

**BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Before Commissioners: Susan K. Duffy, Chair
Dwight D. Keen
Andrew J. French

In the Matter of the Investigation into The Empire
District Electric Company d/b/a Liberty, Regarding)
the February 2021 Winter Weather Events as) Docket No. 21-EPDE-330-GIE
Contemplated by Docket No. 21-GIMX-303-MIS.)
)

ORDER APPROVING UNANIMOUS SETTLEMENT AGREEMENT

This matter comes before the State Corporation Commission of the State of Kansas (Commission). Having examined its files and records, the Commission finds:

1. From February 7, 2021 through February 19, 2021, Kansas experienced extreme weather events resulting in severe prolonged sub-zero temperatures across the State (Winter Event).
2. On February 15, 2021, the Commission issued an Emergency Order directing all jurisdictional electric utilities to do everything necessary to ensure electric service continued to be provided to their customers in Kansas. The Commission authorized every electric utility to defer extraordinary costs relating to the Winter Event to a regulatory asset account.¹
3. On March 9, 2021, the Commission issued an order in Docket No. 21-GIMX-303-MIS adopting Commission Staff's (Staff) recommendation to open company-specific dockets to document issues raised in the Commission's investigation into each major jurisdictional utility's performance during the Winter Event.²

¹ Emergency Order, Docket No. 21-GIMX-303-MIS, In the Matter of Record Natural Gas Prices and Potential System Reliability Issues from Unprecedented and Sustained Cold Weather, pg.1 (February 15, 2021).

² Commission Order, Docket No. 21-GIMX-303-MIS dated March 9, 2021.

4. Soon after, the Commission opened Docket No. 21-EPDE-330-GIE (21-330 Docket) to investigate The Empire District Electric Company d/b/a Liberty's (Liberty) performance during the Winter Event and to evaluate its plan to mitigate the impact of the Winter Event on its customers.³

5. On November 23, 2022, Liberty filed its Plan to Mitigate Financial Effects of Cold Weather Event and Application for Additional Tariff Provisions (Financial Plan).⁴ In its Financial Plan, Liberty reported that it incurred approximately \$10.81 million in extraordinary fuel and purchased power costs and related expenses incurred as a result of the Winter Event and the carrying costs at Liberty's weighted average cost of capital (WACC) of 8.8107% between March 1, 2021, and May 31, 2023, in the amount of \$1.83 million, for a total of \$12.64 million.⁵ To mitigate the costs to customers, Liberty proposed a cost recovery plan to recover incremental extraordinary costs incurred as a result of the Winter Event from its customers over a 13-year period. Liberty also requested recovery of carrying costs during the 13-year recovery period at its WACC. The proposed Winter Storm Uri Recovery Rider (Rider) was calculated by taking the total Winter Event extraordinary costs and associated carrying costs, using a 13-year amortization schedule and spreading the cost by the total number of annual kilowatt hours (kWhs) approved in Liberty's most recent rate case, Docket No. 21-EPDE-444-RTS (21-444 Docket). Liberty's proposal would result in an average monthly bill increase of \$7.32 for a residential customer using 1,000 kWhs per month, over the 13-year period. The Rider to recover the extraordinary fuel and purchase power costs,

³ Order Adopting Staff's R&R to Open Company-Specific Investigations; Order on Petitions to Intervene of Bluemark and CURB; Protective and Discovery Order, March 9, 2021.

⁴ Liberty Plan to Mitigate Financial Effects of Cold Weather Events and Application for Additional Tariff Provisions. November 23, 2022.

