

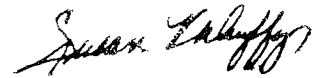
THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Before Commissioners: Thomas E. Wright, Chairman
Joseph F. Harkins

STATE CORPORATION COMMISSION

In the Matter of the Application of The)
Empire District Electric Company for)
Approval to Implement its Portfolio of)
Energy Efficiency and Demand Response)
Programs for its Kansas Customers, to)
Provide for Program Cost Recovery and)
Lost Revenues Through a Rider Mechanism,)
to Obtain any Necessary Waivers from the)
Commission, and for Appropriate)
Accounting Authority to Defer Expenses)
and Revenues Associated with the Filing.)

FEB 12 2010



Docket No. 10-EPDE-497-TAR

Motions of CURB

The Citizens' Utility Ratepayer Board (CURB) herein moves the Commission to (1) appoint a hearing officer in the above-captioned docket, (2) schedule a prehearing conference for purposes of developing a procedural schedule in this docket that will facilitate discovery and thorough investigation, and (3) deny Empire District Electric Company its request for expedited approval of its Application filed in this docket.

1. On January 29, 2010, Empire filed an application for approval of the following: (1) a portfolio of energy efficiency and demand response programs for its Kansas customers established in conjunction with Docket Nos. 08-GIMX-441-GIV ("441 Docket") and 08-GIMX-442-GIV ("442 Docket"); (2) cost recovery, including a Demand Side Management Cost Recovery Rider ("Rider") to recover the cost associated with its portfolio of energy efficiency and demand response programs and to recognize changes in customer consumption as identified by the Commission in its Final Order in Docket 441; (3) to obtain any necessary waivers of the requirements set forth by the Commission in

the 441 Docket and 442 Docket; and (4) specific Commission authority to defer all program costs and accrued revenue pursuant to the proposed Rider.

2. Additionally, Empire states in its Application that “Empire has coordinated its filing with Staff and incorporated feedback from Staff into the proposal. As a result of its preliminary work with the Staff, Empire has proposed that the Commission approve these programs on an expedited basis, in this case by April 15, 2010, or 76 days from the date of initial filing. This effective date will allow time for some air conditioner tune-ups to be performed prior to the summer cooling season, and it will allow contracts to be signed for the interruptible program prior to the June 1 start date for the 2010 contract year.”

3. While CURB can appreciate Empire’s desire to get the air conditioner program up and running before the summer cooling season, the schedule proposed by Empire will not allow sufficient time to conduct discovery and respond to Empire’s application. Thus, CURB objects to Empire’s request for Commission approval of its application on an expedited basis. The company is requesting that the Commission approve its Energy Efficiency programs, as well as its lost revenue recovery mechanism, within a short period of 76 days after its initial filing. CURB asserts that a thorough and accurate analysis of programs costs, benefit-cost test results, and the company’s request for a lost revenue recovery mechanism cannot be completed in an expedited filing.

4. In addition, Empire states that it has “coordinated its filing with Staff and incorporated feedback from Staff into its proposal.” (Application, at 9). CURB was not included in these meetings or invited to them, nor has it been asked for its “feedback.” While Empire is not obligated to consult the statutory representative of most of Empire’s Kansas customers in developing its proposals, CURB is not prepared to assume that these bilateral negotiations produced results

acceptable to CURB. CURB will need to conduct discovery before it will be able to determine whether the proposals that are the product of bilateral talks between Staff and Empire are reasonable and in the public interest.

5. That said, our preliminary reading of the Application reveals that Staff's apparent approval of the company's request for a lost revenue recovery mechanism, and its apparent assent to expedited approval of the application is inconsistent with Staff's recommendations in Docket No. 08-GIMX-441-GIV. In the *Staff Report on Cost Recovery and Incentives for Energy Efficiency Programs*, Staff stated that "(w)hile a lost margin recovery mechanism has been adopted in some states, this recovery mechanism will require stringent evaluation, measurement and verification that will likely require significant expenditures. Staff suggests that a lost margin recovery mechanism is too administratively burdensome especially in light of the fact that the Commission has currently limited the evaluation, measurement and verification budget associated with a particular energy program to 5% of the project costs." (*Staff Report*, at 27). It is not clear at all why Staff would reverse its position on this issue, and why it would assent to expedited approval of a mechanism that, in Staff's own words, is "administratively burdensome" and requires "stringent evaluation, measurement and verification that will likely require significant expenditures." (*Id.*).

6. Furthermore, Staff's preliminary approval of the Company's lost revenue recovery mechanism is in direct conflict with the Commission's order in the 441 docket, which stated that "The Commission does not favor Lost Margin Recovery because of the high premium this method places on accurate evaluation of program impacts and the increased potential for expensive and time-consuming litigation arising from disputes. Furthermore, while Commission staff expertise is growing in this highly technical field, at this time the Commission does not have the depth of

experience available to consider this method without reliance on outside firms." (Final Order, at 23). There is no reason at this time to assume that the Commission has altered its negative view of lost revenue recovery since that order was issued, that it is now prepared in this time of tight state budgets to undertake expensive and time-consuming litigation, or that the Staff has since acquired sufficient experience and expertise to enable it to complete its investigation in an expedited manner. Thus, any expectation that this proposal should receive summary approval in an expedited fashion is unwarranted.

Therefore, for the reasons stated above, CURB moves the Commission to appoint a hearing officer for this docket, to schedule a prehearing conference for purposes of determining a reasonable procedural schedule that will facilitate discovery and thorough investigation, and (3) to deny Empire District Electric Company its request for expedited approval of its Application filed in this docket.

Respectfully submitted,



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CERTIFICATE OF SERVICE

10-EPDE-497-TAR

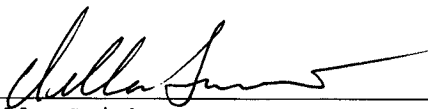
I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was placed in the United States mail, postage prepaid, or hand-delivered this 12th day of February, 2010, to the following:

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