

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

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.)

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) submits its Report and Recommendation and states as follows:

Staff hereby files the attached Report and Recommendation dated July 26, 2022 recommending the Commission allow The Empire District Electric Company's (Empire) request to remove the waiver with respect to Electronic Payment Transaction Fees, thereby allowing Empire to resume charging these fees upon Commission approval. Staff also recommends the Commission allow Empire to correct the third-party fee from \$7.95 per transaction to \$7.75 per transaction for commercial customers.

WHEREFORE, Staff respectfully requests that the Commission adopts its recommendation of approving Empire's Motion for Approval to Correct Credit Fee and to Remove Waiver of Fees Beginning July 1, 2022.

Respectfully submitted,

/s/ Jared R. Jevons

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**REPORT AND RECOMMENDATION
UTILITIES DIVISION**

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

FROM: Justin Prentiss, Senior Rate Analyst
Justin Grady, Chief of Revenue Requirements, Cost of Service and Finance
Jeff McClanahan, Director of Utilities

DATE: July 26, 2022

SUBJECT: Docket No. 21-EPDE-134-TAR—In the Matter of the Application of the Empire District Electric Company’s Proposed Tariff Revision of the Credit/Debit Card Transaction Amounts

EXECUTIVE SUMMARY:

On May 26, 2022, Empire filed a Motion to correct the commercial customer credit/debit card fee from \$7.95 to \$7.75. Also, Empire requested the waiver of Electronic Payment Transaction Fees lapse, allowing Empire to begin charging these fees again upon Commission approval.

As the state shifts to a perpetual-COVID normalcy, including a return to many normal pre-COVID activities, the need for a waiver of Electronic Payment Transaction Fees has begun to wane. The additional fees are now for payment methods which are conveniences as opposed to medical necessities.

The correction of commercial customer credit/debit card fee will reflect accurate charges customers face, and the existing incorrect charge has not been charged to any customers.

Staff recommends the Commission allow the waiver of Electronic Payment Transaction Fees to lapse, thereby allowing Empire to resume charging these fees upon Commission approval. Staff also recommends the Commission allow Empire to correct the third-party fee from \$7.95 per transaction to \$7.75 per transaction for commercial customers.

BACKGROUND:

On December 6, 2004, the Commission issued an Order adopting the Payment Standards in the Docket No. 04-GIMX-651-GIV (04-651 Docket).¹ The Payment Standards adopted in the 04-651 Docket established minimum standards that had to be followed in the event that a utility wanted to allow its customers to pay their utility bill with a credit/debit card. A copy of the Payment Standards is attached to this Report as Attachment A.

On June 1, 2006, the Commission issued a Final Order approving Empire's Rules and Regulations allowing customers to pay their monthly bills by credit or debit card.² The transaction fee on the tariff was \$3.95, to be collected by the third party vendor facilitating the card transaction.³

Docket No. 20-EPDE-448-MIS

In May 2020, Empire requested, among other waivers,⁴ a 60-day temporary tariff that would reimburse Credit Card Transaction Fees for all customers.⁵ In October 2020, the Commission approved Empire's requested temporary tariff reimbursing customers for fees associated with using debit or credit cards to pay for electric service, unless an extension was requested.⁶ In February 2021, in Docket No. 20-EPDE-459-TAR (20-459 Docket), the Commission granted the waiver of the third-party Transaction Fees through December 31, 2020.⁷ On July 8, 2021, the Commission granted an extension of the waiver of Credit Card Transaction Fees through September 30, 2021.⁸ On September 30, 2021, the Commission granted an extension of the waiver of Credit Card Transaction Fees through the end of the pandemic.⁹

Docket No. 20-EPDE-427-ACT (20-427 Docket)

In April 2020, Empire requested an Accounting Authority Order (AAO) to record various extraordinary costs and lost revenues that would arise as a result of the 2019 Coronavirus Disease (COVID-19) pandemic.¹⁰ The Commission approved the request, stating that the costs may be tracked in the regulatory asset account, with determination of whether or not the costs may be

¹ Order Adopting Standards on the Acceptance of Credit Cards by Kansas Jurisdictional Electric, Natural Gas, and Water Utilities, Docket No. 04-GIMX-651-GIV (Dec. 6, 2004). While there were several subsequent Orders issued in that Docket, they did not substantively affect the original terms the Commission established for the collection of credit/debit cards.

² Order Approving Tariff Revisions, Docket No. 06-EPDE-661-TAR (06-661 Docket), p. 2 (June 1, 2006).

³ Application of The Empire District Electric Company, 06-661 Docket, p. 2 (Dec. 22, 2005).

⁴ In addition to requesting a period of reimbursing customers for credit card transaction fees, Empire also sought waiver of reconnect fees and waiver of trip fees to disconnect or collect non-payment. Order on Empire District Electric Company Application, Docket No. 20-EPDE-448-MIS (20-448 Docket), p. 2 (Oct. 6, 2020) (October 20-448 Order).