⁵ *Id.*, page 3, paragraph 7.

related expenses and carrying costs would appear as a separate line item on the customer bill. Liberty also requested a waiver of certain provisions of its tariffs for the sole purpose of recovering the costs through its Financial Plan.⁶ Liberty's application was supported by direct testimony from Aaron Doll and Geoff Rush.⁷

6. The Citizens' Utility Ratepayer Board (CURB) was granted intervention in the 21-330 Docket.

THE AGREEMENT

7. On March 31, 2023, Liberty, Staff and CURB filed a Joint Motion to Approve Unanimous Settlement Agreement. The Unanimous Settlement Agreement (Agreement) is attached as Attachment A.⁸

8. The Agreement allows Liberty customers to pay for the extraordinary costs associated with the Winter Event over a 13-year period from June 1, 2023 through May 31, 2036.⁹ On average, residential customer bills will increase by \$5.73 per month during this period.¹⁰ This is a reduction from Liberty's originally requested plan which would have resulted in an increase in the average residential bill of \$7.32 per month.¹¹ A non-exhaustive summary of the Agreement includes:

(a) The Parties agreed that the \$10,773,444 in extraordinary fuel and purchase power costs and \$33,513 in related expenses, for a total of \$10,806,957, exclusive of any carrying charges, incurred by Liberty during the Winter Event were prudently incurred by

⁶ *Id.*

⁷ Direct Testimony of Aaron Doll in Support of Plan, November 23, 2022 (Doll Testimony); Direct Testimony of Geoff Rush in Support of Plan, November 23, 2022 (Rush Testimony).

⁸ Joint Motion to Approve Settlement Agreement, March 31, 2023 (Agreement).

⁹ Agreement, pages 4-5, paragraph 10.

¹⁰ Agreement, page 5, paragraph 11.

¹¹ *Id.*

the utility and that Liberty shall be allowed to recover said costs pursuant to the terms contained in the Agreement (“Extraordinary Costs”).¹²

(b) In order to minimize the financial impact to Liberty’s customers of the Extraordinary Costs incurred as a result of the Winter Event, Liberty shall extend its recovery of said costs over a 13-year period beginning on June 1, 2023, and ending on May 31, 2036.¹³

(c) Liberty shall also be permitted to recover carrying charges on the Extraordinary Costs. However, instead of the 8.8107% carrying charge proposed by Liberty, Liberty shall be allowed to include in the Winter Event regulatory asset \$920,698 in carrying charges for the period starting when the Extraordinary Costs were incurred through May 31, 2023. Then, the carrying charge rate changes to a rate of 5.71% for the period June 1, 2023, through the end of the 13-year recovery period. This reduction in the carrying charges results in reducing the total customer payments, inclusive of carrying charges, from approximately \$21.2 million over the 13-year period to \$16.6 million for a savings of \$4.6 million, and reduces the monthly impact to the average residential customer from \$7.32 per month to \$5.73 per month.¹⁴

(d) The Extraordinary Costs and associated carrying costs shall be charged on a volumetric basis and calculated by taking the total Extraordinary Costs and associated carrying charges, using a 13-year amortization schedule and spreading that cost by the total number of annual kilowatt hours approved in Liberty’s most recent rate case, 21-444 Docket. The charge shall be \$0.00573 per kWh.¹⁵

¹² Agreement, page 4, paragraph 9.

¹³ Agreement, pages 4-5, paragraph 10.

¹⁴ Agreement, page 5, paragraph 11.

¹⁵ Agreement, page 5, paragraph 12.

(e) The volumetric charges for the Extraordinary Costs and associated carrying costs shall appear as a separate line item surcharge on customer bills similar to “Winter Storm Uri Cost Recovery Rider” (“Rider”) beginning June 1, 2023.¹⁶

(f) Liberty will true-up actual Extraordinary Costs recoveries compared to expected recoveries for periods ending May 31st each year. The difference will be included as a charge or credit for the next twelve months through the Rider. The final true-up will occur after 13 years, and any over or under collected amounts will be included in the ECA/ACA to collect or refund any remaining differences to customers. If Liberty shall receive or recover any payments as a result of any subsequent federal or state governmental relief in the form of profit disgorgement, civil suit relief, market manipulation findings, etc., resulting from the Winter Event, it shall pass those payments on to its customers through its ECA/ACA, even if those payments may be received or recovered after the 13-year plan.¹⁷

(g) Liberty shall provide notice to its customers explaining the purpose of the Rider. Liberty agrees to work together with Staff and CURB in finalizing the contents of said notice.¹⁸

(h) Liberty agrees to enter into good-faith discussions with Staff and CURB regarding the Company’s implementation of a gas hedging plan applicable to its Kansas operations to assist in the mitigation of natural gas price volatility and for Liberty to file an application for approval of said gas hedging plan following said discussions. Liberty, Staff and CURB also agree to discuss how placing Liberty’s Wind Projects in rates could mitigate fuel prices. By agreeing to participate in said discussions, none of the Parties are committing

¹⁶ Agreement, page 5, paragraph 13.

