

BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

In the Matter of a General Investigation )  
Regarding the Effect of Federal Income Tax )  
Reform on the Revenue Requirements of )  
Kansas Public Utilities and Request to Issue an )  
Accounting Authority Order Requiring Certain )  
Regulated Public Utilities to Defer Effects of )  
Tax Reform to a Deferred Revenue Account. )

Docket No. 18-GIMX-248-GIV

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**TESTIMONY OF CHARLOTTE T. NORTH**

**IN SUPPORT OF THE**

**SETTLEMENT AGREEMENT**

**ON BEHALF OF**

**THE EMPIRE DISTRICT ELECTRIC COMPANY**

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**Liberty Utilities®**  
EMPIRE DISTRICT

1   **I.   INTRODUCTION**

2   **Q.   PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3   A.   My name is Charlotte T. North, and my business address is 602 South Joplin Avenue in  
4       Joplin, Missouri.

5   **Q.   WHO IS YOUR EMPLOYER AND WHAT POSITION DO YOU HOLD?**

6   A.   My employer is Liberty Utilities Services Corp., and I serve as a Supervisor in the Rates and  
7       Regulatory Affairs Department for Liberty Utilities Central Region, which includes The  
8       Empire District Electric Company ("Empire" or "Company").

9   **Q.   PLEASE SUMMARIZE YOUR EDUCATIONAL AND PROFESSIONAL**  
10   **BACKGROUND.**

11   A.   I graduated from College of the Ozarks, Point Lookout, Missouri, in 2000 with a Bachelor of  
12       Science degree with a major in Accounting. I have been a Certified Public Accountant  
13       ("CPA") in the State of Missouri since 2006. I was hired by Empire in July 2016 as a Rates  
14       Analyst and promoted to my current position as a Supervisor in the Rates and Regulatory  
15       Affairs Department in May 2017. Prior to joining Empire, I worked for six years in the  
16       regulated insurance industry in Springfield, Missouri as a Director of Accounting. In  
17       addition, I have nine years of public accounting experience working for both a national and  
18       big four accounting firm. My primary roles at these organizations included serving as a  
19       supervisor for financial statement audits and a tax consultant.

20   **Q.   HAVE YOU TESTIFIED BEFORE ANY STATE REGULATORY COMMISSIONS?**

21   A.   Yes. I testified on behalf of Liberty Utilities (Midstates Natural Gas) Corp. and Empire  
22       before the Missouri Public Service Commission ("Commission") in File No. GR-2018-0013

1 and ER-2018-0366 respectfully. I also submitted an affidavit in Case No. EO-2018-0092 on  
2 behalf of Empire. In addition, I have testified before the Arkansas Public Service  
3 Commission in Docket No. 18-006-U and Docket No. 16-053-U.

4 **Q. WAS THIS TESTIMONY PREPARED BY YOU OR UNDER YOUR DIRECT**  
5 **SUPERVISION?**

6 A. Yes, it was.

7 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

8 A. I am providing testimony in support of the Settlement Agreement ("Agreement") between  
9 Empire, the Staff of the Kansas Corporation Commission ("Staff") and the Citizens' Utility  
10 Ratepayer Board ("CURB") (collectively, the "Parties"), which is being submitted to the  
11 Commission for approval.

12 I will also be providing background information regarding this matter, summarizing  
13 the terms of the Agreement, and addressing and applying the Commission standards for  
14 review of settlements to the Agreement in this case.

15 **II. BACKGROUND**

16 **Q. CAN YOU PROVIDE SOME BACKGROUND INFORMATION REGARDING**  
17 **THIS MATTER?**

18 A. Yes. On December 14, 2017, Staff filed a Motion to Open a General Investigation and  
19 Issue Accounting Authority Order Regarding Federal Tax Reform ("Staff Motion").<sup>1</sup>

20 On December 22, 2017, CURB filed a Petition to Intervene and a Response in

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<sup>1</sup>Staff Motion to Open General Investigation and Issue Accounting Authority Order Regarding Federal Tax Reform filed December 14, 2017, in Docket No. 18-GIMX-248-GIV ("248 Docket") ("Staff Motion").

