

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

JOINT MOTION FOR APPROVAL OF BLACK HILLS' TAX REFORM PLAN

Black Hills/Kansas Gas Utility Company, LLC, d/b/a Black Hills Energy ("Black Hills"), the Staff of the Kansas Corporation Commission ("Commission") ("Staff") and the Citizens' Utility Ratepayer Board ("CURB") (collectively "Joint Movants"), pursuant to K.A.R. 82-1-230a, submit this Joint Motion ("Motion"), which seeks Commission approval of the Settlement Agreement ("Agreement") attached to this Motion as Exhibit A. In support of their Motion, Joint Movants state as follows:

I. BACKGROUND

1. On December 14, 2017, Staff filed a Motion to Open a General Investigation and Issue Accounting Authority Order Regarding Federal Tax Reform ("Staff Motion").¹ Staff attached a Report and Recommendation ("Staff's R&R") to the Staff Motion, which recommended the Commission issue an Order addressing the following:

- a. Opening a general investigation for the purpose of examining the financial impact of anticipated federal income tax reform on regulated public utilities operating in Kansas;²

¹Staff 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").

²Staff Motion, page 1.

b. Requiring, through the use of an Accounting Authority Order ("AAO"), certain regulated public utilities that are taxed at the corporate level, which included Black Hills, to track and accumulate in a deferred revenue account, with interest compounded monthly at the most current Commission-approved customer deposit interest rate, the reduction in their regulated cost of service that would occur in the event that a new lower federal income tax rate is signed into law. These deferrals should take effect at the same time as the new federal corporate tax rate change and the calculations should be performed using the cost of service data that was used to set the utilities' last Commission-approved revenue requirement (including any line-item surcharges that contain a provision for regulated income tax expense);³ and

c. Confirming that the Commission's intention regarding the AAO is to preserve any potential tax benefits so that they may be evaluated in the context of a comprehensive evaluation of the reasonableness of the utilities' rates as well as notifying utilities that this portion of their rates should be considered interim subject to refund until the Commission has the opportunity to review the reasonableness of the utilities' rates on a comprehensive and case-by-case basis and confirming that the Commission intends to capture the reduction in Accumulated Deferred Income Tax ("ADIT") balances that will occur in the event that a lower corporate federal income tax rate takes effect, over time, in a manner that comports with Internal Revenue Services ("IRS") Tax Normalization Rules.⁴

2. Staff's R&R referred to and provided a copy of the order issued by the Commission

³Staff Motion, page 1.

⁴Staff Motion, page 1.

in Docket No. 155,094-U dated March 18, 1987, relating to the effects of the Federal Tax Reform Act of 1986 ("1987 Order") and suggested that its recommendation in the current docket was consistent with the 1987 Order.⁵

3. On December 22, 2017, the Tax Cuts and Jobs Act ("TCJA") was signed into law. Among other things, the TCJA reduced the federal corporate income tax rate from 35% to 21% beginning on January 1, 2018.⁶

4. On December 22, 2017, CURB filed a Petition to Intervene and a Response in Support of Staff's Motion.⁷

5. On January 18, 2018, the Commission issued its *Order Opening General Investigation and Issuing Accounting Authority Order Regarding Federal Tax Reform* ("Order").⁸ In said Order the Commission made the following findings and conclusions:

a. The TCJA has the potential to significantly reduce the cost of service for many utilities operating in Kansas since tax expenses are recovered in rates.⁹

b. A significant reduction to the corporate tax rate may also impact the ADIT Liabilities and Assets on the regulated books of utilities.¹⁰

⁵Staff's Motion, attached to Staff's R&R dated December 3, 2017, page 3, 1987 Order attached to Staff's R&R as Attachment A.

⁶Tax Cuts and Jobs Act, Public Law No. 115-97; Statute 131 Stat. 2054 (December 22, 2017).

⁷CURB's Petition to Intervene and a Response in Support of Staff's Motion filed December 22, 2017, in the 248 Docket.

⁸Order issued January 18, 2018, in the 248 Docket.

⁹*Id.* at page 5, ¶6.

¹⁰*Id.*, at page 5, ¶6.

- c. An investigation into the impact of the TCJA on utility rates is warranted.¹¹
- d. The 1987 Order issued by the Commission relating to the effects of the Federal Tax Reform Act of 1986, is informative but not precedential.¹²
- e. The purpose of the investigation is to quantify the economic impacts of the new lower tax rates on Kansas utilities, and where appropriate, direct that any cost savings be passed on to Kansas utility customers.¹³
- f. All regulated public utilities that are taxable at the corporate level are directed to accrue monthly, in a deferred revenue account, the portion of its revenues representing the difference between (1) the cost of service approved by the Commission in its 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.¹⁴
- g. Taxable utilities operating in Kansas are notified that the portion of their regulated revenue stream that reflects higher corporate tax rates should be considered interim and subject to refund, with interest calculated at the rate being used for interest paid on customer deposits, until the Commission can more fully evaluate on a case-by-case basis the impact of the TCJA.¹⁵
- h. Upon the Commission completing its case-by-case evaluation, if it is

¹¹*Id.*, at page 5, ¶7.

¹²*Id.*, at page 5, ¶6.

¹³*Id.*, at page 5, ¶7.

¹⁴*Id.*, at page 5, ¶7.

¹⁵*Id.*, at page 5, ¶8.

determined that a rate decrease is proper and would have been proper as of the January 1, 2018, effective date of the TCJA, any excessive collections in the deferred revenue subaccount, or other appropriate tracking mechanism approved by the Commission, with appropriate adjustments, shall be refundable to customers with interest. Any balance remaining in the account shall be credited to the utility's operating revenue.¹⁶

i. The Commission intends to capture excess ADIT for the benefit of customers using a methodology that is consistent with the tax normalization requirements specified in the tax legislation or IRS Tax Normalization Rules, as applicable.¹⁷

j. Any affected utility that believes other components of their cost of service have more than offset the decrease in its income tax expenses will have the ability to file such information and supporting data with the Commission, to be considered on a case-by-case basis. The Commission's intention here is not to materially impact regulated utilities' profitability, but rather, ensure that the affected utilities are neither positively nor negatively impacted by the passage of federal income tax reform.¹⁸

k. The Commission adopts the Staff's R&R and incorporates it into the Order.

