

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

Before Commissioners: Shari Feist Albrecht, Chair
Jay Scott Emler
Pat Apple

In the Matter of the Application of The Empire)
District Electric Company a Liberty Utilities)
Company for the Ad Valorem Tax Surcharge) Docket No. 18-EPDE-327-TAR
Rider Tariff Adjustment Annual True-Up for)
2018.)

ORDER APPROVING AD VALOREM TAX SURCHARGE RIDER UPDATE

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

I. BACKGROUND

1. On February 1, 2018, the Empire District Electric Company (Empire) filed an Application with the Commission for approval of its Ad Valorem Tax Surcharge Rider Tariff Adjustment Annual True-Up for 2018.¹

2. On February 5, 2018, the Citizens' Utility Ratepayer Board (CURB) filed its Petition to Intervene, citing its statutory authority to represent residential and small commercial ratepayers. CURB explained the rates paid by and the services received by residential and small commercial customers may be substantially affected by this proceeding.² The Commission granted CURB's intervention request on February 15, 2018.³

¹ Application of The Empire District Electric Company (Feb. 1, 2018).

² CURB's Petition to Intervene, ¶ 5 (Feb. 5, 2018).

³ Order Granting CURB's Petition to Intervene (Feb. 15, 2018).

3. Commission Staff (Staff) has submitted a Report and Recommendation (R&R) analyzing and recommending approval of Empire's 2018 Ad Valorem Tax Surcharge Rider.⁴ Staff's R&R, dated February 16, 2018, is attached hereto as "Attachment A" and is hereby adopted by the Commission and incorporated by reference into this Order.

II. DISCUSSION

4. Empire provided Staff with Ad Valorem tax invoices for the counties included in Empire's Application.⁵ Staff reviewed Empire's tax statements and agreed with the total amount of 2017 Ad Valorem tax expense claimed by Empire.⁶ Staff also reviewed documentation regarding Empire's calculation of the Ad Valorem Tax Surcharge Rider and found it accurate.⁷ From this, Staff was able to conclude Empire's 2018 Ad Valorem Tax Surcharge Rider is properly calculated to collect Empire's Ad Valorem expense.⁸

5. By illustration, last year the Commission approved Empire's Ad Valorem Tax Surcharge of \$584,250.⁹ In the instant docket, Empire is requesting a surcharge amount of \$509,037, a decrease from the total amount approved last year.¹⁰ This request consists of the difference between Empire's total 2017 Kansas jurisdictional Ad Valorem tax assessments and the amount included in base rates as well as a true-up provision comparing the amount of Ad Valorem Tax Surcharge revenue collected versus that intended to be collected during the year 2017.¹¹ Ultimately, Staff recommended the Commission approve Empire's Ad Valorem Tax Surcharge amount of \$509,037 with the following conditions:

⁴ See Attachment A - Staff Report & Recommendation, pp. 2-3 (Staff R&R).

⁵ See *id.* at p. 2.

⁶ See *id.*

⁷ See *id.*

⁸ See *id.*

⁹ See Order Approving ad Valorem Tax Surcharge Rider Tariff, Docket No. 17-EPDE-348-TAR, p. 3 (Feb. 28, 2017).

¹⁰ See Application, Exhibit 1, Line 13. See also Staff R&R, p. 1.

¹¹ See Staff R&R, p. 2.

- a. Staff will ensure that the annual true-up of amounts collected versus the actual amount of increase or reduction in property taxes will be reflected in the subsequent year Ad Valorem Tax Surcharge calculation; and
- b. Staff recommends that Empire file its Ad Valorem Property Tax annual true-up in January of each calendar year.¹²

III. FINDINGS AND CONCLUSIONS

6. K.S.A. 66-117(f) provides, in pertinent part:

Whenever, after the effective date of this act, an electric public utility, a natural gas public utility or a combination thereof, files tariffs reflecting a surcharge on the utility's bills for utility service designed to collect the annual increase in expense charged on its books and records for ad valorem taxes, such utility shall report annually to the state corporation commission the changes in expense charged for ad valorem taxes.

