

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

In the Matter of the Application of Empire)
District Electric Company for Approval of) Docket No. 20-EPDE-448-MIS
Temporary Waivers of Certain of Empire's)
Tariffs and for Approval of a Process to)
Implement Temporary Waivers of Certain)
Other Rules and Regulations, Billing)
Standards, General Terms and Conditions and)
to Allow Operating Changes to Address the)
COVID-19 Pandemic.)

NOTICE OF FILING OF STAFF'S REPORT AND RECOMMENDATION

The Staff of the State Corporation Commission of the State of Kansas ("Staff" and "Commission", respectively), hereby files this Report and Recommendation ("Report"), dated August 27, 2020.

Staff recommends the Commission deny Empire's first request in its Application to approve a process that allows Empire to initiate waivers of regulatory obligations. Staff contends it is not good public policy to eliminate the Commission's oversight role of a utility in providing sufficient and efficient service. As an alternative to the waiver process proposed by the Application, Staff recommends the Commission issue a formal statement that it will stay enforcement of any regulatory obligations that Empire's modifies as a result of its response to COVID-19. In order to qualify for the stay of enforcement, Staff recommends the Commission require Empire's to provide written notification (in this Docket) when such action is necessary and state each requirement that cannot be met and the COVID-19 related reason the regulatory noncompliance may occur. Staff recommends the Commission grant partial approval of Empire's second request seeking a temporary waiver of its tariff with respect to the requirement that customers pay 2% of the delinquent amount as a late payment charge, and a waiver of fees

associated with the charge for a trip to the customer's premises to disconnect or collect non-payment, as well as reconnecting a customer that has been disconnected. Finally, Staff recommends the Commission grant conditional approval of Empire's third request for a 60-day temporary tariff that reimburses customers for the cost of paying their bill with a credit or debit card.

WHEREFORE, Staff requests the Commission consider its Report and Recommendation and for any other further relief as the Commission deems just and reasonable.

Respectfully submitted,

s/Cole Bailey

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**REPORT AND RECOMMENDATION
UTILITIES DIVISION**

TO: Chair Susan Duffy
Commissioner Dwight D. Keen
Commissioner Andrew J. French

FROM: Leo M. Haynos, Chief Engineer
Justin Grady, Chief of Revenue Requirements, Cost of Service and Finance
Jeff McClanahan, Director of Utilities

DATE: August 27, 2020

SUBJECT: Docket No. 20-EPDE-448-MIS: In the Matter of the Application of The Empire District Electric Company for Approval of Temporary Waivers of Certain of Empire's Tariffs and for Approval of a Process to Implement Temporary Waivers of Certain Other Rules and Regulations, Billing Standards, General Terms and Conditions and to Allow Operating Changes to Address the COVID-19 Pandemic

EXECUTIVE SUMMARY:

The Empire District Electric Company (Empire) is seeking Commission approval of three initiatives related to Empire's response to the COVID-19 pandemic. The initiatives are listed as follows:

1. Request the Commission approve a process that provides for the waiver of Empire's obligations to comply with certain Commission orders, rules and regulations, billing standards, and terms and conditions included in the Empire tariff. The Application proposes the waiver of the various regulatory obligations would only be in effect when Empire deems compliance with regulatory obligations would create unsafe operating conditions for its customers or personnel due to the impact of the COVID-19 pandemic;
2. Empire is also seeking a temporary waiver of its tariff with respect to the requirement that customers pay 2% of the delinquent amount as a late payment charge. The waiver would also waive fees associated with the charge for a trip to the customer's premises to disconnect or collect non-payment, as well as reconnecting a customer that has been disconnected. The waiver would expire at the end of 2020. The purpose of this waiver is to help mitigate financial hardships on its customers during the COVID-19 pandemic; and

3. Empire also requests the Commission approve a 60-day temporary tariff that would reimburse customers for the cost of paying their bill with a credit or debit card. The tariff would provide a bill credit of \$3.95 for each credit or debit card transaction.¹ This fee is based on the third party payment processing charge that is normally charged to customers when paying with a credit or debit card.

