

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of The Empire District)
Electric Company for Authority to Issue and Sell Under)
its Existing Indenture of Mortgage and Deed of Trust)
Dated as of September 1, 1944, as Amended and)
Supplemented, Up To and Including \$250,000,000)
Principal Amount of its First Mortgage Bonds, in One or)
More Series and to, Among Other Things, Execute and)
Deliver a Supplemental Indenture or Indentures to)
Provide for the Terms of Said Bonds)

Case No. EF-2009-0180

ORDER GRANTING APPLICATION

Issue Date: January 27, 2009

Effective Date: February 6, 2009

On November 13, 2008, The Empire District Electric Company ("Empire")¹ filed an application² seeking authority to issue and sell up to and including \$250,000,000 principal amount of its First Mortgage Bonds under its existing Indenture of Mortgage and Deed of Trust.³ In its application, Empire represents that:

The net proceeds from the sale of each series of the Bonds will be added to Empire's general funds for use in connection with the acquisition of property, business or entities, the construction, completion or improvement of its plant or system, or the improvement or maintenance of service, or the discharge or lawful refunding of its obligations, or the reimbursement of moneys actually expended from income or any other moneys in the treasury not secured or obtained from the issuance of stocks, bonds, notes or other evidences of indebtedness. Empire contemplates that the proceeds from the sale of each series of the Bonds may be used to provide financing for its construction program (including its Projected Infrastructure Investments as detailed in Appendix A of the Experimental Regulatory Plan approved by the Commission in Case No. EO-2005-0263), to discharge long-term

¹ Empire is engaged, generally, in the business of generating, purchasing, transmitting, distributing and selling electric energy in portions of Missouri, Kansas, Arkansas and Oklahoma.

² The application is filed pursuant to Sections 393.180 and 393.190, RSMo 2000, and Commission Rules 4 CSR 240-2.060, 2.080, 3.110 and 3.605.

³ The Bank of New York Mellon Trust Company, N.A., is the principal trustee, and UMB Bank & Trust, N.A. is co-trustee. The Indenture of Mortgage and Deed of Trust, as amended and supplemented, including thirty-three (33) Supplemental Indentures, constitutes a first mortgage lien on substantially all of the properties presently owned by Empire and contains provisions for subjecting after-acquired property to the lien thereof.

indebtedness by the payment of principal at maturity, to refinance outstanding indebtedness, including the payment of applicable redemption premiums, and for other corporate purposes. The money, property or labor to be procured or paid for by the issuance and sale of Bonds is reasonably required for the purposes specified in this application and such purposes are not in whole or in part reasonably chargeable to operating expense or income.⁴

Empire has satisfied all filing requirements for its application.

On January 13, 2009, the Commission's Staff filed a verified Recommendation and Memorandum regarding Empire's application. Staff recommends that the Commission approve the application pending receipt of the definite terms of issuance and subject to nine conditions. Specifically, Staff recommends that the Commission impose the following conditions:

- (1) That the Company shall be authorized to issue up to and including of \$250 million in First Mortgage Bonds under its existing Indenture of Mortgage and Deed of Trust. The Company shall not be authorized to use any portion of the debt securities for any purpose other than to discharge long term indebtedness by the payment of principal at maturity, to refinance outstanding indebtedness, including the payment of applicable redemption premiums, for construction identified as Projected Infrastructure Investments in Appendix A of the Experimental Regulatory Plan in Case No. EO-2005-0263, for construction associated with the Plum Point Power Plant and for other incidental electric utility construction projects.
- (2) That the Company shall submit to the Financial Analysis Department of the Commission the three key financial ratios (i.e. Adjusted Total Debt to Total Capitalization, Adjusted Funds From Operations Interest Coverage, and Adjusted Funds From Operations as a percentage of Average Total Debt) that were agreed to and defined in the Stipulation and Agreement in Case No. EO-2005-0263. The financial ratios shall be submitted on a quarterly calendar year basis and after each issuance of long-term debt and/or common stock identified in Appendix 5 of the Application. The ratios shall be calculated for Empire on a consolidated basis and for Empire's Missouri jurisdictional electric utility operations.

⁴ EFIS Docket No. 1, Application, Paragraph 11, filed November 13, 2008. EFIS is the Commission's Electronic Filing and Information System.

- (3) That the Company's consolidated Adjusted Total Debt to Total Capitalization Ratio objective shall be 56.5% during the period of the Experimental Regulatory Plan approved by the Commission in Case No. EO-2005-0263. If the consolidated Adjusted Total Debt to Total Capitalization Ratio exceeds 56.5% based on a rolling twelve month average for the period subject to review in a rate case during the period of the Experimental Regulatory Plan, then this will be considered in the amount of amortization necessary in any future rate cases in which the Experimental Regulatory Plan is still in effect.
- (4) That Empire shall make available to the Staff sufficient documentation to ensure that the amount of the funds acquired through issuance of securities under this Application shall be used exclusively for the benefit of Empire's regulated electric utility operations, and not for the other operations of Empire or any of its affiliates or non-regulated activities.
- (5) That the Company shall be required to file with the Commission all final terms and conditions on this financing including, but not limited to, the aggregate principal amount to be sold or borrowed, price information, estimated expenses, and the loan or indenture agreement concerning each issuance.
- (6) That the rate be consistent with similar securities of comparable credit quality and maturities issued by other issuers.
- (7) That the Company shall submit to the Financial Analysis Department of the Commission any information concerning communications with credit rating agencies in connection with this issuance(s).
- (8) That nothing in the Commission's order shall be considered a finding by the Commission of the value of these transactions for rate making purposes, and that the Commission reserves the right to consider the rate making treatment to be afforded these financing transactions and their results in cost of capital, in any later proceeding.
- (9) That the Company shall file with the Financial Analysis Department of the Commission any information concerning use of the funds from the issuance(s) with regard to redemption of any outstanding long-term debt, including Net Present Value calculations indicating the amount of interest cost savings.