⁵ *Id.* at 6.

⁶ *Id.* The Order approved Empire's temporary tariff reimbursing customers for fees associated with using debit or credit cards to pay for electric service. *Id.*

⁷ Order on Unanimous Settlement Agreement, Docket No. 20-EPDE-459-TAR (20-459 Docket), p. 8 (Feb. 16, 2021) (20-459 Order) ("To clarify this matter, the Commission orders Empire to continue to waive the third-party vendor fees, not credit, until the Commission issues an order in the 21-134 Docket.").

⁸ Order Granting Empire's Motion, 20-448 Docket, p. 3 (July 8, 2021).

⁹ Order Designating Presiding Officer and Granting Empire's Motion to Extend Stay, 20-448 Docket, p. 3 (Sept. 30, 2021) (20-448 Order Granting Stay).

¹⁰ Application for the Empire District Electric Company, Docket No. 20-EPDE-428-ACT (20-428 Docket), p. 3 (Apr. 16, 2020).

recovered occurring in a future rate preceding.¹¹ Later, in the 20-459 Docket, Staff, CURB, and Empire agreed to include the waived transaction fees in the AAO account, but the Commission ruled that the issue should be addressed in Docket No. 21-EPDE-134-TAR (21-134 Docket).¹²

Docket No. 21-EPDE-134-TAR

In August 2018, Empire began a request for proposal process (RFP) to update its vendor that processes credit and debit card transactions and e-check and ACH payments (Electronic Payments). On October 2019, Empire entered into a contract with their final vendor selection, KUBRA Data Transfer Ltd. (KUBRA), with the Scope of Work finalized in February 2020.¹³

On October 1, 2020, The Empire District Electric Company (Empire) filed an Application requesting Commission approval of a revised third party fee for credit and debit card transactions and e-check and ACH payments used by customers to pay their electric bill (Transaction Fees).¹⁴ Also, Empire requested to include the currently waived Transaction Fees in the regulatory asset account established in the 20-427 Docket.¹⁵

On March 11, 2021, Staff filed its Report and Recommendation (R&R) recommending the Commission approve Empire's proposed Transaction Fees and the corresponding revisions, a waiver to charge fees for e-checks, and the ability to include the waived Transaction Fees in the regulatory asset account established in the 20-427-Docket.¹⁶

On July 13, 2021, the Commission approved Empire's Application.¹⁷

On May 26, 2022, Empire filed a Motion to correct the commercial customer credit/debit card fee from \$7.95 to \$7.75. Also, Empire requested the waiver of Electronic Payment Transaction Fees lapse, allowing Empire to begin charging these fees again, beginning July 1, 2022.¹⁸

ANALYSIS:

On May 26, 2022, Empire filed a motion requesting the removal of a waiver of Electronic Payment Transaction Fees. Also in the motion, Empire requested a correction of their third-party fee for commercial customers from \$7.95 to \$7.75. The incorrect fee has not been charged to customers because the new transaction fees and the waiver of fees were approved at the same time.¹⁹

On October 6, 2020, the Commission granted Empire a Stay of Enforcement for certain regulations for which compliance during COVID-19 might be difficult and granted a temporary tariff to

¹¹ Order Approving Application for Accounting Authority Order, 20-428 Docket, p. 5 (July 9, 2020).

¹² 20-459 Order, *supra* note 8, at p. 9.

¹³ Application for The Empire District Electric Company, Docket No. 21-EPDE-134-TAR (21-134 Docket), p. 4 (Oct. 1, 2020).

¹⁴ *Id.* at 5.

¹⁵ *Id.* at 5–6.

¹⁶ Notice of Filing of Staff's Report and Recommendation, 21-134 Docket (Mar. 11, 2021).

¹⁷ Order, 21-134 Docket (July 13, 2021) (July 21-134 Order).

¹⁸ The Empire District Electric Company Motion for Approval to Correct Credit Card Fee and to Remove Waiver of Fees Beginning July 1, 2022, 21-134 Docket, p. 1 (May 26, 2022).

¹⁹ See July 21-134 Order, *supra* note 21, at p. 7–8.

reimburse customers for reimbursement of the various transaction fees.²⁰ On September 30, 2021, the Commission extended the waiver for Electronic Payment Transaction Fees through the end of the COVID-19 pandemic.²¹

Empire's May 26, 2022 Motion states that it originally agreed to waive Transaction Fees for Electronic Payments in order to "assist customers during the COVID-19 pandemic period in paying their electrical bills. Now that the pandemic has ended, the waiver is no longer necessary."

While Staff has not found a definitive declaration by state or national health authorities that the pandemic has "ended", there are several indications that life is starting to return to a perpetual-COVID normalcy.

