

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.       )

**JOINT MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT  
REGARDING THE EMPIRE DISTRICT ELECTRIC COMPANY**

The Empire District Electric Company ("Empire"), 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").<sup>1</sup> 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;<sup>2</sup>
- b. Requiring, through the use of an Accounting Authority Order ("AAO"),

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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").

<sup>2</sup>Staff Motion, page 1.

certain regulated public utilities that are taxed at the corporate level 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);<sup>3</sup> 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.<sup>4</sup>

2. Staff's R&R 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

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<sup>3</sup>Staff Motion, page 1.

<sup>4</sup>Staff Motion, page 1.

consistent with the 1987 Order.<sup>5</sup>

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.<sup>6</sup>

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

5. On January 18, 2018, the Commission issued its *Order Opening General Investigation and Issuing Accounting Authority Order Regarding Federal Tax Reform* ("Order").<sup>8</sup> 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.<sup>9</sup>

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

c. An investigation into the impact of the TCJA on utility rates is warranted.<sup>11</sup>

d. The 1987 Order issued by the Commission relating to the effects of the

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<sup>5</sup>Staff'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.

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

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

<sup>8</sup>Order issued January 18, 2018, in the 248 Docket.

<sup>9</sup>*Id.* at page 5, ¶6.

<sup>10</sup>*Id.*, at page 5, ¶6.

<sup>11</sup>*Id.*, at page 5, ¶7.

Federal Tax Reform Act of 1986, is informative but not precedential.<sup>12</sup>

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.<sup>13</sup>

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.<sup>14</sup>

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.<sup>15</sup>

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,

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<sup>12</sup>*Id.*, at page 5, ¶6.

<sup>13</sup>*Id.*, at page 5, ¶7.

<sup>14</sup>*Id.*, at page 5, ¶7.

<sup>15</sup>*Id.*, at page 5, ¶8.

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.<sup>16</sup>

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.<sup>17</sup>

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.<sup>18</sup>

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

6. On January 31, 2018, Empire filed its entry of appearance in this docket.<sup>19</sup>

7. On February 7, 2018 and again on May 14, 2018, the Joint Movants conducted conference calls to discuss and attempt to reach agreement to establish a procedure to be used in Empire's next general rate case filing to quantify the economic impacts of the new lower tax rates on Empire's 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 Empire's customers with interest. The Joint Movants also discussed how Empire should capture excess ADIT for the benefit of its

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<sup>16</sup>*Id.*, at page 6, ¶8.

<sup>17</sup>*Id.*, at page 6, ¶8.

<sup>18</sup>*Id.*, at page 7, ¶11.

<sup>19</sup>*Id.*, Order, page 1, ¶11.

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 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.<sup>20</sup>

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

**A. EMPIRE TO ESTABLISH A REGULATORY LIABILITY ACCOUNT RELATING TO THE TCJA'S LOWERING OF THE FEDERAL 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 and said amount should be accrued monthly.<sup>21</sup> 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 a regulatory liability on its general ledger and stand ready to credit its customers for the amount determined to be due to customers at the conclusion of the general rate case, that portion of its revenue representing the difference between: (1) the cost of service as approved by the Commission in its most recent rate case, Docket No. 11-EPDE-856-RTS ("856 Docket"); 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, including the impact of the TCJA on Empire's Asbury Environmental

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<sup>20</sup>See, Exhibit A to the Joint Motion, Settlement Agreement dated March 29, 2018 ("Agreement").

<sup>21</sup>Order, page 5, ¶7.

Riverton Cost Recovery ("AERR") Rider and interest. The Joint Movants agree that based solely upon items one and two above, the monthly amount to be accrued as a regulatory liability exclusive of any calculated interest shall be as set forth in Appendix 1 to the Agreement. The Joint Movants further agree that the interest rate applied to the amount to be accrued shall be calculated at the rate being used for interest paid on customer deposits, which is currently 1.62%. The disposition of the amount accrued as a regulatory liability shall be determined by the Commission in its final order issued at the completion of Empire's next general rate case filing. Empire's agreement to accrue as a regulatory liability the amount calculated herein shall not be considered as any type of concession on the part of Empire and its position that other components of its cost of service, including the return on and of its capital investments, should be considered in reducing or offsetting the decrease in its income tax expenses and Empire intends to utilize the provision in the Order that allows the utility the ability to file such information and supporting data with the Commission in the next rate case to prove the tax savings amount accrued as a regulatory liability should be reduced or offset by other components of its cost of service before determining whether any amount should be credited to customers. Under the Agreement, Empire reserves its right to provide information and supporting data to the Commission in its next general rate case to show other components of its cost of service offset the decrease in its income tax expenses, and therefore, the amount being accrued as a regulatory liability should be reduced or offset by the other components of its cost of service that have increased. In entering into the Agreement, Staff and CURB reserve their rights to challenge Empire's position that other components of its cost of service should be used to offset the decrease in Empire's income tax expenses. A copy of Empire's calculation of the amount being accrued as a regulatory liability, with interest, is attached to the Agreement as Appendix 1. Said calculation has been reviewed and verified by Staff.

