

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the General Investigation to)
Examine Issues Surrounding Rate Design for)
Distributed Generation Customers) Docket No. 16-GIME-403-GIE

POST HEARING BRIEF OF THE EMPIRE DISTRICT ELECTRIC COMPANY

The Empire District Electric Company, a Liberty Utilities Company ("Empire"), pursuant to the Order Setting Procedural Schedule issued by the Kansas Corporation Commission ("Commission") on February 16, 2017, submits the following post hearing brief in support of approval of the Non-Unanimous Settlement Agreement ("Settlement") filed on June 16, 2017, in the above-captioned docket.

I. INTRODUCTION

1. Empire provides electric utility service subject to the jurisdiction of this Commission to approximately 9,670 retail customers in southeastern Kansas.¹

2. On March 28, 2016, Empire filed a petition to intervene in the above-captioned docket² and was made a party to the docket by the Order Opening this General Investigation issued by the Commission on July 12, 2016.³ The purpose of the general investigation was to examine various policy issues surrounding rate structure for Kansas distributed generation ("DG") customers.⁴

¹In the Matter of the Application of The Empire District Electric Company for Approval of a Change in Rates, Docket No. 17-EPDE-101-RTS, Application, page 1, paragraph 3, filed September 16, 2016.

²Petition to Intervene by The Empire District Electric Company, Docket No. 16-GIME-403-GIE ("403 Docket"), filed March 28, 2016.

³Order Opening General Investigation, 403 Docket, page 5, paragraph C, issued July 12, 2016.

⁴Order Opening General Investigation, 403 Docket, page 5, paragraph A, issued July 12, 2016.

3. Currently, Empire only has a handful of DG customers in Kansas.⁵ Empire has seven Kansas net-metering DG customers, five of which are commercial customers.⁶ The renewable energy sources for these DG customers are solar photovoltaic ("PV") panels.⁷ All but one of the DG installations are relatively new, with six of the seven having been installed in February/March 2017.⁸ These residential and small commercial DG customers and their usage characteristics are included with the residential and small commercial classes of customers for class cost of service and rate design purposes and they pay the same monthly customer charge and energy (kWh) charge that Empire's residential and small commercial non-DG customers pay for their utility service.⁹

4. Empire filed its initial comments in this general investigation on March 17, 2017,¹⁰ and its reply comments on May 5, 2017.¹¹ Empire also participated in the two round-table meetings, the technical/settlement conference, and supported the Settlement at the two-day evidentiary hearing held in this docket.¹²

5. Empire's initial and reply position regarding the various policy issues surrounding rate

⁵Transcript, Vol. I, Tr. 39, lines 5-6.

⁶Transcript, Eichman, Vol. II, Tr. 296, line 23 through Tr. 297, line 7; 403 Docket, Affidavit of William G. Eichman on Behalf of The Empire District Electric Company, page 2, paragraph 4, filed March 17, 2017 ("Initial Eichman Affidavit").

⁷*Id.*, Transcript, Eichman, Vol. II, Tr. 296, lines 19-24.

⁸*Id.*, Transcript, Eichman, Vol. II, Tr. 296, line 23 through Tr. 297, line 7.

⁹Initial Eichman Affidavit, page 2, paragraph 4.

¹⁰Initial Eichman Affidavit, filed March 17, 2017.

¹¹403 Docket, Affidavit of William G. Eichman Supporting Reply Comments on Behalf of The Empire District Electric Company, filed May 5, 2017 ("Reply Eichman Affidavit").

¹²403 Docket, Order Setting Procedural Schedule, page 3, paragraph 12, issued February 16, 2017; Prehearing Officer Order Modifying Procedural Schedule, pages 1-2, paragraph 3, filed May 19, 2017.

structure for Kansas DG customers was as follows:

a. The Commission should adopt a policy in this docket that allows a utility in a future rate case to establish a separate rate class and rate or rate structure for DG customers in order to (1) account for and fairly allocate the cost incurred by the utility to provide DG customers (i) access to the grid to effectively obtain a credit for the energy they self-generate but do not use, and (ii) stand by service to obtain energy from the utility when their self-generation is not sufficient to cover their energy needs, and (2) avoid cross-subsidies non-DG customers provide to DG customers because the above mentioned costs are not accounted for and fairly allocated under the current rate structure that requires recovery of a large portion of the utility's fixed costs in the energy (kWh) charge, which is avoided for the most part by the DG customers producing their own energy.¹³

b. The cross subsidy between DG and non-DG customers can be avoided by either increasing the monthly customer charge paid by the DG customers so the customer charge includes all fixed costs incurred by the utility to provide grid access and stand by service to DG customers, or by establishing a "three-part rate" structure, which would include either a demand charge, or stand-by charge, or grid charge, in addition to the current monthly customer charge and energy charge, and where those charges would include the fixed costs incurred by the utility that are not accounted for in the current monthly customer charge. The energy charge paid for by the DG customers would be reduced to account for the fixed charges being recovered through the other charges.¹⁴

¹³Initial Eichman Affidavit, pages 2-3, paragraphs 5-6; Reply Eichman Affidavit, pages 1-2, paragraph 3.

