

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF EAST KENTUCKY POWER)	CASE NO.
COOPERATIVE, INC. FOR APPROVAL TO)	2012-00249
OBTAIN A TRUST INDENTURE)	

O R D E R

On June 13, 2012, East Kentucky Power Cooperative, Inc. ("EKPC") applied to the Commission for approval to obtain a trust indenture to replace its existing mortgage with the Rural Utilities Service ("RUS") and National Rural Utilities Cooperative Finance Corporation ("CFC"). EKPC's application stated that: (1) RUS is no longer lending for base load fossil fuel generating units; (2) RUS's lending and guaranty authority is subject to an annual appropriations process; (3) pursuant to the terms of its existing mortgage, EKPC's access to other sources of secured financing is subject to first obtaining a lien accommodation from RUS; and (4) RUS's lien accommodation process is extremely lengthy and subject to certain inflexible RUS requirements.

EKPC's Application also stated that a trust indenture will provide it with broader, more certain, and quicker access to secured financing and that all debt secured under the existing mortgage will be secured under the proposed trust indenture. The trust indenture would be a mortgage and security agreement that would constitute a lien on substantially all of EKPC's real and tangible personal property and certain of its intangible property. A trustee, which EKPC will select after receiving approval to enter into the trust indenture, will hold the lien on the collateral granted under the trust

indenture equally (pro rata) for the benefit of all EKPC's existing and future holders of debt issued under the trust indenture.

EKPC's Application also stated that it would not be incurring any additional debt in connection with the adoption of the trust indenture and, therefore, it is not requesting any additional financing. The Application also stated that because EKPC is generally unable to receive credit to its collateral borrowing base for property owned by its subsidiary, Charleston Bottoms Rural Electric Cooperative Corporation ("Charleston Bottoms"), it is in EKPC's best interest to dissolve Charleston Bottoms and transfer its assets to EKPC prior to, or at the time of, the adoption of the trust indenture.

Under the proposed trust indenture, EKPC's primary financial compliance test will no longer be a minimum Times Interest Earned Ratio ("TIER") of 1.05 for the average of the two best of the three most recent fiscal years. Instead, the primary financial compliance test will be a minimum Margins For Interest ("MFI") of 1.10 for each fiscal year. Unlike its existing mortgage, the proposed trust indenture will carry no Debt Service Coverage ("DSC") requirement. However, CFC's existing DSC requirements will continue to apply to EKPC subsequent to establishing the proposed trust indenture.

PROCEDURE

On June 22, 2012, the Commission issued a procedural Order which allowed for two rounds of discovery on EKPC's Application. Commission Staff issued, and EKPC responded to, one information request. There are no intervenors in this proceeding. This matter now stands submitted for a decision.

DISCUSSION

The difficulties associated with RUS financing cited by EKPC are not immaterial, nor are they unfamiliar to the Commission. In a recent proceeding, Case No. 2012-00192,¹ the Commission approved the request of Nolin Rural Electric Cooperative Corporation (“Nolin”) to refinance 100 percent of its existing RUS debt with \$50 million in new CFC debt. Nolin’s request was premised on recent and ongoing difficulties with RUS’s loan process and the stringent, and inflexible, requirements associated therewith.

The Commission is encouraged by EKPC’s decision to address its future financing requirements in a proactive manner which will increase its access to capital markets and improve its ability to adapt to the ever-changing landscape of the electric utility industry. While the annual MFI financial compliance test will be more restrictive than RUS’s existing TIER requirements, EKPC has exhibited increased attention to its financial metrics in recent years. This is evidenced by EKPC’s commitment to build its equity position, as was demonstrated in its most recent general rate case.²

For these reasons, we are persuaded that the proposed trust indenture will be in the best interests of EKPC, its member distribution cooperatives, and their retail member ratepayers. The Commission will want to monitor EKPC’s progress in establishing its proposed trust indenture and will, therefore, require that EKPC provide written notice of its selection of a trustee and also provide the final executed trust indenture for the record of this proceeding.

¹ Case No. 2012-00192, Application of Nolin Rural Electric Cooperative Corporation for an Order Pursuant to KRS 278.300 and 807 KAR 5:011, Section 11 and Related Sections, Authorizing the Cooperative to Obtain a Loan in the Amount of \$50,000,000 from the National Rural Utilities Cooperative Financing Corporation (Ky. PSC June 22, 2012).

² Case No. 2010-00167, Application of East Kentucky Power Cooperative, Inc. for General Adjustment of Electric Rates (Ky. PSC Jan. 14, 2011).

FINDINGS AND ORDERS

The Commission, having considered the evidence of record and being otherwise advised, finds that:

1. Authorizing EKPC to obtain a trust indenture for the purpose of replacing its existing mortgage with RUS and CFC is for lawful objects within the corporate purpose of EKPC's utility operations, is necessary and appropriate for and consistent with the proper performance of its service to the public, will not impair its ability to perform that service, is reasonably necessary and appropriate for such purposes, and should therefore be approved.

2. Given the importance of this matter, EKPC should be required to file with the Commission, within 10 days of its selection, a written notice of its selection of the trustee which will administer the trust indenture. Likewise, EKPC should be required to file with the Commission, within 10 days of its execution, the trust indenture which it obtains in accordance with the parameters set out in its Application.

IT IS THEREFORE ORDERED that:

1. EKPC is authorized to obtain a trust indenture in accordance with the parameters described in its Application.

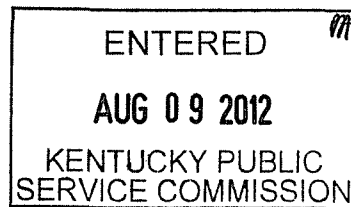
2. EKPC shall file with the Commission, within 10 days of its selection, a written notice of its selection of the trustee which will administer the trust indenture.

3. EKPC shall file with the Commission, within 10 days of its execution, the trust indenture it obtains in accordance with the parameters set out in its Application.

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

Nothing contained herein shall be construed as a finding of value for any purpose or as a warranty on the part of the Commonwealth of Kentucky or any agency thereof as to the securities authorized herein.

By the Commission



ATTEST:



Executive Director

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