B. EMPIRE SHALL ESTABLISH A REGULATORY LIABILITY TO ACCOUNT FOR THE IMPACT OF THE TCJA ON THE UTILITY'S EXCESS ADIT

9. As indicated above, the Commission in its Order stated its intent was also to capture the impact of the TCJA on the utility's 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.<sup>22</sup> Under the Agreement, Empire has indicated that it will also establish a regulatory liability to account for and capture the impact of the TCJA on the utility's excess ADIT and will provide evidence of such to Staff and CURB.<sup>23</sup> Joint Movants have agreed to defer any issues regarding the impact of the TCJA on the utility's excess ADIT to Empire's next general rate case filing with the understanding and concurrence by the Joint Movants that Empire's customers are entitled to the benefits of the tax savings relating to the utility's excess ADIT.<sup>24</sup>

10. Joint Movants also agree Empire would not start amortizing the excess ADIT as of December 31, 2017, until the excess ADIT is reflected in base rates as approved by the Commission in Empire's next general rate case filing.<sup>25</sup>

11. Under the Agreement, Empire agrees to file a general rate case no later than 150 days from the date of a Commission order approving this Agreement. Empire further agrees to include in its general rate case filing the: impact of the TCJA on the utility's excess ADIT, if any, that should be included in base rates; its calculation of tax savings relating to the reduced tax expense resulting from the lower corporate tax rate in the TCJA that should be included in new base rates following the general rate case decision; and its proposed plan to account for any portion of the amount being

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<sup>22</sup>Order, page 6, ¶8.

<sup>23</sup>Agreement, page 7, ¶9.

<sup>24</sup>Agreement, page 7, ¶9.

<sup>25</sup>Agreement, page 7, ¶10.



accrued as a regulatory liability, subject to the provisions and reservation of rights by the Joint Movants discussed in paragraph 8 of the Agreement.

12. Joint Movants agree that, in the event the IRS asserts that the terms of this agreement create a violation of normalization requirements all parties will promptly reform the terms of this agreement to cure and prevent any normalization violation.

C. THE GENERAL PROVISIONS IN THE AGREEMENT ARE CONSISTENT WITH THE COMMISSION'S ORDER TO EVALUATE THE IMPACT OF THE TCJA ON A CASE-BY-CASE BASIS

13. As indicated above, the Commission in its Order stated it intended to evaluate the impact of the TCJA on a case-by-case basis so that affected utilities are neither positively nor negatively impacted by the passage of the TCJA.<sup>26</sup> The Agreement attached to this Motion contains provisions consistent with the Commission's Order to evaluate the impact of the TCJA on a case-by-case basis. The Joint Movants agree the terms in the Agreement, if approved by the Commission, shall apply only to Empire and shall not be binding on Staff, CURB or the Commission in reviewing or approving any other proposal or agreement submitted by any other public utility in this docket or ordered by the Commission in this or any other docket.<sup>27</sup> 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 Empire with respect to TCJA proposals submitted by other public utilities for approval by the Commission.<sup>28</sup> 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

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<sup>26</sup>Order, page 7, ¶11.

<sup>27</sup>Agreement, page 8, ¶12.

<sup>28</sup>Agreement, page 8, ¶13.

issued in this docket and constitute a fair and reasonable procedure to be used by the Joint Movants in Empire's next rate case to address the issues the Commission set forth in its Order.<sup>29</sup>

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

14. 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 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.<sup>30</sup>

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

15. As it relates to Empire, and taking into account the fact that the Agreement limits its applicability to only Empire and is not binding or precedential as to proposals relating to the impact of the TCJA submitted by other public utilities, the Joint Movants who have signed the Agreement represent those persons who will be subject to and impacted by the TCJA as it relates to Empire. Empire represents its customers, employees and shareholders. CURB represents the residential and small commercial customers. Staff represents the public generally. The Agreement properly

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<sup>29</sup>Agreement, page 8, ¶15.

