

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

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

In the Matter of the Application of The Empire    )  
District Electric Company for Approval of the    )  
Commission to Make Certain Changes in its    )    Docket No. 21-EPDE-444-RTS  
Charges for Electric Service.                    )

**ORDER GRANTING JOINT MOTION FOR APPROVAL OF UNANIMOUS PARTIAL  
SETTLEMENT AGREEMENT AND GRANTING EMPIRE'S MOTION TO  
WITHDRAW REQUEST TO RECOVER ACQUISITION AND OPERATING COSTS OF  
WIND PROJECTS IN RATES**

This matter comes before the State Corporation Commission of the State of Kansas ("Commission") for consideration and decision. The Commission finds the following:

1. On June 23, 2020, in Docket 19-EPDE-223-RTS, the Commission granted The Empire District Electric Company ("Empire") permission to file an abbreviated rate case.<sup>1</sup>
2. On May 28, 2021, Empire filed an abbreviated rate case application to: (1) recover the capital and operating costs relating to its acquisition of three wind projects<sup>2</sup>; (2) account for the retirement of its Asbury coal plant ("Asbury"); and (3) update Empire's revenue requirement directly related to the non-growth plant and related accumulated depreciation and deferred income tax balances as of the end of the test year ending June 30, 2020 ("Application").<sup>3</sup>
3. The Application indicated a gross revenue deficiency of \$4,465,956.<sup>4</sup> After adjustments related to the acquisition and operation of the Wind Projects, Empire's revenue

<sup>1</sup> Order Granting Empire's Request to File Abbreviated Rate Case, pg. 8 (June 23, 2020).

<sup>2</sup> Those projects are: the 301.0 Megawatt ("MW") Neosho Ridge wind project located in southeastern Kansas; the 149.4 MW North Fork Ridge wind project located in southwestern Missouri; and the 149.4 MW Kings Point wind project located in southwestern Missouri (collectively the "Wind Projects").

<sup>3</sup> Abbreviated Rate Case Application, pg. 1 (May 28, 2021).

<sup>4</sup> *Id.* at 8.

deficiency increased to \$4,992,969.<sup>5</sup> This includes the cost of the Wind Projects. Empire also proposed an alternative ratemaking mechanism as an option to account for the Wind Projects using a Levelized Cost of Energy (“LCOE”).<sup>6</sup> The LCOE approach is the functional equivalent of the fixed price Power Purchase Agreement (“PPA”) approach which the Commission utilized in the 18-WSEE-328-RTS Docket (“Western Plains”).<sup>7</sup> Using the LCOE approach, customers would pay a set amount per megawatt hour (“MWh”) generated by the Wind Projects; the Wind Projects would be assigned a capacity factor and amount of megawatt hours on a rolling three-year average. Using Empire’s Annual Cost Adjustment (“ACA”) rider, customers would receive either a bill credit or extra charges depending on whether the Wind Projects produced more or less energy than was accounted for using the LCOE approach.<sup>8</sup> After a 20-year period, Empire would be free to realize any residual value of the Wind Projects.

4. Empire also updated its revenue requirement to account for the retirement of Asbury. This included a return on the remaining undepreciated balance on the portion of Asbury that was not repurposed to support the Wind Projects, labor costs for employees who worked at Asbury and Empire’s ability to re-purpose a portion of the Asbury facilities used in support of the Wind Projects.<sup>9</sup> The cumulative effect of the adjustments related to Asbury result in a decrease of \$472,609 to Empire’s annual revenue requirement.<sup>10</sup>

5. Empire’s application describes the process by which it solicited bids from developers for the Wind Projects.<sup>11</sup> Empire explains that one reason it chose to add the Wind Projects was because all its current wind capacity comes from two PPAs which will end in 2025

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<sup>5</sup> *Id.* at 9.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* 9-10.

<sup>9</sup> *Id.* at 10-11.

<sup>10</sup> *Id.* at 11.

