

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

Before Commissioners: Shari Feist Albrecht, Chair
 Jay Scott Emler
 Dwight D. Keen

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.)

ORDER ADOPTING STAFF'S REPORT AND RECOMMENDATION

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed the pleadings and records and being duly advised in the premises, the Commission makes the following findings and conclusions:

I. BACKGROUND

1. On June 20, 2018, the Empire District Electric Company (Empire) filed an application for approval of an Economic Development Rider (EDR).¹ Empire noted it does not have an EDR in Kansas, and to encourage economic development Empire proposed adopting an EDR identical to one approved for Westar Energy, Inc. and Kansas Gas and Electric Company (Westar).²

2. On December 28, 2018, Commission Staff (Staff) filed its Report and Recommendation (R&R) in this matter.³ Staff reviewed Empire's application and recommended the Commission approve the proposed EDR and require Empire to credit 60% of the economic

¹ Application (Jun. 20, 2018) (Application).

² See *id.* at p. 2.

³ Notice of Filing of Staff's Report and Recommendation (Dec. 28, 2018) (Report).

development discounts provided within its Kansas jurisdictional region to its shareholders and the rest to customers.⁴

II. DISCUSSION

3. Empire indicates the proposed EDR would provide Empire the ability to tailor incentive credit offerings without shifting additional costs to Empire's other customers.⁵ As such, Empire's proposed EDR contains a variable incentive credit that varies in percentage and time period.⁶ Finally, Empire noted the EDR would be contingent on a targeted customer receiving further economic development incentives.⁷

4. To encourage economic development within its Kansas service territory, Empire is proposing an EDR identical to the EDR approved for Westar in Docket No. 14-WSEE-147-TAR.⁸ Staff's R&R noted three important provisions underpinning Empire's EDR.

5. First, Staff noted Empire is proposing a variable incentive credit which grants Empire flexibility in offering different incentives to attract new customers or encourage expansion projects in Empire's Kansas service territory.⁹ Second, Empire's EDR makes the discount contingent on the targeted customer increasing the number of employees at the customer's facility, and is also contingent on the targeted customer receiving some other form of economic development incentive.¹⁰ Staff notes these limitations also apply to Westar's EDR, and help reduce any arbitrariness in the selection of targeted customers. Third, Staff notes Empire's EDR incorporates the 60/40 shareholder/customer split contained in Westar's EDR.¹¹

⁴ See *id.*, p. 1.

⁵ See *id.*

⁶ See *id.*

⁷ See *id.* at p. 3.

⁸ See Report at p. 2.

⁹ See *id.* at p. 3.

¹⁰ See *id.*

¹¹ See *id.*

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 nonparticipating customers.¹²

6. Staff noted these three provisions support finding the proposed EDR is reasonable.¹³ Accordingly, Staff recommended the Commission approve Empire's EDR.¹⁴

III. FINDINGS AND CONCLUSIONS

7. The Commission finds Staff's R&R to be reasonable and hereby adopts and incorporates Staff's R&R into this Order by reference.

8. 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. The Commission finds and concludes Empire is a public utility subject to the jurisdiction of the Commission.

9. Pursuant to K.S.A. 66-101b, every electric public utility is required to provide reasonably efficient and sufficient service with just and reasonable rates, classifications, and regulations. The Commission has flexibility in determining what is just and reasonable, and is not bound to an absolute or mathematical formula.¹⁵

¹² *See id.*

¹³ *See id.*

¹⁴ *See id.*

¹⁵ *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).

10. The Commission finds Empire's EDR, as detailed in Staff's R&R, provides reasonable opportunities for Empire to attract new customers or encourage expansion projects in Empire's Kansas service territory. The Commission further finds the contingent conditions and cost sharing split detailed in Staff's R&R is reasonable. The Commission finds and concludes Empire's EDR as detailed in Staff's R&R is a just and reasonable economic incentive similar to other incentive mechanisms utilized by other Kansas utilities.

11. The Commission finds and concludes that Empire's proposed EDR as detailed in Staff's R&R is a just and reasonable proposal and should be approved.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

- A. Empire's proposed EDR as detailed in Staff's R&R is hereby approved.
- B. Parties have 15 days, plus three days if service is by mail, from the date of service of this Order to petition the Commission for reconsideration or request a hearing, as provided in K.S.A. 77-542.
- C. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further orders as it may deem necessary and proper.

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner

Dated: 01/15/2019



Lynn M. Retz
Secretary to the Commission

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CERTIFICATE OF SERVICE

18-EPDE-549-TAR

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of electronic service on 01/15/2019.

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