

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF EAST KENTUCKY POWER)	
COOPERATIVE, INC. FOR APPROVAL OF THE)	CASE NO.
ISSUANCE OF \$900,000,000 OF SECURED)	2009-00476
PRIVATE PLACEMENT DEBT AND UP TO)	
\$21,435,000 OF UNSECURED DEBT)	

O R D E R

On December 30, 2009, East Kentucky Power Cooperative, Inc. ("East Kentucky") filed its application in this case requesting approval to issue evidences of indebtedness consisting of \$900 million in secured private placement debt and approximately \$21.4 million of unsecured debt. The proceeds of the debt are to be used to fund the construction of Smith 1, a 278 MW circulating fluidized bed coal-fired generating unit in Clark County, Kentucky. Gallatin Steel Company ("Gallatin Steel"), the largest consumer of electric power on the East Kentucky system, requested and was granted intervention.

The Commission's Order dated January 13, 2010 established a procedural schedule which provided for two rounds of discovery to East Kentucky, an opportunity for intervenors to file testimony, and discovery to intervenors. As part of its discovery, Gallatin Steel asked East Kentucky a number of questions relating to its need for Smith 1, whether or not Smith 1 is the lowest-cost option to meet future power

requirements, and the financial implications of cancelling Smith 1.¹ East Kentucky refused to answer those questions, claiming that the information being requested went beyond the scope of its application for approval of financing.²

The Commission takes administrative notice that similar issues relating to East Kentucky's need for additional generating capacity, and whether or not Smith 1 is its least-cost source of new generation, have been raised in a separate complaint case filed by three retail consumers on East Kentucky's system, John Patterson, John Rausch, and Wendell Berry (collectively, "Retail Customers").³ East Kentucky has filed a motion to dismiss in that complaint case, and the Retail Customers have filed a response in opposition.

On February 18, 2010, a motion to intervene in this financing case was filed jointly by four retail consumers on East Kentucky's system and three environmental organizations. The four retail consumers include the three Retail Customers in the complaint case; one additional retail customer, Mike Hannon; and three environmental organizations, the Sierra Club, Kentucky Environmental Foundation, and Kentuckians for the Commonwealth. The motion to intervene raises questions relating to East Kentucky's need for Smith 1, the estimated cost for Smith 1, and East Kentucky's ability

¹ Gallatin Steel's First Data Request, dated January 19, 2010, Item Nos. 4 and 10.

² East Kentucky's Response to Gallatin Steel's First Data Request, Item Nos. 4 and 10.

³ Case No. 2009-00426, Dr. John Patterson, Fr. John Rausch, Wendell Berry, Sierra Club, Kentucky Environmental Foundation and Kentuckians for the Commonwealth v. East Kentucky Power Cooperative, Inc., filed Oct. 28, 2009.

to obtain reasonable financing terms and rates. East Kentucky filed an objection to this motion to intervene, and the movants filed a response thereto.

On April 15, 2010, East Kentucky filed a motion to withdraw its financing application, stating that “[F]inancial prudence requires that it step back and reassess its immediate needs for this financing.” East Kentucky further stated that, upon completion of its reassessment of its financing needs, a new financing application will be filed.

Based on the evidence of record and being otherwise sufficiently advised, the Commission finds that the construction of Smith 1 was approved on August 29, 2006 by the issuance of a Certificate of Public Convenience and Necessity (“CPCN”), pursuant to KRS 278.020(1), in Case No. 2005-00053.⁴ Once utility facilities have been approved by the issuance of a CPCN, a subsequent application under KRS 278.300 to finance those facilities does not typically encompass a reexamination of whether or not the approved facilities are still needed and are least-cost. With respect to Smith 1, the Commission has considered that Gallatin Steel has raised issues of need in this financing case, while the Retail Customers are raising similar issues in their complaint case.

While the Commission will now grant East Kentucky’s motion to withdraw this financing case, the issues raised regarding the need for Smith 1 are still pending in the complaint case filed by the Retail Customers, and those issues will resurface in any

⁴ Case No. 2005-00053, Application of East Kentucky Power Cooperative, Inc. for a Certificate of Public Convenience and Necessity, and a Site Compatibility Certificate, for the Construction of a 278 MW (Nominal) Circulating Fluidized Bed Coal-Fired Unit and Five 90 MW (Nominal) Combustion Turbines in Clark County, Kentucky (Ky. PSC Aug. 29, 2006).

future financing case East Kentucky may file relating to additional expenditures for Smith 1. In recognition of the significant future capital outlay projected for Smith 1, and to avoid duplication of effort and achieve administrative economy and efficiency, the Commission finds that the issues raised by Gallatin Steel in this case relating to the need for Smith 1 and whether or not it is still the least-cost power supply option, as well as the similar issues raised by the Retail Customers in their complaint case, should be considered together in a new investigation being initiated today by Order of the Commission in Case No. 2010-00238.⁵ As noted in that Order, Gallatin Steel, as well as the Retail Customers who are the named complainants in the complaint case, are being made parties to the new investigation.

IT IS THEREFORE ORDERED that:

1. East Kentucky's motion to withdraw this financing case is granted.
2. Issues relating to East Kentucky's need for Smith 1, whether or not it is the least-cost available supply alternative, and its financial impacts on East Kentucky and the rates of its member distribution cooperatives shall be considered in investigative Case No. 2010-00238, initiated today by the Commission.
3. The pending motion to intervene filed by the four retail consumers and three environmental organizations is denied as moot.

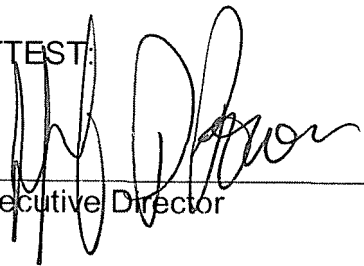
⁵ Case No. 2010-00238, An Investigation of East Kentucky Power Cooperative, Inc.'s Need for the Smith 1 Generating Facility.

4. This case is closed and removed from the Commission's docket.

By the Commission

ENTERED
JUN 22 2010 *sl*
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

Mark David Goss
Frost, Brown, Todd, LLC
250 West Main Street
Suite 2700
Lexington, KY 40507

Honorable Michael L Kurtz
Attorney at Law
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OH 45202