

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 11th day of
March, 2015.

In the Matter of the Application of The Empire
District Electric Company for Authority to Sell
Approximately 35 Miles of a 161 kV Transmission
Line to Westar Energy Inc.

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File No. EO-2015-0172

**ORDER GRANTING AUTHORITY TO SELL APPROXIMATELY 35 MILES OF
TRANSMISSION LINE TO WESTAR ENERGY INC.**

Issue Date: March 11, 2015

Effective Date: March 20, 2015

On January 23, 2015, The Empire District Electric Company ("Empire") filed an *Application and, if Necessary, Motion for Waiver* ("Application"). Empire seeks authority to sell approximately 35 miles of a 161 kV transmission line (hereinafter referred to as, "Litchfield Transmission Line") to Westar Energy Inc. The Commission set a deadline for applications to intervene, but none were received.

The Staff of the Commission filed its recommendation on February 19. Staff recommends the Commission authorize the sale with certain conditions. Empire filed a *Response to Staff's Recommendation*, stating it has no objections to Staff's recommendations, with one clarification; that the net book value of the Litchfield Transmission Line be, "as adjusted between now and the closing date." On February 26, the Office of the Public Counsel ("OPC") filed a response stating it does not oppose the *Staff Recommendation* or the requested clarification by Empire. On February 27, Staff submitted a reply supporting Empire's clarification and requesting the Commission direct

Empire to provide Staff with the workpapers Empire used to calculate the final net book value. This information was also requested by OPC.

Application

Empire is a Kansas corporation with its principal place of business in Joplin, Missouri. In addition to Missouri, Empire conducts business in the states of Kansas, Arkansas and Oklahoma. Empire is engaged in the business of generating, purchasing, transmitting, distributing and selling electric energy in those states. Prior to the Southwest Power Pool's provision for network transmission service, Empire needed a contract path to import energy produced at the Iatan I power plant. Since Iatan 1 and its transmission path were located outside of Empire's certificated area, Empire entered an agreement with Kansas Gas and Electric ("KG&E" now, Westar Energy Inc.)

On August 30, 1978, Empire and KG&E signed a 30-year contract ("Agreement") that allowed both companies to benefit from transmission lines built in the other's Kansas service territory. Under the terms of the Agreement, each company built a transmission line in their own certificated area in the state of Kansas; then leased the use of that line to the other party. To comply with the Agreement, Empire constructed the Litchfield Transmission Line.¹

Under the terms of the Agreement, after the initial 30-year term, either party could exercise a unilateral option to purchase the leased line at net book value. In 2013, Westar Energy Inc. expressed its interest in purchasing the Litchfield Transmission Line. Empire

¹ The Litchfield Transmission Line extends from the Litchfield Substation to the east, to the Neosho, Kansas, plant to the west.

states that the purchase price will be the initial cost of the line, less depreciation, plus applicable (depreciated) expenses at the time of the sale (net book value).

When the Litchfield Transmission Line was constructed, KG&E also built (and owned) a 12kV line that is located on the same poles as the Litchfield Transmission Line. This underbuilt line has caused approximately 200 North American Electric Reliability Corporation clearance violations. Empire's non-ownership of the 12kV under-built line complicates Empire's ability to correct the clearance violations. Sale of the Litchfield Transmission Line may allow Empire to avoid any direct costs associated with resolving these violations.

On July 16, 2014, the Southwest Power Pool Regional Entity granted Empire a 36 month extension to either address the clearance issue or sell the line to Westar Energy Inc., with the proviso that the problems be remediated by July 17, 2017. Empire and Westar Energy Inc. entered into a Letter of Intent ("LOI") for the sale of the Litchfield Transmission Line.

Staff's Recommendation

Staff submitted several data requests to Empire; performed analyses of the plant in service and depreciation reserve; plant additions and retirements; and the cost of removal and net salvage of the Litchfield Transmission Line. At the end of its investigation, Staff determined the sale of the Litchfield Transmission Line would not be detrimental to Empire's customers or to the public interest.

Staff recommends the Commission issue an order that authorizes the sale at a net book value of \$1,611,734.61, as adjusted between now and the closing date, with Empire providing Staff with the workpapers used to calculate the final net book value. Staff also

recommends Empire be required to notify the Commission of the sale of the asset within five days of closing or if the closing will not occur, notify the Commission how it will proceed, in addition to providing regular status reports should the sale not occur within thirty days of the effective date of a Commission order. Staff also recommends that Empire record the sale of the assets in accordance with the FERC Uniform System of Accounts.

