

**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 Notice of Filing of Staff’s Report and Recommendation and states as follows:

Staff hereby files the attached Report and Recommendation dated March 8, 2021, recommending the Commission approve Liberty-Empire’s proposed credit/debit card fees as just and reasonable; accept Liberty-Empire’s proposed Transaction Fees and the tariff revisions to reflect the new Transaction fees; Grant a waiver for Section C of the Payment Standards, allowing a fee to be charged for the use of e-checks; and grant Liberty-Empire permission to include the waived Transaction Fees in the regulatory asset account established in the 20-427 Docket.

WHEREFORE, Staff requests the Commission consider its Report and Recommendation, and for any other further relief as the Commission deems just and reasonable.

Respectfully submitted,

s/Cole Bailey

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**REPORT AND RECOMMENDATION
UTILITIES DIVISION**

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

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

DATE: March 8, 2021

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:

In August 2018, The Empire District Electric Company (Empire) began a request for proposal process (RFP) to update its vendor that, among other things, handles credit and debit card transactions, electronic checks (e-checks), and ACH payments (Electronic Payment Methods). In 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.

In May 2020, Empire sought a temporary waiver of all fees for Electronic Payment Methods with Docket No. 20-EPDE-448-MIS (20-448 Docket), which the commission approved in October 2020.

On October 1, 2020, Empire filed an Application requesting Commission approval of a revised third party fee for credit and debit card transactions, e-check, and ACH payments used by customers to pay their electric bill (Transaction Fees). While these fees are collected by the third party vendor and not Empire, they must be reviewed and approved by the Commission pursuant to Orders in the 04-GIMX-651-GIV Docket (04-651 Docket), which established the Minimum Standards for Payment Methods for Utility Bills and Allowing the Acceptance of Credit Cards by Kansas Jurisdictional Electric, Natural Gas, and Water Utilities (Payment Standards). Additionally, because the fees are charged to customers in accordance with utility services, the fees must be stated in Empire's Tariffs. The fees were last approved by the Commission in the 06-EPDE-661-TAR Docket (06-661 Docket), and last proposed fees were in the 20-EPDE-459-RTS Docket (20-459 Docket). The new fees, as compared to the 20-459 Docket, will drop from \$2.25 to \$1.75 for residential customers, and from \$13.00 to \$7.95 for commercial customers. The transaction limits are also lowering, but are still well above the average bill sizes for the respective customer groups. Customers who do not use Electronic Payment Methods will not pay any fees,

while the fees paid by customers who do use Electronic Payment Methods are paid directly to KUBRA. Therefore, only the customers who use Electronic Payment Methods are burdened with the cost, and Empire receives no benefit from the fees. Thus, the Commission should approve Empire's new Transaction Fees for the Electronic Payment Methods because the Electronic Payment Methods are consistent with the guidelines outlined in the 04-651 Docket.

Included with the new payment methods is the option for e-check payments. Empire did not previously allow its customers to pay by e-check, and the only option to include it now is through KUBRA as part of the package with the credit and debit card transactions at the corresponding fees. However, the Payment Standards require that, when offered as a payment option, e-checks must be cost free. Because of the conflict, the choice then becomes between a waiver of the Payment Standards or an elimination of a payment method. Staff recommends the Commission grant Empire a partial waiver from the Payment Standards, as it would be more beneficial to customers to have the extra payment option available, albeit at a price, than not available at all.

Empire is proposing changes to the Payment Standards section of its Rules and Regulations tariffs. The changes are simply to reflect the additional payment options (debit cards, prepaid cards, e-checks, and ACH payments) and the new fees.

Finally, Empire is proposing to add the waived Transaction Fees to an established regulatory asset account for potential recovery in the next rate case. Staff recommends the Commission allow Empire to track those accounts in an established regulatory asset account, with the determination of how much, if any, of the waived Transaction Fees will be recovered to be determined in the next general rate case.

BACKGROUND:

On December 6, 2004, the Commission issued an Order adopting the Payment Standards in the 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. The transaction fee on the tariff was \$3.95, to be collected by the third party vendor facilitating the card transaction.²

Docket No. 20-EPDE-459-TAR

In 2013, Empire switched card processing vendors and the card transaction fees charged to customers were changed to \$2.25 for residential customers and \$13.00 for commercial customers, with a \$10,000 transaction limit. The card transaction fees continued to be collected by the third

¹While 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.

