COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF KENTUCKY POWER COMPANY FOR AUTHORITY PURSUANT TO KRS 278.300 TO ISSUE AND SELL PROMISSORY NOTES OF ONE OR MORE SERIES AND FOR OTHER AUTHORIZATIONS	)))))	CASE NO. 2024-00017

ORDER

On February 21, 2024, Kentucky Power Company (Kentucky Power) filed an application pursuant to KRS 278.300 for authority to issue and sell promissory notes of one or more series (Notes). Specifically, Kentucky Power seeks authority to issue indebtedness and engage in financings in an amount not to exceed $300 million. The financings will consist of (1) the issuance of up to $85 million in new unsecured promissory notes for its general corporate purposes; (2) the refinancing of the $65 million 3.13 percent Senior Notes, Series F, due 2024; and (3) the refinancing of the $150 million term loan due in 2024. There are no intervenors. Kentucky Power requested the Commission enter an Order no later than April 22, 2024, because an Order by that date would enable Kentucky Power to obtain advantageous financing terms and conditions. This case now stands submitted for a decision based on the evidentiary record.

LEGAL STANDARD

KRS 278.300 requires Commission approval before a utility may “issue any securities or evidence of indebtedness or assume any obligation or liability in respect to the securities or evidence of indebtedness of any other person."[1] The legal standard contained in KRS 278.300(3) establishes the purview of Commission review, stating:

> The commission shall not approve any issue or assumption unless, after investigation of the purposes and uses of the proposed issue and the proceeds thereof, or of the proposed assumption of obligation or liability, the commission finds that the issue or assumption is for some lawful object within the corporate purposes of the utility, is necessary or appropriate for or consistent with the proper performance by the utility of its service to the public and will not impair its ability to perform that service, and is reasonably necessary and appropriate for such purpose.

Additionally, KRS 278.300(8) establishes that KRS 278.300 does not apply if the proposed issuance of securities or indebtedness is payable at periods of not more than two years from the issuance date and any renewals of such notes do not exceed six years from the initial issuance date.

BACKGROUND

Kentucky Power is seeking authority to issue indebtedness and engage in financings in an amount not to exceed $300 million. Currently, Kentucky Power has the refinancing of the $65 million 3.13 percent Senior Notes, Series F, due 2024 and the refinancing of the $150 million term loan due in 2024. Kentucky Power also seeks approval of up to $85 million in new unsecured promissory notes for its general corporate purpose.[2] Kentucky Power stated that the general corporate purposes of the financing include the construction, acquisition, and upgrade of environmental, generation, transmission, distribution, technology, and communication facilities.[3]

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[1] KRS 278.300(1)

[2] Application at 3.

[3] Application at 3.

Kentucky Power explained that the proceeds will be used for ordinary extensions of existing systems and may be used for projects requiring a certificate of public convenience and necessity.[4]

Additionally, Kentucky Power proposed, with the consent and approval of the Commission, to issue and sell, in one or more transactions from time to time through December 31, 2025, up to $300 million aggregate principal amount of unsecured promissory notes in one or more new series.[5] Kentucky Power explained that the Notes may be issued in the form of Senior Notes, or other unsecured promissory notes, and in no event will the amount of the Notes issued in the transaction exceed the principal amount of $300 million.[6] Kentucky Power stated that it anticipated issuing the first of the Senior Notes, or other unsecured promissory notes in May or June 2024 but no later than the June 30, 2024 maturity of the $150 million term loan.[7] Kentucky Power stated that each series of Notes will not mature in less than nine months and no more than 60 years.[8] Kentucky Power explained that the Notes will be sold either by competitive bidding, through negotiation with underwriters, or by agents in private placement offerings, or by direct placement with a commercial bank or other institutional investor.[9]

Kentucky Power asserted that the interest rate of the Notes may be fixed or variable as determined to be most advantageous to it at the time of the issuance and

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[4] Application at 3.

[5] Application at 3.

[6] Application at 3.

[7] Application at 4.

[8] Application at 4.