6. On January 31, 2018, Black Hills filed its entry of appearance in this docket.¹⁹

7. On February 21, 2018, the Joint Movants met in Topeka to discuss and attempt to reach agreement to quantify the economic impacts of the new lower tax rates on Black Hills' Kansas operations based upon the instructions provided by the Commission in its Order and how cost

¹⁶*Id.*, at page 6, ¶8.

¹⁷*Id.*, at page 6, ¶8.

¹⁸*Id.*, at page 7, ¶11.

¹⁹*Id.*, Order, page 1, ¶11.

savings related to the lower tax rates should be passed on to Black Hills' Kansas customers with interest. The Joint Movants also discussed how Black Hills should capture excess ADIT for the benefit of its customers using a method that is consistent with the tax normalization requirements specified in the tax legislation or IRS Normalization Rules, as applicable. As a result of said meeting and follow-up discussions among the Joint Movants, the Joint Movants were able to reach the Agreement, which is attached to this Motion as Exhibit A and hereby submit said Agreement to the Commission for approval.²⁰

II. TERMS OF AGREEMENT COMPLY WITH THE INSTRUCTIONS SET FORTH IN THE COMMISSION'S ORDER

A. REDUCTION IN FEDERAL INCOME TAX EXPENSE INCLUDED IN BLACK HILLS' COST OF SERVICE RESULTING FROM THE TCJA'S LOWERING OF THE FEDERAL INCOME TAX RATE FROM 35% TO 21%

8. As indicated above, 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.²¹ In Appendix 1 to Exhibit A to this Joint Motion, Black Hills has used the calculation method set forth in the Commission's Order to determine the tax savings that results from the lowering of the federal income tax rate under the TCJA from 35% to 21%. The result of said calculation is an annual cost of service savings to customers in the amount of \$1,718,203, exclusive of interest. The Staff has verified Black Hills' calculation. In the Agreement, the Joint Movants concur that the annual cost

²⁰See, Exhibit A to the Joint Motion, Settlement Agreement dated March 7, 2018 ("Agreement").

²¹Order, page 5, ¶7.

of service savings to customers relating to the reduction in federal income tax expense included in Black Hills' cost of service resulting from the TCJA's lowering of the federal income tax rate from 35% to 21% is \$1,718,203, exclusive of interest.²² This amount is also exclusive of the cost savings relating to Black Hills' GSRS surcharge, which is calculated and accounted for separately in the Agreement, and exclusive of any cost savings relating to capturing excess ADIT for the benefit of customers consistent with tax normalization requirements, which is also addressed separately in the Agreement.²³

B. REFUND OF \$1,718,203 IN TAX SAVINGS TO BLACK HILLS' CUSTOMERS

9. As indicated above, the Commission stated that the utility shall refund tax savings to customers with interest calculated at the rate being used for interest paid on customer deposits.²⁴ Under the terms of the Agreement, the Joint Movants agree that Black Hills shall refund \$1,719,619, which includes interest on the amount of monthly excessive collections in the deferred revenue account for the months of January, February and March 2018, by providing Black Hills' customers an annual one-time separate line bill credit in April 2018, for 53% of the tax savings and a volumetric credit returned to the customers through Black Hills' purchased gas adjustment ("PGA") for the remaining 47% of the tax savings.²⁵ The 53% and 47% allocations of the tax savings between the fixed bill credit and the volumetric PGA credit roughly tie to the percentage allocations in Black Hills' last rate case for the amount of total non-gas or non-PGA costs recovered through the monthly customer charge (53%) and the amount of total costs recovered through the

²²Agreement, page 6, ¶9.

²³*Id.*

²⁴Order, page 6, ¶8.

²⁵Agreement, page 6, ¶9.

commodity charge (47%).²⁶ The Joint Movants agree that the allocation of the tax savings between the bill credit and the PGA credit will reasonably assign the refund to customers within each class so that customers who use more gas and pay more of the revenue, and thus, more of the utility's tax expense, will receive an appropriate amount of the tax refund.²⁷

10. The Joint Movants further agree that the tax savings should be allocated among Black Hills' customer classes based upon the allocation to customer classes approved by the Commission in Black Hills' last rate case.²⁸

11. Appendix 2 of Exhibit A to this Joint Motion, shows how the refund is allocated between customer classes and then allocated to the annual one-time separate line bill credit and the volumetric credit to the PGA. Each Black Hills' residential customer will receive an annual one-time separate line bill credit on their bill in April 2018 (if the Agreement is approved by the Commission by March 27, 2018) of \$7.34. In addition to the \$7.34 annual one-time bill credit, residential customers on average will receive \$4.23 as a result of the volumetric credit to the PGA, for a total annual refund of \$11.57.²⁹

12. Under the Agreement, the one-time bill credit and volumetric credit to the PGA will be provided to the Black Hills' customers in January of each succeeding year following 2018 until Black Hills' base rates are changed in its next rate case. At that point in time, the tax savings will be reflected in the new base rates for the benefit of the customers.³⁰

²⁶Agreement, page 6, ¶9.

²⁷Agreement, page 6, ¶9.

²⁸Agreement, page 8, ¶10.

²⁹Agreement, page 7, ¶11.

³⁰Agreement, page 7, ¶12.