1 Support of Staff's Motion.<sup>2</sup>

2 On January 18, 2018, the Commission issued its Order Opening General  
3 Investigation and Issuing Accounting Authority Order Regarding Federal Tax Reform  
4 ("Order").<sup>3</sup>

5 On February 7, 2018 and again on May 14, 2018, the parties conducted conference  
6 calls to discuss and attempt to reach an agreement to establish a procedure to be used in  
7 Empire's upcoming general rate case filing to quantify the economic impacts of the new  
8 lower tax rates on Empire's operations based upon the instructions provided by the  
9 Commission in its Order and how savings related to the lower tax rates should be passed on  
10 to Empire's Kansas customers with interest. The Parties also discussed how Empire should  
11 capture excess accumulated deferred income taxes ("EADIT") for the benefit of its  
12 customers using a method that is consistent with the tax normalization requirements  
13 specified in the tax legislation or IRS Normalization Rules, as applicable. As a result of  
14 those discussions, the Parties were able to reach the Agreement attached to the Joint Motion  
15 as Exhibit A, which was filed with the Commission for approval.<sup>4</sup>

16 **III. TERMS OF THE AGREEMENT**

17 **Q. ARE YOU FAMILIAR WITH THE TERMS OF THE AGREEMENT?**

18 A. Yes, I am. I was personally involved in negotiating the terms of the Agreement which  
19 address the following:

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<sup>2</sup>CURB's Petition to Intervene and a Response in Support of Staff's Motion filed December 22, 2017, in the 248 Docket.

<sup>3</sup>Order issued January 18, 2018, in the 248 Docket.

<sup>4</sup>See, Exhibit A to the Joint Motion, Settlement Agreement dated June 21, 2018 ("Agreement").

- (1) Empire to Establish a Regulatory Liability to Account for the TCJA's Lowering of the Federal Income Tax Rate from 35% to 21%
- (2) Empire Shall Establish a Regulatory Liability to Account for the Impact of the TCJA on the Utility's Excess ADIT
- (3) General Provisions

**Q. PLEASE DISCUSS THE TERM OF THE AGREEMENT REQUIRING EMPIRE TO ESTABLISH A REGULATORY LIABILITY TO ACCOUNT FOR THE TCJA'S LOWERING OF THE FEDERAL INCOME TAX RATE FROM 35% TO 21%.**

A. The Commission stated that in order to quantify the economic impacts of the new lower tax rates on Kansas utilities the calculation should be based upon the difference between: (1) the cost of service approved by the Commission in the utility's most recent rate case; and (2) the cost of service that would have resulted had the provision for federal income taxes been based upon the corporate income tax rate approved in the TCJA and said amount should be accrued monthly.<sup>5</sup> Under the Agreement, the Parties agreed that for the period of time between January 1, 2018, and through the date on which the Commission issues a final order in Empire's next general rate case (the timing of which is discussed in the terms of the Agreement) Empire agrees to accrue monthly, as a regulatory liability on its general ledger and to stand ready to credit its customers the amount determined due to customers at the conclusion of that general rate case, that portion of its revenue representing the difference between: (1) the cost of service as approved by the Commission in Empire's most recent rate case, Docket No. 11-EPDE-856-RTS ("856 Docket"); and (2) the cost of service that would have resulted in the 856 Docket had the provision for federal income taxes been based upon

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<sup>5</sup>Order, page 5, ¶7.

1 the corporate income tax rate approved in the TCJA, including the impact the TCJA would  
2 have on Empire's Asbury Environmental Riverton Rider ("AERR") and interest. The  
3 Parties also agreed that based solely upon items one and two above, the monthly amount to  
4 be accrued as a regulatory liability exclusive of any calculated interest shall be as set forth in  
5 Appendix 1 to the Agreement. The interest rate applied to the amount shall be calculated at  
6 the rate being used for interest paid on customer deposits, which is currently 1.62%.

7 The disposition of the amount accrued as a regulatory liability shall be determined by  
8 the Commission in its final order issued at the completion of the Company's next general rate  
9 case filing. Empire's agreement to accrue as a regulatory liability the amount calculated in  
10 Appendix 1 to the Agreement shall not be considered as any type of concession on the part of  
11 Empire. Nor shall the Agreement be interpreted as a concession of the Company's position  
12 that other components of its cost of service (such as the return on and of its capital  
13 investments) should be considered and applied to reduce or offset the decrease in its income  
14 tax expenses. Empire's intention (as captured in the terms of the Agreement) to utilize the  
15 provision in the Order that allows the utility the ability to file information and supporting  
16 data with the Commission in the upcoming rate case to prove the tax savings amount accrued  
17 as a regulatory liability should be reduced or offset by other components of its cost of service  
18 before determining the amount to be credited to customers. Likewise, Staff and CURB  
19 reserved their rights to challenge Empire's position that other components of its cost of  
20 service should be used to offset the decrease in Empire's income tax expenses.

