

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

Before Commissioners:                    Andrew J. French, Chairperson  
   Dwight D. Keen  
   Susan K. Duffy

In the Matter of the Application of The Empire    )  
District Electric Company for a Certificate of        )  
Public Convenience and Authority to Transact    ) Docket No. 22-EPDE-105-COC  
the Business of an Electric Public Utility        )  
Defined as the Riverton to Neosho 161-kV        )  
Transmission Line Project 81-0 in Cherokee       )  
County, Kansas.

**ORDER GRANTING APPLICATION**

NOW, 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, the Commission makes the following findings:

**I.        Background**

1.        On August 23, 2021, The Empire District Electric Company (Empire) filed an Application with the Commission seeking a Transmission Rights Only (TRO) Certificate to pass through a portion of the certified territory of Heartland Rural Electric Cooperative, Inc. (Heartland).<sup>1</sup> Empire is requesting to replace 25.6 miles of an existing 161kV transmission line that was originally built in the 1920's. The existing 161kV line is to be rebuilt under the Notice to Construct issued December 13, 2019 by the Southwest Power Pool to increase the ampacity of the line to a minimum of 250MVA. Heartland was properly served a copy of the Application and did not file an objection to Empire's request set forth in the Application.

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<sup>1</sup> See Application for The Empire District Electric Company (Aug. 23, 2021) (Application).

2. The legal description of Empire’s requested territory for a Transmission Rights Only Certificate is as follows:

CHEROKEE COUNTY, KANSAS

TRANSMISSION RIGHTS ONLY:

The proposed line rebuild beings in Section 20 Township 34 South Range 25 East within Riverton, Kansas in Empire service territory. The proposed line travels at a northwest angle and enters Heartland service territory in Section 5 Township 34 South Range 24 East and travels approximately 0.20 mile within Heartland service territory through Section 25 Township 33 South Range 23 East and Section 23 Township 33 South Range 23 East. The line reenters Empire service territory within Section 5 Township 34 South Range 24 East. The line continues for approximately 0.75 mile until exiting Empire service territory and reenters Heartland service territory in Section 31 Township 33 South Range 24 East. The line continues for approximately 4.26 miles through Heartland service territory and reenters Empire service territory in Section 22 Township 33 South Range 23 East and continues for approximately 2.61 miles and reenters Heartland service territory in Section 8 Township 33 South Range 23 East. The line continues approximately 5.08 miles and exits Heartland service territory and reenters Empire service territory in Section 27 Township 32 South Range 22 East crossing through Section 6 Township 33 South Range 23 East and Section 36 Township 32 South Range 22 East. The line continues approximately 3.68 miles in Empire service territory until reentering Heartland service territory in Section 7 Township 32 South Range 22 East. The line travels approximately 1.15 miles before briefly reentering Empire service territory in Section 12 Township 32 South Range 21 East and reenters Heartland service territory and travels approximately 1.40 miles until terminating in Section 2 Township 32 South Range 21 East in Cherokee County, Kansas.

3. On November 10, 2021, the Commission Staff (“Staff”) submitted a Report and Recommendation (R&R) dated November 10, 2021, recommending the Commission grant Empire’s request for a Certificate of Convenience and Authority for Transmission Rights Only in Heartland’s certified territory described in paragraph 2 above.<sup>2</sup> Staff’s R&R is attached hereto as Attachment A and is incorporated into this Order by reference.

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<sup>2</sup> Staff’s Report and Recommendation (Nov. 10, 2021) (R&R).

## II. Legal Standards and Discussion

4. Pursuant to K.S.A. 66-131, the Commission has jurisdiction to grant a Certificate to any public utility seeking to transact business in the State of Kansas. The standard for granting a certificate under K.S.A. 66-131 is that public convenience and necessity will be promoted by the transaction of the proposed project.

5. K.S.A. 66-1,170 *et seq.*, the Retail Electric Suppliers Act (RESA), requires the state of Kansas to be divided into electric service territories in which only one retail electric supplier is established for a given territory. If a retail electric supplier receives Commission approval, RESA allows it to extend distribution or transmission facilities through the territory of another supplier, if such extension is necessary for such supplier to connect with any of its facilities or those of others to serve customers within its own certified territory.<sup>3</sup>

6. Staff reviewed Empire's Application and confirmed the legal description included in the Application is accurately depicted on the map attached to the Application.<sup>4</sup> Staff received an electronic map from Empire, which shows the path of the proposed line. That map is attached hereto as Attachment B. Staff also confirmed the legal description does not conflict with the Commission's Certificate Records.<sup>5</sup>

7. Based on the foregoing information, and the absence of any objection, the Commission finds that public convenience will be promoted by granting Empire's Application.

### **THEREFORE, THE COMMISSION ORDERS:**

A. Empire's Application is granted pursuant to K.S.A. 66-131.

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<sup>3</sup> K.S.A. 66-1,173.

<sup>4</sup> *Id.* at 2.

