COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF EAST KENTUCKY POWER COOPERATIVE, INC. FOR APPROVAL OF THE AMENDMENT AND EXTENSION OR REFINANCING OF AN UNSECURED REVOLVING CREDIT AGREEMENT IN AN AMOUNT UP TO $800,000,000 OR WHICH UP TO $100,000,000 MAY BE IN THE FORM OF AN UNSECURED RENEWABLE TERM LOAN AND UP TO $400,000,000 OF WHICH WILL BE IN THE FORM OF A FUTURE INCREASE OPTION	)	CASE NO. 2021-00473

O R D E R

On December 20, 2021, East Kentucky Power Cooperative, Inc. (EKPC) filed an application, pursuant to KRS 278.300 and 807 KAR 5:001 Section 4, 7, 12, 14, and 18, for approval of an amendment and extension, or refinancing, of an unsecured revolving Credit Agreement[1] (Credit Facility) in an amount up to $800 million,[2] of which $100 million may be in the form of an unsecured, renewable term loan and $400 million of which will be in the form of a future increase option.[3] There are no intervenors in this case, and the

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[1] The Commission approved the Credit Facility in Case No. 2011-00204, *Application of East Kentucky Power Cooperative, Inc. for Approval of an Unsecured Revolving Credit Agreement for a Term of up to Five Years and in an Amount up to $500,000,000* (Ky. PSC July 19, 2011). The Credit Facility was most recently amended and extended in Case No. 2016-00116, *Application of East Kentucky Power Cooperative, Inc. for Approval of the Amendment and Extension or Refinancing of an Unsecured Revolving Credit Agreement in an Amount up to $800,000,000 of Which up to $100,000,000 May Be in the Form of an Unsecured Renewable Term Loan and $200,000,000 of Which Will Be in the Form of a Future Increase Option* (Ky. PSC Apr. 11, 2016).

[2] The existing Credit Facility had $225 million drawn down at the time of EKPC's application; *see* Application at 3, paragraph 9.

[3] Application at 1.

matter now stands before the Commission for a decision based upon the evidentiary record.

LEGAL STANDARD

KRS 278.300 requires Commission approval before a utility may "issue any securities or evidence of indebtedness or assume any obligation or liability in respect to the securities or evidence of indebtedness of any other person."[4] The legal standard contained in KRS 278.300(3) establishes the purview of Commission review, stating:

> The Commission shall not approve any issue or assumption unless, after investigation of the purposes and uses of the proposed issue and proceeds thereof, or of the proposed assumption of obligation or liability, the Commission finds that the issue or assumption is for some lawful object within the corporate purposes of the utility, is necessary or appropriate for or consistent with the proper performance by the utility of its service to the public and will not impair its ability to perform that service, and is reasonably necessary and appropriate for such purpose.

PROPOSAL

EKPC's current Credit Facility was approved in Case No. 2016-00116.[5] The current Credit Facility has $225 million drawn, bears a variable interest rate premised on the London Inter-Bank Offered Rate (LIBOR), and has a maturity of July 4, 2023.[6] EKPC proposed to amend, extend, or refinance this Credit Facility with one or more syndicated or bilateral credit facilities to maintain a favorable interest rate spread and extend the

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[4] KRS 278.300(1).

[5] Case No. 2016-00116, *Application of East Kentucky Power Cooperative, Inc.* (Ky. PSC Apr. 11, 2016), final Order at 7.

[6] Application at 3, paragraph 9.

current maturity date to five years from the new closing date.[7] EKPC anticipates making an initial total commitment of up to $600 million, of which up to $100 million may be in the form of an unsecured renewable term loan.[8] The unsecured, renewable term loan would be fully pre-payable at a slightly favorable rate to debt under the Credit Facility.[9]

As stated above, the current Credit Facility is benchmarked against the LIBOR, which was phased out of any new bank contracts on January 1, 2022.[10] EKPC stated that LIBOR, as an index, will cease to exist on July 1, 2023, which necessitates any LIBOR-related contracts to be amended or refinanced before that date.[11] EKPC expects that with the phase-out of LIBOR, the new Credit Facility will be based on a different index, such as the Secured Overnight Financing Rate or the Bloomberg Short-Term Bank Yield Index, and stated that the rate would be negotiated in such a way that no significant change in overall costs is expected.[12]

EKPC stated that it would seek to include a non-guaranteed option that would allow it to increase the Credit Facility up to a total of $800 million at a future date, which it characterizes as an "accordion" feature.[13] Additionally, EKPC would seek options to allow for two or more one-year extensions or an "Evergreen" option which offers a streamlined

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[7] *Id.* at 2, paragraph 3.