Lastly, Staff recommends the Commission approve a waiver of Commission Rule 4 CSR 240-4.020(2) which requires a regulated entity to file a notice with the Commission a minimum of sixty days prior to the filing of a contested case.

OPC Response

OPC states that it does not oppose the recommendations made by Staff or Empire's request to clarify the authority to sell the Litchfield Transmission Line at the net book value of \$1,611,734.61, "as adjusted between now and the closing date." OPC does request the Commission order Empire to supply OPC with the workpapers used to calculate the final book value of Litchfield Transmission Line.

Discussion

Empire is an electrical corporation, subject to the jurisdiction of the Commission. Section 393.190, RSMo,² requires Commission approval before Empire may sell the Litchfield Transmission Line. Commission Rule 4 CSR 240-3.110(1)(F) requires a statement of the impact, if any, the sale of assets will have on the tax revenue of the political subdivisions in which any structures or equipment of the companies involved in the sale are located. In its application, Empire indicates that the sale of the Kansas-based transmission line will not impact the tax revenue of any Missouri political subdivision.

² 2014 Cumulative Supplement.

Westar Energy Inc. will not be subject to the Commission's jurisdiction subsequent to its purchase of the Litchfield Transmission Line.

In *State ex rel. Fee Fee Trunk Sewer Inc., v. Litz*, 596 S.W.2d 466, 468 (Mo. App. E.D. 1980), the court stated that, "[t]he Commission may not withhold its approval of the disposition of assets unless it can be shown that such disposition is detrimental to the public interest." Staff has opined that the proposed transaction will not be detrimental to Empire's customers or to the public interest. OPC does not object to the sale and no requests for intervention were made. Through the sale, Empire may be able to avoid future expenditures associated with the transmission line and reduce its rate base for ratemaking purposes.

In its application, Empire also requested a waiver of the Commission rule that requires notice be given at least sixty days prior to the filing of a contested case. The LOI is effective until April 1, 2015, unless extended by mutual agreement. The intention of the parties to the LOI to resolve the sale expeditiously could be hampered by a sixty day delay. Neither OPC nor Staff objects to Empire's request for the waiver.

Conclusion

The Commission has reviewed the Application, *Staff's Recommendation*, and the responses of OPC and Empire. The Commission finds that the sale of the Litchfield Transmission Line will not be detrimental to Empire's customers or to the public interest. Therefore, the Commission will authorize the sale of the Litchfield Transmission Line. Additionally, good cause was shown for the Commission to waive the application of Commission Rule 4 CSR 240-4.020(2).

THE COMMISSION ORDERS THAT:

1. Empire is authorized to sell the Litchfield Transmission Line to Westar Energy Inc. at a net book value of \$1,611,734.61, as adjusted between now and the closing date.
2. Within five days of the closing of the sale, Empire shall provide the parties with workpapers used to calculate the final net book value of the Litchfield Transmission Line.
3. Empire shall notify the Commission of the sale of the assets within five days after closing. Should the closing not take place within thirty days following the effective date of this order, Empire shall submit a status report within five days regarding the status of the closing, and additional status reports within five days after each additional thirty day period, until closing takes place, or until Empire determines that closing will not occur.
4. Should Empire determine that sale of the assets shall not occur, it shall timely file a notification with the Commission identifying Empire's plans for the Litchfield Transmission Line.
5. Empire shall record the sale of the assets in accordance with the FERC Uniform System of Accounts.
6. By authorizing the sale of the Litchfield Transmission Line, the Commission makes no findings that would preclude the Commission from considering the ratemaking treatment to be afforded any matters pertaining to the granting of the subject sale, including expenditures related to the sale, in any later proceeding.
7. Empire is granted a waiver from the provisions of Commission Rule 4 CSR 240-4.020(2).

8. This order shall be effective on March 20, 2015.



BY THE COMMISSION

Morris L. Woodruff

Morris L. Woodruff
Secretary

R. Kenney, Chm., Stoll, W. Kenney,
Hall, and Rupp, CC., concur.

Burton, Regulatory Law Judge.