On March 31, 2022, Governor Laura Kelly and the Kansas Department of Health and Environment announced that Kansas is shifting from a COVID-19 pandemic response to a COVID-19 endemic response.²² In making this announcement, KDHE and Governor Laura Kelly announced that as of April 1, 2022, Kansas was transitioning to a "'new normal,' which includes life with COVID-19."²³ In making this announcement, KDHE recognized that COVID-19 was not "over" but that the State would be "...working to manage the disease in a way that allows us to maintain a more normal life that is once again filled with friends, families, and other loved ones."²⁴

By explicitly shifting response strategies, it is understood that many of the short term pandemic restrictions on business and personal activities have abated, and many practices can return to the pre-COVID activities. The easing of business and personal restrictions also shows up in the level of economic activity being realized in Empire's service territory and around the State. In fact, as of May, the unemployment in Empire's territory is down to 2.3% compared to 3.1% in February of 2020 (before the pandemic reached Kansas), or 10.6% in April 2020, when unemployment was at its worst.²⁵ This suggests that people are able to resume performing business and personal activities similar to how they would have before the onset of the pandemic and its resulting restrictions. Also, the improved economic climate in Empire's service territory (compared to the depths of the pandemic when the fee waivers began) suggests that the average Empire customer would be more likely to have the means of affording the electronic payment fees, if they so choose. Additionally, Empire's in-person-payment options are once again open.²⁶ Therefore, Staff recommends the Commission allow the waiver of Electronic Payment Transaction Fees to lapse, thereby allowing Empire to resume charging these fees.

²⁰ October 20-448 Order, *supra* note 5, at p. 6.

²¹ 20-448 Order Granting Stay, *supra* note 11, at p. 3-4.

²² Governor Laura Kelly Announces Transition to COVID-19 Endemic Response, OFF. OF THE GOVERNOR OF THE STATE OF KAN. (Mar. 31, 2022), <https://governor.kansas.gov/governor-laura-kelly-announces-transition-to-covid-19-endemic-response/>.

²³ *Id.*

²⁴ *Id.*

²⁵ Federal Reserve Economic Data – Cherokee County, KS: Unemployment Data (updated as of June 29, 2022).

²⁶ Empire customers can pay in person at American Bank locations in the Kansas cities of Baxter Springs, Galena, and Columbus.

Staff notes that Empire did not request to lift the waiver for the fees for Disconnection and Reconnections in this motion.²⁷ Empire has informed Staff that it wishes to wait until the end of the summer heating season to address the waiver of Disconnection and Reconnection fees. Empire's plan would be to file a motion with the Commission to resume collection of those fees at that time. Staff does not object to this approach, as it coincides with our internal timing and plans to evaluate the continued need for the Commission's minimum customer protections initially put in place due to the COVID-19 pandemic within the next few months.

Additionally, the correction of the third-party fee for commercial customers from \$7.95 to \$7.75 is appropriate as the correction both results in a lower fee that is allowed to be charged, and is a fee accurate with what the vendor will charge the customers. Furthermore, the incorrect fee has not posed any issues to date because the fee was approved at the same time the fees were initially waived, meaning no customers have had to pay the incorrect amount to date. Additionally, Empire has confirmed to Staff that it has been recording the correct waived fee (\$7.75) to the regulatory asset account approved in the 20-427 Docket.

RECOMMENDATION:

Staff recommends the Commission allow the waiver of Electronic Payment Transaction Fees to lapse, thereby allowing Empire to resume charging these fees. Staff also recommends the Commission allow Empire to correct the third-party fee from \$7.95 per transaction to \$7.75 per transaction for commercial customers.

²⁷ As discussed in footnote 4, Empire sought waiver of reconnect fees and waiver of trip fees for disconnected customers in addition to reimbursing customers for credit/debit card fees. *See* discussion *supra* note 4. Empire's proposed waiver of reconnect and trip fees was approved. October 20-448 Order, *supra* note 5, at p. 6.

KANSAS CORPORATION COMMISSION

**MINIMUM STANDARDS FOR PAYMENT METHODS FOR UTILITY BILLS AND
ALLOWING THE ACCEPTANCE OF CREDIT CARDS BY KANSAS
JURISDICTIONAL ELECTRIC, NATURAL GAS, AND WATER UTILITIES**

Effective: November 22, 2005

The following standards for bill paying methods shall apply:

(A) Customers can choose the method of bill payment.

(B) A "zero fee" payment method is one in which the customer is not charged a fee for use of the payment method above the actual amount of the utility bill being paid. Postage or money order fees necessary to mail a payment shall not be considered a fee. A "nonzero fee" payment method is any payment method for which the utility or its authorized agent proposes to charge a fee above the actual amount of the utility bill being paid.

