

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

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

In the Matter of the Application of the Empire )  
District Electric Company for Approval of )  
Temporary Waivers of Certain of Empire’s )  
Tariff and for Approval of a Process to ) Docket No. 20-EPDE-448-MIS  
Implement Temporary Waivers of Certain )  
Other Rules and Regulations, Billing )  
Standards, General Terms and Conditions and )  
to Allow Operating Changes to Address the )  
COVID-19 Pandemic. )

**ORDER ON EMPIRE DISTRICT ELECTRIC COMPANY APPLICATION**

This matter comes before the State Corporation Commission of the State of Kansas (“Commission”) for consideration and decision. Having reviewed the pleadings and record, the Commission makes the following findings:

1. On May 4, 2020 the Empire District Electric Company (Empire) filed an application requesting approval of a process to implement waivers of certain Commission orders and rules and regulations, billing standards, and Empire’s general terms and conditions for service as set forth in Empire’s application to allow it to make operating changes on a temporary basis in order to address the COVID-19 pandemic.<sup>1</sup> Specifically, Empire sought:

- a. Approval of a process that provides for waiver of Empire’s obligations to comply with certain Commission orders, rules and regulations, billing standards, and terms and conditions included in the Empire tariff. The application proposes the waiver of the various regulatory obligations would only be in effect when Empire deems

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<sup>1</sup> Application for The Empire District Electric Company (May 4, 2020).

compliance with regulatory obligations would create unsafe operating conditions for its customers or personnel due to the impact of the COVID-19 pandemic;

- b. A temporary waiver of its tariff with respect to the requirement that customers pay 2% of the delinquent amount as a late payment charge. The waiver would also waive fees associated with the charge for a trip to the customer's premises to disconnect or collect non-payment, as well as reconnecting a customer that has been disconnected. The waiver would expire at the end of 2020. The purpose of this waiver is to help mitigate financial hardships on its customers during the COVID-19 pandemic; and
- c. Commission approval for a 60-day temporary tariff that would reimburse customers for the cost of paying their bill with a credit or debit card. The tariff would provide a bill credit of \$3.95 for each credit or debit card transaction.

2. On May 8, 2020, Empire filed an Amendment to Application replacing Exhibit C with an Amended Exhibit C correcting the amount of the credit to reflect the current third-party charges relating to credit/debit card payments. The corrected credits are \$2.25 for residential customers and \$13.00 for commercial customers.<sup>2</sup>

3. On May 8, 2020 the Citizens' Utility Ratepayer Board (CURB) submitted a petition to intervene. CURB's intervention was granted on May 19, 2020.

4. On September 3, 2020 Commission Staff (Staff) submitted a Report and Recommendation (R&R) regarding Empire's application. Staff recommends the Commission deny Empire's request to initiate waivers of regulatory obligations, as Staff believes it is poor public policy to eliminate the Commission's oversight role of a utility in providing sufficient and efficient

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<sup>2</sup> The Empire District Electric Company Amendment to Application (May 8, 2020).

service.<sup>3</sup> Alternatively, Staff recommends the Commission issue a formal statement it will stay enforcement of any regulatory obligations that Empire modifies as a result of its response to COVID-19.<sup>4</sup> Staff recommends the Commission require Empire to provide written notification when such action is necessary and state each requirement that cannot be met and the COVID-19 related reason the regulatory noncompliance may occur.<sup>5</sup> Should the Commission decide to lift its stay of enforcement on its own accord, Staff recommends the Commission allow Empire to propose a time schedule that will allow Empire to complete the regulatory tasks that were postponed.<sup>6</sup>

5. Staff further recommends the Commission approve Empire’s proposed waiver of reconnect fees and waiver of fees for disconnects. The lost fees could be considered lost revenue and should be deferred to a regulatory asset as approved in docket 20-EPDE-427-ACT.<sup>7</sup> Empire will bear the burden of demonstrating why these lost revenues should be recovered during future rate cases.

6. Finally, Staff recommends the Commission approve a temporary tariff reimbursing customers for the fees associated with using debit or credit cards to pay for electric service, provided Empire agrees to correct the tariff language to state the credited amount will be the amount directly charged to the customer by the third party payment processing company.<sup>8</sup>

7. On September 8, 2020 Empire submitted a response to Staff’s R&R.<sup>9</sup> Empire noted its support for Staff’s “stay of enforcement procedure” recommendation.<sup>10</sup> Empire agrees to

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<sup>3</sup> Staff’s R&R, pg. 6 (Sep. 9, 2020).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*, pg. 7.

<sup>8</sup> *Id.*, pg. 7.

<sup>9</sup> Empire Response to Staff’s Report and Recommendation (Sep. 8, 2020).

