

**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 for)
Approval of its 2015 Stock Incentive Plan)
and for Authority to Issue up to 500,000) Docket No. 15-EPDE-062-SEC
Shares of its Common Stock, \$1.00 Par)
Value, Pursuant to Empire's 2015 Stock)
Incentive Plan)

ORDER APPROVING APPLICATION FOR ISSUANCE OF SECURITIES

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and determination. Having examined its files and records and being fully advised in the premises, the Commission finds and concludes as follows:

I. BACKGROUND

1. On August 8, 2014, Empire District Electric Company (Empire) filed an Application pursuant to K.S.A. 66-125 requesting the Commission: (1) issue an Order and Certificate approving Empire's Stock Incentive Plan, (2) authorize Empire to issue and sell up to an aggregate of 500,000 shares of Common Stock at \$1.00 par value each pursuant to its 2015 Stock Incentive Plan, (3) take such action as reasonably necessary to carry out this transaction, and (4) other relief as the Commission deems appropriate.¹

2. Commission Staff (Staff) has submitted a Report and Recommendation (R&R) analyzing and recommending approval of Empire's Application.²

¹ See Application, p. 3 (Aug. 8, 2014).

² Staff Report and Recommendation, p. 2 (Oct. 3, 2014). Specifically, Staff recommends "the Commission grant Empire a Certificate and Authority to issue additional shares of common stock for the [Stock Incentive Plan] in a

3. Staff's R&R dated October 3, 2014, is attached hereto as "Attachment A" and is hereby adopted and incorporated by reference.

4. Staff recommends the Commission grant Empire's Application to issue and sell up to an aggregate of 500,000 shares of Common Stock at \$1.00 par value each pursuant to its 2015 Stock Incentive Plan.³

5. Staff further recommends the Commission explicitly affirm that "any Order or Certificate the Commission issues on this statute state that there is no guarantee of any specific regulatory treatment of related costs or inclusion of related plant and equipment in rate base. . ."⁴

II. FINDINGS AND CONCLUSIONS

6. Upon review of the record as a whole, the Commission concludes that Staff's findings and recommendations are reasonable and hereby adopts the same.

7. K.S.A. 66-125 does not provide the Commission with authority over employee benefit plans such as Empire's Stock Incentive Plan. Therefore, the Commission takes no action regarding Empire's request for Commission approval of said plan.

8. Notwithstanding Empire's proposed amendments which the Commission takes no action on, the Commission finds that Empire's Application satisfies the statutory requirements outlined in K.S.A. 66-125, and therefore should be approved.

manner consistent with the August 8, 2014 S-8." *Id.* For reference, Empire's August 8, 2014 Application noted Empire would be late-filing a copy of the Stock Incentive Plan's Registration Statement filed with the Securities and Exchange Commission. *See* Application ¶ 5. The Registration Statement was filed in this docket by Empire as "Late Filed Exhibit B" on August 13, 2014, but shall be considered part of the August 8, 2014 Application as if it was filed at that time.

³ *See* Report and Recommendation, p. 2.

⁴ *Id.*

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. Empire's Application for Authority to issue and sell up to an aggregate of 500,000 shares of Common Stock at \$1.00 par value each pursuant to its 2015 Stock Incentive Plan is approved.

B. Any securities issued pursuant to this Order shall be done so in a manner consistent with Empire's Form S-8 filed in this docket as "Late Filed Exhibit B."

C. Granting Empire authority to issue these securities does not guarantee any specific regulatory treatment of related costs or inclusion of related plant and equipment in rate base.

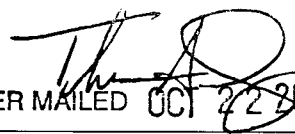
D. Parties have 15 days, plus three days if service is by mail, from the date of service of this Order in which to petition the Commission for reconsideration.⁵

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.

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commissioner; Apple, Commissioner

Dated: OCT 21 2014


ORDER MAILED OCT 22 2014
Thomas A. Day
Acting Executive Director

REV

⁵ K.S.A. 2013 Supp. §§ 66-1,118b; 77-529(a)(1).

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Shari Feist Albrecht, Chair
Jay Scott Emler, Commissioner
Pat Apple, Commissioner

Sam Brownback, Governor

REPORT AND RECOMMENDATION UTILITIES DIVISION

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

FROM: Adam Gatewood, Managing Financial Analyst
Justin Grady, Chief of Accounting & Financial Analysis
Jeff McClanahan, Direct of Utilities Division

DATE: October 3, 2014

SUBJECT: 15-EPDE-062-SEC
In the Matter of the Application of The Empire District Electric Company for Approval of its 2015 Stock Incentive Plan and for Authority to Issue up to 500,000 Shares of its Common Stock, \$1.00 Par Value, Pursuant to Empire's 2015 Stock Incentive Plan

EXECUTIVE SUMMARY:

Staff recommends the Commission grant Empire District Electric Company (Empire) a Certificate and Authority to issue the additional shares of common stock.

BACKGROUND:

Empire requests Authority from the Commission to: 1) approve *Empire's Stock Incentive Plan* (SIP); 2) issue additional shares of common stock for the sole purpose of funding the SIP; and 3) take such action necessary to carry out the SIP.

Under the SIP, shares of common equity will be issued to qualified executive, managerial, supervisory and professional personnel, and Directors of Empire to increase their ownership interest in Empire.

Empire filed for a Certificate and Authority to issue these securities under **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...* (K.S.A. 66-125, emphasis added)

ANALYSIS:

On August 8, 2014, Empire filed an S-8 Registration Statement with the Securities and Exchange Commission (S-8) registering 500,000 additional shares of common stock for the SIP. By doing so and supplying the Commission with the S-8, Empire complied with K.S.A. 66-125.

Empire requests authority from the Commission to amend its SIP. In Staff's opinion, K.S.A. 66-125 does not provide the Commission authority over employee benefit plans such as this SIP, thus, there is no reason for the Commission to act on that aspect of Empire's request.

It has always been Staff's position that authority to issue new securities pursuant to K.S.A. 66-125 does not guarantee any specific regulatory treatment of the capital costs or the related assets financed with that capital. To ensure that all parties understand the limited scope of K.S.A. 66-125, Staff requests that any Order or Certificate the Commission issues on this statute state that there is no guarantee of any specific regulatory treatment of related costs or inclusion of related plant and equipment in rate base; those issues will be addressed in subsequent rate cases.

RECOMMENDATION:

Staff recommends the Commission grant Empire a Certificate and Authority to issue additional shares of common stock for the SIP in a manner consistent with the August 8, 2014, S-8.

PLEASE FORWARD THE ATTACHED DOCUMENT (S) ISSUED IN THE ABOVE-REFERENCED DOCKET
TO THE FOLLOWING:

NAME AND ADDRESS	NO. CERT. COPIES	NO. PLAIN COPIES
JAMES G. FLAHERTY, ATTORNEY ANDERSON & BYRD, L.L.P. 216 S HICKORY PO BOX 17 OTTAWA, KS 66067		
ANDREW FRENCH, LITIGATION COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604-4027 ***Hand Delivered***		
ROBERT VINCENT, LITIGATION ATTORNEY KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604-4027 ***Hand Delivered***		
BRADLEY P. BEECHER, PRESIDENT THE EMPIRE DISTRICT ELECTRIC COMPANY 602 S JOPLIN AVENUE JOPLIN, MO 64801		

ORDER MAILED OCT 22 2014

The Docket Room hereby certified that on this _____ day of _____, 20_____, it caused a true and correct copy of the attached ORDER to be deposited in the United States Mail, postage prepaid, and addressed to the above persons.