

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY POWER)	
COMPANY FOR A CERTIFICATE OF)	CASE NO.
CONVENIENCE AND NECESSITY)	2011-00293
AUTHORIZING THE APPLICANT TO OBTAIN A)	
FRANCHISE IN THE CITY OF HINDMAN,)	
KNOTT COUNTY, KENTUCKY)	

ORDER

On August 10, 2012, Kentucky Power Company (“Kentucky Power”) filed a motion, seeking a declaration that it has exercised its rights under the Certificate of Public Convenience and Necessity (“CPCN”) granted by the Commission in this proceeding. Alternatively, Kentucky Power requests an extension of time in which to do so. In support of its motion, Kentucky Power states that it obtained a CPCN on August 16, 2011 authorizing the company to bid on a franchise for electric service offered by the city of Hindman, Kentucky. Kentucky Power further states that it has been in negotiations with the city of Hindman regarding the franchise agreement and that a city ordinance soliciting bids for the electric franchise is being advertised. Lastly, Kentucky Power avers that it intends to submit a bid for the franchise at the time for doing so under the ordinance, but no later than the end of August 2012.¹

¹ Pursuant to a telephone conference between Commission Staff Counsel and Counsel for Kentucky Power, it was advised that Kentucky Power had submitted a bid for the city of Hindman electric franchise and that the Hindman City Council will conduct a second reading on this bid in early November 2012.

As Kentucky Power points out, the CPCN statute, KRS 278.020, requires Kentucky Power to exercise its authority under the certificate within one year from the grant of the CPCN.² The statute also provides that “the beginning of any new construction or facility in good faith within the time prescribed by the commission and the prosecution thereof with reasonable diligence shall constitute an exercise of authority under the certificate.”³ Failure in good faith to so exercise that authority within the prescribed time will render the CPCN to become void. Thus, pursuant to KRS 278.020(1), Kentucky Power has until August 15, 2012 in which to exercise its authority under the CPCN authorizing it to bid on an electric franchise in Hindman, Kentucky.

Kentucky Power contends that its negotiations with the city of Hindman regarding the franchise and its intent to timely submit a bid under the ordinance should constitute a good faith effort in exercising its authority under the CPCN. In the alternative, should the Commission determine that Kentucky Power has failed to exercise its authority under the CPCN allowing it to bid on the city of Hindman electric franchise, Kentucky Power requests an extension up through and including October 31, 2012 in which to bid on the franchise.

Having reviewed the motion and being otherwise sufficiently advised, the Commission finds that the actions undertaken by Kentucky Power by negotiating with the city of Hindman regarding the franchise agreement and by its intent in submitting a bid for the franchise constitute a good faith exercise of its authority under the CPCN at

² KRS 278.020(1) tolls the one-year time limit if the delay is caused by a court order or a failure to obtain any necessary grant or consent. However, it does not appear that the tolling provision is at issue in this proceeding.

³ *Id.*

issue. The Commission therefore finds that Kentucky Power has satisfied the statutory time requirement as provided under KRS 278.020(1).

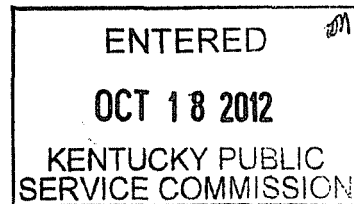
IT IS THEREFORE ORDERED that:

1. Kentucky Power's motion for a declaratory order is granted. Kentucky Power has, in good faith, timely exercised its authority under the CPCN authorizing it to submit a bid for an electric franchise offered by the city of Hindman, Kentucky, and is authorized to so submit such a bid.

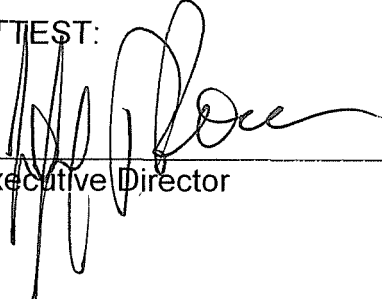
2. Within ten days of the award of the franchise at issue, Kentucky Power shall file with the Commission a written notice stating whether or not Kentucky Power was the successful bidder, and if it was the successful bidder, a copy of the executed franchise agreement shall be filed with the notice.

3. Any documents filed pursuant to ordering paragraph 2 of this Order shall reference the number of this case and shall be retained in the utility's general correspondence file.

By the Commission



ATTEST:


Executive Director

Case No. 2011-00293

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