Out of the three requested initiatives, Staff recommends partial approval of initiative No. 2 and conditional approval of initiative No. 3. For initiative No. 2, Staff supports Empire's waiver of the reconnection fee and fee for a trip to a customer's premises for disconnection. These fees can exacerbate the situation facing customers that are having a difficult time paying their electric bills during the COVID-19 pandemic. Staff notes that the Commission has already ordered utilities to cease assessing late payment fees through the end of the year 2020 in Docket No. 20-GIMX-393-GIV.

For initiative No. 3, Staff supports the idea of reimbursing customers for the use of credit and debit cards to pay for electric service during the COVID-19 pandemic. This provides some financial protection to Empire by transferring some of Empire's bad debt collections to the credit card company. Additionally, in the short term, the practice should also reduce disconnections for nonpayment. Indirectly, increased debit/credit card usage offers some safety benefits as well to Empire personnel by limiting contact with customers and thereby improving the practice of social distancing to limit the person-to-person spread of COVID-19. As discussed in more detail below, Empire should update its requested tariff to reimburse customers for the actual third-party charges being assessed when customers use a debit or credit card.

Staff does not recommend approval of the above listed initiative No. 1. This initiative requests Commission approval of a process that allows Empire management to unilaterally declare when a waiver will go into effect, what tasks the waiver would apply to, and when the waiver for any specific task would end. The Application also proposes that Empire will notify the Commission when it implements the waiver and when Empire determines the waiver should end. Empire proposes the process remain in effect through December 31, 2020, with the ability for Empire to continue filing Motions to extend the process into 2021 and beyond.

Staff recognizes the fluid nature of taking precautions to respond to the ebb and flow of guidelines related to COVID-19. Staff also acknowledges the essential role that utility workers have in maintaining necessary service for consumers. We applaud the actions Empire has taken to develop a robust preparedness plan to minimize the COVID-19 impact on its personnel and customers. However, Staff is reluctant to recommend the Commission grant an open-ended waiver of regulatory obligations to any utility.

In the alternative, Staff recommends the Commission formally agree to not take enforcement action against Empire for any deviations from the listed regulatory requirements that are done in response to the COVID-19 pandemic. Staff further recommends Empire provide written

¹ As discussed in more detail below, the tariff included in the Application was designed to offset the \$3.95 credit card fee included in Empire's General Terms and Conditions (GT&C), but that fee is outdated, as it no longer reflects the actual charge that Empire's customers are assessed when using a credit or debit card.

notification (in this Docket) when such action is necessary and state each requirement that cannot be met and the COVID-19 related reason the regulatory noncompliance may occur. Using this approach, the Commission will maintain oversight of the enforcement process and may lift the stay of enforcement if it believes the COVID-19 impacts have been abated. If the Commission should decide to lift its stay of enforcement on its own accord, Staff recommends the Commission agree to allow Empire to propose a time schedule that will allow it to complete regulatory tasks that were postponed in an orderly fashion.

BACKGROUND:

Billing Standards and Empire's General Terms and Conditions for Service

Empire established a cross-functional task force to develop a comprehensive plan in response to the COVID-19 pandemic. The plan included refining business continuity plans for all departments to ensure that critical services can continue if the Empire workforce is depleted by illness. Through May of 2020, Empire has not experienced any loss of manpower due to COVID-19 related absences.² At this point, Empire is monitoring service work order counts, qualified personnel availability, and time to complete service orders. Using these three parameters, Empire expects to develop an understanding of when a waiver of tariff requirements may be needed.

In its Application, Empire requests the ability to unilaterally waive 11 requirements from its tariff that it believes it may not be able to meet due to COVID-19 related manpower constraints or health concerns. Through May of 2020, Empire has been able to meet all of its tariff requirements. Staff notes that many of the tariff requirements for which Empire believes a waiver may be necessary are related to customer disconnections for nonpayment or restoration of service after payment terms are established. The remaining three requirements involve testing or reading meters. Of the 11 items, only three have explicit deadlines for Empire.³ The remaining items on the list either do not have stated time limits or they allow Empire flexibility in providing a response.