<sup>5</sup> *Id.*

B. An updated territory description should be reflected in the Commission's certified territory map upon the issuance of this Order.

C. Any party may file and serve a petition for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).<sup>6</sup>

**BY THE COMMISSION IT IS SO ORDERED.**

French, Chairperson; Keen, Commissioner; Duffy, Commissioner

Dated: 12/21/2021



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Lynn M. Retz  
Executive Director

CRM

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<sup>6</sup> K.S.A. 66-118b; K.S.A. 77-503(c); K.S.A. 77-531(b).

## **ATTACHMENT “A”**

## **REPORT AND RECOMMENDATION UTILITIES DIVISION**

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

**FROM:** Jason Kerr, Utility Engineering Technician  
Leo Haynos, Chief Engineer  
Jeff McClanahan, Director of Utilities

**DATE:** November 10, 2021

**SUBJECT:** Docket No. - 22-EPDE-105-COC - In the Matter of the Application of The Empire District Electric Company for a Certificate of Public Convenience and Authority to Transact the Business of an Electric Public Utility Defined as the Riverton to Neosho 161-kV Transmission Line Project 81-0 in Cherokee County, Kansas.

### **EXECUTIVE SUMMARY:**

In Docket 22-EPDE-105-COC, The Empire District Electric Company (Empire) requests a Certificate for Transmission Rights Only (TRO). Liberty-Empire is requesting to replace 25.6 miles of an existing 161kV transmission line. As part of the rebuild Liberty-Empire is securing new easements to shift the line in portions of this project.

Staff recommends that the Commission find that public convenience will be promoted by granting a TRO Certificate for this line described in Attachment A of this Application.

### **BACKGROUND:**

On August 23, 2021, Empire filed the above captioned application requesting TRO to pass through a portion of the certified territory of Heartland Rural Electric Cooperative, Inc. (Heartland).

Empire is requesting to replace 25.6 miles of an existing 161kV transmission line that was originally built in the 1920's<sup>1</sup>. The existing 161kV circuit is to be rebuilt under the Notice to Construct issued December 13, 2019 by the Southwest Power Pool<sup>2</sup>, to increase the ampacity of the line to a minimum of 250MVA. The new 161kV line is to be bundled-conductor with a 69kV

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<sup>1</sup> EL #39998

<sup>2</sup> SPP-NTC-C-210549.

line for 20.25 miles as part of this rebuild. Empire has secured a new 100 foot right-of-way for this project.

K.S.A. 66-1,170 et seq., the Retail Electric Suppliers Act (RESA), requires the state of Kansas to be divided into electric service territories in which only one retail electric supplier is established for a given territory. If a retail electric supplier receives Commission approval, RESA allows it to extend distribution or transmission facilities through the territory of another supplier provided the supplier building through the territory only uses the proposed line to serve its own certificated customers.<sup>3</sup>

The Commission has authority to grant a Certificate of Convenience and Necessity to any public utility seeking to transact business in the State of Kansas.<sup>4</sup>

The statutory standard of review in this matter is whether the public convenience will be promoted by the transaction of the proposed project and by permitting the Applicants to transact the business of a common carrier or public utility.<sup>5</sup>

### **ANALYSIS:**

Staff has reviewed Empire's Application and has confirmed the legal description included in the Application is accurately depicted on the map attached to the Application.

Staff contacted Empire requesting an electronic ESRI Shapefile containing the original 161kV line, the proposed 161kV line, the existing 69kV line and the proposed 69kV line, which staff received on September 09, 2020. Staff created a map, Attachment B depicting the proposed construction path.

Staff confirmed the legal description is not in conflict with the Commission's Certificate records. The legal description is included as Attachment A to this Report and Recommendation.

Staff recommends that the Commission find that public convenience will be promoted by the granting of this Application.

The Commission action date is February 19, 2022.

### **RECOMMENDATION:**

Staff is recommending Empire's Application for Certificate in 22-EPDE-105-COC be granted for Transmission Rights Only.

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<sup>3</sup> K.S.A. 66-1,173.

<sup>4</sup> K.S.A. 66-131.

<sup>5</sup> K.S.A. 66-131.

