

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF WINDSTREAM KENTUCKY)
EAST, LLC AND WINDSTREAM KENTUCKY)
WEST, LLC FOR A DECLARATORY RULING)
THAT APPROVAL IS NOT REQUIRED FOR)
THE TRANSFER OF A PORTION OF THEIR)
ASSETS; (2) ALTERNATIVELY FOR APPROVAL) CASE NO. 2014-00283
OF THE TRANSFER OF ASSETS; (3) FOR)
A DECLARATORY RULING THAT)
COMMUNICATIONS SALES AND LEASING,)
INC. IS NOT SUBJECT TO KRS 278.020(1); AND)
(4) FOR ALL OTHER REQUIRED APPROVALS)
AND RELIEF)

ORDER

On August 7, 2014, Windstream Kentucky East, LLC and Windstream Kentucky West, LLC (collectively "Applicants") filed with the Commission an application ("Application") requesting a Declaratory Order that approval of a transfer of assets is not required by Kentucky Law. The Applicants alternatively requested that, if approval is required for the transfer, the Commission approve the transfer under KRS 278.020. The Applicants further requested a Declaratory Order that Communication Sales and Leasing, Inc. ("CSL"), the company acquiring the assets from the Applicants, is not required to obtain a certificate of public convenience and necessity ("CPCN") for said acquisition.

Out of an abundance of caution, the Commission docketed this case as an application under KRS 278.020. Therefore, pursuant to KRS 278.020, the Commission must issue an Order addressing the Application on or before December 5, 2014.

BACKGROUND

The contemplated transaction is described as a corporate reorganization of Windstream Holdings, Inc. (“Holdings”) which would result in two separate entities: Holdings and CSL, a real estate investment trust (“REIT”). The stated purpose of the reorganization is to allow the Applicants to improve their financial condition.¹ Holdings also claims that it will be able to retire \$3.2 billion in debt.²

Windstream Corporation, the parent company of the Applicants, is a subsidiary of Holdings. Under the transaction, the Applicants will transfer the subject assets to Windstream Corporation, which will then transfer the assets to CSL, which will, in turn, lease the assets back to Windstream Holdings for a lease payment of \$650 million a year. Upon the transfer of the assets, Holdings and CSL will be separate entities under common shareholder ownership. Ultimately, CSL and Windstream Holdings will be separately publicly traded entities.

The transaction will involve the transfer of the majority of Applicants’ equipment and assets to the REIT. These assets are all of the Applicants’ distribution system, consisting of fiber optic cable, copper cable, conduits and conduit systems, poles, attachments hardware, guy wires, pedestals, concrete pads, central office land and buildings, signal repeaters, and amplifiers.³ Windstream Kentucky East, LLC will transfer approximately 183,990 poles and 4.4 million feet of underground conduit and Windstream Kentucky West, LLC will transfer 262 poles and 300,000 feet of

¹ Application at 2.

² *Id.* at 3.

³ *Id.* at 8.

underground conduit to CSL.⁴ The estimated value of the assets in Kentucky ranges from approximately \$595,334,107 to \$664,481,969⁵ and includes approximately 353,000 access lines.⁶ CSL will provide Holdings approximately \$3.2 billion in exchange for the transfer of the assets.⁷ These assets, upon transfer to CSL, will then be leased back to Holdings under an exclusive master 15-year lease, with Applicants having the exclusive right to extend the lease by an additional 20 years.⁸

Certain assets, such as central office switches and other electronics, will not be transferred and will remain with the Applicants.⁹ Applicants will retain legal title to any easements that they hold, but will transfer the beneficial ownership rights and interests to the easements to CSL.¹⁰ Applicants will not transfer any distribution facilities financed in partnership with the federal government through the American Recovery and Reinvestment Act.

Holdings has received a private letter from the IRS stating that the proposed transaction to reclassify the subject assets as real estate and spin those assets into a REIT is legal. Applicants also state that, according to the letter ruling from the IRS, and

⁴ Windstream Kentucky East, LLC and Windstream Kentucky West, LLC's Responses to the Commission Staff's Post-Hearing Data Requests, (filed Nov 23, 2014) ("Post-Hearing Response.") Response to Request No. 2.

⁵ *Id.*, Response to Request No. 4.

⁶ Application at 23.

⁷ The \$3.2 billion will be for the assets of Holdings nationwide, not just for the assets in Kentucky.

⁸ Application at 9.