21 **Q. PLEASE DISCUSS THE TERM OF THE AGREEMENT REQUIRING EMPIRE TO**  
22 **ACCOUNT FOR THE IMPACT OF THE TCJA ON THE UTILITY'S EADIT.**

23 **A.** The Commission, in its Order, also stated its intent was to capture the impact of the TCJA on

1 the utility's EADIT for the benefit of customers using a methodology that is consistent with  
2 the tax normalization requirements specified in the tax legislation or IRS Normalization  
3 Rules. Under the Agreement, Empire agrees it will establish a regulatory liability to  
4 account for and capture the impact of the TCJA on the utility's EADIT and will provide  
5 evidence of such to Staff and CURB. The Parties have agreed to defer any issues regarding  
6 the impact of the TCJA on the utility's EADIT to Empire's next general rate case filing with  
7 the understanding and concurrence by the Parties that Empire's customers are entitled to the  
8 benefits of the tax savings relating to the utility's EADIT.

9 Empire has agreed it will not start amortizing the EADIT as of December 31, 2017  
10 until the treatment of EADIT is approved by the Commission in Empire's next general rate  
11 case filing.

12 Empire has agreed to file a general rate case no later than 150 days from the date of a  
13 Commission order approving this Agreement. It is further agreed that Empire will include  
14 in the general rate case filing the: (1) impact of the TCJA on the utility's EADIT, if any, and  
15 the treatment of EADIT; (2) calculation of tax savings relating to the reduced tax expense  
16 resulting from the lower corporate tax rate in the TCJA that should be included in new base  
17 rates following the general rate case decision; and (3) proposed plan to account for any  
18 portion of the amount being accrued as a regulatory liability, subject to the provisions and  
19 reservation of rights discussed in paragraph 8 in the Agreement.

20 Finally, the Parties agreed in the event the IRS asserts that the terms of this  
21 Agreement create a violation of normalization requirements all Parties will promptly reform  
22 the terms of the Agreement to cure and prevent any normalization violation.

23 **Q. PLEASE DISCUSS THE GENERAL PROVISIONS SECTION OF THE**

1           **AGREEMENT.**

2       A.     Staff and CURB specifically reserved their respective rights to make all arguments and to  
3           take positions that are different than what they have agreed to in their Agreement with  
4           Empire with respect to proposals relating to the TCJA submitted by other public utilities for  
5           approval by the Commission.

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

10                The Agreement includes a provision stating it represents a negotiated settlement that  
11           resolves the issues in this docket as it relates to Empire only. The Parties represented that  
12           the terms of the Agreement constitute a fair and reasonable procedure to be used by the  
13           Parties in Empire's upcoming rate case to address the issues raised in the Commission's  
14           Order as they relate to Empire only. Except as specified in the Agreement, the Parties shall  
15           not be prejudiced, bound by, or in any way affected by the terms of the Agreement (a) in any  
16           future proceeding; (b) in any proceeding currently pending under a separate docket; and/or  
17           (c) in this proceeding should the Commission decide not to approve the Agreement in the  
18           agreement as proposed. If the Commission accepts the Agreement in its entirety and  
19           incorporates the same into a final order without material modification, the Parties have  
20           agreed to be bound by its terms and the Commission's order incorporating its terms as to all  
21           issues addressed in the Agreement and in accordance with the terms of the Agreement, and  
22           will not appeal the Commission's order on these issues.

23                The Agreement also includes a statement that the provisions contained in the



1 Agreement have resulted from negotiations among the Parties and are interdependent. In  
2 the event the Commission does not approve and adopt the terms of the Agreement in total, it  
3 shall be voidable and none of the Parties shall be bound, prejudiced, or in any way affected  
4 by any of the agreements or provisions hereof. Further, in such event, the Agreement shall  
5 be considered privileged and not admissible in evidence and shall be withdrawn from the  
6 record in this proceeding and not made a part of the record in any other proceeding.

7 Finally, the Parties agreed to file testimony in support of the Agreement within seven  
8 (7) days after the Motion is filed with the Commission.