¹⁴*Id.*

c. Intangible or unquantifiable benefits that may be associated with DG production should not be used to support a rate structure that results in non-DG customers subsidizing DG customers.¹⁵

d. Rates should continue to be set using traditional class cost of service methodologies based upon real embedded costs of the utility, including those rates charged to DG customers.¹⁶

e. Cost/benefit studies specific to the usage patterns of Kansas DG customers that attempt to calculate societal benefits are not necessary in order to establish a separate rate structure for DG customers. Instead, the separate rate structure for DG customers can be justified by the results of traditional class cost of service methodologies that are based upon real embedded costs of the utility.¹⁷

6. On June 16, 2017, Empire joined in with the Commission Staff and the other Kansas electric utilities in filing a motion to approve the Settlement.¹⁸ The Settlement sets forth a reasonable compromise in establishing a general policy relating to the various issues surrounding rate structure for Kansas DG customers that were raised and discussed in this docket and incorporates many of the points included in Empire's initial and reply comments.

7. As discussed in this post-hearing brief, the substantial competent evidence submitted by the parties during the two-day hearing in this matter supports a finding and conclusion by the

¹⁵Initial Eichman Affidavit, pages 3-5; paragraphs 7-9; Reply Eichman Affidavit, pages 1-3, paragraph 3.

¹⁶*Id.*

¹⁷Initial Eichman Affidavit, page 4, paragraph 9; Reply Eichman Affidavit, page 3, paragraph 4.

¹⁸403 Docket, Joint Motion to Approve Non-Unanimous Stipulation and Agreement ("Settlement") filed June 16, 2017.

Commission that approval and incorporation of the terms contained in the Settlement into a general policy relating to the rate structure for DG customers will promote the public interest and result in just and reasonable rates. The general policies set forth in the Settlement are also consistent with that portion of the Kansas Public Utility Act that prohibits the charging of an "unjust or unreasonably discriminatory or unduly preferential...rate, charge or extraction"¹⁹ and Kansas case law that has recognized the fundamental public utility regulatory principle that one class or sub-class of customers, i.e., non-DG customers, shall not be burdened with costs created by another class or sub-class of customers, i.e., DG customers.²⁰

8. As also discussed in this post hearing brief, the arguments made by those parties that opposed the Settlement, are without merit. Contrary to those arguments, there is evidence in the record that non-DG customers will be burdened with costs created by DG customers if there is no change in the current rate structure.²¹ There is also evidence in the record that using traditional class cost of service methodologies based upon real embedded costs of the utility to continue to allocate costs among customer classes fully complies with Kansas law and that a separate cost/benefit study targeted at just the DG customer class to supplement the class cost of service study and to be used in some way to adjust the results of the class cost of service study as suggested by those parties that opposed the Settlement, is not warranted.²²

¹⁹K.S.A. 66-101b "Every unjust or unreasonably discriminatory or unduly preferential...rate, charge or exaction is prohibited and is unlawful and void."

²⁰*Jones v. Kansas Gas and Electric Co.*, 222 Kan. 390, Syl. 10, 401, 565 P.2d 597 (1977) ("one class or subclass of customers should not be burdened with costs created by another class or subclass.")

²¹Initial Eichman Affidavit, pages 2-3, paragraphs 5-6.

²²Initial Eichman Affidavit, pages 3-5, paragraphs 7-9.

II. ALLOWING ELECTRIC UTILITIES TO CREATE A SEPARATE SUB-CLASS AND RATE STRUCTURE FOR DG CUSTOMERS AS PROVIDED FOR UNDER THE SETTLEMENT WILL ADDRESS CONCERNS THAT NON-DG CUSTOMERS ARE BURDENED WITH COSTS CREATED BY DG CUSTOMERS

9. It is uncontroverted that under the current rate structure approved by the Commission for Empire's residential and small commercial customers, Empire is required to recover a large portion of its fixed costs, which include the utility's investment in generation, transmission, distribution and customer service assets, through its energy or kWh charge, instead of collecting these fixed costs through its monthly customer charge.²³ This means that DG customers, who generate their own energy and for the most part avoid having to pay the utility's energy charge, do not pay for those fixed costs recovered through the energy charge even though they receive the full benefits provided by the utility's assets.²⁴ Those utility assets not only allow DG customers access to the electric grid to effectively obtain a credit for any energy they self-generate but do not use at their residences or businesses, but also allow them to obtain energy from the utility when the DG customers are unable to self-generate enough energy to satisfy their electricity needs.²⁵ This also means that unless there is a change in the rate structure, Empire's non-DG residential and small commercial customers end up subsidizing the DG customers.²⁶ They do so by paying for a disproportionate share of the fixed costs associated with the assets that DG customers benefit from but do not pay for under the current rate structure.²⁷ This deficiency, or loop hole, in the current rate structure, which is being taken

²³Initial Eichman Affidavit, page 2, paragraph 5.