<sup>30</sup>Docket No. 08-ATMG-280-RTS, Order Approving Contested Settlement Agreement, issued May 12, 2012, paragraph 11.

defers all issues relating to the impact of the TCJA on Empire to the utility's next general rate case. Representatives from Empire, Staff and CURB participated in the settlement negotiations on February 7, 2018, and May 14, 2018. A settlement agreement that defers the issues relating to the impact of the TCJA on Empire to the utility's next general rate case 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 the manner in which the impact that the TCJA will have on Empire's rates (as will be determined in the Company's next general rate case) have been represented, have had an opportunity to be heard, and all concur with respect to the terms of the Agreement. Therefore, this factor has been met.

B. THE AGREEMENT IS SUPPORTED BY SUBSTANTIAL COMPETENT EVIDENCE

16. There is substantial competent evidence in the record to support the Agreement reached by the Joint Movants. Empire, 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 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 process to determine the impact of the TCJA on Empire's rates that is fair and reasonable.

C. THE AGREEMENT CONFORMS WITH APPLICABLE KANSAS LAW

17. The Agreement was fully and fairly negotiated and will result in a process to determine just and reasonable rates for Empire's customers. Kansas law recognizes a strong policy favoring and encouraging settlements.<sup>31</sup> 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

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<sup>31</sup>*Bright v. LSI Corp.*, 254 Kan. 853, 858, 869 P.2d 686 (1994).

reasonable rates.<sup>32</sup> That standard is met in this case.

18. In reaching the Agreement, Empire, 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

19. 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.<sup>33</sup> 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,<sup>34</sup> which found the Natural Gas Act's articulated "just and reasonable" standard.

20. Applying these standards to the Agreement, the process agreed to by the parties to determine the impact of the TCJA on Empire's rates in its next general rate case filing 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

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<sup>32</sup>*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. 3d 319 (Kan.App.2000).

<sup>33</sup>*Power Comm'n v. Hope Gas Co.*, 320 U.S. 591, 64 S.Ct. 281, 88 L.Ed. 333 (1944).

<sup>34</sup>*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).

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.<sup>35</sup>

21. The process agreed to by the Joint Movants in the Agreement to determine the impact of the TCJA on Empire's rates in its next general rate case is supported by substantial competent evidence and will allow the Commission to establish just and reasonable rates. The process agreed to by the Joint Movants will allow the Commission to appropriately consider the reduction in federal income tax expense included in Empire's cost of service filed in its rate case as a result of the TCJA and will allow for the pass through of those cost savings to Empire's customers. 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

22. Empire, Staff and CURB each has a duty to protect the interest of the party it represents. Empire 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 establishes a process and procedure to establish just and reasonable rates in the next rate case 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.

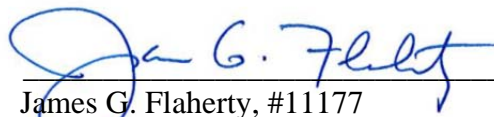
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<sup>35</sup>*Southwestern Bell Tel. Co. v State Corporation Commission*, 192 Kan. 39, 41, 386 P. 2d 515 (1963).

**IV. TESTIMONY IN SUPPORT OF THE AGREEMENT**

23. Within seven (7) days of the filing of this Motion, the Joint Movants will be filing testimony in support of the Agreement. The testimony will address the five factors the Commission considers when evaluating an Agreement.

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



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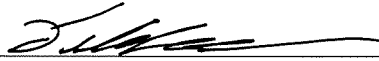


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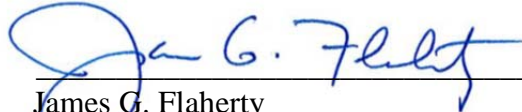


**VERIFICATION**

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 The Empire District Electric Company, named in the foregoing Joint Motion for Approval of Settlement Agreement, 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 21st day of June, 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 22nd day of June, 2018, addressed to:

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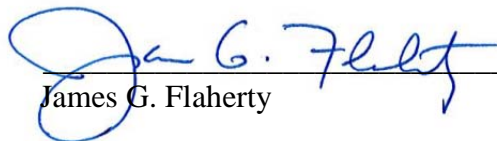
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James G. Flaherty

# 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 )  
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

### **SETTLEMENT AGREEMENT**

The Empire District Electric Company ("Empire"), 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 Empire.

#### **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 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, Empire filed its entry of appearance in this docket.

