



Steven L. Beshear
Governor

Leonard K. Peters
Secretary
Energy and Environment Cabinet

Commonwealth of Kentucky
Public Service Commission
211 Sower Blvd.
P.O. Box 615
Frankfort, Kentucky 40602-0615
Telephone: (502) 564-3940
Fax: (502) 564-3460
psc.ky.gov

David L. Armstrong
Chairman

James W. Gardner
Vice Chairman

Charles R. Borders
Commissioner

February 10, 2011

PSC STAFF OPINION NO. 2011-001

Mark David Goss, Esquire
Frost Brown Todd LLC
Lexington Financial Center
250 W. Main Street, Suite 2800
Lexington, KY 40507-1749

**Re: East Kentucky Power Cooperative Staff Opinion Request
Purchase Power Agreement with Ameren**

Dear David:

Commission Staff is in receipt of your e-mail dated January 26, 2011 requesting guidance on the need for East Kentucky Power Cooperative, Inc. ("EKPC") to obtain Commission approval for a 100 MW purchase of power during three winter months of 2011-2012, and three winter months of 2012-2013. Specifically, you ask whether this power purchase agreement will constitute an evidence of indebtedness that, under KRS 278.300, requires prior approval by the Commission. A copy of your e-mail request is attached hereto. A response from Commission Staff was sent to you by e-mail on February 2, 2011, and this letter is being sent to confirm the guidance set forth in that e-mail response.

The facts as contained in your e-mail are that EKPC is contemplating entering into one contract to purchase 100 MW of power for delivery beginning December 1, 2011 through February 28, 2012, and for delivery beginning December 1, 2012 through February 28, 2013, on a 24 hour/7 day week basis during the two delivery periods. The power is very competitively priced, but the price is not locked-in and is subject to change. Thus, while EKPC would typically request a written opinion as to its need for prior Commission approval, guidance is now being requested on an expedited basis to avoid an undue delay that might result in an increase in the currently quoted price of the power.

Based on a review of the facts as set forth in your e-mail, the controlling statute is KRS 278.300(1), which prohibits a utility from issuing any evidences of indebtedness until it has obtained the prior approval of the Commission. However, KRS 278(8) of that

Mark David Goss, Esquire
February 10, 2011
Page 2

statute exempts from the requirement of prior approval the issuance of evidences of indebtedness that are payable within two years. Under the purchase of power being contemplated here, EKPC will not begin to purchase the 100 MW of power until December 1, 2011. It is that date, *i.e.* December 1, 2011, upon which the seller will begin to deliver power to EKPC, and it is from that date that EKPC is obligated to begin making payments to the seller for the power delivered. Thus, the power contract evidences a financial obligation for EKPC to make payments for power delivered over the time period beginning on December 1, 2011, and ending on February 28, 2013. Since that time period spans 15 months, EKPC's financial obligation, should it enter into the purchase of power described in your e-mail, comes within the "not more than two (2) years" exemption under KRS 278.300(8).

This letter represents Commission Staff's interpretation of the law as applied to the facts presented. This Opinion is advisory in nature and not binding on the Commission should the issue herein be formally presented for resolution by the Commission. Questions concerning this opinion should be directed to Richard Raff, Assistant General Counsel, at (502) 564-3940, Extension 263.

Sincerely,



Jeff Derouen
Executive Director

RR/kar
Enclosure