<sup>11</sup> *Id.* at 13-14.

and 2028, respectively.<sup>12</sup> While Empire also admits that the timing of the Wind Projects does not match up perfectly with the expiration of the existing PPAs, building the Wind Projects early allowed it to take advantage of tax benefits and tax equity financing which lowers the cost of the projects and would not be available in the future.<sup>13</sup>

6. Empire's application was accompanied by the direct testimony of Aaron Doll, Frank Graves, Drew Landoll, James McMahon, Todd Mooney, Shaen Rooney, Tisha Sanderson and Timothy N. Wilson.

7. On June 14, 2021, the Citizen's Utility Ratepayer Board ("CURB") filed a petition to intervene which was granted on July 8, 2021.

8. On November 16, 2021, the Commission held a public hearing, allowing the public to ask questions of Empire and to make comments to the Commission.

9. On January 13, 2022, Andrea Crane submitted direct testimony on behalf of CURB. Crane testified that Empire's wind projects were not needed to serve Kansas ratepayers and that if the Commission authorizes Empire to recover the costs, a LCOE rate of \$23.97/MWh should be used.<sup>14</sup> Crane also testified that Empire should be allowed to recover the stranded costs of Ashbury over 26 years but the Commission should deny Empire's request to recover the carrying costs related to Asbury.<sup>15</sup> Crane further testified that the Commission should establish a regulatory asset for the decommissioning costs of Asbury but not authorize any ratemaking treatment of those costs at this time and that the Commission should authorize a base revenue decrease of \$345,690.<sup>16</sup>

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<sup>12</sup> *Id.* at 16.

<sup>13</sup> *Id.* at 16-18.

<sup>14</sup> Direct Testimony of Andrea C. Crane, pg. 6 (January 13, 2022).

<sup>15</sup> *Id.* at 7.

<sup>16</sup> *Id.*

10. On January 14, 2022, Brad Hutton, Collin Cain, Nicholas Puga and Andria Jackson submitted testimony on behalf of Commission Staff (“Staff”). Hutton recommended that the Commission: (1) update Empire’s accumulated depreciation balance to the end of the test year, June 30, 2020, and (2) revise Empire’s adjustment to include known and measureable rate case expense.<sup>17</sup>

11. Jackson recommended that the Commission: (1) account for the cost of the wind projects using a “market-competitive” PPA rate; (2) remove the revenue requirement effects of the redeployed plant from Asbury that Empire proposes to service the wind projects; (3) allow Empire an accelerated depreciation of Asbury over 13 years but disallow a return on that investment; (4) changes to the Asbury Retirement Rider (“ARR”); and (5) Asbury decommissioning costs be tracked and reviewed in Empire’s next rate case.<sup>18</sup>

12. Cain and Puga submitted their testimony jointly. Cain and Puga testified that: (1) Empire’s acquisition of the Wind Projects was excessive and inefficient; (2) Empire should have solicited bids for PPAs to compare with ownership; and (3) Empire’s cost recovery for the Wind Projects using an LCOE approach should be \$16.32/MWh.<sup>19</sup>

13. On February 15, 2022, parties submitted rebuttal testimony.

14. On March 2, 2022, the Parties submitted a Joint Motion for Approval of Unanimous Partial Settlement Agreement on Revenue Requirement.<sup>20</sup> The unanimous partial settlement (“Settlement Agreement”) resolves all issues related to Empire’s revenue requirement to account

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<sup>17</sup> Direct Testimony of Brad Hutton, pg. 7 (January 14, 2022).

<sup>18</sup> Direct Testimony of Andria A. Jackson, pgs. 4-5 (January 14, 2022).

<sup>19</sup> Direct Testimony of Collin Cain and Nicolas Puga, pgs. 7-8 (January 14, 2022).

