

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

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

In the Matter of the Application of The Empire)
District Electric Company's Proposed Tariff) Docket No. 21-EPDE-134-TAR
Revision of the Credit/Debit Card Transaction)
Amounts.)

ORDER

The Commission rules as follows:

Background

1. On December 6, 2004, the Commission adopted minimum standards for utilities to follow when allowing customers to pay their utility bills with a credit or debit card.¹
2. On June 6, 2006, the Commission granted The Empire District Electric Company's (Empire) application to make changes to its rules and regulations by allowing customers to pay their monthly bills by credit or debit card. The Commission approved an electronic transaction fee of \$3.95 to be collected by the third-party card processing company.² In 2013, Empire's third-party vendor Empire switched card processing vendors. The new third-party vendor charged \$2.25 per transaction for residential customers and \$13.00 per transaction for commercial customers. Empire did not seek approval of the new fees before the vendor charged customers the new fees.³
3. On May 4, 2020, due to the COVID-19 pandemic, Empire sought Commission approval to temporarily reimburse customers for credit and debit card transaction fees charged by

¹ Docket No. 04-GIMX-651-GIV (04-651 Docket), Order Adopting Standards on the Acceptance of Credit Cards by Kansas Jurisdictional Electric, Natural Gas, and Water Utilities (Dec. 6, 2004).

² Docket No. 06-EPDE-661-TAR (06-661 Docket), Order (Jun. 1, 2006); 06-661 Docket, Empire's Application (Dec. 22, 2005); 06-661 Docket, Empire Tariff Filing (May 25, 2006).

³ Application, ¶ 5 (Oct. 1, 2020).

the third-party vendor.⁴ The Commission approved the request.⁵ Empire filed an amended temporary tariff with an effective date of October 16, 2020.⁶

4. On May 8, 2020, Empire filed an application in Docket No. 20-EPDE-459-TAR (20-459 Docket) requesting to revise the third-party charge for customer credit and debit card transactions. Empire explained that it recently discovered the fees customers paid to a third-party vendor beginning in 2013 were not approved by the Commission.⁷

5. On October 1, 2020, Empire filed an application requesting to again revise the third-party charge for customer credit card, debit card, prepaid card, and electronic check (e-check)/Automated Clearing House (ACH) transactions.⁸ Empire filed its application after entering into an agreement with a new third-party vendor. Empire requests approval of a \$1.75 fee per transaction with a \$600 transaction limit for residential customers making payment using a credit card, debit card, prepaid card, or ACH. Empire also requests approval of a \$7.95 fee per transaction with a \$1,200 transaction limit for commercial customers.⁹ Empire requests a continued waiver of the third-party vendor processing fees and to defer potential recovery of those waived fees under the accounting authority order (AAO) in Docket No. 20-EPDE-427-ACT (20-427 Docket).¹⁰

6. On October 5, 2020, the Citizens' Utility Ratepayer Board (CURB) filed a petition to intervene and a motion for protective and discovery orders.¹¹ The Commission granted CURB

⁴ Docket No. 20-EPDE-448-MIS (20-448 Docket), Application (May 4, 2020).

⁵ 20-448 Docket, Order on Empire District Electric Company Application (Oct. 6, 2020).

⁶ 20-448 Docket, The Empire District Company Tariff Related to Credit Card Fees (Oct. 12, 2020).

⁷ 20-459 Docket, Application (May 8, 2020).

⁸ For purposes of its tariff, Empire considers electronic checks as ACH. (Application, Exhibit D (Oct. 1, 2020)).

⁹ Application, ¶ 9.

¹⁰ *Id.*, ¶ 11.