¹⁷ Agreement, pages 5-6, paragraph 14.

¹⁸ Agreement, page 6, paragraph 15.

to any plan and are specifically reserving their respective rights to address any plan when filed by Liberty.¹⁹

9. On April 6, 2023, Patrick Orr filed testimony in support of the Agreement on behalf of CURB. Mr. Orr presented a summary of the terms of the Agreement and applied the Commission's three-factor test, testifying that the Agreement met each of the factors.²⁰

10. Also on April 6, 2023, Justin Grady filed testimony in support of the Agreement on behalf of Staff. Mr. Grady testified that Liberty's fuel and power purchases during the Winter Event were largely consistent with Liberty's previously approved annual fuel and purchased power procurement plan, concluding that Liberty's fuel and power purchases were prudent and necessary. Mr. Grady also testified regarding Staff's review of the independent third-party report prepared by Utilicast regarding Liberty's fuel procurement, generation operations, transmission and distribution operations, communications, and market operations during the Winter Event and the recommendations included in said report. Mr. Grady testified that Liberty is in the process of implementing the recommendations included in the Utilicast report. Mr. Grady then summarized the Agreement and concluded that it met the Commission's three-factor test for unanimous settlement agreements and recommended the Commission accept the Agreement as a reasonable resolution of the issues in this docket.²¹

11. Charlotte Emery also filed testimony in support of the Agreement on behalf of Liberty. Ms. Emery applied the Commission's three-factor test and recommended the Commission accept the Agreement.²²

¹⁹ Agreement, page 6, paragraph 16.

²⁰ Testimony of Patrick Orr in Support of Settlement Agreement on behalf of CURB, April 6, 2023.

²¹ Testimony of Justin Grady in Support of Settlement Agreement on behalf of Staff, April 6, 2023.

²² Settlement Testimony of Charlotte T. Emery on behalf of Liberty, April 6, 2023.

12. On April 13, 2023, the Commission held an evidentiary hearing to consider the Agreement. Ms. Emery and Mr. Aaron Doll for Liberty, Mr. Orr for CURB and Mr. Grady for Staff appeared as witnesses to answer Commission questions. The witnesses answered questions regarding the terms of the Agreement and questions generally relating to Liberty's management and procurement of its fuel and purchased power during the Winter Event.²³

13. Kansas favors compromising and settling disputes when the agreement is entered into intelligently and in good faith.²⁴

14. No party opposes the Agreement. Therefore, it is considered unanimous²⁵ and will be evaluated using the Commission's three part test which determines whether the Agreement: (1) is supported by substantial competent evidence in the record as a whole; (2) will establish just and reasonable rates; and (3) is in the public interest.²⁶

**THE AGREEMENT IS SUPPORTED BY SUBSTANTIAL
COMPETENT EVIDENCE IN THE RECORD AS A WHOLE**

15. All terms agreed to and included within the Agreement are supported by substantial competent evidence in the record as a whole. Specifically, testimony in support of the Agreement was filed by Charlotte Emery on behalf of Liberty, Patrick Orr on behalf of CURB and Justin Grady on behalf of Staff. In addition, those witnesses and Aaron Doll on behalf of Liberty provided testimony during the evidentiary hearing in support of the Agreement.

16. Staff reviewed the reasonableness and prudence of Liberty's fuel and purchased power procurement costs and practices during the Winter Event. Staff found that Liberty's fuel and

²³ Transcript of April 13, 2023 Evidentiary Hearing.

²⁴ See, *Bright v. LSI Corp.*, 254 Kan. 853, 858 (1994) (citing cases).

²⁵ K.A.R. 82-1-230a(a)(2).