Late Payment Fees for Delinquent Payments and Trip Fees for Disconnects

The Empire billing standards require a late payment charge of 2% of the delinquent amount. As per the tariff, a payment becomes delinquent approximately 15 days after the payment due date.⁴ For calendar year 2019, Empire had 33,852 billings to Kansas customers in which late payment fees were assessed. Of that amount, 90% of the late fees were assessed to residential customers. The total revenue Empire received for late fees paid by Kansas customers in 2019 was \$160,000.⁵ Empire has not charged late fees since the COVID-19 pandemic began to affect the economy in March of 2020. However, if late fees had been charged during this time, there would have been 6,900 residential and 872 business billings with late fees for a total revenue amount of \$141,000.⁶

As per the billing standards, Empire is required to charge a disconnection fee for any removal of service for a delinquent bill.⁷ For calendar year 2019, Empire charged 62 accounts for a

² Response to Staff Data Requests Nos. 1 and 2.

³ See Application Exhibit A, items: standards of discontinuance for knock and collect (Section V A.1.a-i); estimated meter reading (Section IV 5.c&d); and Application for service (Section II 4.1-b).

⁴ See Empire Tariff, Section IV.A.10(a) and (b).

⁵ Response to Staff Data Request 12.

⁶ Response to Staff Data Request 13.

⁷ See Empire Tariff, Section IV.A.10(f).

disconnection fee, of which 84% were residential customers. The total amount collected for disconnection fees in 2019 was \$930 or \$15 per trip.

Credit and Debit Card Payments

In calendar year 2019, 18.6% of Empire's Kansas residential customers paid their bills using payment debit or credit card. During the COVID-19 economic disruption in the spring of 2020, 18% of these customers continued to use these payment methods.⁸ The Empire tariff allows Empire to contract with an Authorized Pay Agent to charge an additional \$3.95 for processing credit or debit card payments.⁹ In Docket No. 20-EPDE-459-TAR (20-459 Docket), Empire notified the Commission that the charge listed in its current tariff for credit and debit card transactions (\$3.95/charge) was outdated. Empire stated that the fee had been changed in 2013 to a fee of \$2.25 for residential customers and \$13 for commercial customers. Using those updated charge amounts, and based on billed amounts for April through July of 2020, credit card fees of \$140,000 (~\$35,000 per month) would have been collected if all of Empire Kansas customers had paid their bills using credit cards.¹⁰

ANALYSIS:

Waiver of Billing Standards and Liberty-Empire's General Terms and Conditions for Service

The Commission has the responsibility to ensure that Empire provide "reasonably sufficient and efficient service" to its customers.¹¹ Although the term "reasonably sufficient and efficient" is conceptual, it is operationalized through Empire's contract with its customers (i.e., its tariff), various Commission Orders, and safety regulations. Staff contends that any variance from these obligations violates sufficient and efficient service. However, one must also consider external factors such as a global pandemic when determining if reasonably sufficient and efficient service is violated.

All large utilities have experience responding to emergency situations, such as a weather event, that may impact a large section of their service territory. While the external factors presented by a health pandemic threat are unique in many ways, a utility's response to a weather event or a pandemic is similar. Emergency response requires an assessment of the threat to operations and modification of procedures to address the challenges presented by events causing the emergency. What is unique about the COVID-19 pandemic is the potential sudden loss of available manpower rather than a sudden loss of service from a weather event.

In the past, the Commission has granted waivers of its prescribed requirements when events demonstrated that a variance in requirements provided a better solution for a given set of circumstances. It is Staff's perception that previous waivers granted by the Commission addressed specific items rather than generalities. Typically, a waiver also provides an alternative compliance requirement and an end date. In this Application, Empire does not request a waiver of a specific item. Instead, it requests the Commission approve a process that would allow Empire to implement a waiver of a regulatory obligation by simply notifying the Commission that a waiver is necessary at least for the items listed in the Application's exhibits. While providing a process that allows

⁸ Response to Staff Data Request 16.