<sup>10</sup> *Id.*

submit written notification of any modifications and the COVID-19 related reasons driving the need for such modification.<sup>11</sup> If Staff or the Commission disagree with Liberty-Empire's request, the stay of enforcement is subject to being lifted by the Commission.<sup>12</sup> Empire further notes its agreement with Staff's recommendation that should Staff or the Commission believe the stay of enforcement should be lifted, or if the Commission finds the COVID-19 reasons have been abated, Empire should be allowed to request sufficient time to complete tasks that were delayed as a result of any request for modification.<sup>13</sup>

8. On September 9, 2020 CURB submitted a response to Staff's R&R.<sup>14</sup> CURB supports the recommendations made by Staff regarding Empire's request for temporary waivers of certain rules and standards.<sup>15</sup> CURB also supports Empire's request to waive the \$15 customer trip charge for disconnections and \$20 charge for reconnections.<sup>16</sup> Finally, CURB agrees with Staff's proposals regarding Empire's request to reimburse credit card fees to customers who pay their bills in this manner.<sup>17</sup>

9. The Commission is given full power, authority and jurisdiction to supervise and control the electric public utilities doing business in Kansas and is empowered to do all things necessary and convenient for the exercise of such power, authority and jurisdiction.<sup>18</sup> All power, authority and jurisdiction granted to the Commission shall be liberally construed.<sup>19</sup>

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<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> CURB's Response to Staff's R&R (Sep. 9, 2020).

<sup>15</sup> *Id.* pg. 2.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*, pg. 3.

<sup>18</sup> K.S.A. 66-101.

<sup>19</sup> K.S.A. 66-101g.

10. Every electric public utility shall be required to furnish reasonably efficient and sufficient service and facilities for the use of any and all products or services rendered, furnished, supplied or produced by such electric public utility.<sup>20</sup>

11. The Commission finds Staff's recommendations to be a reasonable compromise allowing Empire to make operating changes to address the COVID-19 pandemic while preserving the Commission's oversight role to ensure Empire continues to provide sufficient and efficient service. Beginning on the date of this Order, the Commission may issue a formal statement staying enforcement of any regulatory obligations upon written notification from Empire stating (1) when such action is necessary and (2) each requirement that cannot be met and the COVID-19 related reason for the regulatory noncompliance. Should the Commission decide to lift its stay of enforcement on its own accord, the Commission will allow Empire to propose a time schedule that will allow it to complete the regulatory tasks that were postponed.

12. Additionally, the Commission finds Empire's proposed waiver of reconnect fees and a waiver of trips fees for disconnects to be in the public interest and approves the proposed waiver. As recommended by Staff, the lost fees may be considered lost revenue and may be deferred to the regulatory asset approved in docket 20-EPDE-427-ACT, with Empire bearing the burden of demonstrating inclusion in future rate cases.

13. Finally, the Commission approves Empire's temporary tariff reimbursing customers for the fees associated with using debit or credit cards to pay for electric service. In accordance with Commission approval, Empire shall correct the tariff language to state the credited amount will be the amount directly charged to the customer by the third party payment

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<sup>20</sup> K.S.A. 66-101b.

processing company. Empire shall provide the corrected tariff to Staff prior to implementation of the temporary waiver.

**THEREFORE, THE COMMISSION ORDERS:**

A. Empire's application is granted, as modified herein. The Commission may issue a formal statement staying enforcement of any regulatory obligations upon written notification from Empire stating (1) when such action is necessary and (2) each requirement that cannot be met and the COVID-19 related reason for the regulatory noncompliance. Should the Commission decide to lift its stay of enforcement on its own accord, the Commission will allow Empire to propose a time schedule that will allow it to complete the regulatory tasks that were postponed. This process shall remain in effect until December 31, 2020, provided Empire may file a motion prior to November 30, 2020 requesting an extension.

B. Empire's proposed waiver of reconnect and trip fees is approved. The waiver shall remain in effect until December 31, 2020, provided Empire may file a motion prior to November 30, 2020 requesting an extension.

C. Empire's temporary tariff reimbursing customers for fees associated with using debit or credit cards to pay for electric service is approved, contingent upon Empire correcting the tariff language to state the credited amount will be the amount directly charged to the customer by the third party payment processing company. The tariff shall remain in effect until December 31, 2020, provided Empire may file a motion prior to November 30, 2020 requesting an extension.

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).

**BY THE COMMISSION IT IS SO ORDERED.**

Duffy, Chair; Keen, Commissioner; French, Commissioner

Dated: 10/06/2020



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Lynn M. Retz  
Executive Director

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## CERTIFICATE OF SERVICE

20-EPDE-448-MIS

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of electronic service on 10/06/2020.

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**CERTIFICATE OF SERVICE**

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