C. REFUND OF AN ADDITIONAL \$154,331 IN TAX SAVINGS TO CUSTOMERS RELATING TO BLACK HILLS' GSRS SURCHARGE

13. As indicated above, the Commission in its Order adopted Staff's R&R and incorporated it into the Order by reference.³¹ The Staff's R&R recommended tax savings also be calculated by the utilities for any line-item surcharges that contain a provision for regulated income tax expense.³² Pursuant to that recommendation, Black Hills calculated the tax savings associated with its Gas System Reliability Surcharge ("GSRS") to be \$154,331 ("GSRS Refund").³³ Staff has verified Black Hills' GSRS Refund. Under the Agreement, Joint Movants agree Black Hills should refund an additional \$154,331 in tax savings to customers relating to Black Hills' GSRS surcharge. Appendix 3 to Exhibit A to this Joint Motion contains the calculation of the GSRS Refund.³⁴

14. Appendix 4 to Exhibit A to this Joint Motion shows the allocation of the GSRS Refund to each Black Hills' customer class; the April 2018 one-time credit to the GSRS per customer by class for the January, February and March 2018 billing cycles to reflect the tax savings (with interest) relating to the GSRS for those three months; and the permanent reduction in the monthly GSRS surcharge to reflect the tax savings. Black Hills' residential customers will receive a one-time credit of \$0.24 per meter in their GSRS rate in April 2018, and their monthly GSRS surcharge will be reduced from the current \$0.69 to \$0.61, a savings of \$0.08 per month. Under the Agreement, the Joint Movants agree to the allocation and method of refunding the additional tax savings to customers relating to Black Hills' GSRS surcharge set forth in Appendix 4 to Exhibit A to

³¹Order, page 7, ¶11.

³²Staff R&R, page 6.

³³Agreement, page 7, ¶13.

³⁴*Id.*

the Agreement.³⁵

D. TAX SAVINGS RELATING TO EXCESS ADIT

15. As indicated above, the Commission in its Order stated its intent was also to capture tax savings relating to excess ADIT for the benefit of customers using a methodology that is consistent with the tax normalization requirements specified in the tax legislation or IRS Normalization Rules.³⁶ Under the Agreement, Black Hills has indicated that it will establish a regulatory liability to account for and capture tax savings relating to excess ADIT and will provide evidence of such to Staff and CURB.³⁷ Joint Movants have agreed to defer any issues regarding the amount of tax savings relating to excess ADIT and how those savings should be passed on to customers in Black Hills' next general rate case filing with the understanding and concurrence by the Joint Movants that Black Hills' customers are entitled to the benefits of the tax savings relating to the utility's excess ADIT.³⁸

16. Joint Movants also agree Black Hills' excess ADIT as of December 31, 2017, will not be amortized for ratemaking purposes until the excess ADIT is reflected in base rates approved by the Commission in Black Hills' next general rate case filing.³⁹ Under the provisions of the GSRS statute (K.S.A. 66-2203), in order for Black Hills to retain its GSRS surcharge it is required to file a general rate case every five years unless it obtains approval from the Commission for an additional one year extension. Black Hills' last general rate case was decided by the Commission on

³⁵Agreement, pages 7-8, ¶14.

³⁶Order, page 6, ¶8.

³⁷Agreement, page 8, ¶15.

³⁸Agreement, page 8, ¶15.

³⁹Agreement, page 8, ¶16.

December 16, 2014. Therefore, if Black Hills wishes to continue to retain its ability to use the GSRS surcharge it will be required to file its next general rate case within the time restrictions set forth in the GSRS statute.⁴⁰

E. THE GENERAL PROVISIONS IN THE AGREEMENT ARE CONSISTENT WITH THE COMMISSION'S ORDER TO EVALUATE TAX SAVINGS REFUNDS ON A CASE-BY-CASE BASIS

17. As indicated above, the Commission in its Order stated that it intended to evaluate tax savings refunds on a case-by-case basis so that affected utilities are neither positively nor negatively impacted by the passage of the TCJA.⁴¹ The Agreement attached to this Motion contains provisions consistent with the Commission's Order to evaluate tax savings refunds on a case-by-case basis. The Joint Movants agree the terms in the Agreement, if approved by the Commission, shall apply only to Black Hills' tax refund plan and shall not be binding on Staff, CURB or the Commission in reviewing or approving any TCJA tax refund plan submitted by any other public utility in this docket or ordered by the Commission in this or any other docket.⁴² Under the Agreement, Staff and CURB specifically reserve their respective rights to make all arguments and to take positions that are different than what they have agreed to in the Agreement for Black Hills' TCJA tax refund plan with respect to TCJA tax refund plans submitted by other public utilities for approval by the Commission.⁴³ Finally, the Agreement contains a provision that indicates the Joint Movants represent to the Commission that the terms are consistent with the requirements set forth in the Commission's Order issued in this docket and constitute a fair and

⁴⁰Agreement, pages 8-9, ¶16.

⁴¹Order, page 7, ¶11.

⁴²Agreement, page 9, ¶17.

⁴³Agreement, page 9, ¶18.

reasonable resolution of the issues the Commission set forth in its Order.⁴⁴

F. EFFECTIVE DATE OF ORDER

18. The calculations set forth in the appendices to Exhibit A to the Joint Motion are based upon the Commission issuing an order approving the Agreement by no later than March 27, 2018, to allow Black Hills time to prepare April bills to show the credits relating to the tax savings. The Agreement contains a provision that would allow the Commission to approve the Agreement after March 27, 2018, however, the Joint Movants agree that if the Commission approves the Agreement after March 27, 2018, Black Hills shall be allowed to proceed with its tax refund plan without further approval from the Commission. The intent of the Joint Movants in including this provision in the Agreement is to pass through the tax savings to customers as soon as possible and to avoid having to re-file this Joint Motion and Agreement should the Commission be unable to rule on the Joint Motion in time to allow Black Hills to reflect the credits in its April 1, 2018 billings to customers. The Joint Movants agree that no adjustment to the interest paid on the refund amount is necessary if the Commission issues the Order after March 27, 2018, because Black Hills has agreed to pass on the entire amount of the annual refund upon approval by the Commission, instead of passing the savings on to customers on a month by month basis and waiting until the revenue associated with the higher tax rate is actually received from the customers.