⁹ See Empire Tariff, Section IV.B.2.

¹⁰ Response to Staff Data Request 16.

¹¹ K.S.A 66-101b.

Empire to unilaterally decide which Commission rules to waive provides maximum flexibility, it eliminates the Commission's oversight role of the utility in providing sufficient and efficient service. Staff also highlights that Empire is the only electric utility to apply for a COVID-19 related waiver of its tariff requirements. As noted above, Staff is reluctant to recommend the Commission grant an open-ended waiver of regulatory obligations to any utility.

Staff also notes many of the obligations listed in the Application's exhibits already provide compliance flexibility by using qualifying phrases such as "make a reasonable effort" or "as soon as possible". Staff contends the use of these type of qualifiers allows Empire to adjust its tariff requirements to account for external factors such as storms or depletion of manpower from a pandemic without the use of a waiver.

Given the infectious nature of COVID-19, Staff supports Empire's efforts to limit or prevent interactions between its personnel and the public, and we recognize these types of limitations will require at least temporary changes in Empire operations. In fact, it is plausible that the regulatory obligations listed in the Application represent only a fraction of the operations or procedures that may need some sort of temporary modification because of manpower limitations.

Therefore, as an alternative to the waiver process proposed by the Application, Staff recommends the Commission issue a formal statement that it will stay enforcement of any regulatory obligations that Empire modifies as a result of its response to COVID-19. In order to qualify for the stay of enforcement, Staff recommends the Commission require Empire to provide written notification (in this Docket) when such action is necessary and state each requirement that cannot be met and the COVID-19 related reason the regulatory noncompliance may occur. If the Commission should decide to lift its stay of enforcement on its own accord, Staff recommends the Commission agree to allow Empire to propose a time schedule that will allow it to complete the regulatory tasks that were postponed in an orderly fashion.

Late Payment Fees for Delinquent Payments / Trip Fees for Disconnects and Reconnects

Because of the pandemic, Empire has not charged late fees since March 15, 2020. In its Application, Empire is requesting the Commission approve a waiver of the late fee for the remainder of 2020 in order to provide some financial relief to its customers. Staff views Empire's request as moot because the Commission has already ordered Kansas jurisdictional utilities in Kansas to cease the assessment of late fees for delinquent payments through the remainder of 2020.

Empire also requests a waiver of the \$15 per customer trip charge for disconnections and the \$20 charge for reconnections. Given the negative economic impact of the COVID-19 pandemic, including the effects on unemployment levels in Kansas, Staff considers Empire's waiver requests as an appropriate measure of relief to its most vulnerable customers. While the Commission allowed Empire to defer lost revenues (including foregone fee revenues associated with waived late fees) in Docket No. 20-EPDE-427-ACT (20-427 Docket), the Commission explicitly withheld judgment about whether these deferred revenues would be recovered in future rate cases. Staff contends that, if approved, Empire's waived reconnect and disconnect fees can be included in the regulatory asset approved by the Commission in the 20-427 Docket, but cautions that Empire will have the burden to prove that these deferred revenues should be collected from other customers in a future rate case.

Credit Card Fee Reimbursement

Empire also requests the Commission approve a 60-day temporary tariff that would reimburse customers for the third party fee that customers pay when using a credit or debit card to pay their electric bill. According to the proposed tariff, the customers would be reimbursed \$3.95 for each credit or debit card transaction. The proposed tariff language found in Exhibit C of the Application states the credit would equal the amount charged by a third party payment processing company; however, the tariff lists the amount as a fixed credit of \$3.95 per transaction. Although not stated in the proposed tariff, Empire currently charges a \$2.25 processing fee to residential customers and a \$13.00 processing fee to commercial customers.¹²

Staff contends that there are several benefits to offering customers a reimbursement that offsets the fee they incur for the use of debit and credit cards to pay their electric bill. This includes:

1. Shifting the burden of bad debt collection to the credit card company;
2. Reducing the level of customers that would otherwise have their utility service disconnected; and
3. The practice of paying bills by credit or debit card may offer some “social distancing” preventative health benefits to Empire personnel by minimizing payment handling of mail or in-person payments.