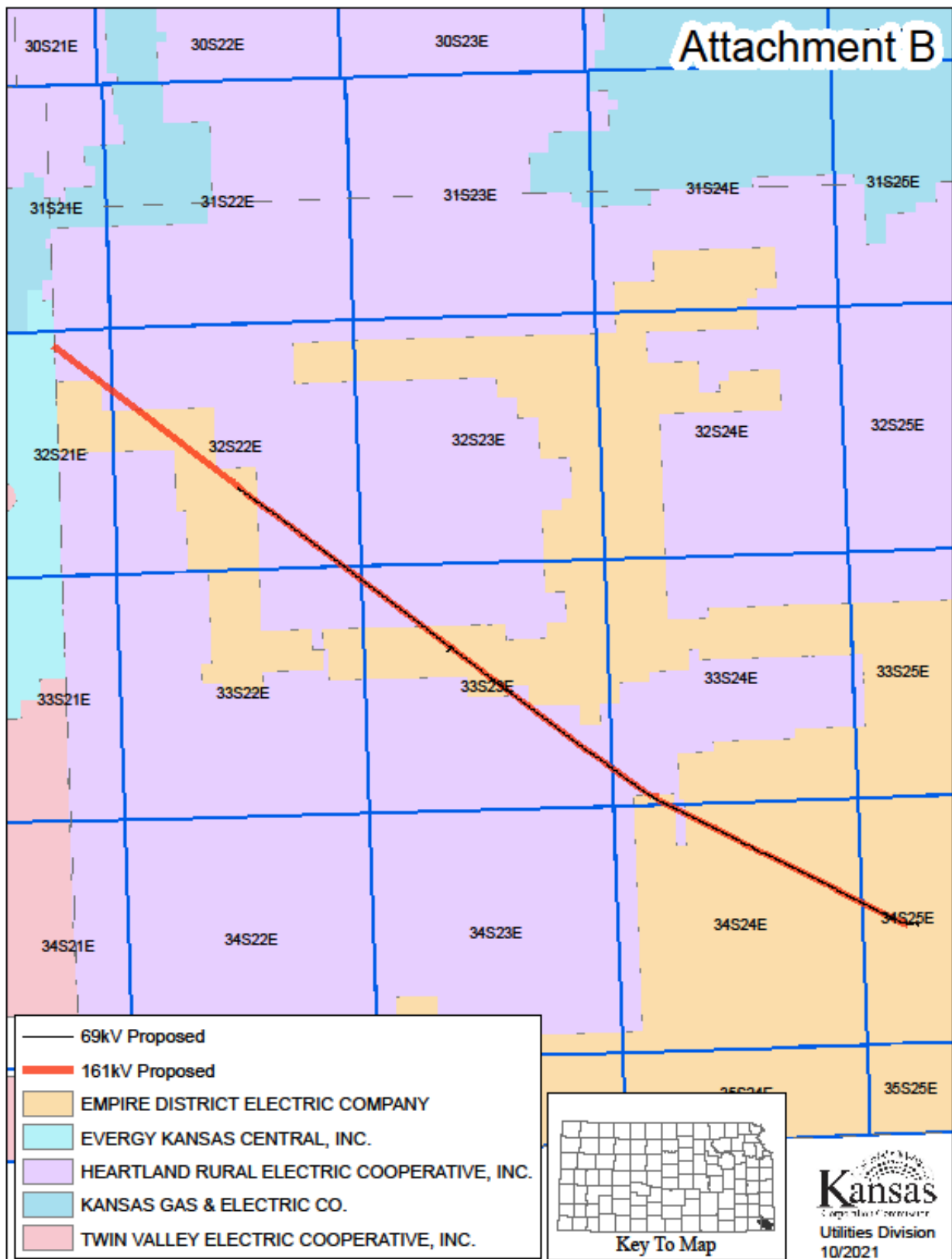
ATTACHMENT A  
Legal Description of Proposed Transmission Line Route  
22-EPDE-105-COC

CHEROKEE COUNTY, KANSAS

TRANSMISSION RIGHTS ONLY:

The proposed line rebuild begins in Section 20 Township 34 South Range 25 East within Riverton, Kansas in Empire service territory. The proposed line travels at a northwest angle and enters Heartland service territory in Section 5 Township 34 South Range 24 East and travels approximately 0.20 mile within Heartland service territory through Section 25 Township 33 South Range 23 East and Section 23 Township 33 South Range 23 East. The line reenters Empire service territory within Section 5 Township 34 South Range 24 East. The line continues for approximately 0.75 mile until exiting Empire service territory and reenters Heartland service territory in Section 31 Township 33 South Range 24 East. The line continues for approximately 4.26 miles through Heartland service territory and reenters Empire service territory in Section 22 Township 33 South Range 23 East and continues for approximately 2.61 miles and reenters Heartland service territory in Section 8 Township 33 South Range 23 East. The line continues approximately 5.08 miles and exits Heartland service territory and reenters Empire service territory in Section 27 Township 32 South Range 22 East crossing through Section 6 Township 33 South Range 23 East and Section 36 Township 32 South Range 22 East. The line continues approximately 3.68 miles in Empire service territory until reentering Heartland service territory in Section 7 Township 32 South Range 22 East. The line travels approximately 1.15 miles before briefly reentering Empire service territory in Section 12 Township 32 South Range 21 East and reenters Heartland service territory and travels approximately 1.40 miles until terminating in Section 2 Township 32 South Range 21 East in Cherokee County, Kansas.





## **CERTIFICATE OF SERVICE**

22-EPDE-105-COC

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of electronic service on 12/21/2021.

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/S/ DeeAnn Shupe  
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