

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

Before Commissioners: Andrew J. French, Chairperson
 Dwight D. Keen
 Annie Kuether

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.)

ORDER ADOPTING STAFF’S REPORT AND RECOMMENDATION

NOW, 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, the Commission makes the following findings:

I. Background

1. On February 28, 2024, the Empire District Electric Company (“Empire”) filed an Application pursuant to K.S.A. 66-125 for authorization to refinance \$300 million short-term debt, incurred through intercompany borrowings, by entering into an intercompany promissory note (“Note”) in the amount of \$300 million with Liberty Utilities Company (“Liberty”).¹

2. On March 7, 2024, the Commission granted intervention to the Citizens’ Utility Ratepayer Board (“CURB”).²

3. On April 9, 2024, Commission Staff filed a Report and Recommendation concerning Empire’s Application.³ On April 24, 2024, Commission Staff filed an amended Report

¹ Empire District Electric Application (Feb. 28, 2024) (“Application”).

² Order Granting CURB’s Petition to Intervene; Protective and Discovery Order (Mar. 7, 2024).

³ Notice of Filing of Staff’s Report and Recommendation (Apr. 9, 2024) (“R&R”).

and Recommendation to clarify that the interest rate on the Note would only be tied to the 10-Year U.S. Treasury bond.⁴

II. Jurisdiction and Standard of Review

4. The Commission holds full power, authority and jurisdiction to supervise and control Empire as an electric public utility pursuant to K.S.A. 66-101.

5. K.S.A. 66-125 permits any investor-owned electric utility in Kansas to issue stocks, bonds, notes, or other evidences of indebtedness for a variety of reasons, including but not limited to the discharge or lawful refunding of its obligations.

6. Empire's requested transaction is governed by K.S.A. 66-125(b)(1), which describes the procedure when a utility seeks to issue stocks, certificates, bonds, notes or other evidences of indebtedness for money only. K.S.A. 66-125(b)(1) predicates approval of such a transaction on the submission of a statement to the Commission from the Applicant showing:

- a) The amount and character of the proposed stocks, certificates, bonds, notes or other evidence 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 thereafter.

7. K.S.A. 66-125(c) dictates the Commission shall issue a certificate stating the amount, character, purposes and terms upon which such stocks, certificates, bonds, notes or other

⁴ Notice of Filing of Staff's Report and Recommendation (Apr. 24, 2024) ("Staff's Amended R&R").

evidence of indebtedness are proposed to be issued, as set out in the Application, upon full compliance by the Applicant with the provisions of K.S.A. 66-125(b)(1).

III. Discussion

8. The Note is non-amortizing and will be unsecured. It will be issued for a 10-year term. The price of the Note will be at a fixed rate of interest equal to the then current yield of the 10-year U.S. Treasury bond, on the pricing date, plus a credit spread of 185 basis points. The credit spread is based on the credit spread paid by Liberty for its 10-year U.S. 144a senior unsecured notes issued on January 12, 2024. This is the most recent capital market financing conducted by Liberty.⁵

9. Upon closing of the new Note, Empire will pay Liberty a debt issuance fee equal to \$2,640,000, which equates to the same 0.88% debt placement fees paid by Liberty for its January 12, 2024, senior unsecured note.⁶

10. Staff verified that the Applicants provided the information required by K.S.A. 66-125(b)(1).⁷

11. Staff's position regarding cost recovery is that granting a certificate to issue new securities under K.S.A. 66-125 should not guarantee any specific regulatory treatment of the costs of, or related property financed by, the securities.⁸ Pursuant to K.S.A. 66-1403, Staff stated that Empire and Liberty must track the actual costs incurred for the Note to include these costs in its revenue requirement at some time in the future.⁹

⁵ Application, p. 2.

⁶ *Id.*

⁷ See Staff's Amended R&R, p. 3.

⁸ See *id.*

⁹ See *id.*, p. 2.

12. Ultimately, Staff determined Empire complied with the provisions of K.S.A. 66-125(b)(1) and as such, recommended the Commission approve Empire's Application for a securities certificate as defined by K.S.A. 66-125. Staff further recommended the Commission reserve judgment on the reasonableness of the costs and the instrument's interest rate until the next Empire rate case.

IV. Findings and Conclusions

13. The Commission agrees that Empire complied with the provisions of K.S.A. 66-125(b)(1) and therefore, as instructed by K.S.A. 66-125(c), the Commission hereby authorizes Empire's request to enter into the \$300 million Note with Liberty for the purpose of refinancing Empire's existing \$300 million short-term debt. The Note is non-amortizing and will be unsecured. It will be issued for a 10-year term. The price of the Note will be at a fixed rate of interest equal to the then current yield of the 10-year U.S. Treasury bond, on the pricing date, plus a credit spread of 185 basis points. The credit spread is based on the spread of Liberty's 10-year U.S. 144a senior unsecured notes, issued on January 12, 2024. This is the most recent capital market financing conducted by Liberty.

14. Empire is further authorized, upon entry into the Note, a debt placement fee equal to \$2,640,000 or 0.88% of the principal amount of the Note.

15. The Commission agrees with Staff that pursuant to K.S.A. 66-1403, Empire and Liberty must track the actual costs incurred for the Note to include these costs in its revenue requirement at some time in the future.

16. The Commission further agrees with Staff that K.S.A. 66-125 does not guarantee any specific regulatory treatment of the costs of or related property financed by securities. The

Commission reserves judgment on the reasonableness of the costs associated with this instrument and its interest rate until an Empire rate case.

THEREFORE, THE COMMISSION ORDERS:

A. The Commission hereby authorizes Empire’s request to enter into the \$300 million Intercompany Promissory Note with Liberty for the purpose of refinancing Empire’s existing \$300 million short-term debt. The Note is non-amortizing and will be unsecured. It will be issued for a 10-year term. The price of the Note will be at a fixed rate of interest equal to the then current yield of the 10-year U.S. Treasury bond, on the pricing date, plus a credit spread of 185 basis points. The credit spread is based on the spread of Liberty’s 10-year U.S. 144a senior unsecured notes, issued on January 12, 2024. This is the most recent capital market financing conducted by Liberty.

B. Empire is further authorized, upon entry into the Note, a debt placement fee equal to \$2,640,000 or 0.88% of the principal amount of the Note.

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).

BY THE COMMISSION IT IS SO ORDERED.

French, Chairperson; Keen, Commissioner; Kuether, Commissioner

Dated: 05/30/2024



Lynn M. Retz
Executive Director

CRM

CERTIFICATE OF SERVICE

24-EPDE-601-SEC

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of electronic service on 05/30/2024.

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/s/ KCC Docket Room
KCC Docket Room
