

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF EAST	)	
KENTUCKY POWER COOPERATIVE, INC. FOR	)	
APPROVAL OF THE AUTHORITY TO ISSUE UP	)	CASE NO.
TO \$450,000,000 OF SECURED OR UNSECURED	)	2025-00044
PRIVATE PLACEMENT OR BANK/FINANCIAL	)	
INSTITUTION DEBT OBLIGATIONS	)	

ORDER

On March 5, 2025, East Kentucky Power Cooperative, Inc. (EKPC) filed an application,<sup>1</sup> pursuant to KRS 278.300 and 807 KAR 5:001, seeking Commission authority to issue up to \$450 million of secured or unsecured private placement or bank/financial institution debt, or some combination thereof.

In response to the original deficiency notice, EKPC filed a motion to deviate from administrative regulation 807 KAR 5:001 Section 18(2)(a), which requires a financial exhibit, as described in 807 KAR Section 5:001 Section 12, meeting certain parameters to be filed along with an Application for the authority to issue evidences of indebtedness.<sup>2</sup> These parameters include a requirement that the financial exhibit for a utility that had \$5,000,000 or more in gross annual revenue in the immediate past calendar year represent a 12-month period ending not more than 90 days prior to the date the

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<sup>1</sup> EKPC tendered its application on February 25, 2025. By letter dated February 28, 2025, the Commission rejected the application for filing deficiencies. The deficiencies were subsequently cured, and the application was deemed filed on March 5, 2025.

<sup>2</sup> 807 KAR Section 12(1)(a) requires that a financial exhibit, "cover operations for a twelve (12) month period, the period ending not more than ninety (90) days prior to the date the application is filed."

application is filed.<sup>3</sup> In its application, EKPC provided the required financial exhibit for the 12-month period ending November 30, 2024, representing a period ending 95 days prior to the date of the application. EKPC argued that 95 days is not a material difference in timing for purposes of the exhibit. The Commission granted the deviation and noted that, in this instance, 95 days was not material for the purpose of reviewing the request for indebtedness pursuant to KRS 278.300.<sup>4</sup> EKPC responded to one request for information.<sup>5</sup> There are no intervenors in this proceeding. This matter stands submitted for decision.

### LEGAL STANDARD

KRS 278.300 requires Commission authorization before a utility may “issue any securities or evidences of indebtedness, or assume any obligation or liability in respect to the securities or evidences of indebtedness of any other person.” KRS 278.300(3) establishes the legal standard and clarifies the scope 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.

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<sup>3</sup> 807 KAR Section 5:001 Section 12.

<sup>4</sup> Order (Ky. PSC Mar. 20, 2025) at 2.

<sup>5</sup> EKPC’s Response to Commission Staff’s First Request for Information (Staff’s First Request) (filed Mar. 28, 2025).

KRS 278.300(8) establishes that KRS 278.300 does not apply if the proposed issuance of securities or indebtedness is payable at periods of not more than two years from the issuance date and any renewals of such notes do not exceed six years from the initial issuance date.

### PROPOSED EVIDENCE OF INDEBTEDNESS

EKPC is seeking authority to incur indebtedness up to \$450 million in the form of secured or unsecured private placement, bank/financial institution debt, or some combination thereof. EKPC requested the proposed financing, at this time, to allow it to have the funding available to fund general purposes, initial construction costs of capital projects, and interim financing, as well as enable EKPC to finance the projects necessary to have “steel in the ground” to serve its native load.<sup>6</sup>

By receiving approval of up to \$450 million through either secured or unsecured private placement debt, EKPC would retain the flexibility to pursue the most cost-effective financing option available at the time of the issuance, based on prevailing interest rates and overall market conditions. EKPC specified that the proposed financing would not exceed \$450 million and requested the flexibility to use either form of financing depending on which is most beneficial and available at the time of issuance and the amount of the debt that will be secured under the Trust Indenture.<sup>7</sup>

If EKPC were to issue unsecured floating-rate bank debt, under current market conditions, EKPC expects to pay a variable interest rate based on the Secured Overnight Financing Rate (SOFR) plus a spread not to exceed three percent, including amortization

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<sup>6</sup> Application at 8.