²⁴*Id.*

²⁵*Id.*

²⁶*Id.*; Transcript Vol. II, Glass, Tr. 340, line 17 through Tr. 346, line 9.

²⁷*Id.*; see also, Transcript Vol. I, Martin, Tr. 151, line 1 through Tr. 157, line 13; Westar Exhibits 2 and 3; Tr. 174, lines 4-17; Transcript Vol. I, Faruqui, Tr. 209, line 10 through Tr. 210, line 3; Tr. 221, lines 12-24; Transcript Vol. II, Glass, Tr. 336, line 3 through Tr. 337, line 8.

advantage of by DG customers and the intervenor solar vendors, who use this loop hole to help market their PV panels, is identified in paragraph 10 of the Settlement.²⁸

10. To account for and correct this deficiency in the current rate structure and to avoid the above-mentioned cross subsidization of the DG customers by the non-DG customers, electric utilities should be allowed to implement a rate design that recovers a proportionate share of the fixed costs associated with the assets used to serve DG customers from those customers in future rate case filings.²⁹ As indicated in paragraph 11 of the Settlement, from a policy standpoint, there are a number of rate design options (a three part rate consisting of a customer charge, demand charge and energy charge; a grid charge based upon either the DG output or nameplate rating; a cost of service-based customer charge that is tiered based upon a customer's capacity requirements; and other rate design proposals) available to the utility and the Commission that will allow the utility to recover from DG customers the fixed cost associated with the assets used to serve those customers.³⁰ All of these rate design options have one thing in common. They will effectively move the recovery of the electric utility's fixed cost from the energy charge, which is not currently being paid for the most part by the DG customers because they produce their own energy, to a separate charge.³¹ This rate design change will fairly charge fixed costs associated with utility assets used by DG customers to those customers in order to discontinue any cross-subsidization between DG and non-DG customers.³²

²⁸Settlement, page 3, paragraph 10; Transcript Vol. I, Martin, Tr. 79, line 16 through Tr. 82, line 3; Transcript Vol. II, Glass Tr. 340, line 17 through Tr. 346, line 9.

²⁹Initial Eichman Affidavit, pages 2-3, paragraph 5-6 (paragraph 9 of the Settlement recognizes that those electric utilities, like Empire, who only have a handful of DG customers, should have flexibility of deciding when to establish a separate class and rate structure for DG customers).

³⁰Settlement, page 4, paragraph 11.

³¹Initial Eichman Affidavit, pages 2-3, paragraph 5-6.

³²*Id.*

11. The policies identified in the Settlement relating to the rate and rate structure changes are consistent with and supported by Kansas law. The Kansas Supreme Court has affirmed the fundamental public utility regulatory principle that one class or sub-class of customers shall not be burdened with costs created by another class.³³ This principle embodies the statutory prohibition against an "unjust or unreasonably discriminatory or unduly preferential ... rate, charge or exaction."³⁴ The rate structure options included in the Settlement will prevent non-DG customers from being burdened with that portion of the fixed costs which should be more appropriately assigned to and paid for by DG customers.³⁵

III. CONTRARY TO THE ARGUMENTS MADE BY THE SOLAR VENDORS AND CEP, DG CUSTOMERS WILL NOT BE UNFAIRLY TREATED UNDER OR PAY UNREASONABLE OR UNJUST RATES RESULTING FROM THE POLICIES SET FORTH IN THE SETTLEMENT

12. Paragraph 9 of the Settlement allows for electric utilities in future rate cases to create a separate residential class or sub-class for DG customers with their own rate design, which appropriately recovers the fixed costs of providing service to residential private DG customers.³⁶ Paragraph 13 of the Settlement requires the rates for private residential DG customers to be cost-based and supported by a traditional class cost of service study.³⁷ Contrary to the arguments made by the Solar vendors and Climate and Energy Project ("CEP") in this case, these policy provisions contained in the Settlement mean that the rates paid by DG customers will be based on what it cost the electric

³³Jones, 222 Kan. at Syl. 10, 401.

³⁴K.S.A. 66-101b.

³⁵Initial Eichman Affidavit, pages 2-3, paragraphs 5-6.

³⁶Settlement, page 3, paragraph 9.