See <https://estar.kcc.ks.gov/estar/ViewFile.aspx/20041206083346.pdf?Id=d5e5a56d-157d-48de-8920-3675fe8b13f8>

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

party vendor. While the new transaction fees have been collected since 2013, Empire did not submit an application for authorization of the new fees or revise its tariffs.³

After discovering the fee discrepancy in a review of its tariffs, Empire filed an Application on May 8, 2020, requesting the tariffs be updated to reflect credit/debit card fees of \$2.25 for residential customers and \$13.00 for commercial customers with a \$10,000 transaction limit.⁴ In the order dated February 16, 2021, the Commission found it was unnecessary to approve these requested fees because the requested tariffs had effectively been superseded by the fees requested in this Docket, and Transaction Fees are currently being waived. The Commission also approved Staff's recommendation that Empire pay, in lieu of a penalty, a refund of what each commercial customer was overcharged, plus interest for each year since the payment. This total amount was \$11,163 total for all commercial customers as of July 15, 2020.⁵

Docket No. 20-EPDE-448-MIS

In May 2020, Empire requested, among other things, a temporary waiver of the Transaction Fees for all customers.⁶ In October 2020, the Commission granted the waiver of the Transaction Fees.⁷

Docket No. 20-EPDE-427-ACT

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 COVID-19 pandemic.⁸ The Commission approved the request, stating that the costs may be tracked in the regulatory asset account now, with determination of whether or not the costs may be recovered occurring in a future rate preceding.⁹ 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 the present docket, the 21-134 Docket.¹⁰

Docket No. 21-EPDE-134-TAR

In August 2018, Empire began a request for proposal process (RFP) to update its vendor that, among other things, handles credit and debit card transactions and e-check and ACH payments (Electronic Payment Methods). 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.

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).

³ ¶5, Application for the Empire District Electric Company, June 8, 2020. Docket No. 20-EPDE-459-TAR (Application) (20-459 Docket).

⁴ Application.

⁵ Order on Unanimous Settlement Agreement, February 16, 2021, 20-459 Docket.

⁶ Application for The Empire District Electric Company, May 4, 2020, 20-EPDE-448-MIS (20-448 Docket).

⁷ Order on Empire District Electric Company Application, October 6, 2020, 20-448 Docket.

⁸ Application for The Empire District Electric Company, April 16, 2020, 20-EPDE-428-ACT (20-428 Docket).

⁹ Order Approving Application for Accounting Authority Order, July 9, 2020, 20-428 Docket.

¹⁰ Order on Unanimous Settlement Agreement, February 16, 2021, 20-459 Docket.

Also, Empire requests to include the currently waived Transaction Fees in the regulatory asset account established in the 20-427 Docket.¹¹

ANALYSIS:

Jurisdiction

Empire is an electric public utility operating in the State of Kansas pursuant to certificates of convenience and necessity issued by the Commission. Pursuant to K.S.A. 66-104 and 66-101 *et seq.*, the Commission is given full power, authority, and jurisdiction to supervise and control the 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.¹² As applied to regulation of electric public utilities, all grants of power, authority and jurisdiction made to the commission shall be liberally construed, and all incidental powers necessary to use those grants of power, authority, and jurisdiction, are expressly granted to and conferred upon the commission.¹³

K.S.A. 66-101b mandates that every jurisdictional electric public utility is required to establish just and reasonable charges, and to make just and reasonable rules, classifications, and regulations. Every unjust or unreasonably discriminatory or unduly preferential rule, regulation, classification, rate, charge, or exaction is prohibited, unlawful, and void.¹⁴ If it is found that any rule and regulation, practice or act, relating to any service performed or to be performed by such electric public utility for the public is in any respect unreasonable, unjust, unfair, unreasonably inefficient or insufficient, unjustly discriminatory or unduly preferential, or otherwise in violation of this act or of any of the laws of the state of Kansas, the Commission may substitute therefor such other regulations, practice, service or act as it determines to be just, reasonable and necessary.¹⁵

Requirement for Commission Approval of Rates and Requirement to File Rate Tariffs

K.S.A 66-117(a) states:

Unless the state corporation commission otherwise orders, no common carrier or public utility over which the commission has control shall make effective any changed rate, joint rate, toll, charge or classification or schedule of charges, or any rule or regulation or practice pertaining to the service or rates of such public utility or common carrier except by filing the same with the commission at least 30 days prior to the proposed effective date.

