

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF OWEN ELECTRIC	)	
COOPERATIVE, INC. FOR AN ORDER	)	
PURSUANT TO KRS 278.300 AND 807 KAR	)	
5:001, SECTION 11 AND RELATED SECTIONS,	)	
AUTHORIZING THE COOPERATIVE TO	)	CASE NO.
OBTAIN A LOAN UNDER THE RUS/COBANK	)	2009-00010
CO-LENDING PROGRAM NOT TO EXCEED	)	
\$28,083,000 AT ANY ONE TIME FROM RURAL	)	
UTILITIES SERVICE AND COBANK	)	

O R D E R

On January 8, 2009, Owen Electric Cooperative, Inc. ("Owen") submitted its application seeking Commission approval to obtain a loan under the Rural Utilities Service ("RUS")/CoBank Co-Lending program not to exceed \$28,083,000. Owen states that \$21,083,000 of the loan will be provided by RUS and the remainder, \$7 million, will be provided by CoBank. Because the application failed to meet certain filing requirements, the Commission issued a deficiency letter to Owen on January 16, 2009, indicating that the application had been rejected for filing. In response to the deficiency notice, Owen submitted additional information on February 9, 2009. The additional information supplied by Owen cured the deficiencies and Owen's application was considered filed as of February 9, 2009. On April 6, 2009, the Commission determined that additional time was needed to complete its investigation and continued this case beyond the 60-day period specified in KRS 278.300(2).

As Owen correctly notes, the loan amount to be provided by RUS does not require Commission approval pursuant to KRS 278.300(10),<sup>1</sup> which provides an exemption from Commission approval for any debt issued by a federal agency. Owen, however, is required to seek Commission approval of the \$7 million portion of the loan to be funded by CoBank.

According to Owen, the waiting period to obtain RUS's approval of the requested loan is approximately 12 to 15 months, and it will then take an additional three months before the RUS funds are available for advancement to Owen.<sup>2</sup> In the interim, Owen would be required to obtain short-term financing to fund its construction projects, which has a higher interest rate than the rate for long-term permanent financing.<sup>3</sup> If it is allowed to use the proceeds of the proposed \$7 million CoBank loan, Owen will achieve a considerable savings in interest expense, and the CoBank repayment options are more favorable than those of RUS.<sup>4</sup>

Owen states that the CoBank loan provides for draw-downs of the loan on an as-needed basis. When the loan is advanced, Owen will have to decide between a weekly quoted variable rate or a quoted fixed rate. Owen maintains that the decision of which

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<sup>1</sup> KRS 278.300(10) provides, in relevant part, as follows:

This section does not apply in any instance where the issuance of securities or evidence of indebtedness is subject to the supervision or control of the federal government or any agency thereof . . . .

<sup>2</sup> Application at 3.

<sup>3</sup> Id.

<sup>4</sup> Id.

option to choose will be made at the time of the loan advance, based upon the interest rates available at the time of the advance and the option that will provide Owen with the lowest anticipated interest over the life of the loan.

The Commission, having considered the evidence of record and being otherwise sufficiently advised, finds that the proposed CoBank loan is for lawful objects within Owen's corporate purposes, 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 be approved.

In Case No. 2002-00454,<sup>5</sup> the Commission granted Owen a Certificate of Public Convenience and Necessity ("Certificate") to construct the facilities described in Owen's 2003-2004 Work Plan. Since that proceeding, Owen has issued two work plans, the September 2005 - August 2007 Work Plan ("2005 Work Plan") and the January 2008 - December 2009 Work Plan ("2008 Work Plan"), but has not formally requested that the Commission issue a Certificate for either of the work plans.<sup>6</sup> Citing the Certificate

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<sup>5</sup> Case No. 2002-00454, Application of Owen Electric Cooperative, Inc. for an Order Issuing a Certificate of Public Convenience and Necessity (Ky. PSC Apr. 4, 2003).

<sup>6</sup> Owen's Response to Commission Staff's First Information Request, item 3.

exemption described in KRS 278.020(2),<sup>7</sup> Owen contends that the construction of the facilities contained in its two work plans would fall within the ordinary course of business exemption and, thus, no Commission approval was needed.<sup>8</sup>

Owen estimated that the costs of the construction projects contained in the 2005 Work Plan and the 2008 Work Plan were \$15,468,170<sup>9</sup> and \$21,281,712,<sup>10</sup> respectively. Upon review of Owen's work plans, the Commission finds that they involve significant capital expenditures for new facilities and, therefore, cannot be deemed ordinary extensions of existing systems in the usual course of business. Accordingly, we find that the subject work plans are not exempt from the Certificate requirements set forth in KRS 278.020(1). The Commission further advises all of the electric cooperatives subject to its jurisdiction that they are required to obtain a Certificate for all work plans prior to beginning construction of the facilities contained in those plans.

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<sup>7</sup> KRS 278.020(2) applies to electric transmission lines. Exemptions from a Certificate for distribution lines and facilities are governed by KRS 278.020(1). That statute provides, in relevant part, as follows:

No person, partnership, public or private corporation, or a combination thereof shall commence providing utility service to or for the public or begin the construction of any plant, equipment, property, or facility for furnishing to the public any of the services enumerated in KRS 278.010, except retail suppliers for service connections to electric-consuming facilities located within its certified territory and ordinary extensions of existing systems in the usual course of business, until that person has obtained from the Public Service Commission a certificate that public convenience and necessity require the service or construction.

<sup>8</sup> Owen's Response to Commission Staff's First Information Request, item 3.

<sup>9</sup> Owen's Response to Commission Staff's First Information Request, item 1; 2006 Work Plan at 18.

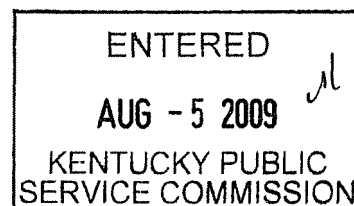
<sup>10</sup> Id., 2008 Work Plan at 10.

IT IS HEREBY ORDERED that:

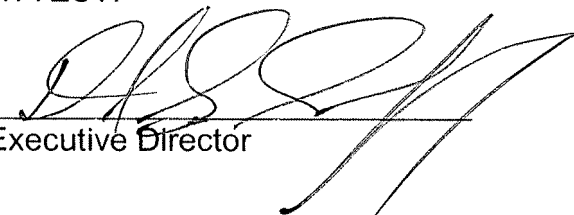
1. Owen is authorized to borrow \$7,000,000 from CoBank for a 32-year period, bearing a fixed or variable rate as chosen by Owen at the time the first monies are drawn from CoBank, subject to the terms and conditions as described in the application.
2. Owen shall select the interest rate option which will result in the lowest net cost of money to it over the term of the financing.
3. Owen shall, within 10 days of obtaining the CoBank loan authorized herein, file with the Commission a statement setting forth the date the loan was obtained, the principal amount, the interest rate option selected, and a detailed analysis supporting the interest rate option chosen.
4. The proceeds from the transaction authorized herein shall be used only for the lawful purposes specified in the application.

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

Mark Stallons  
President  
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