⁹ *Id.* at 8.

¹⁰ Windstream Kentucky East, LLC and Windstream Kentucky West, LLC's Responses to the Commission Staff's Second Data Request for Information (filed November 3, 2014) ("Response to Second Data Request") Response to Request No.1.

pursuant to the Internal Revenue Code, if CSL were to function as a utility, it could not be considered a REIT.¹¹ Applicants further state that the transaction does not require the approval of the Federal Communications Commission. (“FCC”).¹²

Under the terms of the master lease, the Applicants will be responsible for the maintenance, costs, capital investments and operations of the subject assets. Holdings and the Applicants will also have complete control over the subject assets.¹³ The Applicants will not need to obtain approval from CSL to fix, repair, replace or make alterations, including capital improvements, to the assets.¹⁴ The Applicants will continue to pay all the taxes and regulatory costs, including Commission assessments. The proposed transaction is not expected to impact the annual assessment amount.¹⁵ The Applicants will be responsible for making required filings with the Commission and for responding to Commission inquiries, including consumer complaints.

The Applicants claim that the rates and services offered in Kentucky will not change, nor will the customers notice any difference in the service being received, if the transaction is approved.¹⁶ Applicants also state that they will not transfer any customer

¹¹ Application at 15.

¹² *Id.* at 4.

¹³ *Id.* at 9,

¹⁴ *Id.*

¹⁵ Windstream Kentucky East, LLC and Windstream Kentucky West, LLC’s Responses to the Commission Staff’s First Request for Information (filed October 1, 2014) (“Response to First Data Request”) Response to Request No.14.

¹⁶ Application at 25.

accounts or regulatory authorizations to CSL.¹⁷ Applicants will also remain as carriers of last resort in their respective territories.¹⁸

The Applicants claim that their ownership will not change – they will still be owned by Holdings.¹⁹ CSL will not have any direct or indirect control, ownership or right to control Holdings, and by extension, will have no control over the Applicants.²⁰

The Kentucky Cable Telecommunications Association (“KCTA”) and the Communications Workers of America (“CWA”) requested and received intervention. A procedural schedule was established providing for discovery, and a public hearing was held on November 13, 2014. Subsequent to the hearing, CWA filed a letter that stated that it has no objection to the proposed transaction.

The KCTA, in its post-hearing brief, states that it takes no position regarding the proposed transaction and the forming of CSL.²¹ However, KCTA raises several concerns about pole attachments, specifically regarding Commission jurisdiction over pole attachment rates and the manner in which the rates will be calculated.

KCTA asserts that the Commission has asserted jurisdiction over pole attachment rates since 1981²² and has applied a formula rate for these pole

¹⁷ *Id* at 8.

¹⁸ *Id.* at 15.

¹⁹ *Id* at 10.

²⁰ *Id.* at 14.

²¹ Kentucky Cable Telecommunications Association’s Brief, filed November 26, 2014, (“KCTA Brief”) at 5.

²² KCTA Brief at 1, *citing*, PSC Case Nos. 8040 and 8090, *Regulation of Rates, Terms and Conditions for the Provision of Pole Attachment Space to Cable Television Companies*, (Ky. PSC Oct. 28., 1981) (“Pole Attachment Jurisdiction Order”).

attachments since 1982.²³ KCTA expresses concern that it is not clear what effect, if any, the proposed transaction will have on the rights of KCTA members to attach to the poles transferred to CSL.²⁴ KCTA argues that the order approving the proposed transaction should specifically retain jurisdiction over the poles, require full compliance with pole-attachment rate methodology, and require the Applicants and CSL to acknowledge these requirements as a condition to completing the transaction. KCTA further argues that the Commission should also require that none of the elements of the Applicants' calculations of just and reasonable pole-attachment rates as set forth under the rate methodology in the Rate Methodology Order should be altered as a result of the proposed transaction, including embedded costs of poles, accumulated depreciation or cost of money.²⁵

DISCUSSION

The Commission must address several questions regarding the Application. The first question is whether the Commission has the jurisdiction to approve or deny the proposed transaction under KRS 278.020. If the Commission determines that it does have this authority, it must then determine what, if any, conditions are necessary to grant approval of the transaction. The Commission must also determine what, if any, jurisdiction, it has over CSL.

²³ KCTA Brief at 2, *citing*, PSC Administrative Case No. 251, *The Adoption of Standard Methodology for Establishing Rates for CATV Pole Attachments*, (Ky. PSC Aug. 12, 1982) ("Rate Methodology Order").