III. THE TERMS OF THE AGREEMENT SATISFY THE FIVE FACTORS THAT THE COMMISSION CONSIDERS WHEN REVIEWING A PROPOSED SETTLEMENT

19. Joint Movants submit that the Agreement satisfies the five factors that the Commission considers when reviewing a proposed settlement agreement. As the Commission is aware, the five factors the Commission considers when reviewing proposed settlement agreements

⁴⁴Agreement, page 9, ¶20.

are as follows:

- (a) whether there was an opportunity for the opposing party to be heard on their reasons for opposition to the Agreement;
- (b) whether the Agreement is supported by substantial competent evidence;
- (c) whether the Agreement conforms with applicable law;
- (d) whether the Agreement results in just and reasonable rates; and
- (e) whether the results of the Agreement are in the public interest.⁴⁵

A. THERE WAS AN OPPORTUNITY FOR THE OPPOSING PARTIES TO BE HEARD ON THEIR REASONS FOR OPPOSITION TO THE AGREEMENT

20. As it relates to Black Hills' TCJA tax savings refund plan, and taking into account the fact that the Agreement limits its applicability to only the Black Hills' plan and is not binding or precedential as to TCJA tax savings refund plans submitted by other public utilities, the Joint Movants who have signed the Agreement represent those persons who will be subject to and receive the benefits of Black Hills' TCJA tax savings plan. Black Hills represents its customers, employees and shareholders. CURB represents the residential and small commercial customers. Staff represents the public generally. The Agreement addresses all issues between Staff, CURB and Black Hills. Representatives from Black Hills, Staff and CURB participated in the settlement negotiations on February 21, 2018. A settlement of all issues was reached by the Joint Movants resulting in the Agreement attached as Exhibit A which is being filed with this Motion. All persons having an interest in Black Hills' TCJA tax savings plan have been represented, have had an opportunity to be heard, and all concur with respect to the terms of the Agreement. Therefore, this

⁴⁵Docket No. 08-ATMG-280-RTS, Order Approving Contested Settlement Agreement, issued May 12, 2012, paragraph 11.

factor has been met.

B. THE AGREEMENT IS SUPPORTED BY SUBSTANTIAL COMPETENT EVIDENCE

21. There is substantial competent evidence in the record to support the Agreement reached by the Joint Movants. Black Hills, Staff and CURB intend to submit pre-filed testimony in support of the Agreement. That testimony will show that the Agreement reached by the Joint Movants complies with all of the instructions set forth in the Order issued by the Commission in this docket, is consistent with the intent set forth by the Commission in its Order and results in a TCJA tax savings refund plan that is fair and reasonable.

C. THE AGREEMENT CONFORMS WITH APPLICABLE KANSAS LAW

22. The Agreement was fully and fairly negotiated and will result in just and reasonable rates for Black Hills' customers. Kansas law recognizes a strong policy favoring and encouraging settlements.⁴⁶ Standards for reviewing the reasonableness of a settlement agreement require the Commission to make a finding, supported by substantial competent evidence from a review of the record as a whole, that the settlement will establish just and reasonable rates.⁴⁷ That standard is met in this case.

23. In reaching the Agreement, Black Hills, Staff and CURB relied upon the instructions set forth in the Commission's Order, as well as, the Commission's expressed intent in said Order and submit that the Agreement reached by them complies with both those instructions and intent, and thus, conforms with Kansas law.

D. THE AGREEMENT WILL RESULT IN JUST AND REASONABLE RATES

⁴⁶*Bright v. LSI Corp.*, 254 Kan. 853, 858, 869 P.2d 686 (1994).

⁴⁷*Farmland Industries v. Kansas Corporation Commission*, 24 Kan.App.2d 172, 186-188, 943 P.2d 470 (1997); *Citizens' Utility Ratepayer Board v. State Corp. Comm'n of the State of Kansas*, 28 Kan. App. 2d 313, 316-317, 16 P. 3rd 319 (Kan.App.2000).

24. Kansas case law dealing with utility rate cases indicates the "just and reasonable" standard coincides with the "zone of reasonableness" test adopted by the Kansas courts. The "just and reasonable" standard was first outlined by the United States Supreme Court.⁴⁸ The Court emphasized that when evaluating whether rates are just and reasonable, the focus of inquiry is properly on the end result or "total effect" of the rate order, rather than on the specific rate-setting method employed. In addition, the Hope case was followed by another Supreme Court case,⁴⁹ which found the Natural Gas Act's articulated "just and reasonable" standard.

25. Applying these standards to the Agreement, the agreed-upon TJCA tax savings refund plan complies with the Commission's Order issued in this docket and is consistent with Kansas law regarding the reasonableness of rates. The Kansas Supreme Court has discussed the "zone of reasonableness" as it applies to the Commission's ratemaking function as follows:

There is an elusive range of reasonableness in calculating a fair rate of return. A court can only concern itself with the question as to whether a rate is so unreasonably low or so unreasonably high as to be unlawful. The in-between point, where the rate is most fair to the utility and its customers, is a matter for the State Corporation Commission's determination.⁵⁰

26. Black Hills' TCJA tax savings refund plan is supported by substantial competent evidence and results in just and reasonable rates. The tax savings refund plan also satisfies the balancing test aspect of the zone of reasonableness evaluation because it appropriately takes into account the reduction in federal income tax expense included in Black Hills' current cost of service as a result of the TCJA and passes those cost savings to Black Hills' customers in a fair and

⁴⁸*Power Comm'n v. Hope Gas Co.*, 320 U.S. 591, 64 S.Ct. 281, 88 L.Ed. 333 (1944).

⁴⁹*Permian Basin Area Rate Cases*, 390 U.S. 747, 770, 88 S.Ct. 1344, 20 L.Ed. 2d 312, reh denied 392 U.S. 917, 88 S.Ct. 2050 (1968).

⁵⁰*Southwestern Bell Tel. Co. v State Corporation Commission*, 192 Kan. 39, 41, 386 P. 2d 515 (1963).

reasonable manner. Each Joint Movant carefully considered the instructions and intent expressed by the Commission in its Order opening this docket and followed said instructions and intent in reaching the Agreement being submitted for approval by the Commission.

E. THE AGREEMENT IS IN THE PUBLIC INTEREST

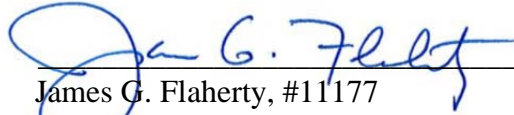
27. Black Hills, Staff and CURB each has a duty to protect the interest of the party it represents. Black Hills has a duty to its customers, employees and shareholders. The Staff and the Commission are in the unique position of being required to weigh and balance the interests of the company, the customers, and the public generally. CURB represents the interests of residential and small commercial customers. As referenced in the *Kansas Gas & Electric* case, "the focus of the inquiry (in setting "just and reasonable" rates) is properly on the end result or "total effect" of the rate order, rather than upon the rate-setting employed. The "total effect" of the terms of the Agreement results in just and reasonable rates and represents an equitable balancing of the interests impacted by the Agreement. Thus, the Agreement is in the public interest and should be approved by the Commission in its entirety.

