

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CITIPOWER, L.L.C.)	
_____)	CASE NO. 2004-00101
)	
ALLEGED FAILURE TO COMPLY WITH)	
KRS 278.300, KRS 278.020(1) AND THE)	
COMMISSION'S ORDER IN)	
CASE NO. 1999-00225)	

O R D E R

Citipower, L.L.C. ("Citipower") is a limited liability company organized under the laws of the State of Delaware with its principal offices located at 2122 Enterprise Road, Greensboro, North Carolina. Citipower also maintains an office in Whitley City, Kentucky. Citipower engages in the distribution of gas to the public for compensation for lights, heat, power, and other uses, and is a utility subject to Commission jurisdiction. KRS 278.010.

This Commission is mandated by KRS 278.040 to regulate utilities and enforce the provisions of KRS Chapter 278.

KRS 278.300(1) provides that "[n]o 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."

KRS 278.300(8) provides an express exemption from this statute if a note issued by the utility is for a proper purpose, is not in violation of law and is payable not more

than 2 years from the date of issuance or not renewed for a period in excess of 6 years from the date of issue of the original note.

KRS 278.020(1) prohibits any person, partnership or private corporation, or combination thereof from beginning construction of any plant, equipment, property, or facility for furnishing to the public any of the services enumerated in KRS 278.010 until such person has obtained from the Commission a certificate that public convenience and necessity require such construction.

On January 10, 2003, staff members from the Commission's Financial Audit Branch issued a Report of Financial Examination ("Report") of Citipower for the year ended December 31, 2001, which is attached as Appendix A. Since several deficiencies were noted in that Report, Commission Staff conducted a follow-up examination on December 10 and 11, 2003, at Citipower's office in Whitley City, Kentucky. Commission Staff prepared a Report of Follow-up Examination ("Follow-up Report") and sent it to Citipower on February 27, 2004. The Follow-up Report is attached hereto as Appendix B. Citipower filed Responses to the Report and the Follow-up Report ("Responses") on February 14, 2003 and March 26, 2004, respectively, which are attached as Appendix C.

Commission Staff alleges in the Report and Follow-up Report that:

1. On December 31, 2001, Citipower had debt on its books that consisted of three renewable loans, all of which had a maturity date of two years or less, that had been renewed several times. Staff noted that, in December 2003, Citipower combined the three notes into one loan, which included a note that had initially been issued on November 11, 1997. Citipower did not seek Commission approval of the new loan.

2. Citipower issued securities every year since 1997 and did not seek Commission approval to make such issuances.

3. Citipower assumed the debt of Lick Branch Unit, L.L.C (“LBU”) to Oneida Gas in the amount of \$445,000 without Commission approval.

4. Citipower extended a pipeline to Stearns, Kentucky without seeking a Certificate of Public Convenience and Necessity (“CPCN”).

5. Citipower did not comply with the Commission’s directive in its March 31, 2000 Order in Case No. 1999-00225¹ to file a compliance plan and to file quarterly reports.

Citipower acknowledged in its Responses that it violated KRS 278.300 when it failed to obtain approval from the Commission before it renewed the November 11, 1997 note, assumed the debt of LBU, and issued securities as set forth above.

After reviewing the Report and Follow-up Report prepared by Commission Staff and the Responses filed by Citipower, the Commission finds that a prima facie showing has been made that Citipower has violated KRS 278.300 by its failure to seek and obtain Commission approval for its renewal of the November 11, 1997 note, its assumption of the debt of LBU, and its issuance of securities annually from 1997 through 2003. The Commission further finds that a prima facie showing has been made that Citipower has violated KRS 278.020(1) by its failure to obtain a CPCN for the Stearns pipeline extension and violated the Commission’s Order dated March 31, 2000 in Case No. 1999-00225 by its failure to comply with the directives therein.

¹Case No. 1999-00225, The Application of Citipower, LLC for an Adjustment of Rates Pursuant to the Alternative Rate Filing Procedure for Small Utilities.

IT IS THEREFORE ORDERED that:

1. Citipower shall appear before the Commission on July 8, 2004, at 9:00 a.m., Eastern Daylight Time, in Hearing Room 1 of the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky, for the purpose of presenting evidence concerning the alleged violations of KRS 278.300 and KRS 278.020 and of showing cause why it should not be subject to the penalties prescribed in KRS 278.990(1) for the alleged willful violations. The official record of the proceeding shall be by video only, unless otherwise requested by a party to this proceeding.

2. Citipower shall submit to the Commission, within 20 days of the date of this Order, a written response to the allegations contained herein.

3. The Report and Follow-up Report of Commission Staff are attached as Appendix A and B, respectively, and are made a part of the record in this proceeding.

4. The Responses filed by Citipower are attached as Appendix C and are made a part of the record in this proceeding

5. Any motion requesting an informal conference with Commission Staff to consider any matter which would aid in the handling or disposition of this proceeding shall be filed with the Commission no later than 20 days from the date of this Order.

Done at Frankfort, Kentucky, this 1st day of June, 2004.

By the Commission

(See document named "200400101_06012004apx.pdf" for Appendix.)

ATTEST:



Executive Director