²⁴ *Id.* at 3.

²⁵ *Id.* at 6.

Approval Pursuant to KRS 278.020(5)

KRS 278.020(5) provides that:

No person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission by sale of assets, transfer of stock, or otherwise, or abandon the same, without prior approval by the commission. The commission shall grant its approval if the person acquiring the utility has the financial, technical, and managerial abilities to provide reasonable service.

The Applicants assert that because there is no change in ownership of the Applicants or the Applicants' parent, no approval is needed under KRS 278.020(5) or (6).²⁶ The Applicants also contend that the proposed transaction will not allow CSL to exercise any control over the Applicants.²⁷

For the purpose of KRS Chapter 278, "control" is defined as, "the power to direct the management or policies of a person through ownership, by contract, or otherwise. . . ."²⁸ It is uncontested that there will be no transfer of ownership of the Applicants or their parent companies; therefore the Commission must determine if the proposed transaction constitutes a transfer or acquisition of control of or over the Applicants. However, because CSL will own and have the capacity to control access to the asset being transferred, and that this control can be used to influence the management or policies of the Applicants, we find that the proposed transaction constitutes a transfer of control under KRS 278.020(5) and must be approved by the Commission.²⁹

²⁶ Application at 13-14.

²⁷ *Id.* at 14.

²⁸ KRS 278.010(19).

²⁹ We do agree, however, that approval is not required under KRS 278.020(6), which provides for a narrower definition of "control."

The Applicants have represented that the lease into which CSL and Holdings will enter transfers all control over the assets back to Holdings and that CSL will have no control over the assets or the Applicants. This is belied by the very language of the master lease. The proposed master lease contains several clauses that require Holdings (and by extension, the Applicants) to use the assets in a certain way. For example, the master lease provides that Holdings “must continuously operate the Facilities for one or more of the activities constituting the Primary Intended Use. . . .”³⁰ Although “primary intended use” is defined broadly,³¹ it nonetheless imposes conditions on the use of the assets, which, in turn, is a form of control, by contract, over the policies of the Applicants. The master lease has further elements of control; for example the master lease requires continuous use of the assets, but allows for discontinuance only if it, “would not reduce the route miles with respect to any one Facility by more than 10% or reduce the route miles by more than 5% for all Facilities in the aggregate over the term.”³²

Although the Commission does not encourage the discontinuance of any landline service in Kentucky, it is possible that future legislative changes to the Commission's

³⁰ Application, Exhibit 4, p. 2.

³¹The master lease provides, in part, that:

Tenant is only permitted to use the Leased Property for the provision, routing and delivery of voice, data, video, data center, cloud computing and other communication service, the colocation activities in the data center space, or ancillary activities provided under the Communications Regulations (the “Primary Intended Use”) consistent with its current use or with prevailing communications industry use at any time.

Application, Exhibit 4, p. 2.

³² *Id.*

statutory regulation would allow the Applicants to abandon certain portions of its landline facilities in the Commonwealth. Assuming, *arguendo*, that this change in regulatory authority occurs, and that it would be financially beneficial for the Applicants to abandon certain facilities, the Applicants ability to do so could be constrained by the master lease, thus influencing the business and policy of the Applicants.

CSL also has strong termination rights, and, however unlikely, can effectively evict Holdings from the assets in the event of a dispute. This lends CSL additional negotiating power in the occurrence of a distressed scenario, with the ability of CSL to either influence the direction of Holdings and/or extract additional concessions under the master lease.

Thus, while the master lease does convey back to Holdings almost all control over the day-to-day operations of the facility, it still erects several requirements for Holdings. These requirements could influence the policy, actions and direction of the Applicants. Thus, the transfer of the assets, and entry into the master lease, constitute a transfer of control under KRS 278.020(5) and require Commission approval.

As discussed, *supra*, the power to conduct the day-to-day operations of the assets will reside with the Applicants and not with CSL. The Applicants, and not CSL, will provide telecommunications services in the Commonwealth.³³ After the transaction is completed, the Applicants will be managed and operated by the same executives and employees and, therefore, will maintain the same technical and managerial ability to provide reliable telecommunications service as they did prior to the transaction.³⁴ The

³³ Application at 19.

³⁴ *Id.* at 20.

