

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION FOR A)	CASE NO.
DECLARATORY ORDER OF BURKESVILLE GAS)	2023-00180
COMPANY, INC.)	

ORDER

By Order entered October 6, 2023, the Commission granted in part and denied in part, without prejudice, the petition of Burkesville Gas Company (Burkesville Gas) for a declaratory order. The Commission denied Burkesville's request for a declaratory order that it was not required to obtain the Commission's approval to take out a disaster loan from the federal Small Business Administration (SBA) because Burkesville Gas did not file copies of the instruments of indebtedness with its petition and directed Burkesville Gas to file copies of the loan documents within 21 days of the entry of the Order.

On October 18, 2023, Burkesville Gas filed the SBA Loan Authorization and Agreement dated June 12, 2020, (Loan Agreement) revisions to the Loan Agreement, and closing documents. Burkesville Gas requested in its notice of filing that the Commission reinstate and grant its request for a declaratory order the Commission approval was not required for the SBA Loan Agreement.

LEGAL STANDARD

KRS 278.300(1) provides that no utility shall issue evidence of indebtedness until it has been authorized by the Commission. Section 10 of the statute exempts from this

requirement the issuance of evidence of indebtedness that “is subject to the supervision or control of the federal government or any agency thereof”

FINDINGS

In this case, the evidence of indebtedness is the Loan Agreement entered into by Burkesville Gas with the SBA. The SBA's powers under the Loan Agreement to administer, control, and supervise the loan and terms of the Agreement include:

- Disbursements under the Loan Agreement are made at the sole discretion of the SBA.
- SBA may withhold disbursements if it determines, in its sole discretion, that there has been an adverse change in the borrower's financial condition.
- SBA has a security interest in the borrower's assets to secure the loan.
- The borrower cannot sell any collateral securing the loan without the written consent of the SBA.
- Requests to increase the loan amount are to be made to the SBA.
- The SBA monitors the use of loan proceeds and can demand itemization of expenditures and receipts from the borrower to ensure the funds were used for a proper purpose under the agreement.
- The borrower can't relocate without the prior written permission of the SBA.
- The SBA is authorized to inspect and audit the borrower's books, financial records and other financial information.
- The SBA can demand immediate repayment of the loan if the borrower raises funds through a securities offering.
- If the borrower violates any term or condition of the Loan Agreement, the SBA can declare default and demand immediate repayment of the loan.
- SBA has authority to modify the terms of the Loan Agreement.

Based on the foregoing, the Commission finds that the Loan Agreement is subject to the supervision or control of an agency of the federal government. The Commission therefore finds that pursuant to the exception in KRS 278.300(10) for federally


administered debt, Burkesville Gas was not required to obtain prior approval of the Commission to enter into the Loan Agreement and that Burkesville Gas's application for a declaratory order to that effect should be granted.

IT IS THEREFORE ORDERED that:


1. Burkesville Gas's application for a declaratory order that it was not required to obtain prior Commission approval to enter into the Loan Agreement with the SBA is granted.
2. This case is closed and removed from the Commission's docket.

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PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ENTERED
DEC 08 2023 bsb
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

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