No party responded to Staff's recommendation.

The Commission has reviewed and considered Empire's verified application and the Staff's verified recommendation and concludes that the application should be granted. The Commission will require Empire to comply with the conditions requested by Staff.

Pursuant to Section 393.200, RSMo 2000, the Commission finds that the issuance and sale of the financial instruments proposed in Empire's application is or will be reasonably required for the purposes specified in the application and that, except as otherwise permitted in the order, such purposes are not in whole, or in part, reasonably chargeable to operating expenses or to income.

THE COMMISSION ORDERS THAT:

1. Subject to the conditions recommended by the Staff of the Missouri Public Service Commission, the Commission:

a. authorizes The Empire District Electric Company to create one or more new series of its First Mortgage Bonds under its Indenture of Mortgage and Deed of Trust to The Bank of New York Mellon Trust Company, N.A. and UMB Bank & Trust, N.A., trustees, or their successor, dated as of September 1, 1944, as amended and supplemented, including by the First through Thirty-Third Supplemental Indentures and to be amended and supplemented, including by a Supplemental Indenture for each new series of Bonds, each such series to be issued at such time, or from time to time, to be of such aggregate principal amount as shall be determined by The Empire District Electric Company, provided the aggregate principal amount of all such series shall not exceed \$250,000,000, bearing interest, including any applicable discount, at a rate not to exceed 12%, having a maturity not less than 9 months and not more than 30 years, and having such designation and such

redemption, purchase and sinking fund provisions, if any, and other terms and provisions as shall be determined by The Empire District Electric Company, all to be set forth in the Supplemental Indenture relating to such series of Bonds, as to be executed, and also to be set forth in Appendices 4 a-x of The Empire District Electric Company's November 13, 2008 Application;

b. authorizes The Empire District Electric Company to execute and deliver to The Bank of New York Mellon Trust Company, N.A. and UMB Bank & Trust, N.A., as trustees, or their successors, a Supplemental Indenture with respect to each such series of Bonds, each to be dated on or prior to the date of the initial issuance of any Bonds of the series of Bonds to which such Supplemental Indenture relates, supplemental to the Indenture of Mortgage and Deed of Trust dated as of September 1, 1944, in substantially the form of the Supplemental Indenture filed as Appendix 3 of The Empire District Electric Company's November 13, 2008 Application;

c. authorizes The Empire District Electric Company to issue and sell and deliver in one or more new series, at such time, or from time to time, its Bonds in such amounts as Empire shall elect, which amounts, in the aggregate, shall not exceed \$250,000,000 principal amount, to obtain the authentication and delivery of the Bonds by the principal trustee in any manner permitted by the Indenture of Mortgage and Deed of Trust dated as of September 1, 1944, as amended and supplemented, including by the First through Thirty-Third Supplemental Indentures and as to be amended and supplemented and to use the net proceeds of the sale or sales of the Bonds for the purposes hereinabove stated;

d. authorizes The Empire District Electric Company to create and make effective the lien of the Indenture of Mortgage and Deed of Trust, dated as of September 1, 1944, as amended and supplemented including by the First through Thirty-Third Supplemental Indentures, and as to be amended and supplemented, including by a Supplemental Indenture for each new series of Bonds, on the property of The Empire District Electric Company in the State of Missouri to secure each new series of Bonds, provided that the aggregate principal amount thereof shall not exceed \$250,000,000;

e. authorizes The Empire District Electric Company to enter into, execute, deliver and perform the necessary agreements and other documents necessary to effectuate the transactions herein described;

f. authorizes The Empire District Electric Company to take such other actions as may be reasonably incidental, necessary, or appropriate to complete the subject transactions;

g. authorizes The Empire District Electric Company to amortize the expenses incident to the sale or sales of the Bonds over the respective life or lives thereof;

h. orders that the money, property or labor to be procured or paid for by The Empire District Electric Company through the issuance and sale of the one or more new series of Bonds is reasonably required and necessary for the purposes set forth above and will be used therefor and that such purposes are not in whole or in part reasonably chargeable to operating expenses or to income; and,

i. authorizes the Secretary of the Commission, from time to time, upon The Empire District Electric Company's request, to confirm by letter that the

commission's order is operative and effective as may be reasonably required at the time of the issuance of any new series of Bonds.

2. The Empire District Electric Company shall comply with the nine conditions recommended by the Commission's Staff that are described in detail in the body of this order.

3. Nothing in this order shall be considered a finding by the Commission of the value of these transactions for ratemaking purposes, and that the Commission reserves the right to consider the ratemaking treatment to be afforded these financing transactions and their results in cost of capital, in any later proceeding.

4. This order shall become effective on February 6, 2009.

5. This case shall close on February 7, 2009.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', is written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Harold Stearley, Senior Regulatory Law Judge,
by delegation of authority pursuant to
Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 27th day of January, 2009.