IV. TESTIMONY IN SUPPORT OF THE AGREEMENT

28. The Joint Movants agree to file testimony in support of the Agreement no later than March 16, 2018. The testimony will address the five factors the Commission considers when evaluating an Agreement. Because the Joint Movants wish to have Black Hills pass through the tax savings to its customers as soon as possible, the Joint Movants do not believe that a hearing on this Agreement is necessary. To the extent necessary, Joint Movants waive their respective rights to have a hearing on the Agreement. Joint Movants submit that based upon the Staff's R&R, Commission Order and the pre-filed testimony submitted by the Joint Movants in support of the Agreement, there is substantial competent evidence in the record to allow the Commission to

approve the Agreement without the need for a hearing in this matter.

WHEREFORE, for the reasons set forth herein, Black Hills, Staff and CURB request that this Joint Motion be granted and that the Agreement attached hereto be approved.



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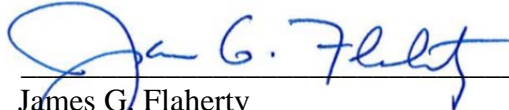
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VERIFICATION

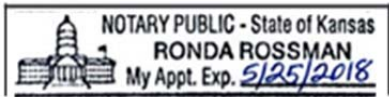
STATE OF KANSAS, COUNTY OF FRANKLIN, ss:

James G. Flaherty, of lawful age, being first duly sworn on oath, states:

That he is the attorney for Black Hills/Kansas Gas Utility Company, LLC d/b/a Black Hills Energy, named in the foregoing Joint Motion for Approval of Black Hills' Tax Reform Plan, and is duly authorized to make this affidavit; that he has read the foregoing Joint Motion, and knows the contents thereof; and that the facts set forth therein are true and correct.


James G. Flaherty

SUBSCRIBED AND SWORN to before me this 7th day of March, 2018.




Notary Public

Appointment/Commission Expires:

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing was sent via U. S. Mail, postage prepaid, hand-delivery, or electronically, this 7th day of March, 2018, addressed to:

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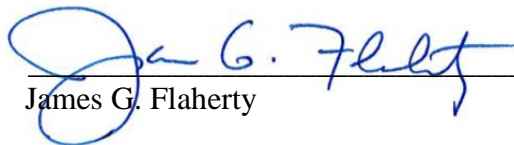
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EXHIBIT A

**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)	Docket No. 18-GIMX-248-GIV
Accounting Authority Order Requiring Certain)	
Regulated Public Utilities to Defer Effects of)	
Tax Reform to a Deferred Revenue Account.)	

SETTLEMENT AGREEMENT

Black Hills/Kansas Gas Utility Company, LLC, d/b/a Black Hills Energy ("Black Hills"), the Staff of the Kansas Corporation Commission ("Commission") ("Staff") and the Citizens' Utility Ratepayer Board ("CURB") (collectively "Joint Movants"), pursuant to K.A.R. 82-1-230a, enter into the following Settlement Agreement ("Agreement"), which if approved by the Commission would address all issues in the above-captioned docket as it relates to Black Hills.

I. BACKGROUND

1. On December 14, 2017, Staff filed a Motion to Open a General Investigation and Issue Accounting Authority Order Regarding Federal Tax Reform ("Staff Motion"). Staff attached a Report and Recommendation ("Staff's R&R") to the Staff Motion, which recommended the Commission issue an Order addressing the following:

- a. Opening a general investigation for the purpose of examining the financial impact of anticipated federal income tax reform on regulated public utilities operating in Kansas;
- b. Requiring, through the use of an Accounting Authority Order ("AAO"), certain regulated public utilities that are taxed at the corporate level, which included Black Hills, to track and accumulate in a deferred revenue account, with interest compounded

monthly at the most current Commission-approved customer deposit interest rate, the reduction in their regulated cost of service that would occur in the event that a new lower federal income tax rate is signed into law. These deferrals should take effect at the same time as the new federal corporate tax rate change and the calculations should be performed using the cost of service data that was used to set the utilities' last Commission-approved revenue requirement (including any line-item surcharges that contain a provision for regulated income tax expense); and

c. Confirming that the Commission's intention regarding the AAO is to preserve any potential tax benefits so that they may be evaluated in the context of a comprehensive evaluation of the reasonableness of the utilities' rates as well as notifying utilities that this portion of their rates should be considered interim subject to refund until the Commission has the opportunity to review the reasonableness of the utilities' rates on a comprehensive and case-by-case basis and confirming that the Commission intends to capture the reduction in Accumulated Deferred Income Tax ("ADIT") balances that will occur in the event that a lower corporate federal income tax rate takes effect, over time, in a manner that comports with Internal Revenue Services ("IRS") Tax Normalization Rules.

2. The Staff Report referred to and provided a copy of the order issued by the Commission in Docket No. 155,094-U dated March 18, 1987, relating to the effects of the Federal Tax Reform Act of 1986 ("1987 Order") and suggested that its recommendation in the current docket was consistent with the 1987 Order.

3. On December 22, 2017, the Tax Cuts and Jobs Act ("TCJA") was signed into law. Among other things, the TCJA reduced the federal corporate income tax rate from 35% to 21% beginning on January 1, 2018.

4. On December 22, 2017, CURB filed a Petition to Intervene and a Response in Support of Staff's Motion.

5. On January 18, 2018, the Commission issued its *Order Opening General Investigation and Issuing Accounting Authority Order Regarding Federal Tax Reform* ("Order").