Applicants will continue to possess the technical capabilities after the transfer as they possess prior to the transfer.³⁵ The Applicants assert that the transaction will result in the retirement of approximately \$3.2 billion of debt of Holdings and that this retirement of debt will allow the Applicants to increase their target capital expenditures from 11-13% to 13-15% of total revenue, allowing the Applicants to invest more heavily in expanding their broadband network and providing enhance services.³⁶ The Applicants also state that the transaction will improve the Applicants continued financial capability by increasing the net free cash flow and by reducing Holdings' long-term debt by \$3.2 billion.³⁷

The Applicants state that they will have the continued managerial capability to provide service in the Commonwealth. The Applicants also claim that they will continue to employ personnel experienced in providing telecommunications service and that their local operations will be staffed and managed by employees who have ties to the community and experience with regard to the local telephone business.³⁸

Based on the Applicants' representations in their Application and at the hearing, it appears to the Commission that the Applicants, after the completion of the transaction, will have the financial, technical, and managerial abilities to provide reasonable service in the Commonwealth. However, the Commission will issue its approval of this transaction subject to several conditions.

³⁵ *Id.*

³⁶ *Id.* at 20-21.

³⁷ *Id.* at 22.

³⁸ *Id.* at 21.

The Commission shares the same concerns expressed by KCTA regarding the Applicants' treatment of pole attachments and the Commission's jurisdiction over them. The Commission also is concerned that the master lease is not final and that material aspects of the master lease could change from the representations the Applicants have made to the Commission. Likewise, the Commission will want to be kept apprised of the Applicants' relationship with CSL and any changes that may occur in that relationship. Subject to these and the other conditions contained in the ordering paragraphs, the Commission finds that the transaction should be approved pursuant to KRS 278.020(5).

The Jurisdictional Status of CSL

The Applicants argue that approval of the transaction is not necessary under KRS 278.020(1) because CSL will not commence providing utility service to or for the public, as provided for in KRS 278.020(1).³⁹ The Applicants further argue that CSL does not meet the definition of a utility under KRS 278.010(3)(e) because CSL will not be engaged in providing telecommunications service to or for the public for compensation.⁴⁰ The Applicants argue that because CSL merely has an ownership interest in the assets, will not offer to provide service to the public, and will not have control over the assets, it is not a utility under Kentucky law.

If the proposed transaction is completed as is described in the application, filed testimony and at the hearing, it is uncontroverted that CSL will have title to and own certain poles, lines, conduit etc., of the Applicants. Currently these assets meet the

³⁹ Application at 14, Direct Testimony of John P. Fletcher ("Fletcher Direct"), p. 6-7.

⁴⁰ Application at 17, Fletcher Direct at 7.

definition of a facility under KRS 278.010(11) because they are being used for or in connection with the business of the Applicants, who are utilities under Kentucky law. The use of these facilities will not change after the transaction is completed; they will still be used in connection with the business of the Applicants. Specifically, the business of the Applicants is the provision of telecommunications service over wireline facilities.

Kentucky law defines a telecommunications utility as follows:

[A]ny person . . . who owns, controls, operates, or manages any facility used or to be used for or in connection with:

(e) The transmission or conveyance over wire, in air, or otherwise, of any message by telephone or telegraph for the public, for compensation....⁴¹

There is no requirement in this statute that the owner of the facilities be engaged or provide the services necessary for the transmission or conveyance over wire, etc., of any message. The statute only requires that a person own, control, operate or manage any facility to be a utility under Kentucky law. Based on the facts set forth in the application, the Commission finds that CSL is a person that intends to own a facility for the transmission or conveyance over wire, in air, or otherwise, of any message by telephone or telegraph for the public, for compensation.

The Applicants argue that the assets that will be transferred to CSL will, not by themselves, be able to be used to provide telecommunications service because the switches and other electronics necessary to provide telecommunications service will not

⁴¹ KRS 278.010(3)(a).

be transferred to CSL and will remain with the Applicants.⁴² Therefore, according to the Applicants, CSL's assets will not be able to provide telecommunications service to or for the public, but the Applicants will be able to provide this service using the assets and the Applicants' other equipment.

The Applicants are attempting to create a distinction without a difference. KRS 278.010(3)(e) does not establish that a facility be used, on its own, for providing telecommunications service, only that the facility is used *in connection* with the provisioning of such services. Under KRS 278.010(3)(e), a person does not have to be able to provide telecommunications service; a person need only own facilities used in connection with the provisioning of telecommunications service. Here, CSL will have title to the vast majority of the Applicants' assets that are currently being used, and are critical for uses in connection with providing telecommunications service for the public, and which, after the transaction, will be used for the very same purpose.

