

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

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

In the Matter of the Petition of The Empire)
District Electric Company for Approval of Its) Docket No. 18-EPDE-184-PRE
Customer Savings Plan.)

**ORDER GRANTING EMPIRE'S MOTION TO WITHDRAW APPLICATION
WITHOUT PREJUDICE**

This matter comes before the State Corporation Commission of the State of Kansas (Commission). Having reviewed its files and records, and being fully advised in the premises, the Commission makes the following findings:

1. On October 31, 2017, The Empire District Electric Company (Empire) filed an Application for Approval of Its Consumer Savings Plan (Application), wherein Empire sought an “opportunity to develop up to 800 MW of strategically located wind generation in or near Empire’s service territory (the ‘Wind Projects’).¹

2. On November 1, 2017, Empire filed a Motion asking the Commission to extend the 180-day deadline for a Commission determination of rate-making principles and treatment required by K.S.A. 66-1239(c)(6) and requesting a procedural schedule.² Empire’s Motion also asked for “the issuance of an Order in this case that is effective by June 15, 2018.”³ Empire filed an Amended Motion on December 11, 2017, asking for the same effective date.⁴

¹ Petition of The Empire District Electric Company for Approval of Its Customer Savings Plan, p. 1 (Oct. 31, 2017).

² Motion to Extend 180-Day Deadline under K.S.A. 66-1239 and Motion for Procedural Schedule, ¶ 2 (Nov. 1, 2017).

³ *Id.*, ¶ 1.

⁴ Amended Motion to Extend 180-Day Deadline Under K.S.A. 66-1239 and Motion for Procedural Schedule, ¶ 1 (Dec. 11, 2017).

3. On November 16, 2017, the Citizens' Utility Ratepayer Board (CURB) was granted intervention.⁵

4. On December 21, 2017, the Commission issued a procedural schedule with a Commission order due by June 15, 2018.⁶

5. On April 25, 2018, Empire filed a Motion to Withdraw Application Without Prejudice, providing a summary of its Application and stating that "Empire is not seeking the recovery of any costs in this proceeding and is in the process of completing a competitive solicitation for the Wind Projects."⁷ Empire noted its filing of "the testimony and exhibits of nine witnesses" in this case.⁸ Empire also noted the testimony filed by Staff and CURB recommending denial of Empire's Application,⁹ as well as Empire's rebuttal testimony.¹⁰

6. Empire stated that a stipulation and agreement it filed with the Missouri Public Service Commission (PSC), if approved, "would change Empire's Customer Savings Plan."¹¹ Empire further stated that, "[b]ased upon discussions with Staff and CURB, and subject to the provisions contained in [its Motion to Withdraw], Empire seeks permission from the Commission to withdraw its Kansas pre-determination application without prejudice and to not proceed with the scheduled evidentiary hearing."¹²

7. Empire stated that its decision to withdraw its Application stemmed from the aforementioned stipulation and agreement it filed with the Missouri PSC and from "Staff and CURB's position that Empire's request for pre-determination of the ratemaking treatment relating

⁵ *Order Granting the Citizens' Utility Ratepayer Board's Petition to Intervene, Protective Order and Discovery Order*, Ordering Clause A (Nov. 16, 2017).

⁶ *Order Granting Amended Motion to Extend 180-Day Deadline Under K.S.A. 66-1239, Setting Procedural Schedule, and Designating a Prehearing Officer*, ¶ 5 (Dec. 21, 2017).

⁷ Motion to Withdraw Application Without Prejudice, ¶¶ 1-2 (Apr. 25, 2018) (Motion to Withdraw).

⁸ Motion to Withdraw, ¶ 4.

⁹ Motion to Withdraw, ¶ 5.

¹⁰ Motion to Withdraw, ¶ 6.

¹¹ Motion to Withdraw, ¶ 7.

¹² Motion to Withdraw, ¶ 8.

to the Wind Projects was premature absent executed wind generation acquisition and tax equity partnership agreements being filed with the Commission.”¹³ According to Empire, Staff and CURB expressed no objection to Empire’s request to withdraw its Application without prejudice, provided Empire acknowledged the following conditions:

- Staff and CURB are not waiving any of the positions taken by them in this matter and are specifically reserving their respective rights to take such positions or take other positions at such time Empire would seek ratemaking treatment relating to the proposed Wind Projects; and
- [I]n Empire’s general rate case filing in which it seeks for the first time to include the Wind Projects in rate base in Kansas, Staff and CURB shall have additional time to review any issues regarding Empire’s acquisition of the Wind Projects by Empire agreeing to the following with respect to the filing of said rate case:
 - Empire would first file that portion of its rate case that supports its request to include the Wind Projects into rate base with the Commission;
 - [T]hat docket would have a rate case designation;
 - Empire would explain in its rate case application that it is filing only that portion of the rate case that relates to its request to include the Wind Projects into rate base;
 - [T]he remaining minimum rate case filing requirements would be filed four (4) months later, at which time the 240-day statutory period for the Commission to decide a rate case would start;
 - [F]or purposes of judicial or administrative economy, there would only be one schedule (one settlement conference, one pre-hearing conference, one briefing schedule, etc.); and
 - [I]n that four (4) month period before the 240-day statutory period for the Commission to decide a rate case would start, Staff and CURB would be allowed to issue discovery relating to Empire’s request to include the Wind Projects into rate base.¹⁴

8. Empire acknowledged and agreed to the conditions listed in the previous paragraph.¹⁵

9. On April 26, 2018, the Prehearing Officer ordered the cancellation of the evidentiary hearing scheduled for May 1-3, 2018, as well as the remainder of the procedural schedule.¹⁶

¹³ Motion to Withdraw, ¶ 8.

¹⁴ Motion to Withdraw, ¶ 8.

¹⁵ Motion to Withdraw, ¶ 8.

¹⁶ *Prehearing Officer Order Cancelling Procedural Schedule*, Ordering Clause A (Apr. 26, 2018).

10. Based on Empire's unopposed Motion to withdraw its Application without prejudice, and its acquiescence to Staff's and CURB's conditions stated in paragraph 7 above, the Commission finds that Empire's request is reasonable and proper and should, therefore, be granted. The Commission authorizes Empire to withdraw its Application without prejudice. The Commission further finds this docket shall be closed following the expiration of the deadline for any party to seek reconsideration of this Order.

THEREFORE, THE COMMISSION ORDERS:

- A. Empire's Motion to Withdraw Application Without Prejudice is granted.
- B. This docket shall be closed following the expiration of the deadline for any party to seek reconsideration of this Order.
- C. Parties have 15 days from the date of electronic service of this Order to petition for reconsideration.¹⁷
- D. The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further orders as it deems necessary.

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner

Dated: 05/03/2018



Lynn M. Retz
Secretary to the Commission

MJD

¹⁷ K.S.A. 66-118b; K.S.A. 77-529(a)(1).

CERTIFICATE OF SERVICE

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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 05/03/2018.

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CERTIFICATE OF SERVICE

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