

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF KENERGY CORP. FOR)
APPROVAL OF ISSUANCE OF EVIDENCES OF) CASE NO. 99-497
INDEBTEDNESS)

O R D E R

On December 13, 1999, Kenergy Corp. (“Kenergy”) applied for Commission approval to execute new promissory notes and other loan documents to evidence the assumption of notes and loans originally owed by Green River Electric Corporation (“Green River”) and Henderson Union Electric Cooperative Corporation (“Henderson Union”). The Commission approved the consolidation of Green River and Henderson Union to form Kenergy in Case No. 99-136¹ and the consolidation became effective on July 1, 1999.

On January 12, 2000, the Commission informed Kenergy that its application was deficient, and would not be considered filed until either the filing deficiencies were cured or Kenergy sought and was granted a waiver of those filing requirements. On January 18, 2000, Kenergy filed a request for waiver of the cited filing deficiencies. On February 8, 2000, the Commission granted Kenergy a waiver of the cited filing deficiencies and declared the application filed as of January 18, 2000.

¹ Case No. 99-136, The Application of Green River Electric Corporation and Henderson Union Electric Cooperative Corporation for Approval of Consolidation, final Order dated June 18, 1999.

At the time of the consolidation, Green River and Henderson Union were indebted to the Rural Utilities Service (“RUS”), the National Rural Utilities Cooperative Finance Corporation (“CFC”), and the National Bank for Cooperatives (“CoBank”). Kenergy states in its application that RUS, CFC, and CoBank require it to execute new promissory notes and other loan documents to evidence the assumption of the Green River and Henderson Union loans by Kenergy. Kenergy also states that the new notes and loan documents do not modify the terms of the existing loans in any substantive manner and that they serve the purpose of redocumenting the loans in the name of Kenergy. Kenergy notes that under KRS 278.300(10), the Commission’s approval is not required where the evidences of indebtedness are subject to the supervision or control of the federal government or any agency thereof. As the RUS is such an agency, Kenergy requests that the Commission disclaim jurisdiction over the RUS loans, and approve the assumption of the debt issued by CFC and CoBank.

Kenergy’s application shows that the face amount of the debt owed to RUS is \$65,892,000 and the face amount of the debt owed to CFC and CoBank is \$22,035,660.² Kenergy’s RUS Form 7 for the month of December 1999 shows the outstanding balance of the RUS debt is \$47,506,700 and the outstanding balance of the CFC and CoBank debt is \$17,510,019.

² See Application Exhibits A through C. The face amount of Green River’s debt to RUS is \$40,065,000, while the face amount of the debt owed to CoBank is \$11,828,000. The face amount of Henderson Union’s debt to RUS is \$25,827,000, while the face amount of the debt owed to CFC is \$10,207,660.

The Commission, after consideration of the evidence of record and being advised, finds that:

1. The assumption by Kenergy of the loans owed by its predecessor cooperatives, Green River and Henderson Union, is for lawful objects within the corporate purposes of Kenergy, is necessary and appropriate for and 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 reasonable, necessary and appropriate for such purposes.

2. Kenergy is capable of executing its notes as security for the loans as stated in its application.

3. Kenergy's execution of new promissory notes and other loan documents to evidence the assumption of the RUS, CFC, and CoBank loans should not modify the terms of these existing loans in any substantive manner and should only serve the purpose of redocumenting the loans in the name of Kenergy. If, during the finalization of the new promissory notes and other loan documents, substantive changes occur, Kenergy should within 10 days of its identification of those changes make the appropriate filing seeking Commission approval of the changes.

4. Kenergy should include in its monthly financial report to the Commission the current interest rate on its outstanding variable rate loans.

5. As the issuance of securities or evidences of indebtedness subject to the control of a federal governmental agency does not require Commission approval, KRS 278.300(10), and as the RUS is an agency of the federal government, no action on Kenergy's proposal to assume the outstanding RUS loans is required.

IT IS THEREFORE ORDERED that:

1. Kenergy is authorized to issue its promissory notes and other loan documents to evidence its assumption of Green River's and Henderson Union's loans with CFC and CoBank, subject to the provisions and terms contained within its application.

2. Kenergy hereby is authorized to execute its notes as security for the loans authorized herein.

3. Kenergy shall comply with all matters set out in Findings 3 and 4 as if they were individually so ordered.

Nothing contained herein shall be deemed a warranty or finding of value of securities or financing authorized herein on the part of the Commonwealth of Kentucky or any agency thereof.

Done at Frankfort, Kentucky, this 1st day of March, 2000.

By the Commission

ATTEST:

Executive Director