

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of Empire District Electric)
Company, Liberty Sub Corp. and Liberty)
Utilities (Central) Co. Compliance Filing as) Docket No. 17-EPDE-393-CPL
Required by Commission Order in Docket 16-)
EPDE-410-ACQ)

STAFF'S RESPONSE TO EMPIRE

The Staff of the Kansas Corporation Commission (Staff and Commission, respectively) hereby states the following in response to The Empire District Electric Company's (Empire's) *The Empire District Electric Company's Response to Staff's Report and Recommendation* (Empire's Response) filed December 10, 2018:

BACKGROUND

1. On December 22, 2016, the Commission issued an *Order Granting Joint Motion to Approve the Unanimous Settlement Agreement and Approval of the Joint Application* (Order) in Docket No. 16-EPDE-410-ACQ (Docket 16-410). As part of the Order, the Commission adopted quality of service metrics contained in the Settlement Agreement at paragraph 50. Paragraph 50 provides in full:

50. LU Central and EDE agree to maintain or improve EDE's current quality of service, consistent with the requirements of Commission rules. In addition, EDE agrees to the following quality of service parameters and penalties for non-compliance in the event of failure to maintain these parameters. Using the methodology established in the annual Reliability Benchmarking Report of the Institute of Electronic and Electrical Engineers (IEEE), EDE's normalized reliability statistics (SAIDI, SAIFI, CAIDI) for its Kansas operations (area 212) shall be calculated for years 2013 through 2015. EDE shall pay a refund to its Kansas customers for any year the Kansas Service area normalized annual statistics decrease in reliability below the 2013-2015 averages according to the following schedule:

¹Normalized shall be defined as excluding major event days as defined by IEEE. The occurrence of any major event shall be considered in evaluating customer service reporting metrics.

- a. 5%-10%: \$35,000
- b. 10%-15%: \$70,000
- c. >15%: \$105,000

2. On November 8, 2018, in the immediate docket, Staff filed a Report and Recommendation (R&R) indicating that pursuant to Paragraph 50, Empire's CAIDI metric for 2017 deteriorated greater than 15% from the 2013-2015 normalized averages and that Empire should refund to its customers \$105,000 for the violation. Staff viewed SAIFI, SAIDI, and CAIDI individually and considered each metric to be distinct for purposes of determining quality of service violations.

3. Empire's response states that Staff is misinterpreting Paragraph 50 because a plain reading of the phrase "area normalized annual statistics" implies SAIFI, SAIDI, and CAIDI should be combined to determine whether a violation has occurred. Empire also states that it would be unnecessarily punitive to impose penalties purely based on CAIDI and that the Commission has ordinarily rejected CAIDI from quality of service penalty provisions in other mergers.

THE LANGUAGE CONTAINED IN PARAGRAPH 50 IS AMBIGUOUS BUT THE INTENT IS CLEAR

4. Although Empire asserts that a "plain reading" of Paragraph 50 leads to the conclusion that SAIDI, SAIFI, and CAIDI should be combined for purposes of determining refunds, the words used can be interpreted to refer to SAIDI, SAIFI, and CAIDI in the singular. The Kansas Supreme Court has indicated that language in a contract is ambiguous when the words used in a contract may be understood to reach two or more possible meanings.² The word "statistics" could denote all three metrics in the singular or in the plural. Just as the surrounding language does not indicate a review of each "individual" item, there is no language indicating the items should be "combined" or "averaged" as Empire asserts.

²See *Mobile Acres, Inc. v. Kurata*, 211 Kan. 833, 838 (1973).

5. Because the language is ambiguous, resort must be had to the intent of the language.³ It is clear that the intent behind Paragraph 50 is that Empire's quality of service post-merger should be maintained or improved. This is contained in the very first sentence of Paragraph 50.

6. An increasing Customer Average Interruption Duration Index (CAIDI) indicates that it takes longer, on average, for Empire to restore service to a customer in the event of an outage.⁴ This is a decline in quality of service for the customers that experience outages. It is not unreasonable to assume SAIDI, SAIFI, and CAIDI were all included individually to look at quality of service from different perspectives. System Average Interruption Duration Index (SAIDI) looks at how long outages last on the system as a whole, System Average Interruption Frequency Index (SAIFI) looks at how frequent outages occur on the system as a whole, and CAIDI looks at how long outages last for the actual customers that are interrupted.