7. On February 7, 2018, and again on May 14, 2018, the Joint Movants conducted conference calls to discuss and attempt to reach agreement to establish a procedure to be used in Empire's upcoming general rate case filing to quantify the economic impacts of the new lower tax rates on Empire's 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 Empire's customers with

interest. The Joint Movants also discussed how Empire 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. EMPIRE TO ESTABLISH A REGULATORY LIABILITY TO ACCOUNT FOR 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 and said amount should be accrued monthly.<sup>1</sup> 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 this Agreement, Empire agrees to accrue monthly, as a regulatory liability on its general ledger and stand ready to credit its customers for the amount determined to be due to customers at the conclusion of the general rate case that portion of its revenue representing the difference between: (1) the cost of service as approved by the Commission in its most recent rate case, Docket No. 11-EPDE-856-RTS ("856 Docket"); 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, including the impact the TCJA would have on Empire's AERR rider and

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<sup>1</sup>Order, page 5, ¶7.



interest. The Joint Movants agree that based solely upon items one and two above, the monthly amount to be accrued as a regulatory liability exclusive of any calculated interest shall be as set forth in Appendix 1 to the Agreement. The Joint Movants further agree that the interest rate applied to the amount shall be calculated at the rate being used for interest paid on customer deposits, which is currently 1.62%. The disposition of the amount accrued as a regulatory liability shall be determined by the Commission in its final order issued at the completion of Empire's next general rate case filing. Empire's agreement to accrue as a regulatory liability the amount calculated herein shall not be considered as any type of concession on the part of Empire and its position that other components of its cost of service, including the return on and of its capital investments, should be considered in reducing or offsetting the decrease in its income tax expenses and Empire intends to utilize the provision in the Order that allows the utility the ability to file such information and supporting data with the Commission in the upcoming rate case to prove the tax savings amount accrued as a regulatory liability should be reduced or offset by other components of its cost of service before determining whether any amount should be credited to customers. Under this Agreement, Empire reserves its right to provide information and supporting data to the Commission in its next general rate case to show other components of its cost of service offset the decrease in its income tax expense, and therefore, the amount being accrued as a regulatory liability should be reduced or offset by the other components of its cost of service that have increased. In entering into this Agreement, Staff and CURB reserve their rights to challenge Empire's position that other components of its cost of service should be used to offset the decrease in Empire's income tax expenses. A copy of Empire's calculation of the amount being accrued as a regulatory liability, with interest, is attached to this Agreement as Appendix 1. Said calculation has been reviewed and verified by Staff.

B. EMPIRE SHALL ESTABLISH A REGULATORY LIABILITY TO ACCOUNT FOR THE IMPACT OF THE TCJA ON THE UTILITY'S EXCESS ADIT

9. As indicated above, the Commission in its Order stated its intent was also to capture the impact of the TCJA on the utility's 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.<sup>2</sup> Under this Agreement, Empire agrees it will also establish a regulatory liability to account for and capture the impact of the TCJA on the utility's excess ADIT and will provide evidence of such to Staff and CURB. Joint Movants have agreed to defer any issues regarding the impact of the TCJA on the utility's excess ADIT to Empire's next general rate case filing with the understanding and concurrence by the Joint Movants that Empire's customers are entitled to the benefits of the tax savings relating to the utility's excess ADIT.

10. Joint Movants also agree Empire will not start amortizing the excess ADIT as of December 31, 2017, until the excess ADIT is reflected in base rates as approved by the Commission in Empire's next general rate case filing.

11. Under this Agreement, Empire agrees to file a general rate case no later than 150 days from the date of a Commission order approving this Agreement. Empire further agrees to include in its general rate case filing the impact of the TCJA on the utility's excess ADIT, if any, that should be included in base rates; its calculation of tax savings relating to the reduced tax expense resulting from the lower corporate tax rate in the TCJA that should be included in new base rates following the general rate case decision; and its proposed plan to account for any portion of the amount being accrued as a regulatory liability, subject to the provisions and reservation of rights by the Joint Movants discussed in paragraph 8 in this Agreement.

12. Joint Movants agree that, in the event the IRS asserts that the terms of this agreement

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<sup>2</sup>Order, page 6, ¶8.

create a violation of normalization requirements all parties will promptly reform the terms of this agreement to cure and prevent any normalization violation.

C. GENERAL PROVISIONS

13. The Joint Movants agree the terms in this Agreement, if approved by the Commission, shall apply only to Empire and shall not be binding on Staff, CURB or the Commission in reviewing or approving any other proposal or agreement submitted by any other public utility in this docket or ordered by the Commission in this or any other docket.

14. 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 Empire with respect to proposals relating to the TCJA submitted by other public utilities for approval by the Commission.

15. 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 Empire is providing efficient and sufficient service at just and reasonable rates.

16. This Agreement represents a negotiated settlement that resolves the issues in this docket as it relates to Empire only. The Joint Movants represent that the terms of the Agreement constitute a fair and reasonable procedure to be used by the Joint Movants in Empire's next rate case to address the issues raised in the Commission's Order as they relate to Empire 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.