In said Order the Commission made the following findings and conclusions:

a. The TCJA has the potential to significantly reduce the cost of service for many utilities operating in Kansas since tax expenses are recovered in rates.

b. A significant reduction to the corporate tax rate may also impact the ADIT Liabilities and Assets on the regulated books of utilities.

c. An investigation into the impact of the TCJA on utility rates is warranted.

d. The 1987 Order issued by the Commission relating to the effects of the Federal Tax Reform Act of 1986, is informative but not precedential.

e. The purpose of the investigation is to quantify the economic impacts of the new lower tax rates on Kansas utilities, and where appropriate, direct that any cost savings be passed on to Kansas utility customers.

f. All regulated public utilities that are taxable at the corporate level are directed to accrue monthly, in a deferred revenue account, the portion of its revenues representing the difference between (1) the cost of service approved by the Commission in its 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.

g. Taxable utilities operating in Kansas are notified that the portion of their regulated revenue stream that reflects higher corporate tax rates should be considered

interim and subject to refund, with interest calculated at the rate being used for interest paid on customer deposits, until the Commission can more fully evaluate on a case-by-case basis the impact of the TCJA.

h. Upon the Commission completing its case-by-case evaluation, if it is determined that a rate decrease is proper and would have been proper as of the January 1, 2018, effective date of the TCJA, any excessive collections in the deferred revenue subaccount, or other appropriate tracking mechanism approved by the Commission, with appropriate adjustments, shall be refundable to customers with interest. Any balance remaining in the account shall be credited to the utility's operating revenue.

i. The Commission intends to capture excess ADIT for the benefit of customers using a methodology that is consistent with the tax normalization requirements specified in the tax legislation or IRS Tax Normalization Rules, as applicable.

j. Any affected utility that believes other components of their cost of service have more than offset the decrease in its income tax expenses will have the ability to file such information and supporting data with the Commission, to be considered on a case-by-case basis. The Commission's intention here is not to materially impact regulated utilities' profitability, but rather, ensure that the affected utilities are neither positively nor negatively impacted by the passage of federal income tax reform.

k. The Commission adopts the Staff's R&R and incorporates it into the Order.

6. On January 31, 2018, Black Hills filed its entry of appearance in this docket.

7. On February 21, 2018, the Joint Movants met in Topeka to discuss and attempt to reach agreement to quantify the economic impacts of the new lower tax rates on Black Hills' Kansas operations based upon the instructions provided by the Commission in its Order and how cost

savings related to the lower tax rates should be passed on to Black Hills' Kansas customers with interest. The Joint Movants also discussed how Black Hills should capture excess ADIT for the benefit of its customers using a method that is consistent with the tax normalization requirements specified in the tax legislation or IRS Normalization Rules, as applicable. As a result of said meeting and follow-up discussions among the Joint Movants, the Joint Movants were able to reach the following Agreement.

II. TERMS OF AGREEMENT

A. REDUCTION IN FEDERAL INCOME TAX EXPENSE INCLUDED IN BLACK HILLS' COST OF SERVICE RESULTING FROM THE TCJA'S LOWERING OF THE FEDERAL INCOME TAX RATE FROM 35% TO 21%

8. As indicated above, 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. In Appendix 1 to this Agreement, Black Hills has used the calculation method set forth by the Commission in its Order to determine the tax savings that results from the lowering of the federal income tax rate under the TCJA from 35% to 21%. The result of said calculation is an annual cost of service savings to customers in the amount of \$1,718,203, exclusive of interest. The Staff has verified and agreed with Black Hills' calculation. The Joint Movants concur that the annual cost of service savings to customers relating to the reduction in federal income tax expense included in Black Hills' cost of service resulting from the TCJA's lowering of the federal income tax rate from 35% to 21% is \$1,718,203, exclusive of interest. This amount is also exclusive of the cost savings relating to Black Hills' GSRS surcharge, which is calculated and accounted for separately in this Agreement,

and exclusive of any cost savings relating to capturing excess ADIT for the benefit of customers consistent with tax normalization requirements, which is also addressed separately in this Agreement.

B. REFUND OF \$1,718,203 IN TAX SAVINGS TO BLACK HILLS' CUSTOMERS

9. As indicated above, the Commission stated that the utility shall refund tax savings to customers with interest calculated at the rate being used for interest paid on customer deposits. Under the terms of the Agreement, the Joint Movants agree that Black Hills shall refund \$1,719,619, which includes interest on the amount of monthly excessive collections in the deferred revenue account for the months of January, February and March 2018, by providing Black Hills' customers an annual one-time separate line bill credit in April 2018, for 53% of the tax savings and a volumetric credit returned to the customers through Black Hills' purchased gas adjustment ("PGA") for the remaining 47% of the tax savings. The 53% and 47% allocations of the tax savings between the fixed bill credit and the volumetric PGA credit roughly tie to the percentage allocations in Black Hills' last rate case for the amount of total non-gas or non-PGA costs recovered through the monthly customer charge (53%) and the amount of total costs recovered through the commodity charge (47%). The Joint Movants agree that the allocation of the tax savings between the bill credit and the PGA credit will reasonably assign the refund to customers within each class so that customers who use more gas and pay more of the revenue, and thus, more of the utility's tax expense, will receive an appropriate amount of the tax refund.

10. The Joint Movants further agree that the tax savings should be allocated among Black Hills' customer classes based upon the allocation to customer classes approved by the Commission in Black Hills' last rate case.

11. Appendix 2 of this Agreement, shows how the refund is allocated between customer

classes and then allocated to the annual one-time separate line bill credit and the volumetric credit to the PGA. Each Black Hills' residential customer will receive an annual one-time separate line bill credit on their bill in April 2018 (if the Agreement is approved by the Commission by March 27, 2018) of \$7.34. In addition to the \$7.34 annual one-time bill credit, residential customers on average will receive \$4.23 as a result of the volumetric credit to the PGA, for a total annual refund of \$11.57.

12. Under this Agreement, the one-time bill credit and volumetric credit to the PGA will be provided to the Black Hills' customers in January of each succeeding year following 2018 until Black Hills' base rates are changed in its next rate case. At that point in time the tax savings will be reflected in the new base rates for the benefit of the customers.