²⁶ See, Docket No. 21-BHCG-418-RTS, Order Approving Unanimous Settlement Agreement, pages 6-7 (December 30, 2021).

purchased power procurement practices during February of 2021 were consistent with the Fuel and Purchased Power Plan that Liberty files on an annual basis with the Commission. Staff also found that Liberty was addressing the recommendations contained in the Utilicast report with respect to its procurement and operational practices.²⁷

17. Substantial competent evidence possesses something of substance and relevant consequence, which furnishes a substantial basis of fact to reasonably resolve the issues.²⁸ Whether another trier of fact could have reached a different conclusion given the same facts is irrelevant; a Commission decision lacks substantial competent evidence when the Commission's determination "is so wide of the mark as to be outside the realm of fair debate."²⁹

18. Having reviewed the record as a whole, the Commission finds the Agreement is supported by substantial competent evidence.

THE AGREEMENT WILL RESULT IN JUST AND REASONABLE RATES

19. The Financial Plan presented by Liberty (as modified by the Agreement) recognizes that there are real costs associated with allowing customers to pay off the Extraordinary Costs incurred during the Winter Event over 13-years and delaying recovery of the Extraordinary Costs incurred by Liberty in order to mitigate the impact to its customers. The terms in the Agreement allow for the recovery of carrying costs that will be incurred by Liberty in order to defer and spread out the Winter Event costs over the 13-year period.

20. Liberty's initial Financial Plan included charges at Liberty's WACC of 8.8107%. The plan was modified as a result of the Agreement to contain carrying costs of \$920,698 for the period March 1, 2021 through May 31, 2023, and carrying costs at a rate of 5.71% for the period of

²⁷ Justin Grady Direct Testimony in Support of Settlement Agreement, pages 6-14, April 6, 2023.

²⁸ *Farmland Industries, Inc. v. Kansas Corp. Comm'n.*, 25 Kan.App.2d, 849, 852 (1999).

²⁹ *Id.* at 851, 856.

June 1, 2023 through May 31, 2036. This reduction in carrying costs resulted in a \$4.6 million reduction in overall charges in Liberty's proposal from \$21.2 million originally to \$16.6 million.³⁰

21. While no customer welcomes bill increases, the Agreement allows customers to pay their portion of the Winter Event costs over a 13-year period at a lower interest rate than Liberty's current WACC. Had customers been asked to pay the Winter Event costs over a one-year period, it would have resulted in average residential bill increases of \$48.24 per month, or a 41.74% increase.³¹

22. The Agreement recognizes that Liberty should be allowed to recover reasonable and prudent costs of providing electric service, even when such costs are extraordinary. However, the Agreement also protects customers by spreading out the time for payment and reducing carrying costs. Therefore, the Commission finds the Agreement will result in just and reasonable rates.

THE AGREEMENT IS IN THE PUBLIC INTEREST

23. The Commission notes that each party has a duty to protect the interests it represents. Liberty has a duty to both their customers and shareholders. CURB represents the interests of residential and small commercial customers. Staff represents the public interest generally, placing Staff in the unique position of being required to weigh and balance the interests of all classes of Liberty's customers, and any other interests impacted by the Commission's Order that may not be a party to the proceeding.

24. In his testimony in support of the Agreement, Justin Grady explains that the Agreement is in the public interest because it protects customers from unnecessarily high prices and/or unreliable service while allowing Liberty to meet its financial obligations.³² The Agreement

³⁰ Justin Grady Direct Testimony in Support of Settlement Agreement, pages 27-28, April 6, 2023.

³¹ *Id.* at page 31.

³² *Id.* at pages 35-36.

represents a reasonable compromise among the parties that avoids costly and time consuming litigation. The terms in the Agreement are consistent with other utility's financial plans that were approved by the Commission in order to mitigate the impact that the extraordinary costs incurred during the Winter Event had on customers.

25. The Commission agrees with Mr. Grady and finds the Agreement represents an equitable balancing of the interests of all parties. Therefore, the Commission finds the Agreement is in the public interest.