<sup>7</sup> EKPC's Response to Deficiency Letter (Response to Deficiency Letter) (filed Mar. 5, 2025) at 3.

of all costs.<sup>8</sup> EKPC stated that the covenants and other terms of the debt would be similar to those in its Credit Facility.<sup>9</sup>

If EKPC were to issue private placement debt, it would be secured under its Indenture of Mortgage, Security Agreement, and Financing Statement (Trust Indenture),<sup>10</sup> which was approved in Case No. 2012-00249<sup>11</sup> and executed on October 11, 2012, with the U.S. Bank National Association as trustee.<sup>12</sup> EKPC explained that the amount of indebtedness authorized to be secured by the Trust Indenture is up to and including \$5 billion, which may be amended as needed, and there are no sinking fund provisions associated with the Trust Indenture.<sup>13</sup> As of November 30, 2024,<sup>14</sup> EKPC held \$2.47 billion of outstanding secured debt.<sup>15</sup> EKPC indicated that any portion of the proposed financing that is secured will be covered under the Trust Indenture.<sup>16</sup> Furthermore, EKPC asserted that the interest rate for this private placement debt would be a fixed rate not to exceed by more than three percent the yield to maturity of United States Treasury Bonds of comparable maturity at the time of issuance, including

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<sup>8</sup> Response to Deficiency Letter at 2.

<sup>9</sup> Response to Deficiency Letter at 2.

<sup>10</sup> EKPC's Response to Staff's First Request, Item 4.

<sup>11</sup> Case No. 2012-00249, *Application of East Kentucky Power Cooperative, Inc. for Approval to Obtain a Trust Indenture* (Ky. PSC Aug. 9, 2012), Order.

<sup>12</sup> Application at 6.

<sup>13</sup> Application at 6.

<sup>14</sup> The application lists this date as November 30, 2025. However, given that 807 KAR 5:001 Section 12(1)(a) requires the support of a financial exhibit that cover operations for a 12-month period ending not more than 90 days prior to the date the application is filed, and the attached Exhibit 3 reflects the date of November 30, 2024, the Commission believes the 2025 entry to be a typo and reads it as 2024.

<sup>15</sup> Application at 6.

<sup>16</sup> Application at 8.

amortization of all costs.<sup>17</sup> EKPC explained that the rate would be reasonable compared to the Credit Facility rates when adjusted for tenor and consideration of fixed versus floating rate, and that covenants and terms would be similar to those in its existing secured debt.<sup>18</sup>

### DISCUSSION AND FINDINGS

Having considered the evidence of the record and being otherwise sufficiently advised, the Commission finds that EKPC's request to incur indebtedness of up to \$450 million of secured or unsecured private placement, bank/financial institution debt, or some combination thereof, is approved in accordance with KRS 278.300 as discussed below.

The Commission finds that the proposed financings are for lawful objects within the corporate purposes of EKPC's utility operations, which is to provide safe and reliable service to its service territory. The Commission also finds that the proposed financing is for lawful objects within the utility's purpose because it will primarily be used to reduce borrowings under EKPC's existing Credit Facility, thereby providing the necessary liquidity to support approved capital projects. EKPC's Credit Facility, approved in Case No. 2021-00437,<sup>19</sup> is currently used to provide temporary funding for construction projects, working capital needs, and general corporate purposes.<sup>20</sup> As of February 15,

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<sup>17</sup> Response to Deficiency Letter at 2.

<sup>18</sup> Response to Deficiency Letter at 2-3.

<sup>19</sup> Case No. 2021-00437, *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* (Ky. PSC Feb. 8, 2022), Order.

<sup>20</sup> Application at 4.

2025, approximately \$450 million of the \$600 million Credit Facility was drawn and currently bears a variable interest rate of approximately 5.25 to 5.50 percent.<sup>21</sup> The current maturity date of the Credit Facility is July 26, 2029.<sup>22</sup> EKPC explained that the terms of the Credit Facility would allow EKPC to maintain up to \$900 million of unsecured debt and issue additional unsecured debt up to this limit, and/or seek a waiver of this limit by the Credit Facility holder to seek further unsecured debt.<sup>2324</sup>

In Case No. 2024-00129, the Commission granted EKPC two Certificates of Public Convenience and Necessity (CPCNs) for construction of two separate solar power facilities in Marion and Fayette counties, Kentucky, and approval of assumption of the leases and two Site Compatibility Certificates for siting of the two facilities (Projects).<sup>25</sup> EKPC is expecting capital expenditures related to the Projects of approximately \$335 million.<sup>26</sup> EKPC asserted that, while the proposed financing would not be used directly or adequately fund all the Projects, the proposed financing would reduce borrowings under EKPC's unsecured Credit Facility and provide liquidity to facilitate the

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<sup>21</sup> Application at 5.