While Staff agrees that there are benefits to Empire and its customers from reimbursing customers the cost of a debit/credit card transaction, Empire’s request to revise its current credit card fees is currently before the Commission in the 20-459 Docket. Therefore, Staff recommends the Commission approve the temporary tariff provided that Empire corrects the tariff language to state the credited amount will be the amount directly charged to the customer by the third party payment processing company.

RECOMMENDATION:

- Staff recommends the Commission deny Empire’s Application to approve a process that allows Empire to initiate waivers of regulatory obligations. Staff contends it is not good public policy to eliminate the Commission’s oversight role of a utility in providing sufficient and efficient service.

As an alternative to the waiver process proposed by the Application, Staff recommends the Commission issue a formal statement that it will stay enforcement of any regulatory obligations that Empire modifies as a result of its response to COVID-19. In order to qualify for the stay of enforcement, Staff recommends the Commission require Empire to provide written notification (in this Docket) when such action is necessary and state each requirement that cannot be met and the COVID-19 related reason the regulatory noncompliance may occur. If the Commission should decide to lift its stay of enforcement on its own accord, Staff recommends the Commission agree to allow Empire to propose a time schedule that will allow it to complete the regulatory tasks that were postponed in an orderly fashion.

¹² Approximately 13% of Empire’s customers are commercial accounts (see response to Staff Data Request No. 16).

- Staff recommends approval of Empire's proposed waiver of reconnect fees and a waiver of trip fees for disconnects as described in Exhibit B of the Application. Staff considers Empire's waiver request as an appropriate measure of relief for its most vulnerable customers. These lost fees should be considered lost revenue and, therefore, should be deferred to a regulatory asset as approved in the 20-427 Docket. Importantly, Empire will have the burden of showing the Commission why these lost fee revenues should be recovered from other customers during future rate cases.
- Staff recommends the Commission approve the temporary tariff reimbursing customers for the fees associated with using debit or credit cards to pay for electric service, provided that Empire agrees to correct the tariff language shown in Exhibit C of the Application to state the credited amount will be the amount directly charged to the customer by the third party payment processing company.

Attachment 1 Data Request Responses



The Empire District Electric Company

A Liberty Utilities Company

Docket No. 20-EPDE-448-MIS

KCC Data Request – 1

Data Request Received: 05/21/20
Request No. 1

Date of Response: 06/20/20
Respondent: Jeff Westfall

Submitted by: Leo Haynos

REQUEST:

A. For March through April of 2020, has Liberty-Empire experienced a reduction in the number of field personnel serving Kansas customers?

B. If yes, please estimate the percentage of field personnel reduction that was caused by Covid-19 conditions during the months of March and April of 2020.

RESPONSE:

A. We did not experienced a reduction of field personnel serving Kansas customers during March through April.

B. N/A



The Empire District Electric Company

A Liberty Utilities Company

Docket No. 20-EPDE-448-MIS

KCC Data Request – 2

Data Request Received: 05/21/20
Request No. 2

Date of Response: 06/02/20
Respondent: Jeff Westfall

Submitted by: Leo Haynos

REQUEST:

A. For any Liberty-Empire contractors, have conditions related to COVID-19 resulted in any manpower reductions for field operations in Kansas?

B. If yes, please explain the magnitude of the manpower shortages

RESPONSE:

A. We have not experienced any contractor manpower reductions related to COVID-19.

B. N/A



The Empire District Electric Company

Case No. 20-EPDE-448-MIS

Kansas Corporation Commission Data Request - 0012

Data Request Received: 2020-08-10
Request No. 0012
Submitted by: Leo Haynos, L.Haynos@kcc.ks.gov

Response Due Date: 2020-08-19
Respondent: Patsy Mulvaney

REQUEST:

A. For the calendar year 2019, how many accounts were charged a 2% late payment charge? B. Of the accounts listed in Part A, how many accounts were residential accounts? C. What was the amount of late payment fees collected in 2019?