C. REFUND OF AN ADDITIONAL \$154,331 IN TAX SAVINGS TO CUSTOMERS RELATING TO BLACK HILLS' GSRS SURCHARGE

13. As indicated above, the Commission in its Order adopted Staff's R&R and incorporated it into the Order by reference. The Staff's R&R recommended tax savings also be calculated by the utilities for any line-item surcharges that contain a provision for regulated income tax expense. Pursuant to that recommendation, Black Hills calculated the tax savings associated with its Gas System Reliability Surcharge ("GSRS") to be \$154,331 ("GSRS Refund"). Staff has verified and agrees with Black Hills' GSRS tax savings calculation. Under the Agreement, Joint Movants agree Black Hills should refund an additional \$154,331 in tax savings to customers relating to Black Hills' GSRS surcharge. Appendix 3 to this Agreement contains the calculation of the GSRS surcharge tax savings agreed to by the Joint Movants.

14. Appendix 4 to this Agreement shows the allocation of the GSRS Refund to each Black Hills' customer class; the April 2018 one-time credit per customer by class for the January, February and March 2018 billing cycles to reflect the tax savings (with interest) relating to the

GSRS for those three months; and the permanent reduction in the monthly GSRS surcharge to reflect the tax savings. Black Hills' residential customers will receive a one-time credit of \$0.24 per meter in their GSRS rate in April 2018, and their monthly GSRS surcharge will be reduced from the current \$0.69 to \$0.61, a savings of \$0.08 per month. Under this Agreement, the Joint Movants agree to the allocation and method of refunding the additional tax savings to customers relating to Black Hills' GSRS surcharge set forth in Appendix 4 to this Agreement.

D. TAX SAVINGS RELATING TO EXCESS ADIT

15. As indicated above, the Commission in its Order stated its intent was also to capture tax savings relating to excess ADIT for the benefit of customers using a methodology that is consistent with the tax normalization requirements specified in the tax legislation or IRS Normalization Rules. Under this Agreement, Black Hills shall establish a regulatory liability to account for and capture tax savings relating to excess ADIT and will provide evidence of such to Staff and CURB. Joint Movants have agreed to defer any issues regarding the amount of tax savings relating to excess ADIT and how those savings should be passed on to customers to Black Hills' next general rate case filing with the understanding and concurrence by the Joint Movants that Black Hills' customers are entitled to the benefits of the tax savings relating to the utility's excess ADIT.

16. Joint Movants also agree Black Hills' excess ADIT as of December 31, 2017, will not be amortized for ratemaking purposes until the excess ADIT is reflected in base rates approved by the Commission in Black Hills next general rate case filing. Under the provisions of the GSRS statute (K.S.A. 66-2203), in order for Black Hills to retain its GSRS surcharge it is required to file a general rate case every five years unless it obtains approval from the Commission for an additional one year extension. Black Hills' last general rate case was decided by the Commission on

December 16, 2014. Therefore, if Black Hills wishes to continue to retain its ability to use the GSRS surcharge it will be required to file its next general rate case within the time restrictions set forth in the GSRS statute and in that next general rate case filing Black Hills agrees to reflect the tax savings relating to the excess ADIT in its cost of service so said savings can be passed through in the base rates approved by the Commission in that next general rate case.

E. GENERAL PROVISIONS

17. The Joint Movants agree the terms in this Agreement, if approved by the Commission, shall apply only to Black Hills' tax refund plan and shall not be binding on Staff, CURB or the Commission in reviewing or approving any TCJA tax refund plan submitted by any other public utility in this docket or ordered by the Commission in this or any other docket.

18. Staff and CURB specifically reserve their respective rights to make all arguments and to take positions that are different than what they have agreed to in this Agreement for Black Hills' TCJA tax refund plan with respect to TCJA tax refund plans submitted by other public utilities for approval by the Commission.

19. 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 Black Hills is providing efficient and sufficient service at just and reasonable rates.

20. This Agreement represents a negotiated settlement that resolves the issues in this docket as it relates to Black Hills only. The Joint Movants represent that the terms of the Agreement constitute a fair and reasonable resolution of the issues addressed herein as they relate to Black Hills only. 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 contained in this Agreement have resulted from negotiations among the Joint Movants and are interdependent. In the event the Commission does not approve and adopt the terms of this Agreement in total, it shall be voidable and none of the Joint Movants 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 and shall be withdrawn from the record in this proceeding and not made a part of the record in any other proceeding.

F. EFFECTIVE DATE OF ORDER

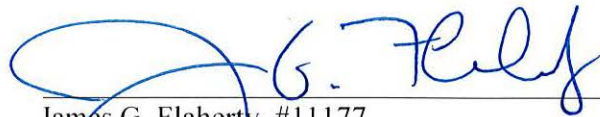
22. The calculations set forth in the appendices to this Agreement are based upon the Commission issuing an order approving the Agreement by no later than March 27, 2018, to allow Black Hills time to prepare April bills to show the credits relating to the tax savings. The Joint Movants agree that if the Commission approves the Agreement after March 27, 2018, then the interest on the amount in the deferred account will not need to be adjusted because Black Hills has agreed to refund the entire amount of the tax savings as soon as approved by the Commission instead of waiting to refund the tax savings on a month to month basis for the remainder of 2018 as the revenues relating to the tax expense is received from customers, and Black Hills shall be allowed to proceed with its tax refund plan without further approval from the Commission. The intent of

the Joint Movants in including this provision in this Agreement is to pass through the tax savings to customers as soon as possible and to avoid having to re-file this Joint Motion and Agreement should the Commission be unable to rule on the Joint Motion in time to allow Black Hills to reflect the credits in its April billings to customers.

III. TESTIMONY IN SUPPORT OF THE AGREEMENT

23. The Joint Movants agree to file testimony in support of the Agreement no later than March 16, 2018. The testimony will address the five factors the Commission considers' when evaluating a settlement agreement. Because Joint Movants wish to have Black Hills pass through the tax savings to customers as soon as possible, and because the Joint Movants are in agreement with respect to Black Hills' tax savings refund plan, the Joint Movants do not believe that a hearing on this Agreement is necessary, and therefore to the extent necessary, waive their respective rights to have a hearing on this Agreement. Joint Movants submit that based upon the Staff's R&R, Commission Order and the pre-filed testimony submitted by the Joint Movants in support of this Agreement, there is substantial competent evidence in the record to allow the Commission to approve this Agreement without the need for a hearing in this matter.

This Agreement is entered into this 7th day of March, 2018.



