

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office  
in Jefferson City on the 24<sup>th</sup>  
day of August, 2011.

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 ) File No. EF-2011-0393  
\$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 )

**ORDER GRANTING APPLICATION WITH CONDITIONS**

Issue Date: August 24, 2011

Effective Date: September 3, 2011

The Missouri Public Service Commission is granting the application of The Empire District Electric Company ("applicant") to borrow \$250 million secured by Missouri assets, subject to conditions set forth in the ordered paragraphs at the end of this order.

**I. Procedure**

Applicant filed its initial application on June 16, 2011. Staff filed its recommendation on August 4, 2011, favoring granting the application subject to conditions. Applicant filed no response to the recommendation. Neither the governing statute<sup>1</sup> nor any other law requires a hearing before approving the unopposed application,<sup>2</sup> so this action is not a contested case and the Commission need not

---

<sup>1</sup> Section 393.190.1. All sections are in the 2000 Revised Statutes of Missouri unless otherwise stated.

<sup>2</sup> *State ex rel. Rex Deffenderfer Ent., Inc. v. Public Serv. Comm'n*, 776 S.W.2d 494, 496 (Mo. App., W.D. 1989).

separately state its findings of fact. Based on the verified filings, the Commission independently finds and concludes<sup>3</sup> as follows.

## **II. Jurisdiction**

The Commission has jurisdiction to decide the application because Applicant is a public utility, doing business in Missouri, and seeking authorization to incur debt secured by applicant's Missouri assets. That activity requires the Commission's authorization:

No gas corporation . . . shall hereafter . . . mortgage . . . or encumber the whole or any part of its franchise, works or system, necessary or useful in the performance of its duties to the public . . . without having first secured from the commission an order authorizing it so to do.[<sup>4</sup>]

Such authorization constitutes, "a special privilege, the right of supervision, regulation, restriction and control ["conditions"] of which is and shall continue to be vested in the state [<sup>5</sup>]" The state exercises that right through the Commission's order.<sup>6</sup> The standard is whether granting the application is detrimental to the public interest.<sup>7</sup>

## **III. Merits**

The burden of proof is with applicant because applicant seeks to change the status quo.<sup>8</sup> The quantum of proof is a preponderance of the evidence.<sup>9</sup> The evidence consists of the verified application and verified recommendation.

Those documents show that the main purposes of the debt are as follows. About half is for refinancing current debt, almost all the rest is for future capital expenditures

---

<sup>3</sup> Section 386.420.2.

<sup>4</sup> Section 393.190.1.

<sup>5</sup> Section 393.180.

<sup>6</sup> *Id.*

<sup>7</sup> *State ex rel. City of St. Louis v. Public Service Comm'n of Missouri*, 73 S.W.2d 393, 400 (Mo.1934).

<sup>8</sup> *Tate v. Department of Social Services*, 18 S.W.3d 3, 8 (Mo. App., E.D. 2000).

<sup>9</sup> *Id.* and *State Bd. Of Nursing v. Berry*, 32 S.W.3d 638, 641 (Mo. App., W.D. 2000).

associated with the Asbury coal-fired generating station. The remaining portion is for purposes described as statutorily-authorized, but unspecified, requiring conditions set forth below.

The parties agree on the purposes and amounts, and on the degree of Commission “supervision, regulation, restriction and control”<sup>10</sup> (“conditions”) set forth in the ordered paragraphs below. The Commission independently finds and concludes that such financing, subject to such conditions, is not detrimental to the public. Therefore, the Commission will grant the application subject to the conditions.

**THE COMMISSION ORDERS THAT:**

1. The application is approved and the authorization sought in the application is granted. Such authorization shall be subject to the following conditions.

- a. Applicant shall make available to the Commission’s staff (“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 Applicant's regulated electric utility operations, and not for the other operations of Applicant or any of its affiliates or non-regulated activities.
- b. Applicant 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.

---

<sup>10</sup> Section 393.180.

- c. The rate shall be consistent with similar securities of comparable credit quality and maturities issued by other issuers.
  - d. Applicant shall submit to the Financial Analysis Department of the Commission any information concerning communications with credit rating agencies in connection with any issuance under this order.
  - e. Applicant shall submit to 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.
  - f. Nothing in this 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.
- 2. This order shall become effective on September 3, 2011
  - 3. This file shall close on September 4, 2011.

**BY THE COMMISSION**



Steven C. Reed  
Secretary

( S E A L )

Gunn, Chm., Davis, Jarrett, and  
Kenney, CC. concur.

Dated at Jefferson City, Missouri,  
on this 24<sup>th</sup> day of August, 2011.