¹¹ Petition to Intervene and Motion for Protective Order and Discovery Order (Oct. 5, 2020).

intervention and issued protective and discovery orders. The Commission also suspended the effective date of the application for 240 days, from October 1, 2020, until May 31, 2021.¹²

7. On November 13, 2020, the parties to the 20-459 Docket filed a joint motion seeking approval of a unanimous settlement agreement.¹³ On February 16, 2021, the Commission issued its order on the unanimous settlement agreement. The Commission found the rates Empire charged beginning in 2013 resulted in no harm to residential customers. The rates Empire charged to commercial customers resulted in an over collection. The Commission ordered Empire to refund the over-collected commercial fees with interest in lieu of a penalty. The Commission rejected the parties' proposals regarding the deferral accounting for potential recovery due to the COVID-19 pandemic. The Commission determined the parties' arguments regarding accounting under the 20-427 Docket were more appropriate for this docket, the 21-134 Docket.¹⁴ The Commission further ordered Empire to continue to waive the credit or debit card transaction fees until the Commission issues an order in the 21-134 Docket.¹⁵

8. On March 11, 2021, Commission Staff (Staff) filed its Report and Recommendation (R&R) in this docket. Staff recommends the Commission approve Empire's proposed tariff. Staff explains that although Empire was not required to do so, Empire selected their vendor using a request for proposal (RFP) analysis. By using this process, Empire demonstrated due diligence in its comparison of vendors. Staff compared the proposed fees to Empire's current tariff and the proposed fees in the 20-459 Docket. Staff states Empire is providing customers with transaction fees

¹² Order Granting CURB's Petition to Intervene, Discovery Order, Protective Order, Suspension Order (May 31, 2021) (Oct. 20, 2020).

¹³ Joint Motion for Approval of Unanimous Settlement Agreement (Nov 13, 2020); Unanimous Settlement Agreement (Nov. 18, 2020).

¹⁴ 20-459 Docket, Order, ¶ 21 (Feb. 16, 2021).

¹⁵ *Id.*, Ordering Clause F.

lower than rates it offered for its customers since 2013. Additionally, Staff explains the fees are revenue-neutral for Empire and the third-party vendor will charge only the customers using an electronic service to submit payments. Staff also states the proposed transaction limits are not an unreasonable trade-off for lower rates. Staff states the average residential bill for the last three years ranged from \$121 to \$128, and the average commercial customer bill for the last three years ranged from \$370 to \$402. Staff notes these average ranges are well below the proposed transaction limits. Staff believes the fees are reasonable.¹⁶

9. Staff also addresses Empire's request for the third-party vendor to charge a transaction fee to customers paying by e-check. Staff states the minimum payment standards provided in the 04-651 Docket provide that e-checks must be offered at a zero-fee pay method. According to Staff, Empire explained the e-check payment method is available through its vendor only if a fee is charged. Staff believes it is in the best interest of the customers and the parties to allow Empire to offer e-checks at a fee through its third-party vendor. Staff recommends the Commission grant a partial waiver to Empire of the payment standards item (C) and to approve Empire's request.¹⁷

10. Staff also recommends the Commission approve Empire's request to track the waived credit and debit card fees in the regulatory account established in the 20-427 Docket. Staff emphasizes that any determination regarding the recovery of these tracked fees would be made in a future rate case.¹⁸

¹⁶ Notice of Filing of Staff's Report and Recommendation (Mar. 11, 2021).

¹⁷ *Id.*

¹⁸ *Id.*

11. On March 18, 2021, CURB responded to Staff's R&R. CURB agrees with Staff's conclusion that Empire's proposed fees comply with the minimum payment standards. CURB notes customers who do not utilize the electronic payment methods cannot be burdened with the costs of these transactions. CURB also states Empire's proposed transaction fees have lower transaction limits, and those customers with larger bills may be negatively impacted. CURB addresses Staff's conclusion that the average customer bill is well under the proposed limits, which mitigates potential impacts. CURB, however, encourages Empire to work directly with those customers who are burdened by the lower transaction limits to reach an amicable solution. Regarding Empire's proposed e-check fee, CURB agrees with Staff's recommendation to grant Empire a partial waiver of the payment standards. CURB states the use of e-checks was previously unavailable, and e-checks may provide a new alternative for remote payments that can cut down on person-to-person contact and add convenience for customers. CURB is also agreeable to allowing Empire to track the waived transaction fees due to the COVID-19 pandemic, but believes this particular topic may require special attention in the future.¹⁹