26. Based on the above, the Commission finds the Agreement is supported by substantial competent evidence in the record as a whole, results in just and reasonable rates, and is in the public interest. The Commission approves the Agreement.

THEREFORE, THE COMMISSION ORDERS:

A. The Agreement attached hereto as Attachment A is approved.

B. Any party may file for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).³³

BY THE COMMISSION IT IS SO ORDERED.

Duffy, Chair; Keen, Commissioner; French, Commissioner.

Dated: June 1, 2023.



Lynn M. Retz
Executive Director

³³K.S.A. 77-529(a)(1).

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the Investigation into The Empire)
District Electric Company d/b/a Liberty Regarding)
the February 2021 Winter Weather Events, as) Docket No. 21-EPDE-330-GIE
Contemplated by Docket No. 21-GIMX-303-MIS.)

UNANIMOUS SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into between and among The Empire District Electric Company ("Liberty-Empire" or "Company"), the Staff of the State Corporation Commission of the State of Kansas ("Staff" and "Commission" respectively), and the Citizens' Utility Ratepayer Board ("CURB") (collectively "Joint Movants"). This Agreement is being submitted to the Commission for approval pursuant to K.A.R. 82-1-230a.

I. INTRODUCTION: PROCEDURAL HISTORY OF DOCKET

1. On February 15, 2021, the Commission issued an Emergency Order ("Emergency Order") relating to the stress on utility and natural gas providers caused by the sub-zero temperatures during Winter Storm Uri, which were causing increased energy demand and natural gas supply constraints throughout Kansas and wholesale natural gas prices to increase from 10 to 100 times higher than normal ("Winter Event" or "Winter Storm Uri").¹ The Commission stated that Kansas utilities were facing potential reliability issues related to the prolonged arctic temperatures and, therefore, it intended to exercise its emergency powers pursuant to K.S.A. 77-536(a).² The Commission directed all jurisdictional natural gas and electric utilities to coordinate efforts and take

¹Emergency Order, Docket No. 21-GIMX-303-MIS, In the Matter of Record Natural Gas Prices and Potential System Reliability Issues from Unprecedented and Sustained Cold Weather, February 15, 2021, page 1, paragraph 1 ("Emergency Order").

²*Id.*, pages 1-2, paragraph 2.

all reasonably feasible, lawful, and appropriate actions to ensure adequate transportation and electricity to interconnected, non-jurisdictional Kansas utilities.³ The Commission ordered the utilities to do everything necessary to ensure natural gas and electricity service continued to be provided to their customers in Kansas.⁴ The Commission authorized every electric and natural gas utility to defer extraordinary costs relating to the Winter Event to a regulatory asset account.⁵ The Commission also indicated that the deferred costs may also include carrying costs at the utility's weighted average cost of capital ("WACC").⁶

2. On March 9, 2021, the Commission opened Docket No. 21-EPDE-330-GIE ("330 Docket") to investigate the effects of the Winter Event on Liberty-Empire and its customers.⁷ The Commission intended to analyze any extraordinary costs incurred during the Winter Event.⁸ The Commission ordered Liberty-Empire to file a plan to minimize the financial impact of the Winter Event on customers.⁹

3. On November 23, 2022, Liberty-Empire submitted its plan to minimize the financial impact of the Winter Event on customers in the 330 Docket ("Financial Plan").¹⁰ Liberty-Empire

³*Id.*, page 2, paragraph 3.

⁴*Id.*

⁵*Id.*, page 2, paragraph 4.

⁶*Id.*

⁷Order Adopting Staff's R&R to Open Company Specific Investigations, Docket No. 21-EPDE-330-GIE, March 9, 2021, page 5, paragraph 10.