[9] Application at 4.

sale of the Notes.[10] Kentucky Power noted that any fixed rate of interest on the Notes will be at a yield to maturity which shall not exceed by more than 500 basis points with the yield to maturity on United States Treasury bonds of comparable maturity at the time of pricing and any initial fluctuating rate of interest on the Notes will not exceed 8 percent per annum at the time of issuance.[11] Additionally, Kentucky Power explained that it may issue one or more Notes to American Electric Power (AEP), or to any entity owning, directly or indirectly, all of the outstanding common stock.[12] The interest rates and maturity dates of any such borrowings will be designed to parallel the cost of the capital of AEP to comply with any applicable law or regulation.[13]

Additionally, Kentucky Power requested to enter into Treasury Hedge Agreements and Interest Rate Management Agreements including, but not limited to, treasury lock agreements, forward-starting interest rate swaps, treasury put options or interest rate collar agreements to protect against future interest rate movements in connection with the issuance of the Notes.[14] Kentucky Power stated that, if it utilizes Interest Rate Management Agreements, then its annual long-term interest charges could change and allow sufficient alternatives and flexibility to reduce its effective interest cost and manage interest cost on financings.[15]

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[10] Application at 4.

[11] Application at 4.

[12] Application at 4.

[13] Application at 4.

[14] Application at 7.

[15] Application at 7.

In connection with the sale of the Notes, Kentucky Power explained that it may agree to restrictive covenants. The covenants would prohibit Kentucky Power from creating or permitting to exist any liens on its property; creating indebtedness except as specified therein; failing to maintain a specified financial condition; entering into certain mergers, consolidations, and dispositions of assets; and permitting certain events to occur in connection with pension plans.[16]

Kentucky Power noted that the present market conditions make it difficult to determine whether it would be more advantageous to Kentucky Power and its customers to sell its Notes with a 60-year maturity or some with a shorter maturity. Nevertheless, it is in the public interest that Kentucky Power is afforded the necessary flexibility to adjust its financing program to developments in the markets for medium- and long-term debt securities when and as they occur in order to obtain the best possible price, interest rate, and terms for its Notes.[17] Therefore, Kentucky Power requested authorization to make a determination at a subsequent date on whether there will be more than one series and on the maturity of each series of the Notes. Kentucky Power also requested that the Commission allow Kentucky Power the leeway to agree to specific redemption provisions, if any, at the time of the pricing of the Notes.[18]

Kentucky Power estimated that the issuance costs for the Notes will total approximately $1.5 million but that the actual cost of the Notes will be determined at the time of the sale or sales.[19] However, Kentucky Power noted that it has not allocated the

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[16] Application at 4–5.

[17] Application at 5.

[18] Application at 5.

[19] Application at 6.

proceeds to specific projects.[20] Kentucky Power explained that it may purchase any outstanding securities through tender offer, negotiated, open market, or other form of purchase or otherwise by means other than redemption if they can be refunded at a lower effective cost.[21] Kentucky Power also noted that it intends to utilize deferred tax accounting for the premium expense, in order to match properly the amortization of the expense and the related tax effect.[22]

DISCUSSION AND FINDINGS

Having considered the evidence of record and being otherwise sufficiently advised, the Commission finds that Kentucky Power should be granted the authorization to enter into indebtedness and engage in financings in an amount not to exceed $300 million as well as authorization to enter into Treasury Hedge Agreements and Interest Rate Management Agreements. Both the indebtedness and Agreements are for lawful objects within the corporate purposes of Kentucky Power's utility operations, which is to provide adequate, efficient and reasonable service at fair, just and reasonable rates, in accordance with KRS 278.300.

The Commission finds that the proposed financing is for lawful objects within Kentucky Power's purpose because it will be used to strengthen Kentucky Power's financial position through favorable financing options as market conditions permit and to construct new facilities and improve existing facilities. Additionally, the Commission finds that the Notes are necessary and appropriate for, and consistent with, the proper performance of Kentucky Power's service to the public and will not impair Kentucky

[20] Application at 3.

[21] Application at 6.

[22] Application at 6.

