

**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 an) Docket No. 18-EPDE-549-TAR
Economic Development Rider.)

NOTICE OF FILING OF STAFF'S REPORT AND RECOMMENDATION

COMES NOW, the Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively) and files its Report and Recommendation regarding Empire District Electric Company's (Empire) proposed Economic Development Rider (EDR). Staff recommends the Commission approve Empire's EDR.

WHEREFORE, Staff submits its Report and Recommendation for Commission review and consideration and for such other relief as the Commission deems just and reasonable.

Respectfully submitted,

/s/ Robert Elliott Vincent
Robert Elliott Vincent, S. Ct. #26028
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VERIFICATION

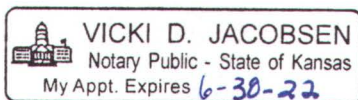
STATE OF KANSAS)
) ss.
COUNTY OF SHAWNEE)

Robert E. Vincent, of lawful age, 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 *Notice of Filing of Staff's Report and Recommendation*, and attests that the statements therein are true and correct to the best of his knowledge, information and belief.



Robert E. Vincent, S.Ct. #26028
Senior Litigation Counsel
The State Corporation Commission
of the State of Kansas

SUBSCRIBED AND SWORN to before me this 28th day of December, 2018.


Notary Public

My Appointment Expires: 6-30-22

STATE OF KANSAS



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REPORT AND RECOMMENDATION UTILITIES DIVISION

TO: Shari Feist Albrecht, Chair
Jay Scott Emler, Commissioner
Dwight D. Keen, Commissioner

FROM: Darren Prince, Senior Research Economist
Lana Ellis, Deputy Chief of Economics and Rates
Robert Glass, Chief of Economics and Rates
Jeff McClanahan, Director of Utilities

DATE: December 27, 2018

SUBJECT: Docket No. 18-EPDE-549-TAR: In the Matter of the Application of the Empire District Electric Company for Approval of an Economic Development Rider

EXECUTIVE SUMMARY:

On June 20, 2018, the Empire District Electric Company (Empire) filed an Application requesting the Kansas Corporation Commission (Commission) approve an Economic Development Rider Tariff (EDR). Staff has reviewed the Application and recommends the Commission approve the proposed EDR and require Empire to credit 60% of the economic development discounts provided within its Kansas jurisdictional region to its shareholders and the rest to customers.

BACKGROUND:

Currently, Empire has an EDR approved in Missouri but does not have one in Kansas. In March 2018, Empire was approached by an industrial customer about the possibility of offering an economic development incentive in Kansas similar to the incentive offered by Empire to Missouri customers.¹ Empire has remained in contact with this customer and anticipates the customer will move ahead with its project once assurances are provided that the incentive will be made available. On June 20, 2018, Empire filed an Application requesting the Commission approve its proposed EDR Tariff.

¹ Response to DR KCC-3.

ANALYSIS:

JURISDICTION

Pursuant to K.S.A. 66-101, the Commission is given full power, authority, and jurisdiction to supervise and control electric public utilities (as defined in K.S.A. 66-101a) doing business in Kansas and is empowered to do all things necessary and convenient for the exercise of such power, authority, and jurisdiction. Pursuant to K.S.A. 66-101a, electric public utility means any public utility (as defined in K.S.A. 66-104) that generates or sells electricity. Pursuant to K.S.A. 66-104(a), “public utility” is defined (in relevant part) as all companies for the production, transmission, delivery, or furnishing of heat, light, water, or power. Pursuant to K.S.A. 66-101h, the Commission is granted, among other things, general supervision over all electric public utilities doing business in the state.

Kansas law grants broad authority to the Commission to ensure public utilities provide reasonably efficient and sufficient services and facilities at just and reasonable rates.² The provisions of the Public Utilities Act and all grants of power, authority, and jurisdiction made to the Commission, are liberally construed, and the Commission is expressly granted “all incidental powers necessary to carry into effect the provisions of this act”.³

STANDARD OF REVIEW

K.S.A. 66-101b requires every electric public utility to have reasonably efficient and sufficient service with just and reasonable rates, classifications, and regulations. The terms “just” and “reasonable” imply flexibility and are not intended to bind regulatory discretion to an absolute or mathematical formula.⁴ Just and reasonable can be interpreted as striking a balance between the interests of the utility and its customers.⁵

Commission Staff evaluates any proposed new tariff or tariff revisions made by electric public utilities to determine if they are just and reasonable. In addition, Staff reviews previous Commission Orders that contain Commission policy statements about issues involved in the analysis of proposed new tariffs or tariff revisions.

EDR ANALYSIS

Description of Proposed EDR Tariff

Currently, Empire has an EDR approved in Missouri⁶ but does not have one in Kansas. In order to encourage economic development within its Kansas service territory, Empire is proposing an EDR identical to the EDR approved for Westar Energy, Inc. and Kansas Gas and Electric Company (Westar) in Docket No. 14-WSEE-147-TAR with the following provisions:

² See K.S.A. 66-101b; See also 66-117.

³ K.S.A. 66-101g.

⁴ See *Farmland Indus., Inc. v. State Corp. Comm'n of Kansas*, 24 Kan. App. 2d 172, 190–91, 943 P.2d 470, 486–87 (1997); See also *Kansas Gas & Elec. Co. v. State Corp. Comm'n*, 239 Kan. 483, 496, 720 P.2d 1063, 1075 (1986).

⁵ See *Citizens' Util. Ratepayer Bd. v. State Corp. Comm'n of State*, 47 Kan. App. 2d 1112, 1130, 284 P.3d 348, 360 (2012).

⁶ KS 18-EPDE-549-TAR DR 1 MO_EDR_Tariff.pdf.

Variable Incentive Credit

Empire is proposing a variable incentive credit that would range from five to twenty-five percent the first year and then decline incrementally over the time period defined. The variable incentive credit allows Empire flexibility to offer different incentive levels to attract new customers or encourage expansion projects in its Kansas service territory.

Supported by Economic Development Organizations

Empire's proposed EDR makes the discount contingent upon the customer increasing the number of employees at its facility. The rider is also contingent on the targeted customer receiving economic development incentives from a city, county, regional, or state economic development group. This limitation, which also applies to Westar's EDR, ensures that Empire's EDR incentive is only offered to customers supported by an economic development organization, such as the Kansas Department of Commerce. While this limitation will reduce the pool of potential candidates, it will also serve to minimize any arbitrariness in the selection of customers for the incentive credit offering.

Shareholder Revenue Imputation

To the extent the Commission allows Westar to split the costs of providing economic development incentives 60/40 between shareholders and customers, Empire agrees to ask the Commission for similar rate treatment in future rate cases.⁷ Staff believes this treatment is appropriate because economic development benefits both shareholders and customers. But, Empire would have less incentive to provide discounts if the entire discount were imputed. Thus, the 60/40 split provides an incentive to Empire without shifting substantial cost to non-participating customers.

CONCLUSION

As discussed above, Empire's EDR provides flexibility to tailor its incentive credit offering at an appropriate level necessary to target specific customers, while ensuring the EDRs' incentive is part of a broader incentive package supported by an economic development organization. In addition, splitting the discount 60/40 between shareholders and customers allows Empire to offer incentive credits without shifting substantial cost to non-participating customers. For these reasons, Staff finds the proposed EDR reasonable and recommends the Commission approve the EDR.

RECOMMENDATION:

Staff recommends the Commission approve Empire's EDR.

⁷ Supplemental Response to DR KCC-5.

CERTIFICATE OF SERVICE

18-EPDE-549-TAR

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 served via electronic service this 28th day of December, 2018, to the following:

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