<sup>20</sup> The March 2, 2022 filing withheld information Empire deemed Confidential. On March 8, 2022, the parties refiled the Joint Motion for Approval of Unanimous Partial Settlement Agreement on Revenue Requirement with no information withheld.

for the retirement of Asbury.<sup>21</sup> It also resolves all issues related to capturing the revenue requirement impact directly related to the non-growth plant and related accumulated depreciation and deferred income tax balances as of the end of the test year ending June 30, 2020.<sup>22</sup> This settlement (Attachment A), if approved, would leave only issues related to the Wind Projects for Commission adjudication.<sup>23</sup> A non-exhaustive list of the terms of the unanimous settlement includes:

- a. The Asbury regulatory liability shall be netted against the Asbury regulatory asset so that the net regulatory asset value shall be \$3,340,140, this asset shall be recovered over 10 years.
- b. Resolution of the Asbury regulatory asset, and the revenue requirement directly related to the non-growth plant and related accumulated depreciation and deferred income tax balances as of the end of the test year ending June 30, 2020, results in a decrease in Empire's revenue requirement of \$636,091. The reduction in revenue requirement shall be allocated among Empire's customers based upon the recommendation contained in Staff's testimony.
- c. Empire shall establish a regulatory asset to capture the Asbury decommissioning costs and expense. Empire shall be allowed to seek recovery of that regulatory asset during its next full rate case.
- d. Empire shall recover its actual rate case expense over three years.

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<sup>21</sup> Joint Motion for Approval of Unanimous Partial Settlement Agreement on Revenue Requirement, pg. 3 (March 2, 2022).

<sup>22</sup> *Id.* at 3-4.

<sup>23</sup> *Id.* at 4.

15. On March 7, 2022, parties submitted testimony in support of the Settlement Agreement. This testimony will be discussed below as it applies to the Commission’s three-factor test for unanimous settlement agreements.

16. On March 8 and 9, 2022, the Commission held an evidentiary hearing via Zoom and heard the testimony of Tim Wilson, Shaen Rooney, Drew Landoll, Aaron Doll, Andrea Crane, James McMahon, Todd Mooney, Gregory Tillman, Collin Cain, Nicholas Puga and Justin Grady. The testimony at the evidentiary hearing focused mainly on the Wind Projects.

17. On May 16, 2022, Empire filed a Motion to Withdraw Request to Recover Acquisition and Operating Costs of Wind Projects in Rates. Empire requested that it be allowed to withdraw its request to recover its acquisition and operating costs relating to the Wind Projects without prejudice.<sup>24</sup> This would allow Empire to seek recovery for the Wind Projects in a future general rate case and leave only the unanimous partial settlement for Commission decision at this time.<sup>25</sup> Empire indicates that Staff and CURB do not oppose Empire’s motion but reserve the right to oppose recovery of the wind projects in future proceedings.<sup>26</sup> The Wind Projects, which are currently in operation will continue to operate but Kansas customers will be insulated from their costs and revenues.

### **The Settlement**

18. Kansas favors compromise and the settlement of disputes when the agreement is entered into intelligently and in good faith.<sup>27</sup> The style of settlement is known as a “black box,”

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<sup>24</sup> Motion to Withdraw Request to Recover Acquisition and Operating Costs of Wind Projects in Rates, pg. 3 (May 16, 2022).

<sup>25</sup> *Id.* at 2.

<sup>26</sup> *Id.*

<sup>27</sup> *See, Bright v. LSI Corp.*, 254 Kan. 853, 858 (1994).

meaning that while the parties agree on the terms, they do not disclose how they arrived at those terms.<sup>28</sup>

19. The Agreement is a unanimous settlement agreement as defined by K.A.R. 82-1-230a. Therefore, there is no need to apply the five-factor test.

20. When approving a unanimous settlement, a three-factor test is used, the Commission must make an independent finding as to whether the settlement: (1) is supported by substantial competent evidence in the record as a whole, (2) will establish just and reasonable rates, and (3) is in the public interest.<sup>29</sup>

**The Settlement is supported by substantial competent evidence in the record as a whole.**

21. All items agreed to and included within the Settlement Agreement are supported by substantial competent evidence in the record as a whole. Specifically, testimony in support of the settlement was filed by Justin Grady on behalf of Staff, Andrea Crane on behalf of CURB, and Greg Tillman on behalf of Empire. In his testimony in support of the settlement, Greg Tillman expressed his belief that the settlement agreement is consistent with the testimony of all the witnesses in this docket and reflects a compromise by the parties in their respective positions.<sup>30</sup>

22. Justin Grady testified that the terms of the settlement agreement are commensurate with what Staff would expect if the settled issues were to be fully litigated.<sup>31</sup>

23. Substantial competent evidence possesses something of substance and relevant consequence, which furnishes a substantial basis of fact to reasonably resolve the issues.<sup>32</sup> Whether

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<sup>28</sup> Settlement Testimony of Gregory Tillman, pg. 3 (March 7, 2022); *See*, Testimony in Support of Unanimous Partial Settlement Agreement by Justin Grady, pg. 11 (March 7, 2022).