Similarly, K.S.A. 66-117(d) requires:

Except as provided in subsection (c), no change shall be made in any rate, toll, charge, classification or schedule of charges or joint rates, or in any rule or regulation or practice pertaining to the service or rates of any such public utility or common carrier, without the consent of the commission. Within 30 days after such

¹¹ Application for The Empire District Electric Company, October 1, 2020, 21-134 Docket.

¹² See K.S.A. 66-101.

¹³ See K.S.A. 66-101g.

¹⁴ K.S.A. 66-101b.

¹⁵ K.S.A. 66-101f.

changes have been authorized by the state corporation commission or become effective as provided in subsection (c), copies of all tariffs, schedules and classifications, and all rules and regulations, except those determined to be confidential under rules and regulations adopted by the commission, shall be filed in every station, office or depot of every such public utility and every common carrier in this state, for public inspection.

Lastly, K.S.A. 66-109 states (Emphasis Original):

No common carrier or public utility governed by the provisions of this act shall, knowingly or willfully, charge, demand, collect or receive a greater or less compensation for the same class of service performed by it within the state, or for any service in connection therewith, than is specified in the printed schedules or classifications, including schedules of joint rates; or demand, collect or receive any rate, joint rate, toll, fare or charge not specified in such schedule or classification: *Provided*, That rates different from those specified in the printed schedule or classification of rates may be charged by any public utility, street or interurban railway, by agreement with the customer, in cases of charity, emergency, festivity or public entertainment: *Provided*, That any utility governed by the provisions of this act may grant to the officers, employees and agents of such utilities free or reduced rates or service upon like terms and in the same manner as is now provided by law relating to common carriers.

Staff's Tariff Analysis

Under Section I of the Payment Standards, the Commission set forth the following requirements for credit card payments when offered by utilities.¹⁶

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. [a] The fees associated with credit card use shall cover all of the costs to the utility of such payment methods. [b] Customers not paying with credit cards shall not be burdened with the transaction costs of customers utilizing these payment methods. [c] Any fees associated with credit card use should be reasonably related to the costs of payment by credit card and [d] 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.

¹⁶ See Attachment A

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.

Analysis of Updated Transaction Fees

Section I of the Payment Standards requires a utility to make a diligent effort to provide reasonably cost effective means for customers to use their credit cards when offered. The Payment Standards do not specify a minimum or maximum limit on transaction amounts. The evidence shows Empire made diligent efforts to provide a reasonably cost effective means for customers to use their credit cards. Below, Staff shows how Empire complied with each portion of Section I:

[1] If utilities make alternative payment options such as credit cards¹⁷ available, utilities shall make a diligent effort to provide customers with a reasonably cost effective means of utilizing such payment methods.

Though not required, Empire chose to select their vendor using an RFP Analysis. This allowed Empire to show due diligence in the comparison of different vendor options. Also, it is important to note that the agreement is cost effective in that it does not impact the company or non-credit-card-paying customers. Below is a comparison of the currently approved fees from the 06-661 Docket, the fees from 20-459 Docket and the proposed fees in Docket No. 21-EPDE-134-TAR (21-134 Docket):

	Residential Fee	Residential Fee Limit	Non-Residential Fee	Non-Residential Fee Limit
Current Tariff	\$3.95	-	\$3.95	-
20-459 Docket (Proposed, Not Approved)	\$2.25	-	\$13.00	\$10,000
Empire (Proposed)	\$1.75	\$600	\$7.95	\$1,200

When compared to the proposed fees in the 20-459 Docket, for both residential and non-residential customers, the proposed fees are a reduction in both fees and transaction limits. However, these new lower transaction limits are not an unreasonable trade-off for lower rates. The average residential bill for the last three years ranged from \$121 to \$128, well under the new \$600 limit. The average commercial customer bill for the last three years ranged from \$370 to \$402, well under the new limit of \$1,200.¹⁸ Thus, the new Transaction Fees represent a cost effective way of paying bills through Electronic Payment Methods.

