

BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

In the Matter of the Joint Application of The )  
Empire District Electric Company, Liberty Sub )  
Corp. and Liberty Utilities (Central) Co. for ) Docket No. 16-EPDE-410-ACQ  
Approval of an Agreement and Plan of Merger )  
and for Other Related Relief )

**TESTIMONY IN SUPPORT OF  
UNANIMOUS SETTLEMENT AGREEMENT  
OF  
STACEY HARDEN  
ON BEHALF OF  
CITIZENS' UTILITY RATEPAYER BOARD**

OCTOBER 6, 2016

1 **I. STATEMENT OF QUALIFICATIONS**

2 **Q. Please state your name and business address.**

3 A. My name is Stacey Harden. My business address is 1700 SW College Ave, Topeka,  
4 Kansas 66621.

5

6 **Q. By whom are you employed and in what capacity?**

7 A. I am employed by Washburn University as the Sponsored Projects Accountant.

8

9 **Q. Please describe your educational background.**

10 A. I earned a Bachelor of Business Administration degree from Baker University in 2001. I  
11 earned a Master of Business Administration degree from Baker University in 2004.

12

13 **Q. Please summarize your professional experience in the utility industry.**

14 A. I served as a Regulatory Analyst for the Citizens' Utility Ratepayer Board from February  
15 2008 until March 2016. Prior to joining CURB, I was the manager of a rural water district  
16 in Shawnee County, Kansas for five years.

17

18 **Q. Have you previously testified before the Commission?**

19 A. Yes. I have previously offered testimony in KCC Docket Nos. 08-WSEE-1041-RTS, 10-  
20 KGSG-421-TAR, 10-EPDE-497-TAR, 10-BHCG-639-TAR, 10-SUBW-602-TAR, 10-  
21 WSEE-775-TAR, 10-KCPE-795-TAR, 10-KCPE-415-RTS, 11-SUBW-448-RTS, 12-  
22 SUBW-359-RTS, 12-MKEE-410-RTS, 12-MKEE-491-RTS, 13-HHIW-570-RTS, 14-  
23 WSEE-148-TAR, 14-ATMG-230-TAR, 15-WSEE-181-TAR, 15-KCPE-116-RTS, 15-

1 SPEE-519-RTS, and 16-KCPE-446-TAR. I have also authored Report and  
2 Recommendations to the Commission in 13-HHIW-570-RTS, 14-KCPE-042-TAR, and  
3 15-WSEE-021-TAR.

4  
5 **Q. What is the purpose of your testimony?**

6 A. The purpose of my testimony is to support the Unanimous Settlement Agreement reached  
7 by the parties in this proceeding. If approved by the Commission, the Unanimous  
8 Settlement Agreement will allow Liberty Utilities to acquire all of the common stock of  
9 Empire District Electric Company.

10  
11 **Q. Please provide a summary of the Company's application.**

12 A. On March 16, 2016, Empire District Electric Company ("Empire" or "Company"),  
13 Liberty Sub Corp ("LSC") and Liberty Utilities (Central) Co. ("LU Central")  
14 (collectively, "Joint Applicants") filed an Application with the Kansas Corporation  
15 Commission ("Commission") requesting an order authorizing LU Central to acquire all  
16 of the common stock of Empire and for other relief.

17 According to the Application, Empire, LU Central and LSC have entered into an  
18 Agreement and Plan of Merger dated February 9, 2016. Pursuant to the Agreement, LSC  
19 will be merged with and into Empire under the terms and provisions described in the  
20 Agreement, with Empire emerging as the surviving corporation. Immediately following  
21 the merger LSC will cease to exist. As a consequence of the merger, Algonquin will  
22 acquire, indirectly through its subsidiary LU Central all of the capital stock of Empire.  
23 Empire's outstanding debt and related obligations will remain with Empire.

1           The aggregate purchase price of the transaction is \$2.4 billion, including \$0.9  
2 billion of existing Empire indebtedness. Empire's shareholders will receive \$34 per  
3 common share in cash.

4           At the closing of the transaction, Empire will become a wholly owned subsidiary  
5 of LU Central and will cease to be a publicly held corporation.

6  
7 **Q. Since the Application was filed, have the parties engaged in settlement discussions?**

8 A. Yes, the parties to this case have entered into a Unanimous Settlement Agreement that  
9 resolves all issues which have been raised during the parties' investigation of the  
10 Application.

11  
12 **Q. Can you please summarize the terms of the Unanimous Settlement Agreement?**

13 A. The Unanimous Settlement Agreement, filed on October 6, 2016 by Empire's counsel,  
14 contains several stipulated provisions. Included within these provisions is an agreement  
15 that as a subsidiary of LU Central, Empire's operation will continue to be regulated by  
16 the states that currently regulate the utility. Empire will continue to utilize the rates,  
17 regulations and other tariff provisions on file with and approved by the Commission, and  
18 will continue to provide service to its customers under those rates, rules and regulations,  
19 and other tariff provisions until such time as they may be modified by Commission  
20 action.