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Appendix 1

Appendix 1

12-Jan-18

BLACK HILLS KANSAS GAS UTILITY COMPANY, LLC d/b/a BLACK HILLS ENERGY

PROPOSED RATE ADJUSTMENT CALCULATED ON
TEST PERIOD ENDED 12/31/2013

SECTION 3
SCHEDULE 1
PAGE 1 OF 1

LNE NO.		REFERENCE	w/Tax Change	(32.55% + 7.0% to 19.53% + 7.0%)
001	GAS PLANT	3-2-1	241,005,712	
002	DEPRECIATION AND AMORTIZATION RESERVE	3-2-1	95,391,277	
003	NET GAS PLANT		\$145,614,435	
004	CONSTRUCTION WORK IN PROGRESS	3-2-1	0	
005	MATERIALS AND SUPPLIES	3-2-1	659,009	
006	GAS STORAGE	3-2-1	2,980,645	
007	PREPAYMENTS	3-2-1	389,491	
008	WORKING CAPITAL	3-2-1	0	
009	CUSTOMER ADVANCES	3-2-1	(541,465)	
010	CUSTOMER DEPOSITS	3-2-1	(1,552,797)	
011	ACCRUED INTEREST ON CUSTOMER DEPOSITS	3-2-1	0	
012	RESERVES FOR INJURIES AND DAMAGES	3-2-1	(811,616)	
013	ACCUMULATED DEFERRED INCOME TAXES	3-2-1	(19,310,958)	
014	ACCUMULATED DEFERRED INVESTMENT TAX CREDIT	3-2-1	0	
015	UNCLAIMED CHECK RESERVES	3-2-1	(192)	SETTLEMENT DIFFERENCE
016	TOTAL RATE BASE		\$127,426,552	127,426,552 0
017	ADJUSTED OPERATING REVENUES	3-2-3-3	113,722,228	113,722,228 0
018	ADJUSTED OPERATING EXPENSES	3-2-3-11	104,364,619	105,527,478 1,162,859
019	ADJ OPERATING INCOME AT PRESENT RATES	3-2-3-12	9,357,609	8,194,750 (1,162,859)
020	RATE OF RETURN - PRESENT RATES		7,3435	6,4310 (0,9125)
021	ADDL REVENUE FROM PROPOSED RATE ADJ	3-3-1-7	(953,958)	764,245 1,718,203
022	LESS: INCOME TAXES ON PROPOSED RATE ADJ		(253,085)	302,259 555,344
023	ADJ OPERATING INCOME - PROPOSED RATES	3-3-1-3	8,656,736	8,656,736 0
024	RATE OF RETURN - PROPOSED RATES	7-1-1-4	6,7659	6,7659 0
025	TOTAL PROPOSED RATE ADJUSTMENT		(953,958)	764,245 1,718,203

Appendix 2

Appendix 3

Black Hills/Kansas Gas Utility Company, LLC
d/b/a Black Hills Energy
Gas System Reliability Surcharge Filing - Feb 2017
REV FOR TAX CHANGE

Gas System Reliability Surcharge Filing - Feb 2017
REV FOR TAX CHANGE

	UPDATED			
	New Investment	16-BHOG-277-TAR	DEC 2015	
	11/11/15-12/31/16	7/1/14-10/31/15		DIFFERENCE
TOTAL				
LESS: GAS PLANT ORIGINAL COST	\$ 14,482,975	\$ 6,243,896	\$ 8,239,079	
LESS: ACCUMULATED DEPRECIATION (1)	(1,057,017)	(331,252)	(725,765)	
NET GAS PLANT IN SERVICE	\$ 15,539,992	\$ 6,575,148	\$ 8,964,844	
LESS: ACCUMULATED DEFERRED INCOME TAXES	4,048,466	1,672,761	2,375,705	
TOTAL GSRS RATE BASE	\$ 11,491,526	\$ 4,902,387	\$ 6,589,139	
CARRYING CHARGE *	8.4200%	8.4200%	8.4200%	
PRE-TAX REQUIRED RETURN	\$ 967,586	\$ 412,781	\$ 554,806	
DEPRECIATION EXPENSE	237,542	103,965	133,577	
GSRS REVENUE REQUIREMENT	\$ 1,205,128	\$ 516,746	\$ 688,383	
TRUE-UP OF RECOVERIES	27,998			
REVISED GSRS REVENUE REQUIREMENT	\$ 1,233,126			
PREVIOUSLY AUTHORIZED GSRS	806,778			
INCREMENTAL INCREASE IN GSRS REVENUE	\$ 426,348			
LESS: STATUTORY LIMIT ADJUSTMENT	-			
INCREMENTAL GSRS REVENUE REQUEST	\$ 426,348			
				\$ 154,331

Appendix 4

Appendix 4

Summary - BHE GSRS Tax Reform:

	Current	Surcharge Per Month with Tax Revision (Beg. April 1)	Difference: Refund Per Cust Per Mo	Customer Count Per GSRS Alloc	Total Refund Per Month	Total Proposed Refund (Jan, Febr, Mar)	Refund Per Customer (Jan, Febr, Mar) Eff. April 1	FV (With Cumulative Interest @ 1.62%)
Residential	\$ 0.69	\$ 0.61	\$ (0.08)	98,879	\$ (7,910.32)	\$ (23,730.96)	\$ (0.24)	\$ (0.24)
Commercial	\$ 1.74	\$ 1.55	\$ (0.19)	8,791	\$ (1,670.32)	\$ (5,010.97)	\$ (0.57)	\$ (0.57)
Small Volume	\$ 11.01	\$ 9.80	\$ (1.21)	1,464	\$ (1,771.44)	\$ (5,314.32)	\$ (3.63)	\$ (3.63)
Irrigation	\$ 1.35	\$ 1.20	\$ (0.15)	1,731	\$ (259.59)	\$ (778.76)	\$ (0.45)	\$ (0.45)
Large Volume	\$ 81.48	\$ 72.51	\$ (8.97)	166	\$ (1,486.78)	\$ (4,460.33)	\$ (26.91)	\$ (26.95)
	\$ 96.27	\$ 85.67	\$ (10.60)	111,031	\$ (13,098.45)	\$ (39,295.34)		