<sup>29</sup> *See*, Docket No. 21-BHCG-418-RTS, Order Approving Unanimous Settlement Agreement, pgs. 6-7 (December 30, 2021).

<sup>30</sup> Settlement Testimony of Gregory Tillman, pg. 6 (March 7, 2022).

<sup>31</sup> Testimony in Support of Unanimous Partial Settlement Agreement by Justin Grady, pg. 10 (March 7, 2022).

<sup>32</sup> *Farmland Indus., Inc. v. Kansas Corp. Comm'n.*, 25 Kan.App.2d 849, 852 (1999).

another trier of fact could have reached a different conclusion given the same facts is irrelevant; a Commission decision lacks substantial competent evidence when the Commission's determination "is so wide of the mark as to be outside the realm of fair debate."<sup>33</sup>

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

**The Settlement will result in just and reasonable rates**

25. Greg Tillman testified that the Settlement Agreement results in a 3.8% reduction to Empire's revenue requirement.<sup>34</sup>

26. Andrea Crane testified that if Staff's initial recommendation of a LCOE is removed from their base rate recommendation, the result is a revenue reduction similar to the settlement agreement.<sup>35</sup>

27. Justin Grady testified that the settlement agreement results in rates that fall within the "zone of reasonableness" which balances the interests of ratepayers and investors, present and future investors and the public generally.<sup>36</sup>

28. Andrea Crane testified that the settlement agreement results in a revenue reduction greater than the reduction originally recommended by CURB.<sup>37</sup>

29. Every electric public utility is required to provide reasonably efficient and sufficient service and establish just and reasonable rates.<sup>38</sup> The Parties represent a variety of interests, including investors, small commercial customers, residential customers and the public generally. The terms of the Agreement are fair and reasonable, and were fully and fairly negotiated

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<sup>33</sup> *Id.* at 851, 856.

<sup>34</sup> Settlement Testimony of Gregory Tillman, pg. 6 (March 7, 2022).

<sup>35</sup> Testimony of Andrea Crane in Support of Unanimous Partial Settlement Agreement, pg. 8 (March 7, 2022).

<sup>36</sup> Testimony in Support of Unanimous Partial Settlement Agreement by Justin Grady, pg. 12 (March 7, 2022).

<sup>37</sup> Testimony of Andrea Crane in Support of Unanimous Partial Settlement Agreement, pgs. 7-8 (March 7, 2022).

<sup>38</sup> K.S.A. 66-101b.

by the parties in conjunction with the acknowledgement that it is unlikely the Commission would accept wholesale any party's prefiled position. Based on the foregoing, the Commission finds approval of the settlement will result in just and reasonable rates.

**The results of the Settlement are in the public interest**

30. Justin Grady testified that the Settlement Agreement is in the public interest because it avoids costly and time consuming litigation and provides Empire with sufficient revenues to meet its financial obligations and provide reliable service.<sup>39</sup>

31. As stated above, the Settlement Agreement will result in a 3.8% reduction to Empire's revenue requirement.<sup>40</sup> This results in bill reduction of about \$2.95 per month for average residential users.<sup>41</sup>

32. Andrea Crane testified that the public interest is served because it creates rate stability. The 10 year amortization of Asbury is also preferable to Empire's initially proposed 26 year schedule because the 10 year schedule better aligns recovery of the costs of Asbury with those that benefitted from it and avoids intergenerational inequity.<sup>42</sup>

33. Each party has a duty to protect the interest of the party it represents. Empire has a duty to its customers, employees, and shareholders. 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.

34. This agreement was sufficient to satisfy the diverse interest of all the parties, which supports the conclusion that the agreement is in the public interest. The total effect of the terms of

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<sup>39</sup> Testimony in Support of Unanimous Partial Settlement Agreement by Justin Grady, pg. 15 (March 7, 2022).

