



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

April 2, 2012

Hon. Clayton O. Oswald  
Taylor, Keller & Oswald, PLLC  
1306 West Fifth Street, Ste. 100  
P.O. Box 3440  
London, KY 40743-3440

**PSC STAFF OPINION 2012-009**

Re: Jackson Energy Cooperative Request for Staff Opinion

Dear Mr. Oswald:

Commission Staff acknowledges receipt of your letter dated March 12, 2012, on behalf of Jackson Energy Cooperative ("Jackson Energy"), in which you request an opinion concerning whether Jackson Energy must obtain Commission approval prior to entering into certain purchase power agreements with two third party generation projects. It is Jackson Energy's belief that approval is not needed, reasoning that KRS 278.300 does not govern in this instance because the "agreements are not securities or evidences of indebtedness, inasmuch as Jackson Energy only pays for the electricity it actually receives and therefore, it has no obligation to pay these two suppliers if no power is produced." Additionally, Jackson Energy contends that "this is not a situation in which Jackson must receive and pay for electricity that is not needed. All electricity produced by both suppliers can be used by Jackson Energy at any time up to the limits of production of those facilities. This will simply result in a reduction of power purchased from East Kentucky [Power Cooperative, Inc. ("EKPC")], which is allowed pursuant to the terms and conditions of the wholesale power contract." Jackson Energy notes that its wholesale power contract with EKPC permits it to purchase up to 15 percent of its power from a third party supplier.

According to the letter, the first purchase power agreement is with the Wellhead Energy project, which utilizes a small generator to convert natural gas from stranded wells or pipelines to electricity. Under the agreement, Jackson Energy would purchase all electricity generated by Wellhead Energy for a period of ten years and would only pay for electricity that is actually generated. If no electricity is generated, then Jackson Energy would be under no obligation to pay Wellhead Energy. Although Jackson Energy did not provide the pricing terms due to its confidential nature, the letter does

state that the purchase price to Jackson Energy is less than that paid to its wholesale supplier, East Kentucky Power Cooperative, Inc. This particular project will generate approximately one megawatt of electricity on a monthly basis. Jackson Energy's winter peak is 300 MW and its summer peak is 160 MW.

The second purchase power agreement is with North American Resources, which is a landfill project that converts methane gas produced by the natural decomposition of waste into electricity by a generator. Under the contract, Jackson Energy will purchase all power generated by North American Resources at the landfill site for a period of 20 years. Similar to the Wellhead agreement, Jackson will only pay for electricity that is generated and will not be obligated to purchase power if the landfill does not produce any electricity. Again, Jackson Energy did not disclose the rate to be paid for the electricity, citing confidentiality issues; however, it does note that the price will be less than what Jackson is paying to EKPC.

In Administrative Case No. 350,<sup>1</sup> the Commission determined that jurisdictional electric utilities could enter into long-term purchase power contracts without prior Commission approval.<sup>2</sup> The Commission did express, however, that such contracts could require prior approval under KRS 278.300 if they constitute evidence of indebtedness. In particular, the Commission stated: "... the inclusion in such contracts of minimum payment obligations or take/pay provisions may necessitate prior approval."<sup>3</sup> KRS 278.300(1) provides in full as follow:

No utility shall 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 until it has been authorized so to do by order of the commission.

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<sup>1</sup> The Consideration and Determination of the Appropriateness of Implementing a Ratemaking Standard Pertaining to the Purchase of Long-Term Wholesale Power by Electric Utilities as Required in Section 712 of the Energy Policy Act of 1992 (Ky. PSC Oct. 25, 1993).

<sup>2</sup> Id., at 8. The Commission, however, encouraged jurisdictional electric utilities to file long-term purchase power contracts for prior approval, noting the significant risk created by a subsequent rate disallowance should the Commission ultimately find that such contracts to be not prudent or reasonable.

<sup>3</sup> Id., at 9.

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Based on the facts presented in your letter, the provisions of the two purchase power agreements do not appear to contain any minimum payment obligations or take or pay commitments that would trigger the requirements of KRS 278.300(1). Under the terms of the proposed purchase power agreements, Jackson Energy would only be required to pay for electricity actually generated. In the event the two projects associated with the proposed purchase power agreements fail to generate any electricity, Jackson Energy would not be under any obligation to pay.

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 upon the Commission should the issues presented herein be formally presented for Commission resolution. Questions concerning this opinion should be directed to Quang D. Nguyen, Staff Attorney, at (502) 564-3940, Extension 256.

Sincerely,



Jeff Derouen  
Executive Director

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