21           Additionally, in exchange for Staff's agreement not to recommend in this  
22 proceeding, or any future Empire ratemaking proceedings, a sharing with ratepayers of  
23 the acquisition premium or gain on sale associated with the LU Central's acquisition of

1 Empire, all parties agree that upon Commission approval of this Unanimous Settlement  
2 Agreement, Empire will withdraw its rate case application currently pending before the  
3 Commission.<sup>1</sup> In addition, the parties agree that Empire shall not re-file to change its base  
4 rates prior to May 1, 2018, with new rates effective no sooner than January 1, 2019.

5 As part of the Unanimous Settlement Agreement parties agree that the  
6 Environmental Cost Recovery Rider established in Docket No. 15-EPDE-233-TAR will  
7 continue with modifications as described in the Unanimous Settlement Agreement at  
8 paragraph 26.

9  
10 **Q. Has Empire received regulatory approval of the proposed merger in other states?**

11 A. Yes. Empire has received regulatory approval from the public service commissions in  
12 Arkansas, Oklahoma, and Missouri. Kansas is the last Commission to rule on the merger.

13  
14 **Q. Have you reviewed the Commission's Order on Merger Standards that was filed in  
15 this proceeding on August 9, 2016?**

16 A. Yes., I have.

17  
18 **Q. Does the Unanimous Settlement Agreement demonstrate that the merger will  
19 promote the public interest as described in the Commission's Order on Merger  
20 Standards?**

21 A. Yes, it does. The terms of the Unanimous Settlement Agreement were developed in order

---

<sup>1</sup> KCC Docket No. 17-EPDE-101-RTS

1 to comply with the Commission's Order on Merger Standards. It is my recommendation  
2 the Commission find the Unanimous Settlement Agreement promotes the public interest.  
3

4 **Q. Are you familiar with the standards used by the Commission to evaluate a  
5 settlement that is proposed to the Commission?**

6 A. Yes, I am. The Commission has adopted five guidelines for use in evaluating settlement  
7 agreements. These include: (1) Has each party had an opportunity to be heard on its  
8 reasons for opposing the settlement? (2) Is the agreement supported by substantial  
9 evidence in the record as a whole? (3) Does the agreement conform to applicable law? (4)  
10 Will the agreement result in just and reasonable rates? (5) Are the results of the  
11 agreement in the public interest, including the interests of customers represented by any  
12 party not consenting to the agreement?

13 I understand CURB counsel will address item 3, i.e., does the Unanimous  
14 Settlement Agreement conform to applicable law, in opening statement at the upcoming  
15 hearing. Since I am not an attorney, it is more appropriate for CURB counsel to address  
16 this issue than for me to address it. However, I will discuss the remaining four guidelines.  
17

18 **Q. Has each party had an opportunity to be heard on its reasons for opposing the  
19 settlement?**

20 A. Yes. Excluding representatives of the Company and Staff, CURB was the only  
21 intervening party in this proceeding. CURB has been able to participate in conference  
22 calls and other working discussions that have led to the creation of the Unanimous

1 Settlement Agreement. It is my understanding that all parties support the Unanimous  
2 Settlement Agreement and that no party is in opposition.

3

4 **Q. Is the Unanimous Settlement Agreement supported by substantial evidence in the**  
5 **record as a whole?**

6 A. Yes. The Company's application and the Unanimous Settlement Agreement contain  
7 substantial evidence on the record for review by the Commission and other external  
8 parties.

9

10 **Q. Will the Unanimous Settlement Agreement result in just and reasonable rates?**

11 A. The Unanimous Settlement Agreement does not cause a change in rates. Empire's current  
12 rates, which have been deemed just and reasonable by the Commission, will remain in  
13 effect until at least January 1, 2019.

14

15 **Q. Are the results of the Unanimous Settlement Agreement in the public interest,**  
16 **including the interests of customers represented by any party not consenting to the**  
17 **agreement?**

18 A. Yes. In my opinion each of Kansas's nearly 10,000 Empire customers will benefit from  
19 the Commission's approval of the Unanimous Settlement Agreement. The primary and  
20 more immediate benefit comes from Empire's agreement to withdraw its current general  
21 rate increase request that is pending before the Commission. According to Empire's  
22 application in 17-EPDE-101-RTS, Empire is requesting an increase to its approved  
23 revenue requirement of \$6,416,324 – an increase of 25.7%. This increase is estimated to

1 increase the average residential customer's monthly bill by \$31.85.<sup>2</sup> Empire's agreement  
2 to withdraw this request and its agreements to not file another general rate case request  
3 before May 1, 2018, will result in savings of approximately \$637 per residential  
4 customer.<sup>3</sup> In my opinion, this is a significant savings for Empire's residential customers.

