

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 Revision) Docket No. 20-EPDE-459-TAR
of the Credit/Debit Card Transaction Amounts)

JOINT MOTION FOR APPROVAL OF UNANIMOUS SETTLEMENT AGREEMENT

The Empire District Electric Company ("Liberty-Empire"), the Staff of the State Corporation Commission ("Staff") and the Citizens' Utility Ratepayer Board ("CURB") (collectively the "Parties") submit the following Unanimous Settlement Agreement ("Agreement") to the Kansas Corporation Commission ("Commission") for approval pursuant to K.A.R. 82-1-230a (2). In support of their Joint Motion, the Parties state as follows:

I. INTRODUCTION

1. On May 20, 2020, Liberty-Empire filed an application with the Commission requesting approval of a revised third-party fee for credit and debit card transactions used by customers to pay their electric bill ("459 Docket"). The fee is collected by the third-party vendor and not Liberty-Empire. However, pursuant to the Commission orders in Docket No. 04-GIMX-651-GIV docket ("651 Docket"), the fee must be stated in Empire's tariffs. The initial third-party fees charged to Liberty-Empire's customers were approved by the Commission in 2006 in Docket No. 06-EPDE-661-TAR ("661 Docket"). As set forth in Liberty-Empire's application, and as summarized in the Staff's Report and Recommendation filed in the above-captioned docket on October 20, 2020 ("Staff's R&R"), in 2013, Liberty-Empire switched its third-party vendor. The third-party vendor fee charged to Liberty-Empire's residential customers decreased from \$3.95 to \$2.25 per transaction. The fee charged to commercial customers was set at \$13.00, with a \$10,000 transaction limit. Liberty-Empire did not submit an application for approval of the new third-party vendor fees in 2013

as required in the 651 Docket. This omission was recently discovered by Liberty-Empire and prompted the filing of the application in the current docket.

2. As set forth in the Staff R&R, the 2013 third party vendor fees paid by Liberty-Empire's customers were comparable to, or lower than, the third-party fees charged by other Kansas utilities. The Staff pointed out that the reduction in the third-party fee in 2013 resulted in saving residential customers \$156,760, but also resulted in an over-collection by the third-party of \$10,955 from Liberty-Empire's commercial customers through July 15, 2020.

3. Staff recommends that the Commission find Liberty-Empire's proposed credit/debit card fees to be just and reasonable and accept Empire's proposed tariff revisions to reflect the 2013 third-party fees. Staff also recommends the Commission order Liberty-Empire to refund to commercial customers who paid a fee greater than what was allowed under the 2006 tariff the amount of the over-payment plus interest through October 16, 2020.¹

4. On October 30, 2020, CURB filed its response to Staff's R&R. CURB notified the Parties that it supports the recommendations included in Staff's R&R. However, CURB recommended that Liberty-Empire be allowed to charge the lower third party vendor fees Liberty-Empire has requested in Docket No. 21-EPDE-134-TAR. As pointed out in Staff's R&R, Liberty-Empire has recently requested to revise the third-party fees pursuant to an agreement with a new third-party vendor in Docket No. 21-EPDE-134-TAR. In addition, and as also pointed out in Staff's R&R, the Commission has approved Liberty-Empire's request in Docket No. 20-EPDE-448-MIS for a temporary waiver of third-party fees effective October 16, 2020 to the end of calendar year 2020, to assist its customers in paying their bills due to COVID-19. The fee for residential customers under the

¹Liberty-Empire has provided a revised and updated response to Staff DR 0004 and a response to Staff DR 0009 that updates the over-collection from commercial customers through October 16, 2020. The revised data results in a slight change to the original numbers provided in response to Staff DR 0004 and included in the Staff R&R.

agreement with the new third-party vendor, if approved by the Commission, would further reduce the residential fee from \$2.25 per transaction to \$1.75 per transaction (limit \$600) and the commercial fee from \$13.00 per transaction (limit \$10,000) to \$7.95 per transaction (limit \$1,200).

5. On November 2, 2020, Liberty-Empire filed its response to Staff's R&R. Liberty Empire stated that it agreed with the recommendations included in Staff's R&R. Liberty-Empire also indicated that in order to address the concern raised by CURB in its response to the Staff R&R, Liberty-Empire would agree, subject to Commission approval, to extend the waiver of the third-party fees approved in Docket No. 20-EPDE-448-MIS ("448 Docket") until a decision was made in Docket No. 21-EPDE-134-TAR ("134 Docket"), regarding Liberty-Empire's new third-party fees.

6. On November 6, 2020, the Parties discussed each of the issues raised in this docket. As a result of said discussions the Parties were able to reach a unanimous settlement resolving all issues.