<sup>22</sup> Application at 5.

<sup>23</sup> EKPC's Response to Staff's First Request, Item 20.

<sup>24</sup> Application at 8.

<sup>25</sup> Case No. 2024-00129, *Electronic Application of East Kentucky Power Cooperative, Inc. for Certificates of Public Convenience and Necessity and Site Compatibility Certificates for the Construction of a 96 Mw (Nominal) Solar Facility in Marion County, Kentucky and a 40 Mw (Nominal) Solar Facility in Fayette County, Kentucky and Approval of Certain Assumptions of Evidences of Indebtedness Related to the Solar Facilities and Other Relief* (Ky. PSC Dec. 26, 2024), Order.

<sup>26</sup> Application at 4.

financing of the Projects and allow the utility to continue to provide safe and reliable service to its Owner-Members.<sup>27</sup>

Additionally, the Commission finds that the proposed financing is for lawful objects within the utility's purpose because it will provide flexibility for EKPC to utilize favorable financing options and allow EKPC to access capital at favorable rates. The Commission acknowledges that EKPC intends to replace the proposed financing with permanent debt or grants from the United States Department of Agriculture's Rural Utilities Services (RUS), which may include both loans and grants through programs such as the New Empowering Rural America (New ERA) program, and that the maturities of the proposed financing are expected to be limited to a tenor of seven years.<sup>28</sup> EKPC stated that such RUS funding has historically occurred after construction is complete and does not currently have approved RUS loans for financing ongoing capital projects.<sup>29</sup> However, EKPC stated that ongoing transmission and generation project applications were submitted to RUS in September 2024 and are awaiting approval documentation.<sup>30</sup> Further, EKPC anticipates receiving direct pay tax credits upon the commercial operation of its solar projects, which would provide another source of funds to help manage its overall debt position.<sup>31</sup>

The Commission finds that the proposed financings are necessary and appropriate for, and consistent with, the proper performance of EKPC's service to the public and will

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<sup>27</sup> Application at 7-8.

<sup>28</sup> Application at 8.

<sup>29</sup> Application at 4.

<sup>30</sup> Application at 4.

<sup>31</sup> EKPC's Response to Staff's First Request, Item 14.

not impair its ability to perform that service. The Commission finds that EKPC's application requesting authority to issue indebtedness should be approved.

IT IS THEREFORE ORDERED that:

1. EKPC is authorized to incur indebtedness of up to \$450 million of secured or unsecured private placement or bank/financial institution debt or some combination thereof.

2. The proceeds from the transaction authorized in this Order shall be used to reduce existing borrowings under EKPC's Credit Facility, thereby creating liquidity to fund previously approved solar projects, other ongoing capital expenditures for generation and transmission infrastructure, and general corporate purposes consistent with EKPC's representations.

3. EKPC shall, within 30 days of the date of issuance of the debt authorized herein, file with the Commission a written statement setting forth the date or dates of issuance of the debt authorized, the date of maturity, the price paid, the proceeds of such issuance, the interest rate, and all fees and expenses, including underwriting discounts or commissions or other compensation, involved in the issuance and distribution. EKPC shall also file documentation showing the quotes that EKPC relied upon to determine the lowest interest rate.

4. EKPC shall agree only to terms and prices consistent with the parameters set forth in EKPC's application.

5. Any documents filed in the future pursuant to ordering paragraph 3 of this Order shall reference this case number and shall be retained in EKPC's post-case correspondence file.

6. The Executive Director is delegated authority to grant reasonable extensions of time for filing of any documents required by this Order upon EKPC's showing of good cause for such extension.

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

Nothing contained in this Order shall be deemed a warranty of the Commonwealth of Kentucky, or any agency thereof, of the financing, herein approved.

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PUBLIC SERVICE COMMISSION

  
Chairman

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Vice-Chairman

  
Commissioner

ATTEST:

  
Executive Director

ENTERED  
APR 29 2025  
KENTUCKY PUBLIC SERVICE COMMISSION  
jdc

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