<sup>40</sup> See, fn 34.

<sup>41</sup> The average residential customer uses approximately 924 kWh per month. Direct Testimony of Tisha Sanderson, pg. 30 (May 27, 2021). See, Joint Motion for Approval of Unanimous Partial Settlement Agreement on Revenue Requirement, Attachment A, pg.5 (March 2, 2022). See also, Abbreviated Rate Case Application, Section 17.2 Rate Design (May 28, 2021).

<sup>42</sup> Testimony of Andrea Crane in Support of Unanimous Partial Settlement Agreement, pgs. 9-10 (March 7, 2022).

the Agreement results in just and reasonable rates and represents an equitable balancing of the interest of all the Parties. Therefore, the Agreement is in the public interest.

**THEREFORE, THE COMMISSION ORDERS:**

A. Empire's Motion to Withdraw Request to Recover Acquisition and Operating Costs of Wind Projects in Rates is granted without prejudice.

B. The unanimous partial settlement is approved, effective July 1, 2022.

C. Any party may file and serve a petition for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).<sup>43</sup>

**BY THE COMMISSION IT IS SO ORDERED.**

Keen, Chair; Duffy, Commissioner; French, Commissioner

Dated: 05/26/2022

DGC

  
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Lynn M. Retz  
Executive Director

<sup>43</sup> K.S.A. 66-118b; K.S.A. 77-503(c); K.S.A. 77-531(b).

BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

In the Matter of the Application of The Empire )  
District Electric Company for Approval of the )  
Commission to Make Certain Changes in its ) Docket No. 21-EPDE-444-RTS  
Charges for Electric Service. )

**PARTIAL SETTLEMENT AGREEMENT ON REVENUE REQUIREMENT**

As a result of discussions between the parties to this docket, the Staff of the State Corporation Commission of the State of Kansas ("Commission") ("Staff"), The Empire District Electric Company ("Empire" or "Company") and the Citizens' Utility Ratepayer Board ("CURB") (collectively referred to as "Joint Movants" of "Signatories" or "Signatory Parties") hereby submit to the Commission for its consideration and approval the following unanimous Partial Settlement Agreement ("Partial Settlement Agreement" or "Settlement").

**I. INTRODUCTION**

**A. EMPIRE'S ABBREVIATED RATE APPLICATION**

1. On May 28, 2021, Empire filed an abbreviated rate case application to (1) recover the capital and operating costs relating to its acquisition of three wind projects; (2) update Empire's revenue requirement to account for the retirement of its Asbury coal plant; and (3) capturing the revenue requirement impact directly related to the non-growth plant and related accumulated depreciation and deferred income tax balances as of the end of the test year ending June 30, 2020.

2. Empire received permission from the Commission in its last general rate case, Docket No. 19-EPDE-223-RTS ("223 Docket") to make an abbreviated rate case limited to the three issues identified above.

3. Empire filed the testimony and exhibits of eight (8) witnesses in support of its application. The schedules filed with its Application established a gross revenue deficiency of \$4.465 million. The gross revenue deficiency was offset by a credit to customers of \$924,952 relating to the retirement of the Asbury coal plant on March 1, 2020 and projected wind revenues in the amount of \$2.817 million for a net revenue increase to customers of \$723,582. On September 15, 2021, pursuant to the procedural schedule issued by the Commission, Empire filed an update to its abbreviated rate application. In its update, Empire increased its revenue deficiency to \$4.49 million, reduced its projected net wind revenues to \$2,728,907, and increased the net revenue increase to customers to \$836,947. As an alternative to including the levelized cost of the Wind Projects in base rates, Empire proposed using a fixed-price purchase power ("FPP") approach similar to the one approved by the Commission in Docket No. 18-WSEE-328-RTS ("328 Docket") for Evergy's Western Plains wind farm with a levelized cost of energy ("LCOE") of \$33.73/MWh. Empire also filed rebuttal testimony and exhibits of four (4) witnesses on February 15, 2022.

