

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

In the Matter of the Application of The Empire)
District Electric Company for Authorization to)
Refinance \$300 Million of Short-term Debt by) Docket No. 24-EPDE-601-SEC
Entering into an Intercompany Promissory)
Note Issued to Liberty Utilities Co. in the Same)
Amount.)

NOTICE OF FILING OF STAFF'S REPORT AND RECOMMENDATION

The Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively) hereby submits an Amended Report and Recommendation in regard to the Application of the Empire District Electric Company (Empire) for authorization to refinance \$300 million in short-term debt by entering into an intercompany promissory note in the amount of \$300 million with Liberty Utilities Company (LUC).

Staff stated in its Report and Recommendation that the Note between Empire and LUC would bear an interest rate equal to 185 basis points over the reported yield on the 10-Year U.S. Treasury Bond and the 20-Year U.S. Treasury Bond. The interest rate on the Note will only be tied to the 10-Year U.S. Treasury Bond, not the 20-Year U.S. Treasury Bond. Staff has prepared both a red-line and clean Report and Recommendation reflecting this change to the Report and Recommendation.

WHEREFORE, Staff submits its Amended Report and Recommendation for Commission review and consideration and for such other relief as the Commission deems just and reasonable.

Respectfully Submitted,

/s/ Carly R. Masenthin

Carly R. Masenthin, #27944
Senior Litigation Counsel
Kansas Corporation Commission
1500 S.W. Arrowhead Road
Topeka, Kansas 66604-4027
Phone: 785-271-3265
Email: c.masenthin@kcc.ks.gov

MEMORANDUM

To: Chairman Andrew French
Commissioner Dwight D. Keen
Commissioner Annie Kuether

From: Adam Gatewood, Sr. Managing Financial Analyst
Chad Unrein, Chief of Accounting & Financial Analysis
Justin Grady, Deputy Director of Utilities
Jeff McClanahan, Director of Utilities

Date: April 7, 2024

Re: In the Matter of the Application of The Empire District Electric Company for Authorization to Refinance \$300 Million of Short-term Debt by Entering into an Intercompany Promissory Note Issued to Liberty Utilities Co. in the Same Amount
Docket No. 24-EPDE-601-SEC

EXECUTIVE SUMMARY:

Empire District Electric Company, a Liberty Utilities Company (Empire), requests authority to issue securities. Staff concludes that the Commission can grant Empire the requested certificate as Empire provides the information required by K.S.A. §66-125. This is a transaction with an affiliate; therefore, if Empire wants to recover the related costs through rates, it must comply with K.S.A. §66-1403 at its next rate case.

BACKGROUND:

Empire seeks a certificate from the Commission pursuant to K.S.A. §66-125, which would authorize it to sell an unsecured, intercompany promissory note (Note) to an affiliate company, Liberty Utilities Company (LUC).

ANALYSIS:

Empire is an investor-owned electric public utility incorporated in the state of Kansas. As it has not obtained authority for this transaction from any other regulatory agency, Empire must file under K.S.A. §66-125. The specific terms of the transaction and the security detailed in the Application are as follows: 1) Empire will enter into the Note with LUC to borrow \$300 million; 2) the Note matures in 10 years; 3) it bears an interest rate equal to 185 basis points over the reported yield on the 10-Year U.S. Treasury Bond and the 20-Year U.S. Treasury Bond; 4) Empire

will pay its affiliate, LUC, a placement fee of \$2,640,000 or 0.88% of the loan amount; and 5) Empire will use the proceeds from the Note to repay short-term debt.

This is a financial transaction between Empire and LUC, an affiliate. To include these costs in its revenue requirement at some time in the future, K.S.A. §66-1403 requires Empire and LUC to track the actual costs incurred for the Note.¹ Staff will review those costs during the next rate case and recommend the appropriate recovery.

This transaction is governed by section (b)(1) of K.S.A. §66-125 (emphasized in the footnote), as Empire will receive cash from selling the securities.² The standard of review for filings under this

¹ K.S.A. §66-1403. Showing required for fixing or charging rates. In ascertaining the reasonableness of a rate or charge to be made by a public utility, no charge for services rendered by a holding or affiliated company, or charge for material or commodity furnished or purchased from a holding or affiliated company, shall be given consideration in determining a reasonable rate or charge unless there be a showing made by the utility affected by the rate or charge as to the actual cost to the holding or affiliated company furnishing such service and material or commodity. Such showing shall consist of an itemized statement furnished by the utility setting out in detail the various items, cost for services rendered and material or commodity furnished by the holding or affiliated company. **History:** L. 1931, ch. 239, § 3; March 9. https://www.ksrevisor.org/statutes/chapters/ch66/066_014_0003.html

² **K.S.A. §66-125 Issuance of securities; certificate of commission required, when; proceedings; motor carriers exempted.** (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;

statute is a verification that the Applicant provided the Commission with a list of the security's terms and the proposed use of the proceeds. Staff verified that the Applicants provided the information required by the statute.³ The statute does not require or even allow the Commission to decide on the reasonableness of the securities or the use of the proceeds. Therefore, in Staff's view, the information in Empire's Application provides what is required from §66-125 for the Commission to issue a certificate.

Staff's position on this statute has always been that granting a certificate to issue new securities under K.S.A. §66-125 does not guarantee any specific regulatory treatment of the costs of or related property financed by the securities. Those questions are addressed during a rate proceeding when the Applicant desires to recover those costs from consumers. Thus, Staff is not making a recommendation on cost recovery at this time.

RECOMMENDATION: Staff recommends the Commission approve Empire's Application for a securities certificate as defined by K.S.A. §66-125 to issue the Note to its affiliate. Staff recommends that the Commission explicitly reserve judgment on the reasonableness of the costs described herein and the instrument's interest rate until an Empire rate case.

(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.

History: L. 1911, ch. 238, § 25; R.S. 1923, 66-125; L. 1983, ch. 222, § 1; L. 1988, ch. 265, § 1; L. 1993, ch. 118, § 1; L. 1995, ch. 4, § 1; L. 1996, ch. 268, § 16; L. 1997, ch. 132, § 16; L. 2017, ch. 18, § 4; July 1.

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MEMORANDUM

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Commissioner Dwight D. Keen
Commissioner Annie Kuether

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CERTIFICATE OF SERVICE

24-EPDE-601-SEC

I, the undersigned, certify that a true and correct copy of the above and foregoing Notice of Filing was served via electronic service this 24th day of April, 2024, to the following:

JAMES G. FLAHERTY, ATTORNEY
ANDERSON & BYRD, L.L.P.
216 S HICKORY
PO BOX 17
OTTAWA, KS 66067
jflaherty@andersonbyrd.com

JOSEPH R. ASTRAB, ATTORNEY
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
j.astrab@curb.kansas.gov

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

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

SHONDA RABB
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
s.rabb@curb.kansas.gov

DELLA SMITH
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
d.smith@curb.kansas.gov

REGULATORY INFORMATION*
EMPIRE DISTRICT ELECTRIC COMPANY
602 S JOPLIN AVE
JOPLIN, MO 64801
regulatory.information@libertyutilities.com

AHSAN LATIF, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
a.latif@kcc.ks.gov

CARLY MASENTHIN, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
c.masenthin@kcc.ks.gov

ANGELA CLOVEN
LIBERTY UTILITIES - EMPIRE DISTRICT
602 South Joplin Avenue
Joplin, MO 64801
angela.cloven@libertyutilities.com

CERTIFICATE OF SERVICE

24-EPDE-601-SEC

Ann Murphy

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