⁸*Id.*

⁹*Id.*

¹⁰Liberty-Empire's Plan to Minimize Financial Effects of Cold Weather Event and Application for Additional Tariff Provisions, Docket No. 21-EPDE-330-GIE, November 23, 2022 ("Financial Plan").

filed pre-filed direct testimony and exhibits in support of its Financial Plan prepared by Aaron Doll and Geoff Rush.¹¹ Liberty-Empire proposed to extend recovery of the approximately \$10.81 million in extraordinary fuel and purchased power costs and related expenses incurred as a result of the Winter Event and the carrying costs at Liberty-Empire's WACC, 8.8107%, between March 1, 2021, and May 31, 2023, in the amount of \$1.83 million, for a total of \$12.64 million, over a 13-year period in order to minimize the financial impact on its customers.¹² Liberty-Empire also requested recovery of carrying costs during the 13-year recovery period at its WACC per the Commission's Emergency Order. The Winter Storm Uri Cost Recovery Rider ("Rider") was calculated by taking the total Winter Storm Uri extraordinary costs and associated carrying costs, using a 13-year amortization schedule and spreading that cost by the total number of annual kilowatt hours approved in Liberty-Empire's most recent rate case, Docket No. 21-EPDE-444-RTS ("21-444 Docket"). Liberty-Empire's proposal would result in an average monthly bill increase of \$7.32 for a residential customer using 1,000 kilowatt hours ("kWh") per month, over the thirteen-year period.¹³ The Rider to recover the extraordinary fuel and purchase power costs, related expenses and carrying costs would appear as a separate line item on the customer bills.¹⁴ Liberty-Empire also requested a waiver of certain provisions of its tariffs for the sole purpose of recovering the extraordinary fuel and purchase power costs, related expenses and associated carrying costs through its Financial Plan.¹⁵

¹¹Direct Testimony of Aaron Doll in Support of Plan, Docket No. 21-EPDE-330-GIE, November 23, 2022; Direct Testimony of Geoff Rush in Support of Plan, Docket No. 21-EPDE-330-GIE, November 23, 2022 ("Rush Testimony").

¹²Financial Plan, page 3, paragraph 6; Rush Testimony, page 8, Schedule GMR-1.

¹³Rush Testimony, page 12, line 15 through page 13, line 4; page 13, lines 19-22.

¹⁴Rush Testimony, page 13, lines 15-16.

¹⁵Financial Plan, page 3, paragraph 7.

4. The Commission granted intervention to CURB on March 9, 2021.

5. On February 21, 2023, Liberty-Empire filed a Motion for Procedural Schedule.¹⁶

6. On March 1, 2023, the Presiding Officer issued an Order Granting Motion for Procedural Schedule.¹⁷

7. All of the Parties participated in a technical/settlement conference held on March 27, 2023. This Agreement was reached on March 30, 2023, and filed on March 31, 2023. All of the Parties have entered into this Agreement. The Joint Movants plan to file testimony in support of the Agreement by April 6, 2023.

8. The Joint Movants believe that this Agreement represents a reasonable and fair resolution of this matter and that the terms contained herein are in the public interest.

II. SETTLEMENT PROVISIONS

9. The Joint Movants agree that the \$10,773,444 in extraordinary fuel and purchase power costs and \$33,513 in related expenses, for a total of \$10,806,957, exclusive of any carrying charges, incurred by Liberty-Empire during the Winter Event were prudently incurred by the utility and that Liberty-Empire shall be allowed to recover said costs pursuant to the terms contained in this Agreement ("Extraordinary Costs").

10. In order to minimize the financial impact to Liberty-Empire's customers of the Extraordinary Costs incurred as a result of the Winter Event, Liberty-Empire shall extend its recovery of said costs over a 13-year period beginning on June 1, 2023, and ending on May 31,

¹⁶ Liberty-Empire's Motion for Procedural Schedule (Financial Plan and OFO Waiver Request), Docket No. 21-EPDE-330-GIE, February 21, 2023.

¹⁷Presiding Officer's Order Granting Motion for Procedural Schedule, Docket No. 21-EPDE-330-GIE, March 1, 2023.

2036.