B. STAFF AND CURB'S TESTIMONY AND EXHIBITS

4. On January 14, 2022, Staff filed its testimony and exhibits. Staff proposed a gross revenue deficiency of \$1.3 million, offset by a credit to customers of \$1.497 million relating to the retirement of Asbury and projected wind revenues of \$2.636 million for a net revenue decrease of \$2.833 million. Staff testified that the Wind Projects were not necessary for Kansas customers and should not be included in rates. However, if the Commission determined to include the Wind Projects in rates then Empire's proposal should be adjusted to remove \$28.75 million from rate base and \$1.58 million in operating expenses relating to the Wind Projects and increase operating expenses by \$1.934 million to reflect Staff's inclusion of the levelized market-competitive PPA prices for Empire's wind

investments in the revenue requirement based upon Staff's market-competitive PPA price of \$16.32/MWh.

5. On January 13, 2022, CURB filed its testimony and exhibits. CURB also took the position that the Wind Projects were not necessary to serve Kansas customers. However, if the Commission authorized Empire to recover the costs of the wind projects from Kansas ratepayers, CURB recommended that the cost be recovered on a LCOE basis. CURB proposed a net revenue decrease of \$345,690, excluding the costs of the wind projects, and recommended an additional fixed LCOE charge of \*\$23.97/MWh\* for the Wind Projects if recovery was authorized by the Commission.

C. SETTLEMENT DISCUSSIONS; PARTIAL SETTLEMENT OF ISSUES

6. Beginning on February 22, 2022, the parties met collectively to discuss the possible settlement of specific contested issues in this matter and continued those discussions through March 1, 2022.

7. As a result of the settlement discussions, Joint Movants reached an agreement, which has been reduced to writing, is attached to this Joint Motion as Attachment A, and is incorporated herein by reference.

8. Pursuant to K.A.R. 82-1-230a, the Partial Settlement is a "unanimous settlement agreement" because all parties are in agreement with the terms of the Settlement.

9. The Partial Settlement resolves all issues relating to two of the three issues in the abbreviated rate case filing. It resolves all issues relating to Empire's revenue requirement to account for the retirement of its Asbury coal plant. It resolves all issues related to capturing the revenue requirement impact directly related to the non-growth plant and related accumulated depreciation and deferred income tax balances as of the end of the test year ending June 30, 2020. All issues relating

to whether the Wind Projects should be included in Empire's Kansas rates, and if so, at what value, shall be presented by the parties to the Commission for determination at an evidentiary hearing.

## **II. TERMS OF THE PARTIAL SETTLEMENT**

10. The Signatory Parties have settled all issues relating to Empire's revenue requirement to account for the retirement of Asbury and all issues related to capturing the revenue requirement impact directly related to the non-growth plant and related accumulated depreciation and deferred income tax balances as of the end of the test year ending June 30, 2020. The settlement provisions provide no precedent for future cases. In the event the Commission either does not approve this Partial Settlement Agreement in total, or materially changes the Partial Settlement Agreement terms, then the Agreement shall be voidable by any Signatory negatively affected by such modification and the matters shall be presented to the Commission in a future evidentiary hearing. If the Commission accepts this Partial Settlement Agreement in its entirety and incorporates the same into a final order without material modification, the Signatories 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, will not appeal the Commission's order on these issues.

11. This Partial Settlement Agreement resolves all matters of, and related to, the revenue requirement items at issue in this docket with the exception of the following issues which will be presented to the Commission at an evidentiary hearing for determination:

- a. Whether the investment and cost relating to the Wind Projects should be included in Empire's Kansas rates?
- b. What is the amount of the investment and cost relating to the Wind Projects that should be included in Empire's rates?

c. Whether the investment and cost relating to the Wind Projects should be recovered using a traditional ratemaking approach or a fixed-price purchase power ("FPP") approach?