CAIDI IS RELATED TO, BUT DIFFERENT FROM SAIDI AND SAIFI

7. With respect to Empire's argument that CAIDI is not a good metric to use because CAIDI is a ratio of SAIDI and SAIFI – Staff would reiterate its point made in the paragraph above. Just because CAIDI is derived by dividing SAIDI by SAIFI does not mean it should be disregarded. CAIDI is used to indicate quality of service from an individual customer's perspective.

THE CAIDI METRIC WAS INCLUDED IN THE TERMS OF THE SETTLEMENT AGREEMENT AND CANNOT BE DISREGARDED

³See Id. at 838-39.

⁴See Notice of Filing of Staff's Report and Recommendation, p. 4 (Nov. 8, 2018).

8. Finally, although Empire believes CAIDI is ordinarily omitted from merger quality of service requirements, the fact remains that it is specifically mentioned in Paragraph 50. Had the intent been to ignore CAIDI, the parties could have omitted it.

STAFF WILL WORK WITH EMPIRE TO DETERMINE IF A COMPROMISE CAN BE REACHED

9. As mentioned by Empire in its response, Staff has had discussions with the company regarding Staff's R&R. Staff understands why Empire does not believe CAIDI is an appropriate metric to focus on because it can give the illusion of service quality degradation when none exists. Staff has indeed indicated that it is willing to work with Empire to come up with an alternative metric to be used to measure quality of service and is willing to work with Empire to resolve this issue.

10. While Staff still holds firm to its position in this matter, Staff would ask that the Commission abstain from issuing any order until the parties have had an opportunity to try and resolve their issues. Staff intends to either file a proposed settlement with Empire or indicate to the Commission in a later filing that a resolution could not be reached.

WHEREFORE, Staff respectfully requests that the Commission abstain from issuing any final ruling on this matter until the parties either file a proposed settlement agreement or a pleading indicating that the Commission should proceed.

Respectfully Submitted,



Michael Neeley, S. Ct. #25027
Senior Litigation Counsel
Kansas Corporation Commission
1500 S.W. Arrowhead Road
Topeka, Kansas 66604-4027
Phone: 785-271-3173

STATE OF KANSAS)
) ss.
COUNTY OF SHAWNEE)


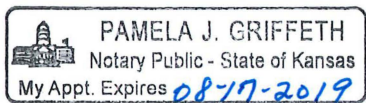
VERIFICATION

Michael Neeley, being duly sworn upon his oath deposes and states that he is Litigation Counsel for the State Corporation Commission of the State of Kansas, that he has read and is familiar with the foregoing *Staff's Response to Empire* and that the statements contained therein are true and correct to the best of his knowledge, information and belief.



Michael Neeley # 25027
Kansas Corporation Commission of the
State of Kansas

Subscribed and sworn to before me this 13th day of December, 2018.


Notary Public

My Appointment Expires: August 17, 2019

CERTIFICATE OF SERVICE

17-EPDE-393-CPL

I, the undersigned, certify that a true and correct copy of the above and foregoing Staff's Response to Empire was served by electronic service on this 13th day of December, 2018, to the following:

JAMES G. FLAHERTY, ATTORNEY
ANDERSON & BYRD, L.L.P.
216 S HICKORY
PO BOX 17
OTTAWA, KS 66067
Fax: 785-242-1279
jflaherty@andersonbyrd.com

COLE BAILEY, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3354
c.bailey@kcc.ks.gov

SARAH B. KNOWLTON, SENIOR DIRECTOR,
REGULATORY COUNSEL
LIBERTY UTILITIES CORP
15 BUTTRICK ROAD
LONDONDERRY, NH 03053
sarah.knowlton@libertyutilities.com

CHRIS KRYGIER, DIRECTOR, RATES AND REGULATORY
AFFAIRS (CENTRAL REGION)
EMPIRE DISTRICT ELECTRIC COMPANY
602 S JOPLIN AVE
JOPLIN, MO 64801
Fax: 417-625-5169
chris.krygier@libertyutilities.com

MICHAEL NEELEY, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3167
m.neeley@kcc.ks.gov

CHRISTOPHER D. KRYGIER, DIRECTOR, REGULATORY &
GOVERNMENT AFFAIRS
LIBERTY UTILITIES CORP
602 S JOPLIN AVE
PO BOX 127
JOPLIN, MO 64802-0127
chris.krygier@libertyutilities.com



Pamela Griffeth
Administrative Specialist