II. AGREEMENT

7. The Parties agree to the following terms and conditions:

(a) The Parties accept the recommendations included in Staff's R&R. Within ten (10) days following approval of this Agreement by the Commission, Liberty-Empire agrees to provide a credit or payment to its customers as outlined in Staff's R&R.

(b) The Parties agree that Liberty-Empire shall be allowed to waive or credit customers for third party vendor fees until it receives an order from the Commission in the 134 Docket.

(c) The Parties agree Liberty-Empire shall be allowed to defer and request recovery of any waived or credited third party vendor fees between October 16, 2020, and when it receives the Commission's order in the 134 Docket under the accounting order approved by

the Commission in Docket No. 20-EPDE-427-ACT ("427 Docket") and in the 448 Docket. Support of this Agreement by Staff and CURB in no way precludes or impairs their rights to challenge whether the Commission should approve any request by Liberty-Empire to recover any waived or credited third party vendor fees under the accounting order issued in the 427 Docket.

(d) For clarification purposes and in order to address the concern raised by CURB in its response to Staff's R&R, the amount that Liberty-Empire can seek to recoup regarding any waived or credited third party vendor fees under the accounting order issued in the 427 Docket shall be the lesser of what the customer's third party vendor fee would have been under the third party vendor fee approved in this 459 Docket, or the third party charges set forth in the 134 Docket.

(e) Nothing in this Agreement is intended to impinge or restrict, in any manner, the exercise by the Commission of any statutory right, including the right of access to information, and any statutory obligation, including the obligation to ensure that Liberty-Empire is providing efficient and sufficient service at just and reasonable rates.

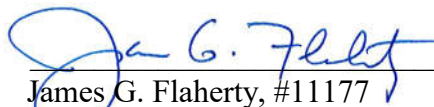
(f) This Agreement represents a negotiated settlement that fully resolves all of the issues in this docket among the Parties. The Parties represent that the terms of this Agreement constitute a fair and reasonable resolution of the issues addressed herein. Except as specified herein, the Parties shall not be prejudiced, bound by, or in any way affected by the terms of this Agreement (a) in any future proceeding; (b) in any proceeding currently pending under a separate docket; and/or (c) in this proceeding should the Commission decide not to approve this Agreement in the instant proceeding. If the Commission accepts this Agreement in its entirety and incorporates the same into a final order without material modification, the Parties

shall be bound by its terms and the Commission's order incorporating its terms as to all issues addressed herein and in accordance with the terms hereof, and will not appeal the Commission's order on these issues.

(g) The provisions of this Agreement have resulted from negotiations among the Parties and are interdependent. In the event that the Commission does not approve and adopt the terms of this Agreement in total, the Agreement shall be voidable and no party hereto shall be bound, prejudiced, or in any way affected by any of the agreements or provisions hereof. Further, in such event, this Agreement shall be considered privileged and not admissible in evidence or made a part of the record in any proceeding.

(h) To the extent this Agreement provides for information, documents or other data to be furnished to the Commission or Staff, such information, documents or data shall be filed with the Commission and a copy served upon the Commission's Director of Utilities. Such information, documents, or data shall be marked and identified with the docket number of this proceeding.

IN WITNESS WHEREOF, the Parties have executed and approved this Joint Motion and Unanimous Settlement Agreement, effective as of the 12th day of November, 2020, by subscribing their signatures below. The parties request the Commission issue an Order approving this Joint Motion and Unanimous Settlement Agreement.



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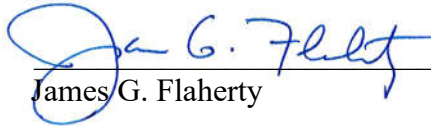
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VERIFICATION

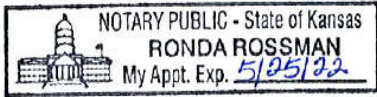
STATE OF KANSAS
COUNTY OF FRANKLIN, ss:

James G. Flaherty, of lawful age, being first duly sworn on oath, states:

That he is the attorney for The Empire District Electric Company named in the foregoing Joint Motion for Approval of Unanimous Settlement Agreement and is duly authorized to make this affidavit; that he has read the foregoing and knows the contents thereof; and that the facts set forth therein are true and correct.


James G. Flaherty

SUBSCRIBED AND SWORN to before me this 13th day of November, 2020.





Notary Public

Appointment/Commission Expires:

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing was sent via electronic mail this 13th day of November, 2020, addressed to:

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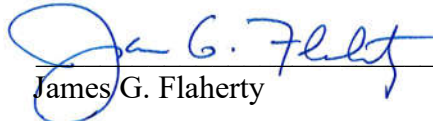
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