11. Liberty-Empire shall also be permitted to recover carrying charges on the Extraordinary Costs. However, instead of the 8.8107% carrying charge proposed by Liberty-Empire, the Company shall be allowed to include in the Winter Storm Uri regulatory asset \$920,698 in carrying charges for the period starting when the Extraordinary Costs were incurred through May 31, 2023. Then, the carrying charge rate changes to a rate of 5.71% for the period June 1, 2023, through the end of the 13-year recovery period. This reduction in the carrying charges results in reducing the total customer payments, inclusive of carrying charges, from approximately \$21.2 million over the 13-year period to \$16.6 million for a savings of \$4.6 million, and reduces the monthly impact to the average residential customer from \$7.32 per month to \$5.73 per month.

12. The Extraordinary Costs and associated carrying costs shall be charged on a volumetric basis and calculated by taking the total Winter Storm Uri Extraordinary Costs and associated carrying charges, using a 13-year amortization schedule and spreading that cost by the total number of annual kilowatt hours approved in Liberty-Empire's most recent rate case, 21-444 Docket. The charge shall be \$0.00573 per kWh.

13. The volumetric charges for the Extraordinary Costs and associated carrying costs shall appear as a separate line item surcharge on customer bills similar to "Winter Storm Uri Cost Recovery Rider" ("Rider") beginning June 1, 2023.

14. Liberty-Empire will true-up actual Extraordinary Costs recoveries compared to expected recoveries for periods ending May 31st each year. The difference will be included as a charge or credit for the next twelve months through the Rider. The final true-up will occur after 13 years, and any over or under collected amounts will be included in the ECA/ACA to collect or refund any remaining differences to customers. If Liberty-Empire shall receive or recover any

payments as a result of any subsequent federal or state governmental relief in the form of profit disgorgement, civil suit relief, market manipulation findings, etc., resulting from the Winter Event, it shall pass those payments on to its customers through its ECA/ACA, even if those payments may be received or recovered after the 13-year plan.

15. Liberty-Empire shall provide notice to its customers explaining the purpose of the Rider. Liberty-Empire agrees to work together with Staff and CURB in finalizing the contents of said notice.

16. Liberty-Empire agrees to enter into good-faith discussions with Staff and CURB regarding the Company's implementation of a gas hedging plan applicable to its Kansas operations to assist in the mitigation of natural gas price volatility and for Liberty-Empire to file an application for approval of said gas hedging plan following said discussions. The Joint Movants also agree to discuss how placing Liberty-Empire's Wind Projects in rates could mitigate fuel prices. By agreeing to participate in said discussions, none of the Joint Movants are committing to any plan and are specifically reserving their respective rights to address any plan when filed by Liberty-Empire.

17. Nothing in this Agreement is intended to impinge or restrict, in any manner, the exercise by the Commission of any statutory right, including the right of access to information, and any statutory obligation, including the obligation to ensure that Liberty-Empire is providing efficient and sufficient service at just and reasonable rates.

18. The Joint Movants shall have the right to present pre filed testimony in support of this Agreement. Such testimony shall be filed formally in the docket and presented by witnesses at a hearing on this Agreement. Such testimony shall be filed on or before April 6, 2023, as required by the procedural schedule filed in this docket.

19. The Joint Movants agree to waive cross examination on all testimony filed prior to

the filing of this Agreement. The Joint Movants agree that all such pre-filed testimony and exhibits may be incorporated into the record without objection. The Joint Movants agree to waive filing of post-hearing briefs.

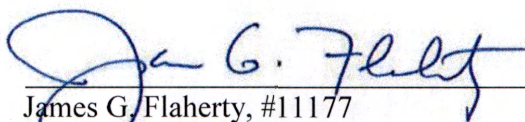
20. This Agreement represents a negotiated settlement that fully resolves all of the issues in this docket among the Joint Movants. The Joint Movants represent that the terms of this Agreement constitute a fair and reasonable resolution of the issues addressed herein. Except as specified herein, the Joint Movants shall not be prejudiced, bound by, or in any way affected by the terms of this Agreement (a) in any future proceeding; (b) in any proceeding currently pending under a separate docket; and/or (c) in this proceeding should the Commission decide not to approve this Agreement in the instant proceeding. If the Commission accepts this Agreement in its entirety and incorporates the same into a final order without material modification, the Joint Movants shall be bound by its terms and the Commission's order incorporating its terms as to all issues addressed herein and in accordance with the terms hereof, and will not appeal the Commission's order on these issues.