5 Further, LU Central and Empire have agreed to maintain or improve Empire's  
6 current quality of service consistent with the requirements of Commission rules. Using  
7 benchmarks established for customer service from 2013 to 2015, LU Central and Empire  
8 have agreed to pay a refund to its Kansas customers for any year the Kansas Service area  
9 normalized annual statistics decrease in reliability. In addition, LU Central and Empire  
10 have agreed to pay a refund to its Kansas customers for any year its answered call rate  
11 normalized annual operation falls below 95% of the 2013-2015 average. The  
12 commitment of LU Central and Empire to improve quality of service will benefit each of  
13 Kansas's Empire customers.

14  
15 **Q. What do you recommend?**

16 A. I recommend the Commission find that all parties had the opportunity to participate in the  
17 settlement process, that the Unanimous Settlement Agreement is supported by substantial  
18 evidence in the record, that the Unanimous Settlement Agreement does not cause a  
19 change in Empire's existing rates, and that the Unanimous Settlement Agreement is in the  
20 public interest. Therefore, I recommend the Commission approve the Unanimous  
21 Settlement Agreement as filed.

22  

---

<sup>2</sup> Docket No. 17-EPDE-101-RTS, Application at Section 2 Schedule G.

<sup>3</sup> \$31.85 proposed monthly bill increase in 17-EPDE-101-RTS, multiplied by twenty months.



1 Q. Does this conclude your testimony?

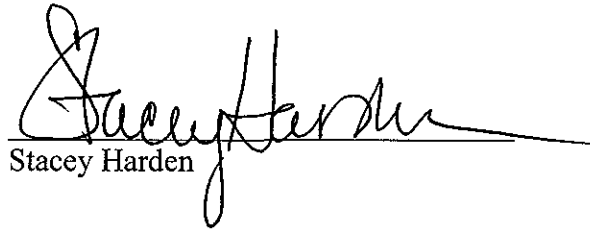
2 A. Yes, it does.

VERIFICATION

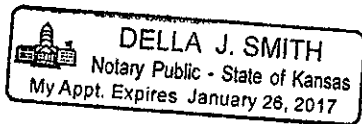
STATE OF KANSAS )

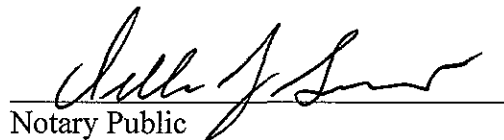
COUNTY OF SHAWNEE ) ss:

I, Stacey Harden, of lawful age and being first duly sworn upon my oath, state that I am a consultant for the Citizens' Utility Ratepayer Board; that I have read and am familiar with the above and foregoing document and attest that the statements therein are true and correct to the best of my knowledge, information, and belief.

  
Stacey Harden

SUBSCRIBED AND SWORN to before me this 6<sup>th</sup> day of October, 2016.



  
Notary Public

My Commission expires: 01-26-2017.

**CERTIFICATE OF SERVICE**

16-EPDE-410-ACQ

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was served by electronic service on this 6<sup>th</sup> day of October, 2016, to the following:

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

DUSTIN KIRK, DEPUTY GENERAL  
COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604-4027  
[d.kirk@kcc.ks.gov](mailto:d.kirk@kcc.ks.gov)

W. SCOTT KEITH, DIRECTOR OF  
PLANNING AND REGULATORY  
EMPIRE DISTRICT ELECTRIC COMPANY  
602 S JOPLIN AVE (64801)  
PO BOX 127  
JOPLIN, MO 64802  
[skeith@empiredistrict.com](mailto:skeith@empiredistrict.com)

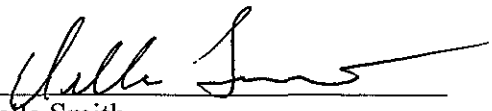
AMBER SMITH, CHIEF LITIGATION  
COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604-4027  
[a.smith@kcc.ks.gov](mailto:a.smith@kcc.ks.gov)

KELLY S. WALTERS, VP/COO  
EMPIRE DISTRICT ELECTRIC COMPANY  
PO BOX 127  
JOPLIN, MO 64802  
[KWALTERS@EMPIREDISTRICT.COM](mailto:KWALTERS@EMPIREDISTRICT.COM)

SARAH B. KNOWLTON, SENIOR  
DIRECTOR, REGULATORY COUNSEL  
LIBERTY UTILITIES CO.  
15 BUTTRICK ROAD  
LONDONDERRY, NH 03053  
[sarah.knowlton@libertyutilities.com](mailto:sarah.knowlton@libertyutilities.com)

JAKE FISHER, LITIGATION COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604-4027  
[j.fisher@kcc.ks.gov](mailto:j.fisher@kcc.ks.gov)

CHRISTOPHER D. KRYGIER, DIRECTOR,  
REGULATORY & GOVERNMENT AFFAIRS  
LIBERTY UTILITIES CO.  
2751 N HIGH STREET  
JACKSON, MS 63755  
[chris.krygier@libertyutilities.com](mailto:chris.krygier@libertyutilities.com)

  
\_\_\_\_\_  
Della Smith  
Administrative Specialist