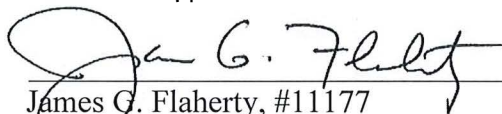
17. The provisions contained in this Agreement have resulted from negotiations among the Joint Movants and are interdependent. In the event the Commission does not approve and adopt the terms of this Agreement in total, it shall be voidable and none of the Joint Movants shall be bound, prejudiced, or 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.

D. TESTIMONY IN SUPPORT OF THE AGREEMENT

18. The Joint Movants agree to file testimony in support of this Agreement within seven (7) days after the Motion is filed with the Commission. The testimony will address the five factors the Commission considers when evaluating a settlement agreement.

This Agreement is entered into this \_\_\_\_\_ day of June, 2018.

21st



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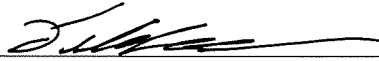
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# Appendix 1

Line No.	Description	Kansas - AERR Rider	
		21% Federal Income Tax Rate	35% Federal Income Tax Rate <sup>(1)</sup>
1	Rate Base	14,982,069	14,982,069
2	ROR	6.90%	6.90%
3	Return on Rate Base	1,033,047	1,033,047
4	Depreciation Expense	310,675	310,675
5	Income Taxes	217,450	393,724
6	Property Taxes		
7	Other O&M	-	-
8	Total Expenses	528,125	704,399
9	Total Rev Req	1,561,172	1,737,446
10	Total Rev Req (Per Stipulation)	1,740,667	1,740,667
11	Difference	(179,495)	(3,221)



**The Empire District Electric Company**  
Estimated Tax Reform Revenue Requirement Base Rate Impact  
Exhibit 1 - Base Rates  
Page 1 of 1

Line No.	Description Revenue Requirement Component	Kansas	
		21% Federal Income Tax Rate	35% Federal Income Tax Rate <sup>(1)</sup>
1	OpEx	10,237,191	10,237,191
2	Rate Base	65,138,347	65,138,347
3	ROR	8.40%	8.40%
4	Return on Rate Base	5,471,621	5,471,621
5	Interest Sync:		
6	Rate Base	65,138,347	65,138,347
7	Weighted Cost of Debt	2.90%	2.90%
8	Interest Deduct	1,891,984	1,891,984
9	Return on Rate Base	5,471,621	5,471,621
10	Interest Deduct	(1,891,984)	(1,891,984)
11	Net Income (Equity Portion of Return)	3,579,637	3,579,637
12	Composite Tax Rate	26.57%	39.58%
13	Equity x Tax Rate	951,092	1,416,910
14	GRCF	1.3618	1.6551
15	Taxes	1,295,227	2,345,198
16	Total Rev Req	17,004,039	18,054,010
17	Total Rev Req (Per Stipulation)	18,054,010	18,054,010
18	Difference	(1,049,971)	0

Line No.	Description	Base Rate	AERR	Total	AERR(1)	Kansas	Total
	Month	Annual Regulatory Liability	Annual Regulatory Liability	Annual Regulatory Liability	Consumption	Allocation	Monthly Accrual
1	January	(1,049,971)	(179,495)	(1,229,466)	21,320,472	9.78%	(120,207)
2	February	(1,049,971)	(179,495)	(1,229,466)	20,225,760	9.28%	(114,035)
3	March	(1,049,971)	(179,495)	(1,229,466)	16,429,589	7.53%	(92,632)
4	April	(1,049,971)	(179,495)	(1,229,466)	16,183,641	7.42%	(91,245)
5	May	(1,049,971)	(179,495)	(1,229,466)	13,888,549	6.37%	(78,305)
6	June	(1,049,971)	(179,495)	(1,229,466)	16,724,063	7.67%	(94,292)
7	July	(1,049,971)	(179,495)	(1,229,466)	22,674,789	10.40%	(127,843)
8	August	(1,049,971)	(179,495)	(1,229,466)	22,635,428	10.38%	(127,621)
9	September	(1,049,971)	(179,495)	(1,229,466)	19,450,079	8.92%	(109,661)
10	October	(1,049,971)	(179,495)	(1,229,466)	16,656,886	7.64%	(93,913)
11	November	(1,049,971)	(179,495)	(1,229,466)	14,348,740	6.58%	(80,900)
12	December	(1,049,971)	(179,495)	(1,229,466)	17,526,180	8.04%	(98,814)
Total		(1,049,971)	(179,495)	(1,229,466)	218,064,176	100.0%	(1,229,466)

(1) Consumption based on Usage approved in AERR Rider