

**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, a Liberty)
Utilities Company, for Authorization to) Docket No. 18-EPDE-422-SEC
Refinance Empire's \$90 Million of First)
Mortgage Bonds Maturing June 1, 2018, by)
Entering into a Intercompany Promissory)
Note Issued to Liberty Utilities Corp, in the)
Amount of \$90 Million.)

ORDER GRANTING CERTIFICATE

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:

1. On March 30, 2018, Empire District Electric Company, a Liberty Utilities Company (Empire) filed an Application with the Commission for authorization to refinance Empire's \$90 million of first mortgage bonds maturing June 1, 2018, by entering into an intercompany promissory note issued to Liberty Utilities Corp, in the amount of \$90 million. According to the Application, the intercompany promissory note will be an unsecured, non-amortizing, 15 year note, with a fixed rate of interest equal to the current yield of the 15-year U.S. Treasury bond on the pricing date, plus a credit spread of 160 basis points.

2. Empire also requested authorization to pay Liberty Utilities Co. a debt issuance fee equal to \$450,000, and requested that the Commission take any other action as may reasonably be necessary to complete the subject transaction.

Standard of Review

3. Empire's request is subject to K.S.A. § 66-125, which requires investor-owned utilities, prior to issuing stocks, certificates, bonds, notes, or other evidences of indebtedness payable at periods of more than 12 months after the date thereof - when necessary for the acquisition of property, for purposes of carrying out its corporate powers, the construction, completion, extension or improvements of its facilities, for the improvements or maintenance of its service, for the discharge or lawful refunding of its obligations, or for such other purposes as may be authorized by law - to secure a certificate from the Commission stating the amount, character, purposes and terms on which such stocks, certificates, bonds, notes or other evidences of indebtedness are proposed to be issued, as set out in the application for such certificate.

4. K.S.A. § 66-125 provides in full:

(a) Any investor-owned electric public utility incorporated in the state of Kansas may issue stocks, certificates, bonds, notes or other evidences of indebtedness, payable at periods of more than 12 months after the date thereof, when necessary for the acquisition of property, for the purpose of carrying out its corporate powers, the construction, completion, extension or improvements of its facilities, for the improvements or maintenance of its service, for the discharge or lawful refunding of its obligations, or for such other purposes as may be authorized by law. Prior to any such issuance, there shall be secured from the commission a certificate stating the amount, character, purposes and terms on which such stocks, certificates, bonds, notes or other evidences of indebtedness are proposed to be issued, as set out in the application for such certificate. In lieu of securing a certificate from the commission, if the issuance requires a registration statement to be filed with the securities and exchange commission or such utility obtains an authorization or approval of such issuance from another state or federal agency, the public utility may file with the state corporation commission a copy of the information filed with the securities and exchange commission or such other agency.

(b) The proceedings for obtaining such certificate from the commission and the conditions of its being issued shall be as follows:

(1) In case the stocks, certificates, bonds, notes or other evidences of indebtedness are to be issued for money only, the public utility or common carrier shall file with the commission a statement, signed and verified by the president or other chief officer of the company having knowledge of the facts, showing:

(A) The amount and character of the proposed stocks, certificates, bonds, notes or other evidences of indebtedness;

(B) the general purposes for which they are to be issued;

(C) the terms on which they are to be issued;

(D) the total assets and liabilities of the public utility or common carrier; and

(E) that the capital sought to be secured by the issuance of such stocks, certificates, bonds, notes or other evidences of indebtedness is necessary and required for such purposes and will be used therefor.

(2) In case stocks, certificates, bonds, notes or other evidences of indebtedness are to be issued partly or wholly for property or services or other consideration than money, the public utility or common carrier shall file with the commission a statement, signed and verified by the president or other chief officer having knowledge of the facts, showing:

(A) The amount and character of the stocks, certificates, bonds, notes or other evidences of indebtedness proposed to be issued;

(B) the general purposes for which they are to be issued;

(C) a general description and an estimated value of the property or services for which they are to be issued;

(D) the terms on which they are to be issued or exchanged;

(E) the amount of money, if any, to be received for the same in addition to such property, services or other consideration;

(F) the total assets and liabilities of the public utility or common carrier; and

(G) that the capital sought to be secured by the issuance of such stocks, certificates, bonds, notes or other evidences of indebtedness is necessary and required for such purposes and will be used therefor.

(c) The commission may also require the public utility or common carrier to furnish such further statements of facts as may be reasonable and pertinent to the inquiry. Upon full compliance by the applicant with the provisions of this section the commission shall forthwith issue a certificate stating the amount, character, purposes and terms upon which such stocks, certificates, bonds, notes or other evidences of indebtedness are proposed to be issued, as set out in the application for such certificate. Any issue of stocks, certificates, bonds, notes or other evidences of indebtedness not payable within one year, which shall be issued by such public utility or common carrier contrary to the provisions of this act shall be voidable by the commission, except as provided in subsection (d).

(d) The provisions of this section shall not apply to motor carriers, as defined in 49 C.F.R. § 390.5, as in effect on July 1, 2017, or any later version as established in rules and regulations adopted by the state corporation commission, or any public utility except as provided in subsection (a). Any issue of stocks, certificates, bonds, notes or other evidences of indebtedness not payable within one year, which were issued by a motor carrier prior to the effective date of this act without obtaining a certificate from the commission shall be deemed valid.

Staff's Report and Recommendation

5. On April 18, 2018, Staff filed a Report and Recommendation (R&R) in this docket which was unopposed by any other party to the docket.

6. While noting that Empire has, in Staff's view, met the requirements necessary for a certificate under K.S.A. § 66-125, Empire's intercompany promissory note is a transaction between affiliates as referenced under K.S.A. § 66-1401 *et seq.* Staff points out that under K.S.A. § 66-1403, Empire would be required to account for the *actual costs* incurred by its affiliate prior to inclusion of the costs associated with the intercompany promissory note in rates.

7. Therefore, Staff recommended that the Commission grant the securities certificate requested by Empire pursuant to K.S.A. § 66-125, but explicitly reserve judgment on the

reasonableness of the costs associated with the intercompany promissory note, and the interest rate of the instrument, until Empire's next rate case.

8. The Commission finds Staff's findings and recommendations to be reasonable, and hereby adopts the same.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. Empire is granted a certificate, pursuant to K.S.A. § 66-125, to issue a \$90 million intercompany promissory note for the purposes of refinancing its \$90 million first mortgage bonds, maturing June 1, 2018. Application of the proceeds from the intercompany promissory note for any purpose other than that specified in the certificate shall constitute a misdemeanor under K.S.A. 66-126.

B. The Commission reserves judgment regarding the reasonableness of the costs associated with the intercompany promissory note, and the interest rate of the instrument, until Empire's next rate case.

C. For clarity, it should be noted that the Commission is neither approving nor denying Empire's request to pay Liberty Utilities Co. a \$450,000 debt issuance fee, as such fee is not an evidence of indebtedness pursuant to K.S.A. § 66-125. Consistent with Staff's recommendation, the Commission will reserve judgment regarding the reasonableness of such fee until Empire's next rate case.

D. Parties have 15 days, plus three days if service is by mail, from the date of service of this Order in which to petition the Commission for reconsideration.¹

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

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

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner

Dated: 05/03/2018

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

Lynn M. Retz
Secretary to the Commission

MRN

CERTIFICATE OF SERVICE

18-EPDE-422-SEC

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 05/04/2018.

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/S/ DeeAnn Shupe

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