RESPONSE:

- A. 33,852
- B. 30,310
- C. \$159,831.82



The Empire District Electric Company

Case No. 20-EPDE-448-MIS

Kansas Corporation Commission Data Request - 0013

Data Request Received: 2020-08-10
Request No. 0013
Submitted by: Leo Haynos, L.Haynos@kcc.ks.gov

Response Due Date: 2020-08-19
Respondent: Patsy Mulvaney

REQUEST:

A. Since April of 2020, how many residential accounts have been eligible for the 2% late payment charge? B. Since April of 2020, how many accounts OTHER THAN residential have been eligible for the 2% late payment charge? C. Of the accounts in Part A and Part B, how many accounts have been charged the 2% late payment fee? D. For the time period April 2020 through July 2020, what is the total amount of late payment fees owed to Empire?

RESPONSE:

- A. 6,869
- B. 872
- C. 0. Due to COVID we have not charged late fees since 3/15/2020.
- D. \$140,617.19 is the amount that would be owed if late fees had been assessed during the time period.



The Empire District Electric Company

Case No. 20-EPDE-448-MIS

Kansas Corporation Commission Data Request - 0016

Data Request Received: 2020-08-10
Request No. 0016
Submitted by: Leo Haynos, L.Haynos@kcc.ks.gov

Response Due Date: 2020-08-19
Respondent: Christy Londerholm

REQUEST:

A. What percentage of residential customers paid their bills using an online method of payment in 2019? B. For the time period April 2020 through July 2020, What percentage of residential customers paid their bills using an online method of payment? C. What is the maximum amount of bill credits that would be paid per month if all Empire customers elected to use online payments?

RESPONSE:

- A. 18.6%
- B. 18.0%
- C. For the period April 2020 to July 2020, all Liberty-Empire Kansas customer total is \$140,240.

Work paper for responses attached.

KCC Data Request – 16

A.

Count of 2019 Credit Card Transactions	18,217
Total 2019 Residential Customers	97,853
Percent of Residential Customers using a credit card	18.6%

B.

	April 2020	May 2020	June 2020
Count of Residential Monthly Credit Card Transactions	1,579	1,410	1,389
Count of Residential Customeres	8,164	8,200	8,203
Percent of Residential Customers using a credit card	19.3%	17.2%	16.9%

C.

	Count of Customers	Rate per class	Total Credit Card
Residential July 2020	8,191	\$ 2.25	\$ 18,430
Commercial July 2020	1,283	\$ 13.00	\$ 16,679
	<u>9,474</u>		<u>\$ 35,109</u>

	Count of Customers	Rate per class	Total Credit Card
Residential June 2020	8,203	\$ 2.25	\$ 18,457
Commercial June 2020	1,279	\$ 13.00	\$ 16,627
	<u>9,482</u>		<u>\$ 35,084</u>

	Count of Customers	Rate per class	Total Credit Card
Residential May 2020	8,200	\$ 2.25	\$ 18,450
Commercial May 2020	1,276	\$ 13.00	\$ 16,588
	<u>9,476</u>		<u>\$ 35,038</u>

	Count of Customers	Rate per class	Total Credit Card
Residential April 2020	8,164	\$ 2.25	\$ 18,369
Commercial April 2020	1,280	\$ 13.00	\$ 16,640
	<u>9,444</u>		<u>\$ 35,009</u>

Total			\$ 140,240
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July 2020	Total
1,518	5,896
8,191	32,758
18.5%	18.0%

CERTIFICATE OF SERVICE

20-EPDE-448-MIS

I, the undersigned, certify that a true and correct copy of the above and foregoing Notice of Filing of Staff's Report and Recommendation was electronically served this 3rd day of September, 2020, to the following:

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CERTIFICATE OF SERVICE

20-EPDE-448-MIS

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