[2.a] The fees associated with credit card use shall cover all of the costs to the utility of such payment methods.

¹⁷ In the Payment Standards, “credit cards” is generally used to refer to all non-zero fee payment methods.

¹⁸ See Response to Staff Data Request No. 6.

Empire does not pay its credit card vendor any additional fees, and each customer covers their own cost.¹⁹ Thus, the fees associated with credit card use do cover all the associated costs.

[2.b] Customers not paying with credit cards shall not be burdened with the transaction costs of customers utilizing these payment methods.

Empire does not pay its credit card vendor any additional fees, and each customer covers their own cost. Thus, the customers not using credit cards are not contributing to the cost recovery for customers that are using credit cards.

[2.c] Any fees associated with credit card use should be reasonably related to the costs of payment by credit card.

This standard is not applicable in this case because the fee is a third-party vendor fee, not a fee which is charged by the utility and based on the utility's costs.

[2.d] The receipt of such fees by the utility should be revenue neutral to the utility.

The Transaction Fees are handled by a third-party processor, so Empire never receives any of the fees. Thus, the fees are 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.

In response to this standard, Staff points to our analysis above relative to standard No. 1. Empire is providing customers with Transaction Fees lower than the rates that have been offered for all customers since 2013. Staff agrees that the resulting fees are reasonably priced for the customers, and of no cost to the company.

Conclusion -- Transaction Fee Reasonableness

Staff's Analysis shows that Empire's Application meets the requirements set forth in the Payment Standards in Section I. Therefore, Staff recommends the Commission find the new Transaction Fees of \$1.75 for Residential Customers with a transaction limit of \$600, and \$7.95 for Commercial Customers with a transaction limit of \$1,200 reasonable.

Tariff Changes

Empire is proposing changes to the Payment Standards section of its Rules and Regulations tariffs. The changes are simply to reflect the additional payment options (debit cards, prepaid cards, e-checks, and ACH payments) and the new fees. Because the tariff accurately represents changes from the new vendor, staff recommends the tariff be approved as proposed.

Partial Billing Standards Waiver

One of the new payment options that Empire will now accept is e-checks. E-checks are to be accepted at the same Transaction Fees as the other payment methods (e.g. credit cards). However,

¹⁹ See Confidential Application, p. 60.

item (C) of the Commission’s Payment Standards states that if e-checks are offered, they must be a zero-fee pay method.²⁰ Unfortunately, Empire has explained that this payment option is only available from its payment vendor if a fee is charged. When given the choice between following the Payment standards and not offering e-checks at a fee, or creating a new voluntary payment opportunity of an e-check, at a voluntary fee, Staff contends it would be in the best interest of all parties for the Commission to grant the waiver in order to allow this extra method of payment. Thus, Staff recommends that Empire be granted this partial waiver of the Payment Standards item (C), allowing them to offer e-checks at a fee.

Waived Transaction Fees Recovery

Empire is proposing to add the waived Transaction Fees to the regulatory asset account created by the Commission in the 20-427 Docket. Staff supports the addition of these waived Transaction Fees to the regulatory asset account. These fees will also be subject to the conditions the Commission originally placed on this regulatory asset account, meaning that, as the Commission stated, “any determination regarding Liberty-Empire's recoverability of tracked costs and lost revenue due to the COVID-19 pandemic will occur in a future Liberty-Empire rate proceeding.”²¹

RECOMMENDATION:

Staff recommends the Commission:

1. Approve Empire’s proposed credit/debit card fees as just and reasonable;
2. Accept Empire’s proposed Transaction Fees and the tariff revisions to reflect the new Transaction Fees;
3. Grant a waiver for Section C of the Payment Standards, allowing a fee to be charged for the use of e-checks; and
4. Grant Empire permission to include the waived Transaction Fees in the regulatory asset account established in the 20-427 Docket.

²⁰ Payment Standards (C)

²¹ Application for The Empire District Electric Company, April 16, 2020, 20-428 Docket.

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 electronic service this 11th day of March, 2021, to the following:

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CERTIFICATE OF SERVICE

21-EPDE-134-TAR

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