

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION OF EAST KENTUCKY POWER)	
COOPERATIVE, INC. FOR A DECLARATION)	CASE NO.
OF ITS AUTHORIZATION TO SELL THE SMITH)	2013-00005
UNIT 1 ASSETS WITHOUT A TRANSFER OF)	
CONTROL FILING UNDER KRS 278.218)	

ORDER

On January 4, 2013, East Kentucky Power Cooperative, Inc. (“EKPC”) filed a petition seeking a declaratory ruling authorizing EKPC to sell its Smith 1 Generating Unit (“Smith 1”) without having to obtain prior Commission approval pursuant to KRS 278.218. Finding that the Smith 1 assets are obsolete, the Commission issues this Order authorizing EKPC to sell its Smith 1 assets without having to file a transfer of control application pursuant to KRS 278.218(1)(a).

BACKGROUND

On August 29, 2006, the Commission granted EKPC a Certificate of Public Convenience and Necessity (“CPCN”) to construct Smith 1, a 278 MW circulating fluidized bed coal-fired generating unit at EKPC’s Smith Generating Station.¹ Almost four years later, on June 22, 2010, the Commission, on its own motion, opened an investigation of EKPC’s continued need for Smith 1, citing certain unique circumstances, including a significant escalation in the estimated cost and EKPC not

¹ 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).

having obtained all necessary permits to construct and operate the unit.² At the time the investigation was opened, Smith 1 was under construction in Clark County, Kentucky. The investigation was concluded on February 28, 2011 when the Commission accepted and approved a settlement agreement³ that, among other things, provided for EKPC to cancel the construction of Smith 1 and voluntarily relinquish the CPCN previously granted.⁴ The Commission's decision was based on a review of EKPC's 2010 load forecast, which did not support an immediate need for additional base load generation. Indeed, the 2010 load forecast reflected "a significant downward trend in EKPC's load growth,"⁵ primarily due to "the severe economic recession which began in late 2007 and which has caused EKPC's peak load to decrease by more than 10 percent since 2008."⁶ The Commission concluded that, "[b]ased on EKPC's 2010 load forecast . . . EKPC no longer has a need for additional base load generation until 2018 and, within that time frame, completion of Smith 1 is no longer the least-cost power supply option."⁷ Thus, the Commission approved EKPC's request to relinquish its CPCN for Smith 1.

² Case No. 2010-00238, *An Investigation of East Kentucky Power Cooperative, Inc.'s Need for the Smith 1 Generating Facility* (Ky. PSC Feb. 28, 2011).

³ The settlement agreement was unanimous. In addition to EKPC, the parties to the proceeding were: Gallatin Steel Company; the Office of the Attorney General, by and through his Office of Rate Intervention; and three retail customers, Wendell Berry, Dr. John Patterson, and Fr. John Rausch.

⁴ Case No. 2010-00238, *East Kentucky Power Cooperative, Inc.* (Ky. PSC Feb. 28, 2011).

⁵ *Id.* at 6.

⁶ *Id.*

⁷ *Id.* at 8.

In Case No. 2010-00449,⁸ EKPC requested the establishment of a regulatory asset of approximately \$163.4 million for expenditures made on Smith 1 as of September 30, 2010, plus its \$10 million estimate of the costs of cancelling, or unwinding, various vendor contracts. During the course of discovery, the proposed Smith 1 cancellation costs were revised downward to \$157,388,715. Based on the evidence in that case, the Commission found that:

Having accepted the Settlement reached in Case No. 2010-00238, which reflects EKPC's decision to cancel Smith 1, and based upon our review of EKPC's present value analysis of the costs of continuing with the construction of Smith 1, as well as the costs of pursuing other power supply alternatives, we find it is less costly to cancel Smith 1 and recover the amount invested therein than it would be to complete construction of the unit.⁹

The Commission then authorized EKPC to establish a regulatory asset in the amount of \$157,388,715 which included the amounts expended on Smith 1 and EKPC's estimate of the costs to unwind its Smith 1 vendor contracts. Among other things, the Commission also ordered EKPC to file quarterly reports summarizing the status of its mitigation efforts to reduce the balance of the regulatory asset through the sale of the Smith 1 physical assets.

EKPC'S PETITION

The petition for a declaratory Order notes that EKPC has filed seven quarterly mitigation reports and, as reported in its December 2011 mitigation report, EKPC has negotiated final settlement of all Smith 1 contracts. As reported in its December 28,

⁸ Case No. 2010-00449, *Application of East Kentucky Power Cooperative, Inc. for an Order Approving the Establishment of a Regulatory Asset for the Amount Expended on Its Smith 1 Generating Unit* (Ky. PSC Feb. 28, 2011).

⁹ *Id.* at 6.

2012 mitigation report, the regulatory asset balance relating to Smith 1 had been reduced to \$150,925,119 which included expenses associated with marketing the assets and preserving the assets for potential sale. As of that report, 324 inquiries regarding the assets have been received, which EKPC narrowed to one United States prospect and seven international prospects. In the event that it receives an offer for Smith 1, EKPC advised that it would need to have the ability to quickly respond and complete the transaction in a timely manner in order to maximize its mitigation efforts. Accordingly, it seeks a declaratory ruling on whether the transfer of assets statute, KRS 278.218, would govern such a potential sale.

That statute provides, in relevant part, that:

No person shall acquire or transfer ownership of or control, or the right to control, any assets that are owned by a utility as defined under KRS 278.010(3)(a) without prior approval of the commission, if the assets have an original book value of one million dollars (\$1,000,000) or more and: (a) The assets are to be transferred by the utility for reasons other than obsolescence; or (b) The assets will continue to be used to provide the same or similar service to the utility or its customers.¹⁰

In anticipation of the transfer of those assets, EKPC contends that the transfer of the Smith 1 assets is a result of obsolescence, and as such, no approval would be required under KRS 278.218(1)(a).

COMMISSION FINDINGS

Based on a review of EKPC's petition and the provisions of KRS 278.218(1)(a), the Commission finds that the Merriam-Webster Dictionary defines the term "obsolete"

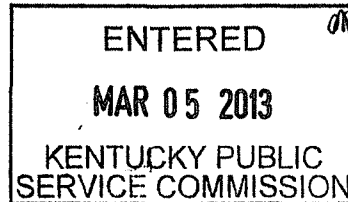
¹⁰ KRS 278.218(1).

as "no longer in use or no longer useful."¹¹ In light of the Commission's decision authorizing EKPC to cancel construction of Smith 1 because the base load generation is not needed, it is clear that Smith 1, in its current uncompleted state, cannot now be considered "in use" or "useful" as originally intended. Therefore, the Smith 1 assets meet the definition of obsolescence as used in KRS 278.218(1)(a). Further, those assets have never been used, and are incapable of being used, to provide service to the utility or its customers, as used in KRS 278.218(1)(b). Since neither KRS 278.218(1)(a) nor (b) are applicable to the circumstances presented here, EKPC needs no further approval from the Commission, beyond that set forth in Case No. 2010-00238, to transfer those assets in a commercially reasonable manner.

IT IS THEREFORE ORDERED that:

1. EKPC's Petition for a Declaration of Its Authorization to Sell the Smith Unit 1 Without a Transfer of Control Filing Under KRS 278.218 is granted.
2. EKPC is authorized to sell its Smith 1 assets without further approval from the Commission under KRS 278.218.

By the Commission



ATTEST:

Executive Director

¹¹ In addition, Black's Law Dictionary defines obsolete as "No longer in general use; out-of-date." *Black's Law Dictionary* 1183 (9th ed. 2009).

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