[8] *Id.*

[9] *Id.*, Exhibit 1 at 1.

[10] *Id.* at 2, paragraph 3, and, Exhibit 1 at 2.

[11] *Id.*, Exhibit 1 at 2.

[12] *Id.*

[13] *Id.*

way to extend the maturity with minimal paperwork.[14] If added, EKPC requested proactive authority to exercise the extension options and the accordion feature and pay any reasonable associated fees.[15] EKPC sought to amortize any new amendment fees and expenses, over the life of the new Credit Facility, including the remaining deferred financing fees currently outstanding from its current Credit Facility of $621,066.[16]

EKPC stated that the Credit Facility would be used for general corporate purposes and to fund capital expenditures associated with the construction of utility plants until permanent, long-term financing can be obtained.[17] The Credit Facility will also provide the necessary funding for approved regulatory assets and assist EKPC in maintaining its liquidity.[18]

DISCUSSION AND FINDINGS

Having considered the evidence of record and being otherwise sufficiently advised, the Commission finds that EKPC satisfied the legal standard established in KRS 278.300 to amend and extend, or refinance, its current Credit Facility for the following reasons. First, the lawful object of EKPC's purpose is to provide safe, adequate, and reliable electric service to the public. The proposal meets the legal entity of the utility's purposes because it is intended to allow EKPC to fund capital expenditures associated with the construction of utility plant, provide EKPC with the necessary funding for approved regulatory assets, and assist EKPC in maintaining its liquidity. Second, the refinancing

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[14] *Id.*

[15] *Id.*

[16] *Id.*at 5, paragraph 14.

[17] *Id.*, Exhibit 1 at 3.

[18] *Id.*

is appropriate for the proper performance by the utility and will not impair its ability to perform that service because the proposal is effectively an extension of a financing agreement which this Commission has already approved. No other aspects of EKPC's operations or finances will change, except those related to the amendment and extension, or refinancing, of its current Credit Facility as outlined in the application and this Order. Third, the proposal is a reasonably appropriate option for EKPC to meet its statutory duty to provide safe, adequate, and reliable service because the phase-out of LIBOR necessitates an amendment or refinancing of the current Credit Facility. Furthermore, EKPC anticipates that future changes in the credit markets could lead to less favorable interest rate spreads and other relevant and vital terms.[19]

To monitor EKPC's progress with the term loan, accordion feature, and extension(s), the Commission will require EKPC to provide the Commission with certain information.

IT IS THEREFORE ORDERED that:

1. EKPC's request for amendment and extension, or refinancing, of its unsecured revolving credit agreement in an amount up to $800 million and to extend the current maturity date to five years from the new closing date, as described in its application, is approved.

2. EKPC is authorized to seek and proactively exercise the extension options and the accordion feature, as outlined in the application.

3. EKPC's proposal to amortize the balance in deferred financing fees and the new amendment fees and expenses over the life of the new Credit Facility is approved.

[19] *Id.* at 1.

4. The proceeds resulting from the proposed amendments and extension of the unsecured revolving credit agreement shall be used only for the lawful purposes set out in EKPC's application.

5. The terms and conditions of proposed amendments and extension of the unsecured revolving credit agreement shall be consistent with the terms and conditions described in EKPC's application.

6. EKPC shall, within 30 days of the issuance, file with the Commission a statement setting forth the date or dates of issuance of the term loan, accordion feature, or the extension provision authorized herein. For the term loan and accordion feature, the statement shall include the proceeds of such issuances, the interest rate(s), the maturity date(s), and all fees and expenses involved in the issuances of these evidence of indebtedness.

7. Any document filed pursuant to ordering paragraph 6 of this Order shall reference the number of this case and shall be retained in the utility's general correspondence file.

8. This case is closed and removed from the Commission's docket.

Nothing contained herein shall be deemed a warranty or finding of value of securities or financing authorized herein on the part of the Commonwealth of Kentucky or any agency thereof.

By the Commission

ENTERED

FEB 08 2022

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