Power's ability to perform that service. The proposed financing will provide Kentucky Power with greater flexibility in financing options, to refund existing debt as market conditions permit, and to purchase or construct new facilities and improve Kentucky Power's existing utility plant. The financing is reasonably necessary and appropriate because some of the indebtedness will replace term loans that are maturing in 2024. A portion of the indebtedness Kentucky Power will use for the construction, acquisition, and upgrade of environmental, generation, transmission, distribution, technology, and communication facilities needed to provide adequate, efficient and reasonable service. The Commission notes that utilizing the financings for the reasons discussed above are a step in the right direction towards addressing some of the concerns that the Commission has raised in regard to Kentucky Power's transmission investment.[23]

The Commission, however, reiterates its findings from Kentucky Power's most recent rate case. The Commission will closely monitor Kentucky Power's proposed increased capital spending over the next few years to ensure that Kentucky Power is attempting to limit its risk exposure and increase its financial strength.[24] The Commission stresses that Kentucky Power has control over its capital spending and is able to improve its funds from operations to debt credit metric, in part, by adjusting its capital spending and debt levels.[25] Kentucky Power's current capital structure, as approved in Case No. 2023-00159, is 52.65 percent long-term debt, 6.14 percent short-

[23] *See* Case No. 2023-00159, *Electronic Application of Kentucky Power Company for (1) A General Adjustment of Its Rates for Electric Service; (2) Approval of Tariffs and Riders; (3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; (4) a Securitization Financing Order; and (5) All Other Required Approvals and Relief* (Ky. PSC Jan. 19, 2024), Order at 35–39.

[24] Case No. 2023-00159, Jan. 19, 2024 Order at 50 and 61.

[25] Case No. 2023-00159, Jan. 19, 2024 Order at 50.

term debt, and 41.25 percent common equity.[26] Therefore, the Commission cautions Kentucky Power in assuming substantial amounts of debt and not issuing enough equity, as this would create an imbalance to Kentucky Power's capital structure and negatively impact its customers. Based on the information contained in the record, substantial evidence exists that allowing Kentucky Power to issue this indebtedness will not impair Kentucky Power's ability to provide adequate, efficient and reasonable service.

IT IS THEREFORE ORDERED that:

1. Kentucky Power is authorized to issue indebtedness and engage in financings in an amount not to exceed $300 million for the purposes of refinancing of the $65 million 3.13 percent Senior Notes, Series F, due 2024; the refinancing of the $150 million term loan due in 2024; and up to $85 million in new unsecured promissory notes for its general corporate purposes.

2. Kentucky Power shall agree only to such terms and conditions that are proposed in its application.

3. Kentucky Power is authorized to enter into Treasury Hedge Agreements and Interest Rate Management Agreements as described in the application.

4. Kentucky Power is authorized to determine the subsequent date of whether there will be more than one series, and the maturity of each series of Notes.

5. The proceeds from the transaction authorized in this Order shall be used solely for the lawful purposes set out in the application.

[26] Case No. 2023-00159, Jan. 19, 2024 Order at 48.

6. Kentucky Power shall file, within 30 days from the date of issuance, with the Commission a statement setting forth the date or dates of issuance of the securities authorized herein, the date of maturity, the price paid, and proceeds of such issuances, the interest rate, costs or gains from the use of hedging agreements, and all fees and expenses, including underwriting discounts, commissions, or other compensations involved in the issuance and distribution. Kentucky Power shall also file documentation showing the quotes that it relied upon to determine the lowest interest rates.

7. If Kentucky Power engages in refinancing or remarketing of this indebtedness Kentucky Power shall file, within 30 days from the date of issuance, with the Commission a statement setting forth the date or dates of issuance of the securities authorized herein, the date of maturity, the price paid, and proceeds of such issuances, the interest rate, costs or gains from the use of hedging agreements, and all fees and expenses, including underwriting discounts, commissions, or other compensations involved in the issuance and distribution. Kentucky Power shall also file documentation showing the quotes that it relied upon to determine the lowest interest rates.

8. All documents filed pursuant to ordering paragraph 6 or paragraph 7 of this Order shall reference the number of this case and shall be retained in the post-case correspondence file.

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

PUBLIC SERVICE COMMISSION

Chairman

Vice Chairman

Commissioner

ENTERED

APR 02 2024

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KENTUCKY PUBLIC SERVICE COMMISSION

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