

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY POWER)	
COMPANY FOR APPROVAL OF THE TERMS)	
AND CONDITIONS OF THE RENEWABLE)	
ENERGY PURCHASE AGREEMENT FOR)	CASE NO.
BIOMASS ENERGY RESOURCES BETWEEN)	2013-00144
THE COMPANY AND ECOPOWER)	
GENERATION-HAZARD LLC; AUTHORIZATION)	
TO ENTER INTO THE AGREEMENT; GRANT)	
OF CERTAIN DECLARATORY RELIEF; AND)	
GRANT OF ALL OTHER REQUIRED)	
APPROVALS AND RELIEF)	

ORDER

The matter is before the Commission upon a motion filed by the Office of the Attorney General (“AG”) requesting that this case be held in abeyance until a final decision has been rendered in Case No. 2012-00578.¹ In support of the motion, the AG states that the proposed Renewable Energy Purchase Agreement (“REPA”) contains a provision that allows the parties to that agreement to not be bound to proceed under the agreement unless Commission approval is obtained in Case No. 2012-00578. The AG contends that this case is moot in the absence of a Commission order approving Kentucky Power’s application in Case No. 2012-00578 and, therefore, this case should be held in abeyance until a final order is issued in Case No. 2012-00578.

¹ Case No. 2012-00578, Application of Kentucky Power Company for (1) a Certificate of Public Convenience and Necessity Authorizing the Transfer to the Company of an Undivided Fifty Percent Interest in the Mitchell Generating Station and Associated Assets; (2) Approval of the Assumption by Kentucky Power Company of Certain Liabilities in Connection with the Transfer of the Mitchell Generating Station; (3) Declaratory Rulings; (4) Deferral of Costs Incurred in Connection with the Company’s Efforts to Meet Federal Clean Air Act and Related Requirements; and (5) All Other Required Approvals and Relief filed Dec. 19, 2012.

In response to the AG's motion, Kentucky Power Company ("Kentucky Power") objects to the request and argues that any delay in this proceeding would be tantamount to denying Kentucky Power's application. Kentucky Power notes that under Section 6.1 of the REPA, there must be a final, non-appealable order from the Commission approving the REPA by October 15, 2013.² Kentucky Power states that in order for the appeals time to lapse, a final order in this matter must be issued no later than September 11, 2013.³ Noting that a final decision would most likely not be rendered in Case No. 2012-00578 until mid-August, Kentucky Power contends that any abeyance of this matter would effectively not permit Kentucky Power to obtain a final, non-appealable order by the date required under Section 6.1 of the REPA.

In his reply, the AG argues that the Commission is vested with authority to control the procedures of the matters pending before it and that Kentucky Power should not be allowed to dictate the procedural aspects based upon the terms of the REPA. The AG reiterates that a decision in the instant matter is premature in light of the fact that the REPA is contingent upon the Commission's approval of Kentucky Power's request to acquire a 50 percent interest of the Mitchell generating station in Case No. 2012-00578, which case is currently pending before the Commission. Thus, the AG contends that the instant matter is moot without a Commission order approving the Mitchell transfer and that this case should be placed in abeyance until after the date the Commission issues a final order in Case No. 2012-00578.

² On June 28, 2013, Section 6.1 of the REPA was amended to reflect the requirement of a final, non-appealable order by November 15, 2013. This would mean that an order would need to be issued by the Commission by October 11, 2013 to take into account the appeals time.

Having reviewed the pleadings and being otherwise sufficiently advised, the Commission finds that the AG has failed to establish good cause to hold this matter in abeyance. Article 6.1 of the REPA provides, in relevant part, as follows:

If the Commission fails to issue the Approval Order by October 15, 2013,⁴ or the FERC fails to issue the FERC Approval Order by October 15, 2013, Purchaser, by notice to Seller delivered on or before November 15, 2013, may terminate this REPA, without any further financial or other obligation to Seller as a result of such termination except that Purchaser shall return the Security Fund to Seller; provided that, if Purchaser has not on or prior to November 15, 2013⁵ provided notice to Seller of a termination of this REPA as a result of the failure to obtain either the Commission Approval Order or the FERC Approval Order, Purchaser shall be deemed to have waived its right to terminate this REPA for failure to achieve such condition precedent.

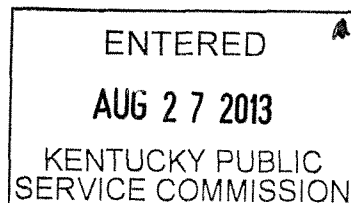
Contrary to the AG's argument that the instant matter is moot without a Commission order approving the Mitchell transfer, the REPA does not automatically terminate if the Mitchell transfer is not approved. Article 6.1 provides that Kentucky Power may terminate the agreement, but only upon notice to ecoPower or that such right to terminate could be waived by Kentucky Power. The Commission finds that the instant matter is not dependent upon the Mitchell transfer case and that the matter at bar should proceed and be decided independent of the outcome of the Mitchell transfer case.

⁴ As previously noted the REPA was amended on June 28, 2013, to reflect the requirement of a final, non-appealable order by November 15, 2013.

⁵ Pursuant to the June 28, 2013 Amendment, the notice deadline was changed to December 15, 2013.

IT IS THEREFORE ORDERED that the AG's motion to hold the case in
abeyance is denied.

By the Commission



ATTEST:


Executive Director

Case No. 2013-00144

Kenneth J Gish, Jr.
Stites & Harbison
250 West Main Street, Suite 2300
Lexington, KENTUCKY 40507

Jennifer B Hans
Assistant Attorney General's Office
1024 Capital Center Drive, Ste 200
Frankfort, KENTUCKY 40601-8204

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

Honorable Mark R Overstreet
Attorney at Law
Stites & Harbison
421 West Main Street
P. O. Box 634
Frankfort, KENTUCKY 40602-0634

Ranie Wohnhas
Managing Director
Kentucky Power Company
101 A Enterprise Drive
P. O. Box 5190
Frankfort, KY 40602