7. In Docket No. 15-EPDE-313-TAR, the Commission approved Empire's Ad Valorem Tax Surcharge Rider.¹³ Empire submitted its present request in February 2018. Accordingly, the Commission finds and concludes Empire has substantially complied with its obligation to submit its annual report to the Commission regarding changes in expense charged for Ad Valorem taxes as required by K.S.A. 66-117(f) and the Commission's February 19, 2015, Order in Docket No. 15-EPDE-313-TAR.¹⁴

8. K.S.A. 66-117(f) also provides the legal standard by which the Commission should review tariffs such as Empire's Ad Valorem Tax Surcharge Rider:

Upon a showing that the surcharge is applied to bills in a reasonable manner and is calculated to substantially collect the increase in ad valorem tax expense charged on the books and records of the utility, or reduce any existing surcharge based upon a decrease in ad valorem tax expense incurred on the books and records of the utility, the commission shall approve such tariffs within 30 days of the filing.

¹² See Staff R&R at pp. 2-3.

¹³ See Application, p. 1.

¹⁴ See Order Approving Ad Valorem Tax Surcharge, Docket No. 15-EPDE-313-TAR, p. 3 (Feb. 19, 2015).

9. Upon review of Staff's R&R and the record as a whole, the Commission finds and concludes the surcharge as calculated by Empire and reviewed by Staff substantially collects the Ad Valorem tax expense charged on the books of Empire. Accordingly, the Commission finds and concludes substantial competent evidence exists to approve Empire's request in the instant proceeding, as conditioned in Staff's R&R.

10. The Commission finds and concludes Empire's request to update its Ad Valorem Tax Surcharge Rider should be approved. Empire shall be permitted to recover its Ad Valorem tax surcharge of \$509,037, which equates to a surcharge of \$0.00221/kWh for Empire's customers.¹⁵ Empire may implement this surcharge for its customers subject to the conditions contained within Staff's R&R and as detailed in paragraph 5 of this Order.

11. The Commission finds and concludes a surcharge in the amount of \$0.00221/kWh for Empire's customers will result in revenues sufficient to substantially collect the Ad Valorem tax expense charged to Empire, and will therefore result in just and reasonable rates. The Commission finds and concludes Empire's Ad Valorem Tax Surcharge Rider will be applied to bills in a reasonable manner.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. Empire's request to recover \$509,037 via its Ad Valorem Tax Surcharge Rider is approved.

B. Empire shall be permitted to recover its Ad Valorem tax surcharge of \$509,037, which equates to a surcharge of \$0.00221/kWh, from its customers subject to the conditions contained within Staff's R&R and as detailed in paragraph 5 of this Order.

C. Parties have 15 days, plus three days if service is by mail, from the date of service

¹⁵ See Staff R&R, p. 2.

of this Order to petition the Commission for reconsideration or request a hearing, as provided in K.S.A. 77-542.¹⁶

D. The Commission retains jurisdiction over the subject matter and parties for the purpose of issuing such further order, or orders, as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commissioner; Apple, Commissioner

Dated: March 1, 2018

A handwritten signature in black ink, appearing to read "Lynn M. Retz", written over a horizontal line.

Lynn M. Retz
Secretary to the Commission

REV

¹⁶ See *also* K.S.A. 66-118b; K.S.A. 77-529(a)(1).

ATTACHMENT “A”

**REPORT AND RECOMMENDATION
UTILITIES DIVISION**

TO: Chair Shari Feist Albrecht
Commissioner Jay Scott Emler
Commissioner Pat Apple

FROM: Tim Rehagen, Senior Auditor
Justin Grady, Chief of Accounting and Financial Analysis
Jeff McClanahan, Director of Utilities

DATE: February 16, 2018

SUBJECT: Docket No. 18-EPDE-327-TAR – In the Matter of the Application of The Empire District Electric Company a Liberty Utilities Company for the Ad Valorem Tax Surcharge Rider Tariff Adjustment Annual True-Up for 2018.

EXECUTIVE SUMMARY:

Staff recommends Commission approval of Empire District Electric Company's (Empire) 2018 Ad Valorem Tax Surcharge Rider. This surcharge would be in effect from March 2018 through February 2019 and is in addition to the Ad Valorem tax that was included in base rates from Empire's most recent rate case. Compared to the Ad Valorem Tax Surcharge Rider approved in last year's filing, Empire's proposed Ad Valorem Tax Surcharge Rider in the current Docket would decrease an average residential bill by \$0.29 annually.¹ Pursuant to K.S.A. 66-117(f), a Commission Order is due within 30 days of the filing, which in this case is by March 5, 2017.²

BACKGROUND:

On February 1, 2018, Empire filed an Ad Valorem Tax Surcharge request with the Kansas Corporation Commission (Commission) for its Kansas electric operations. Empire is requesting a surcharge amount of \$509,037 consisting of:

¹ The approved surcharge amount in last year's Ad Valorem Tax Surcharge filing was \$584,250, while the proposed surcharge amount in the present Docket equals \$509,037.