9 **IV. COMMISSION STANDARDS FOR REVIEW OF AGREEMENT**

10 **Q. ARE YOU FAMILIAR WITH THE FACTORS THE COMMISSION CONSIDERS**  
11 **WHEN REVIEWING A PROPOSED SETTLEMENT AGREEMENT?**

12 A. Yes, I am. I understand there are five factors the Commission considers when reviewing a  
13 proposed settlement agreement, and I have reviewed several of the Commission's orders  
14 since the Commission adopted its five-factor test in 2008.

15 **Q. CAN YOU IDENTIFY THOSE FIVE FACTORS?**

16 A. The five factors the Commission considers when reviewing proposed settlement agreements  
17 are as follows:

18 (1) Whether there was an opportunity for the opposing party to be heard on their  
19 reasons for opposition to the Agreement;

20 (2) Whether the Agreement is supported by substantial competent evidence;

21 (3) Whether the Agreement conforms with applicable law;

22 (4) Whether the Agreement results in just and reasonable rates; and

(5) Whether the results of the Agreement are in the public interest.

**Q. WHO ARE THE PARTIES TO THIS DOCKET?**

A. The parties to this general investigation docket included all investor owned utilities, CURB and Staff. However, because the Agreement only pertains to Empire and only impacts Empire's customers, only the relevant parties are signatories to the Agreement.

**Q. ARE THERE ANY ISSUES NOT ADDRESSED IN THE AGREEMENT THAT ANY OF THE PARTIES WISH TO LITIGATE?**

A. No. The Agreement either addresses or defers the issues between Empire, Staff and CURB to Empire's next general rate case.

**Q. WHO PARTICIPATED IN THE SETTLEMENT NEGOTIATIONS IN THIS DOCKET?**

A. Representatives from Empire, Staff, and CURB participated in the settlement negotiations as it related to Empire. Empire originally discussed with the parties the issues in this docket and the possibility for settlement of some or all of the issues. The Parties continued discussions through June 20, 2018. A settlement of all issues was reached by Empire, Staff and CURB resulting in the Agreement filed with the Commission on June 21, 2018.

**Q. DID ALL PARTIES WHO WILL BE IMPACTED BY THE PROPOSED TAX SAVINGS REFUND PLAN HAVE AN OPPORTUNITY TO BE HEARD WITH RESPECT TO THE TERMS OF THE AGREEMENT?**

A. Yes. All parties impacted by the terms contained in the Agreement participated in the settlement discussions.

**Q. IS THE SETTLEMENT AGREEMENT AMONG THE PARTIES IN CONFORMITY WITH THE FACTORS THE COMMISSION USES TO REVIEW**

1           **SETTLEMENTS?**

2    A.    Yes. While I am not a lawyer, it is my understanding all the parties agree that the  
3           established standards have been met. A legal analysis in the Joint Motion addresses these  
4           points. The final settlement agreement conforms to the instructions included by the  
5           Commission in its Order, and is consistent with the intent set forth by the Commission in its  
6           Order. The Agreement establishes a reasonable process and procedure to account for the  
7           impact of the TCJA in Empire's rates in its upcoming general rate case filing.

8    **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

9    A.    Yes.

**VERIFICATION OF CHARLOTTE T. NORTH**

STATE OF MISSOURI, COUNTY OF JASPER, ss:

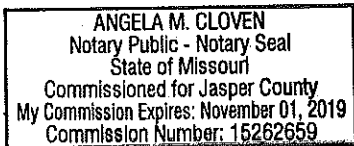
I, Charlotte T. North, being first duly sworn on oath, depose and state that I am the witness identified in the foregoing Testimony in Support of the Settlement Agreement; that I have read the testimony and am familiar with its contents; and that the facts set forth therein are true and correct.

Charlotte T. North  
Charlotte T. North

SUBSCRIBED AND SWORN to before me this 27 day of June, 2018.

Angela M. Cloven  
Notary Public

Appointment/Commission Expires:



## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing Testimony of Charlotte T. North in Support of the Settlement Agreement was sent via electronic mail, this 27<sup>th</sup> day of June, 2018, addressed to:

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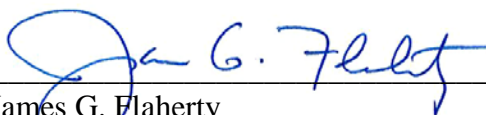
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