³⁷Settlement, page 4, paragraph 13.

utility to provide service to those customers.³⁸ This means that to the extent that there is a quantified cost and/or benefit relating to DG production that will increase or decrease the costs and/or revenues that are recorded on the books and records of Empire's and the other utilities' FERC accounting system, then such costs and/or benefits can be accounted for in the traditional class cost of service study and property assigned to classes and sub-classes of customers in that study.³⁹ This also means that if the rates paid by DG customers are based on what it cost the electric utility to provide service to those customers as supported by the results of the class cost of service study and the ultimate rate design approved by the Commission based upon the class cost of service study, then there is simply no basis or support for the Solar vendors and CEP's argument that the policies set forth in the Settlement will result in DG customers being treated unfairly or charged unjust or unreasonable rates.⁴⁰

13. The Solar vendors and CEP argued that instead of rates being set using traditional class cost of service methodologies based upon real and embedded costs of the utility, rates for DG customers should be adjusted to account for the value added by the customers' DG production, which is not accounted for in the class cost of service study.⁴¹ This means moving costs that are assigned by the class cost of service study to the DG customer class to the other classes of customers and effectively burdening those other classes of customers with costs incurred to serve the DG customer class in order to account for "the value added" by DG production that is not accounted for in the class

³⁸Martin Reply Affidavit, page 6, filed May 5, 2017; Vol. I, Martin, Tr. 102, line 11 through Tr. 103, line 16; Tr. 165, lines 1-16; Transcript Vol. II, Glass, Tr. 319, line 20 through Tr. 320, line 16.

³⁹Initial Eichman Affidavit, pages 3-4, paragraph 7-8.

⁴⁰*Id.*

⁴¹Reply Comments of CEP, pages 18-21, paragraphs 25-32, filed May 5, 2017.

cost of service study.⁴² This argument is not only contrary to the long standing use of traditional class cost of service methodologies to fairly allocate costs among customer classes and contrary to Kansas law and the fundamental regulatory principle that one class of customers should not be burdened with costs incurred to serve another class of customers, but as one of the Commissioners suggested during the hearing, will likely result in an unnecessary and slippery slope where other customers or customer classes contend their cost-based rates should be adjusted downward (and thus increasing the rates paid by the other customers or customer classes) based upon "the valued added" by that customer or customer class being a customer of the utility as shown by some cost/benefit analysis.⁴³

IV. CONCLUSION

14. The separation of DG customers into a separate class or subclass and application of one of the rate structures authorized by the Settlement, which effectively move the recovery of the utility's fixed costs from the energy charge to either the existing customer charge or new demand or grid access charge, will effectively address any cross subsidy between DG and non-DG customers and will ensure DG customers pay their fair share of the fixed costs they impose on the utility system.

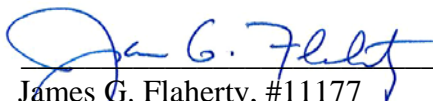
15. Continued use of the traditional class cost of service study filed as part of a general rate case application will account for all measurable cost and benefits of the DG class and will result in fair and just rates being charged to those customers. If there are real and measurable reductions in the utility's cost as a result of any benefits provided by the DG class, then such will be reflected in future class cost of service studies and the rates charged to DG customers set according to the result of those studies. No value added cost benefit analysis are necessary to set just and reasonable rates

⁴²Brown Reply Affidavit, page 12, Transcript Vol. I, Lutz, Tr. 244, line 7 through Tr. 245, line 9.

⁴³Transcript Vol. II, Tr. 285, line 3 through Tr. 287, line 10; Transcript Vol. II, Glass, Tr. 338, line 4 through Tr. 339, line 22.

for DG customers.

16. Empire respectfully requests that the Commission approve the Settlement and incorporate the terms and conditions contained in that Settlement in any policies relating to rate structure issues relating to DG customers adopted in this docket.



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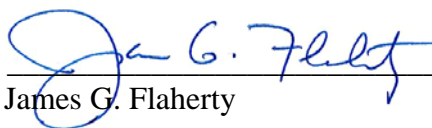
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VERIFICATION

STATE OF KANSAS, COUNTY OF FRANKLIN, ss:

James G. Flaherty, of lawful age, being duly sworn upon oath, deposes and says that he is attorney for The Empire District Electric Company above named, that he has read the above and foregoing Post Hearing Brief, and the statements contained therein are true.



James G. Flaherty

SUBSCRIBED AND SWORN to before me this 21st day of July, 2017.



Notary Public

Appointment/Commission Expires:

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing was sent via U.S. Mail, postage prepaid, hand-delivery, or electronically, this 21st day of July, 2017, addressed to:

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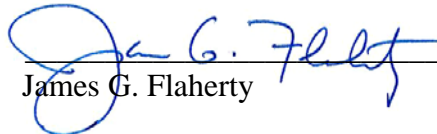
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