12. As it relates to Empire's revenue requirement to account for the retirement of its Asbury coal plant and all issues related to capturing the revenue requirement impact directly related to the non-growth plant and related accumulated depreciation and deferred income tax balances as of the end of the test year ending June 30, 2020, the parties agree as follows:

a. The Asbury regulatory liability amount related to the retirement of Asbury on March 1, 2020, shall be netted against the Company's Asbury regulatory asset so that the net Asbury regulatory asset shall be \$3,340,140 ("Asbury Regulatory Asset"). Empire shall be allowed to recover the Asbury Regulatory Asset over 10 years beginning on the date in which rates set in this case become effective. Empire's request to implement an Asbury Retirement Rider ("ARR") is no longer necessary because that regulatory liability has been netted against the regulatory asset.

b. Resolution of the Asbury Regulatory Asset and the revenue requirement directly related to the non-growth plant and related accumulated depreciation and deferred income tax balances as of the end of the test year ending June 30, 2020, results in a decrease in Empire's revenue requirement of \$636,091.00. The reduction in revenue requirement shall be allocated among Empire's customers based upon the recommendation contained in Staff's testimony.

c. Empire shall be allowed to establish a regulatory asset to capture Asbury decommissioning expenses and costs and Empire shall be allowed to seek recovery of that

regulatory asset in its first rate case following completion of decommissioning of Asbury.

d. Notwithstanding the revenue requirement change identified above in paragraph 12.b, Empire shall be allowed to amortize its actual rate case expense incurred by Empire, Staff and CURB in this proceeding over a three-year period.

13. All Signatory Parties to this Partial Settlement Agreement waive cross examination of all other Signatory Parties' witnesses on the settled items listed above for purposes of the evidentiary hearing, except for questions in response to Commissioner questions. All Signatory Parties also agree to provide testimony in support of the Partial Settlement Agreement. The Signatory Parties agree that all pre-filed testimony of their witnesses related to the settled revenue requirement issues may be incorporated into the record without objection.

14. Nothing in this Partial Settlement 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.

15. The Signatory Parties shall have the right to present pre-filed testimony in support of this Partial Settlement Agreement. Such testimony shall be filed formally in the docket and presented by witnesses at a hearing on this Agreement.

16. This Partial Settlement Agreement represents a negotiated settlement that fully resolves the settled issues in this docket among the Signatory Parties. The Parties represent that the terms of this Agreement constitute a fair and reasonable resolution of the settled issues addressed herein. Except as specified herein, the Signatory Parties shall not be prejudiced, bound by, or in any way affected by the terms of this Partial Settlement Agreement (a) in any future proceeding; (b) in any

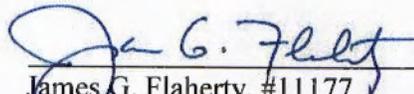
proceeding currently pending under a separate docket; and/or (c) in this proceeding should the Commission decide not to approve this Partial Settlement Agreement in the instant proceeding. The provisions of this Agreement have resulted from negotiations among the Signatory Parties and are interdependent. If the Commission accepts this Partial Settlement Agreement in its entirety and incorporates the same into a final order without material modification, the Signatory Parties shall be bound by its terms and the Commission's order incorporating its terms as to all settled issues addressed herein and in accordance with the terms hereof, and will not appeal the Commission's order as it relates to the settled issues contained herein.

17. In the event the Commission either does not approve this Partial Settlement Agreement in total, or materially changes the Settlement Agreement terms, then such Agreement shall be voidable by any Signatory Party negatively affected by such modification. Further, in such event, this Partial Settlement Agreement shall be considered privileged and not admissible in evidence or made a part of the record in any proceeding. In the event of a termination pursuant to this Section, this Partial Settlement Agreement shall be null and void and of no further effect, with all rights, duties, and obligations of the Signatory Parties thereafter restored as if this Partial Settlement Agreement had never been executed; provided, that the Signatory Parties may, in the sole discretion of each Party, agree to attempt to modify this Partial Settlement Agreement in a manner that would resolve the adverse effect of the material change or condition.

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

proceeding.

IN WITNESS WHEREOF, the Signatory Parties have executed and approved this Partial Settlement Agreement on Revenue Requirement, effective as of the 2<sup>nd</sup> day of March, 2022, by subscribing their signatures below.



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**CERTIFICATE OF SERVICE**

21-EPDE-444-RTS

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of electronic service on 05/26/2022.

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