The Applicants also cite to a Commission case which they argue supports their position that CSL will not be a utility under Commission precedent and Kentucky law. In that case, the Applicants assert that the Commission found that an entity is a utility if it owns facilities *and* holds itself out to the public to serve all who apply. In Case No. 2001-00007,⁴³ the applicant proposed to construct an electricity-generating station dedicated to selling power to the wholesale market. The Commission concluded that the applicant was not a utility because it had no contracts to sell power to Kentucky

⁴² Application at 18.

⁴³ Case No. 2001-00007 *Petition of Kentucky Mountain Power, L.L.C. for a Declaratory Order*, (Ky. PSC Mar., 19, 2001).

jurisdictional utilities or Kentucky consumers for ultimate consumption, and, therefore, was not providing generation to or for the public.⁴⁴

The Kentucky Mountain Power case and the proposed transaction are distinguishable. In the case of Kentucky Mountain Power, the proposal was to construct a facility that, although it would produce power, would not be used to provide power to or for the public. Rather, the facility's output would be moved to a wholesale market and not to end users. Kentucky Mountain Power was not a utility because it was not using a facility that would provide service directly or indirectly to an indefinite public, was not dedicated or held out generation as available to the public as a class, or served any utilities or end-users in Kentucky. In short, the facility was not used to provide utility service to or for the public in Kentucky.

In the proposed transaction, the facilities that CSL will acquire are used to provide service for the public. (Unlike other definitions of utility service in KRS 278.010, KRS 278.010(3)(e) does not require that the service be provided "to" the public; it only requires that the service be "for" the public.) That is precisely the purpose for which the facilities are currently being employed, unlike in the case of Kentucky Mountain Power, in which the proposed facility was: (a) not in existence; (b) not already dedicated to serve the public; and (c) not intended to be used for or in connection with providing service to or for the public. Therefore, the fact that CSL itself does not provide service for the public is not dispositive, the fact that the facilities it will own are used in connection with providing service to the public is dispositive in determining that it is a utility under Kentucky law.

⁴⁴ *Id.* at 3-4.

The Applicants also cite to another Commission case in which the Commission concluded that because an applicant would not be providing a "regulated activity," no approval under KRS 278.020(1) was necessary.⁴⁵ In that case, AEP Transco proposed to construct transmission lines solely for the transmission of power to its wholesale customers. The Commission found that AEP Transco would be engaged exclusively in the transmission of electricity in the interstate market, and then, only at the wholesale level. As a result, the transmission assets would be exclusively regulated by the Federal Energy Regulatory Commission ("FERC") and not the Commission. The Commission concluded that because the assets were regulated by FERC, the Commission had no jurisdiction over the construction because AEP Transco would be engaging in a nonregulated activity as defined by KRS 278.010(21). The Commission used this reasoning to determine that no approval was necessary under KRS 278.020(1).

Once again the Applicants seek to create a distinction without a difference. In the AEP Transco case, the facilities were not only being used to serve wholesale customers, the facilities were to be used to provide interstate service, which triggers federal jurisdiction. AEP Transco was also proposing to use the facilities to provide wholesale service, with no potential end users. There is no such dilemma posed in the Application. The assets being transferred are used to provide service in the Commonwealth and are squarely under the Commission jurisdiction. Likewise, while the FCC does have jurisdiction over several aspects of interstate service, there is

⁴⁵ Case No. 2011-00042, *Application of AEP Kentucky Transmission Company, Inc. for a Certificate of Public Convenience and Necessity Pursuant to KRS 278.020 to Provide Wholesale Transmission Service in the Commonwealth* (Ky. PSC Jun. 10, 2013.) ("AEP Transco").

nothing in the record to indicate that either FCC preemption or interstate service is at issue. Therefore, we cannot follow the ruling in the AEP Transco case and conclude that CSL is providing a nonregulated activity.

KRS 278.020(1) provides that no person shall “commence providing utility service to or for the public . . . until that person has obtained from the Public Service Commission a certificate that public convenience and necessity require the service or construction.” Of critical importance in this statutory section are the terms “utility” and “service.”

We have already discussed CSL’s status as a utility pursuant to KRS 278.010(3)(e) and concluded that it meets the statutory definition of a utility under that statute. The next issue is to determine if CSL is providing “service” as defined by Kentucky law.