² The 30-day deadline falls on March 3, 2018, which is a Saturday. Therefore, the Order is due by the following Monday, March 5.

1. The difference between its total 2017 Kansas jurisdictional Ad Valorem tax assessments and the amount embedded in the base rates established in Empire's 2010 base rate case³; and
2. A true-up provision comparing the amount of Ad Valorem Tax Surcharge revenue collected versus that intended to be collected during the year 2017.

ANALYSIS:

The Commission derives its authority to review Ad Valorem tariffs from K.S.A. 66-117(f), which states in part:

“Whenever, after the effective date of this act, an electric public utility, a natural gas public utility or a combination thereof, files tariffs reflecting a surcharge on the utility's bills for utility service designed to collect the annual increase in expense charged on its books and records for ad valorem taxes, such utility shall report annually to the state corporation commission the changes in expense charged for ad valorem taxes...Upon a showing that the surcharge is applied to bills in a reasonable manner and is calculated to substantially collect the increase in ad valorem tax expense charged on the books and records of the utility, or reduce any existing surcharge based upon a decrease in ad valorem tax expense incurred on the books and records of the utility, the commission shall approve such tariffs within 30 days of the filing.”

Empire's Ad Valorem Tax Surcharge was filed in accordance with K.S.A. 66-117(f), which provides for a utility to collect (refund) differences in its Ad Valorem taxes above (under) amounts currently included in base rates.

Empire provided Staff with its Ad Valorem tax invoices for the counties included in the Application. Staff reviewed the tax statements and is in agreement with the total amount of 2017 Ad Valorem tax expense claimed by Empire in its Application. Additionally, Staff reviewed the supporting documentation regarding the calculation of the Ad Valorem Tax Surcharge and the revenues collected during the year 2017 and found it to be accurate. Staff concludes that Empire's 2018 Ad Valorem tax surcharge is properly calculated to collect the increase in Ad Valorem taxes when compared to the amount currently embedded in Empire's base rates.

Staff recommends the Commission approve Empire's 2018 Ad Valorem Tax Surcharge request of \$509,037. This translates into a surcharge of \$0.00221/kWh. Staff's recommendation will be recovered through Empire's Ad Valorem Tax Surcharge Rider Tariff.

RECOMMENDATION:

Staff recommends the Commission approve Empire's Ad Valorem Tax Surcharge amount of \$509,037 with the following conditions:

1. Staff will ensure that the annual true-up of amounts collected versus the actual amount of increase or reduction in Ad Valorem taxes will be reflected in the subsequent year Ad Valorem Tax Surcharge calculation; and

³ The amount of Ad Valorem tax expense included in Empire's base rates was approved by the Commission in Docket No. 10-EPDE-314-RTS. See page 19, paragraph 44, of the Commission Order in that Docket.

2. Per K.S.A. 66-117(f), Staff recommends that Empire file its Ad Valorem Tax Surcharge Rider annual true-up in January of each calendar year.

CERTIFICATE OF SERVICE

18-EPDE-327-TAR

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of first class mail/hand delivered on **MAR - 1 2018**.

THOMAS J. CONNORS, ATTORNEY AT LAW
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3116
tj.connors@curb.kansas.gov

TODD E. LOVE, ATTORNEY
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3116
t.love@curb.kansas.gov

DAVID W. NICKEL, CONSUMER COUNSEL
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3116
d.nickel@curb.kansas.gov

SHONDA RABB
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3116
s.rabb@curb.kansas.gov

JILL SCHWARTZ, SR. MANAGER, RATES AND
REGULATORY AFFAIRS (CENTRAL REGION)
EMPIRE DISTRICT ELECTRIC COMPANY
602 S JOPLIN AVE
JOPLIN, MO 64801
Fax: 417-625-5169
jill.schwartz@libertyutilities.com

DELLA SMITH
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3116
d.smith@curb.kansas.gov

ROBERT VINCENT, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604-4027
Fax: 785-271-3354
r.vincent@kcc.ks.gov

/S/ DeeAnn Shupe

DeeAnn Shupe