21. The provisions of this Agreement have resulted from negotiations among the Joint Movants and are interdependent. In the event that the Commission does not approve and adopt the terms of this Agreement in total, the Agreement shall be voidable and no party hereto shall be bound, prejudiced, or in any way affected by any of the agreements or provisions hereof. Further, in such event, this Agreement shall be considered privileged and not admissible in evidence or made a part of the record in any proceeding.

22. To the extent this Agreement provides for information, documents or other data to be furnished to the Commission or Staff, such information, documents or data shall be filed with the Commission and a copy served upon the Commission's Director of Utilities. Such information,

documents, or data shall be marked and identified with the docket number of this proceeding.

IN WITNESS WHEREOF, the Joint Movants have executed and approved this Stipulated Settlement Agreement, effective as of the 31th day of March, 2023, by subscribing their signatures below.



James G. Flaherty, #11177
ANDERSON & BYRD, LLP
216 S. Hickory ~ P.O. Box 17
Ottawa, Kansas 66067
(785) 242-1234, telephone
(785) 242-1279, facsimile
jflaherty@andersonbyrd.com

Diana C. Carter
Director, Legal Services
The Empire District Electric Company d/b/a Liberty
428 E. Capitol Ave., Suite 303
Jefferson City, MO 65101
Joplin Office Phone: (417)-626-5976
Cell Phone: (573)-289-1961
E-mail: Diana.Carter@libertyutilites.com

Attorneys for The Empire District Electric Company

/s/ Thomas J. Connors

Thomas J. Connors, #27039
Connors Law, LLC
1201 Wakarusa Dr. Suite E225
Lawrence, Kansas 66049
T (785) 328-4210
F (785) 328-4210
tommy@connorslawllc.com

For Commission Staff

/s/ Todd E. Love

David W. Nickel, #11170
Todd E. Love, #13445
Joseph R. Astrab #26414
Citizens' Utility Ratepayer Board
1500 SW Arrowhead Road
Topeka, KS 66604
(785) 271-3200
d.nickel@curb.kansas.gov
t.love@curb.kansas.gov
j.astrab@curb.kansas.gov

Attorneys for CURB

CERTIFICATE OF SERVICE

21-EPDE-330-GIE

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of electronic service on 06/01/2023.

JAMES G. FLAHERTY, ATTORNEY
ANDERSON & BYRD, L.L.P.
216 S HICKORY
PO BOX 17
OTTAWA, KS 66067
jflaherty@andersonbyrd.com

JOSEPH R. ASTRAB, ATTORNEY
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
j.astrab@curb.kansas.gov

TODD E. LOVE, ATTORNEY
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
t.love@curb.kansas.gov

DAVID W. NICKEL, CONSUMER COUNSEL
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
d.nickel@curb.kansas.gov

SHONDA RABB
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
s.rabb@curb.kansas.gov

DELLA SMITH
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
d.smith@curb.kansas.gov

THOMAS J. CONNORS, ATTORNEY
CONNORS LAW, LLC
1201 WAKARUSA DRIVE, SUITE E225
LAWRENCE, KS 66049
tommy@connorslawllc.com

DAVID COHEN, ASSISTANT GENERAL COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
d.cohen@kcc.ks.gov

WALKER HENDRIX, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
w.hendrix@kcc.ks.gov

CARLY MASENTHIN, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
c.masenthin@kcc.ks.gov

CERTIFICATE OF SERVICE

21-EPDE-330-GIE

DIANA C. CARTER
LIBERTY UTILITIES - EMPIRE DISTRICT
428 E. Capitol Ave.
Ste. 303
Jefferson City, MO 65101
diana.carter@libertyutilities.com

CHARLOTTE T. EMERY, DIRECTOR, RATES AND
REGULATORY AFFAIRS-ELECTRIC
LIBERTY UTILITIES - EMPIRE DISTRICT
602 South Joplin Avenue
Joplin, MO 64801
charlotte.emery@libertyutilities.com

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