KRS 278.010(13) defines “service” broadly as “any practice or requirement in any way relating to the service of any utility . . . and in general the quality, quantity and pressure of any commodity or product used or to be used for or in connection with the business of any utility. . . .” The Commission must determine if the transaction will result in CSL’s providing a service as defined by KRS 278.010(13) in order to determine if approval is necessary under KRS 278.020(1) for CSL to acquire assets from the Applicants. We find that CSL’s owning facilities used for providing service for the public qualifies as service under KRS 278.010(13) because this ownership is related to a “product used or to be used for or in connection with the business of any utility.” Therefore, because we have concluded that CSL is a utility as defined by KRS 278.010(3)(e) and it will provide a service as defined under KRS 278.010(13), we also

conclude that prior to obtaining assets from the Applicants, it must first obtain a certificate of public convenience and necessity. Although the application is requesting, *inter alia*, approval under KRS 278.020(5) and (6), on our own motion, we will treat it as seeking approval for CSL under KRS 278.020(1). We also find that it is in the public interest to grant CSL a certificate of public convenience and necessity to acquire certain assets from the Applicants and participate in the proposed transaction. We also find that CSL should register with the Commission as a utility.

The Applicants recognized that CSL could be treated as a utility in this or other jurisdictions. CSL conceded this point as well in a filing with the Securities and Exchange Commission (“SEC”) explaining that “if any such regulation is required, we believe that we will be able to operate in compliance with such regulations without any material impact. . . .”⁴⁶

CONCLUSION

The proposal to transfer critical facilities to an entity that is outside the jurisdiction of the Commission is one of first impression and we do not approach our decision lightly. As evidenced by this Order, we have concluded that CSL will be under our jurisdiction. However, we do not believe that the Commission’s regulation of CSL will be onerous or cause any undue hardship.

We also take steps to impose conditions on the Applicants to ensure that this transaction does not result in any harm to Kentucky consumers or parties that seek to access the Applicants’ or CSL’s facilities for the purpose of pole attachments. If, as is stated in the application and in testimony, the transaction does not result in any

⁴⁶ Post-Hearing Response, Response to Request No. 1, p. 76.

changes for Kentucky customers, parties seeking pole attachments or Commission jurisdiction, then the conditions that we attach will impose no burdensome obligation on the Applicants and they can enjoy the purported benefits of the transaction when it is completed.

IT IS THEREFORE ORDERED that:

1. The Applicants' proposed transfer of certain assets to CSL, as described in the application, is approved, subject to the written acceptance of the Applicants, filed within 10 days of the date of this Order, of the following conditions:

a. The Commission retains jurisdiction over pole attachments, the Applicants, and, upon execution of the master lease, over CSL;

b. The Applicants shall fully comply with the Commission's pole-attachment rate methodology;

c. None of the elements of the Applicants' calculations of maximum and just pole-attachment rates under the methodology set forth in the Rate Methodology Order should be altered as a result of the transaction, including embedded costs of poles, accumulated depreciation or cost of money;

d. The Applicants will file a copy of the master lease with the Commission once the master lease is executed;

e. The Applicants shall file a copy of the separation and distribution agreement with the Commission when that agreement is finalized;

f. The Applicants shall notify the Commission when the proposed transaction is finalized; and,

g. The Applicants shall continue to comply with KRS 278.140 to 150.

2. The Commission's approval of this transaction is based upon the transaction as it has been represented in the record of this case. If the final executed version of the master lease contains material differences from the representations made to the Commission in this proceeding, the Commission may revoke its approval of the transaction.

3. CSL is granted a certificate of public convenience and necessity to provide service in the Commonwealth, contingent upon CSL's registering as a utility with the Commission.

4. The Applicants and CSL shall notify the Commission of any disputes arising out of the master lease between the Applicants and CSL.

5. CSL shall seek Commission approval before it transfers to another entity the assets acquired from the Applicants.

6. The Applications shall notify the Commission when Holdings exercises the option to extend the master lease or when Holdings chooses not to exercise its option to extend the master lease.

7. The decisions reached by the Commission in this Order turn upon the specific facts of this case and do not establish precedent that will be applied to any other application seeking approval of such a transfer. Future applications seeking approval of similar transactions will be addressed upon the specific facts presented in the application.

By the Commission

ENTERED
DEC 04 2014
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

Case No. 2014-00283

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