(C) Customers shall be provided a choice of zero fee payment methods which shall include, at a minimum, payment by mail using check or money order, and payment in person using check, money order, or cash. If electronic checks (ECM) are accepted by the utility or by an authorized agent of the utility, they shall be accepted as a zero fee method.

(D) The following general principles shall govern the use of nonzero fee payment alternatives such as credit, debit and ATM card payments (hereinafter "credit cards"):

(1) the utility shall fully disclose: (i) all payment methods; and (ii) the fees to the customer associated with each payment method; and

(2) the costs to the utility associated with accepting nonzero fee payment alternatives should be exclusively borne by the users of such payment methods.

(E) The utility shall notify the Commission upon closing walk-in payment locations and explain what other options for in person payments will be made available to the customer.

(F) Unless otherwise authorized, customers paying utility bills by any zero fee payment method shall not be charged a fee to transact business with the utility or with an authorized agent of the utility.

(G) Utilities have the option to offer electronic payment methods such as credit cards according to the desires of its customers and the ability of the utility to accommodate them. Utilities are not required to offer customers the opportunity to pay their bills with such payment methods.

(H) Utilities wanting to accept nonzero fee payment alternatives as a form of payment must have Commission approval.

(I) Credit card fees incurred by the customer must be reasonable.

Attachment A

(1) If utilities make alternative payment options such as credit cards available, utilities shall make a diligent effort to provide customers with a reasonably cost effective means of utilizing such payment methods.

(2) The fees associated with credit card use shall cover all of the costs to the utility of such payment methods. Customers not paying with credit cards shall not be burdened with the transaction costs of customers utilizing these payment methods. Any fees associated with credit card use should be reasonably related to the costs of payment by credit card and the receipt of such fees by the utility should be revenue neutral to the utility.

(3) The Commission does not require a utility to choose its vendor through a competitive bid process. The utility must provide evidence to the Commission to show that the utility made diligent efforts to provide a reasonably cost effective means for customers to use their credit cards.

(4) The Commission shall have the right to review any contract/agreement entered into with a vendor or bank for transacting credit card payments and shall disallow recovery by the utility of any credit card cost not deemed reasonable and prudent.

(J) The level of customer service must be preserved.

(1) All authorized payment methods shall comply with the Commission's Electric, Natural Gas and Water Billing Standards.

(2) The utility is ultimately responsible for making sure customers are satisfied and that the vendor follows the Billing Standards, Quality of Service Standards and other rules of the Commission.

(3) The utility shall attempt to resolve disputes or complaints regarding payments accepted by utility authorized vendors in accordance with the Commission Billing Standards.

(4) The utility shall provide a complete list of all available payment options and the amount of any associated fees payable by customers for all types of payment methods (mail, walk-in, ACH, credit card, debit card, ATM, etc.) on the utility's web site, at local offices and authorized pay stations, in tariffs, and through customer service.

(5) For purposes of determining whether payment has been made, all utility authorized pay centers and authorized vendor/agents shall be considered to be agents of the utility, and all payments made to such agents shall be treated the same as if paid directly to the utility. Pay centers not authorized by the utility are not agents of the utility and payment is deemed made when received by the utility.

(6) Each utility accepting credit cards shall provide a toll-free number for customers to make credit card payments by phone.

Attachment A

(7) Each utility accepting credit cards shall include information and "instructions regarding all payment methods, including any additional fees, and shall include links to vendor or financial institutions that provide the credit card services.

(8) Each customer choosing to pay by credit card, whether by telephone, internet, or paper bill remittance, shall be advised, prior to providing the credit card number, of the amount of any additional fee and must answer in the affirmative to proceed with the payment process.

(9) The utility shall provide an annual notice to customers. The notice should inform customers of authorized bill payment options and where customers can find a list of authorized payment centers. The utility shall advise customers of the potential impact of using unauthorized payment sources. Such notice shall be provided to the Commission for review at least 30 days prior to being mailed to customers.

(K) Utilities shall be in compliance with Commission Rules and Regulations before charging fees for bill payment.

(1) Utilities wanting to accept credit card payments directly or through a third party vendor, or utilities wanting to accept payment by any other nonzero fee payment method shall file an application, including GT &C and/or Schedule of Service Fees for the methods) of payment, requesting Commission approval.

(2) The utility may be required to provide documentation necessary to demonstrate compliance with (I)(2) regarding all costs associated with accepting credit card payments.

(3) Each utility, upon commencement of the acceptance of credit cards, shall provide its customers with notice including: a complete list of all available payment options and the amount of any associated fees payable by customers, information and instructions regarding all payment methods, and step-by-step instructions of how to pay by credit card.

CERTIFICATE OF SERVICE

21-EPDE-134-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 US Mail and electronic service this 29th day of July, 2022, to the following:

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CERTIFICATE OF SERVICE

21-EPDE-134-TAR

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