12. On May 21, 2021, Empire filed a notice in this docket agreeing to extend the 240-day statutory deadline to July 15, 2021.²⁰

13. On June 18, 2021, Empire filed a motion in the 20-448 Docket requesting an extension of a stay of enforcement of action against Empire through September 30, 2021. Empire

¹⁹ CURB's Response to Staff's Report and Recommendation (Mar. 18, 2021).

²⁰ Notice (May 21, 2021).

stated it would continue to waive the third-party electronic transaction fees.²¹ The Commission granted the motion on July 8, 2021.²²

Analysis

14. Empire provides retail electric service to customers in Kansas and is a certificated electric public utility subject to the regulatory jurisdiction of the Commission. The Commission has jurisdiction over Empire's rates and terms of service under K.S.A. 66-101b. Empire's rates pertaining to jurisdictional service must be approved by the Commission pursuant to K.S.A. 66-117. According to K.S.A. 66-101b, any rates charged by Empire must be just and reasonable. The rates may not be unreasonably discriminatory or unduly preferential.

15. The Commission agrees with Staff's analysis, and concludes Empire's proposed electronic fees of \$1.75 per transaction with a \$600 transaction limit for residential customers, and \$7.95 per transaction with a \$1,200 transaction limit for commercial customers are just and reasonable. Empire's revised tariff is approved.

16. The Commission agrees with Staff and CURB and finds it is in the parties' and the public's best interest to allow a previously unavailable payment method at a fee as opposed to the alternative—that Empire would not offer an e-check payment option. The Commission grants Empire a partial waiver of the minimum payment standards set forth in the 04-651 Docket, allowing the third-party vendor to charge a fee for e-check/ACH payment options.

²¹ Motion to Extend Stay Issued in Docket No. 20-EPDE-448-MIS Through September 30, 2021 and Clarification that the Accounting Authority Order Granted in Docket No. 20-EPDE-427-ACT Covers the Period At Least Through September 30, 2021, ¶ 4 (Jun. 18, 2021).

²² 20-448 Docket, Order Granting Empire's Motion (Jul. 8, 2021).

17. The Commission approves Empire's request to track the actual extraordinary costs of the waived and/or credited electronic transaction fees incurred as a result of the COVID-19 pandemic. The Commission agrees with CURB, that this topic may require special attention in the future.²³ The Commission is not reaching a decision about the potential recovery of any amounts Empire is tracking. Considerations of whether Empire can or should lawfully recover deferred revenue associated with charges that were not previously approved by the Commission are more appropriate for Empire's next rate case.

THEREFORE, THE COMMISSION ORDERS:

A. Empire's application to revise the authorized one-time charges for credit card, debit card, prepaid card, and Automated Clearing House (ACH) transactions is approved.

B. Empire is granted partial waiver of the minimum payment standards and the third-party vendor may charge a fee for e-check/ACH payment options.

C. Empire's request to track the credited or waived electronic transaction fees in the regulatory account established in the 20-427 Docket is granted.

D. 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).²⁴

BY THE COMMISSION IT IS SO ORDERED.

French, Chairperson; Keen, Commissioner; Duffy, Commissioner.

Dated: 07/13/2021



Lynn M. Retz
Executive Director

LEL

²³ CURB's Response to Staff's Report and Recommendation (Mar. 18, 2021).

²⁴ K.S.A. 66-118b; K.S.A. 77-503(c); K.S.A. 77-531(b).

CERTIFICATE OF SERVICE

21-EPDE-134-TAR

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of electronic service on 07/13/2021.

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CERTIFICATE OF SERVICE

21-EPDE-134-TAR

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