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COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
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June 4, 1990

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JUN 04 1990

Mr. Donald R. Norris
President and General Manager
East Kentucky Power Cooperative, Inc.
4758 Lexington Road
P. O. Box 707
Winchester, Kentucky 40391

RATES AND TARIFFS

Dear Mr. Norris:

This letter is written in response to East Kentucky Power Cooperative's ("EKP") request for an opinion from the Commission regarding the need for a Certificate of Convenience and Necessity, pursuant to KRS 278.020(1), to construct approximately \$10 million of new facilities to engage in the sale of steam to a new industrial customer, Inland Container Corporation ("Inland").

The facts as set forth in EKP's request of April 20, 1990 are that Inland intends to construct a paper recycling facility located adjacent to EKP's Spurlock Generating Station. Inland is projected to be EKP's largest customer with an electric load of approximately 24 MW plus a steamload approximating the equivalent of 24 MW. Contract negotiations between EKP and Inland have been ongoing for at least six months, and EKP staff has met with the Commission Staff on two occasions.

The Spurlock Generating Station is a coal powered, steam driven electric generating facility. Since steam is utilized to drive the generating turbines, EKP will be able to modify its currently existing plant to add the requisite facilities needed to engage in the sale of steam.

Under the terms of the draft contract submitted with EKP's April 20 letter, EKP will pay for and own all facilities on its property necessary to engage in the sale of steam. Inland will own all facilities located on its property necessary to transport the steam from its property line into its plant. EKP estimates its cost for additional facilities to be \$10 million, which will be recovered from Inland over a 20 year period through a monthly facility's charge. This charge will be imposed irrespective of the quantity of electricity or steam taken by Inland.

The Commission's jurisdiction to grant certificates of convenience and necessity arises from KRS 278.020(1), which provides in pertinent part that:

No person, partnership, public or private corporation or combination thereof shall begin the construction of any plant, equipment, property or facility for furnishing to the public any of the services enumerated in KRS 278.010. . . until such person has obtained from the public service commission a certificate that public convenience and necessity require such construction.

EKP's letter argues that the sale of steam is not a "service enumerated in KRS 278.010," and, therefore, a certificate is not needed. The relevant portion of KRS 278.010 defines utility as a person utilizing facilities for "The generation, production, transmission or distribution of electricity to or for the public, for compensation, for lights, heat, power or other uses." KRS 278.010(3)(a). While it is true that the sale of steam is not a "service" specifically enumerated in KRS 278.010, the Kentucky courts have placed a very liberal interpretation on the term "service." The term "service" is defined in KRS 278.010(11) as:

[A]ny practice or requirement in any way relating to the service of any utility, including the voltage of electricity, the heat units and pressure of gas, the purity, pressure and quantity of water, 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.

In Kentucky CATV Association v. Volz, Ky.App., 675 S.W.2d 393 (1984), the Kentucky Court of Appeals declared that a utility's rental of space on its poles to cable television companies constituted a regulated utility service and the charge for said service was a rate within the Commission's jurisdiction. Specifically, the court held that:

The definition [of "rate"] is quite comprehensive, but the definition of "service" is even broader.

Although cable television was not contemplated at the time the statutes were originally enacted, the utilities are clearly providing a "service" to cable TV when they allow CATV operators to attach their cables to unused space on an existing utility pole. The term

"service" not only includes the basic services for which a utility is created, but it also includes any service which arises from the use of a utility's facilities, such as its poles. Such use provides additional revenue to the utility which must be considered in determining the "rates" it charges its customers for its basic utility services.

Kentucky CATV at 396.

EKP's contemplated sale of steam to Inland represents the utilization of utility facilities analogous to the rental of pole space by utilities in Kentucky CATV v. Volz. EKP will be clearly providing a "service," as that term is defined in KRS 278.010, by the sale of steam to Inland. Consequently, the construction of approximately \$10 million of facilities to engage in the sale of steam constitutes a "service" for which EKP is statutorily required to receive prior approval through a certificate of convenience and necessity.

It should also be noted that the sale of steam, as currently contemplated by EKP, provides that the customer will be contractually obligated to pay for all costs associated with the construction of the new steam facilities. The rates to be paid by Inland for both electric and steam service, as well as all other terms and conditions set forth in the EKP/Inland service agreement, are subject to Commission jurisdiction pursuant to KRS 278.160 and 807 KAR 5:011, Section 13. In an effort to minimize the time and resources necessary to adequately review both EKP's application for a certificate of convenience and necessity and its service contract with Inland, it is recommended that EKP file one joint application.

Sincerely,



Richard G. Raff
Staff Attorney

Debra J. Waltz
Associate Counsel
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June 20, 1990

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RATES AND TARIFFS

Lee M. MacCracken
Executive Director
Public Service Commission
730 Schenkel Lane
P. O. Box 615
Frankfort, Kentucky 40602

Dear Mr. MacCracken:

We understand that East Kentucky Power Cooperative, Inc. ("EKPC") has recently submitted copies of contracts which have been negotiated among Inland Container Corporation ("Inland"), EKPC and Fleming-Mason Rural Electric Cooperative Corporation ("Fleming-Mason"). We thought it might be helpful to provide the following description of Inland and our proposed mill project to assist the Public Service Commission's review of this transaction. Of course, we are happy to respond to any specific questions of the Commission or its staff about our company upon request.

Inland Container Corporation is an Indianapolis-based manufacturer of containerboard and corrugated containers with six paper mills and thirty-three corrugated box manufacturing plants located throughout the country. Inland ranks fifth in containerboard production in the United States (1,897,000 record tons in 1989) and third among the country's 800 corrugated box producers (1,569,000 record tons shipped in 1989).

Inland is a vertically-integrated packaging company with timberland, containerboard mills and box plants. Full integration assures Inland of an uninterrupted supply of the principal raw materials that go into making a corrugated container. In 1989, 80% of Inland's containerboard production was converted in Inland's own box plants.

Inland is a wholly-owned subsidiary of Temple-Inland Inc., a publicly-held company, whose stock is traded on the New York and Pacific Stock Exchanges under the ticker symbol TIN. Temple-Inland is a diversified holding company with major interests in paper, packaging, building products and financial services.

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Lee M. MacCracken
June 20, 1990
Page Two

In 1989, Inland's operations (Temple-Inland's largest business group) accounted for 54% of Temple-Inland's total revenues and 59% of its total operating earnings. I am enclosing Temple-Inland's 1989 Annual Report and have marked statements referring to Inland's operations, earnings and assets (referred to as "container" and "containerboard") for your convenience.

Last year, the Board of Directors of Temple-Inland approved Inland's proposed construction of a greenfield recycle containerboard mill. The mill will be the fourth recycle mill for Inland and promises to be the most technically advanced recycle mill in the industry. A recycle mill uses waste corrugated material, in the form of used corrugated containers and box plant clippings, rather than timber, as raw material for the containerboard product. The proposed recycle mill will complement area city and state mandatory recycling programs.

Inland continues to assess the 242+ acre tract located adjacent to EKPC's Spurlock Station in Maysville, Kentucky. The decision to proceed with the mill at the Maysville site is contingent on several factors, including Inland's execution of contracts with EKPC and Fleming-Mason for 100% of the Maysville mill's process steam and electrical power requirements. If these arrangements are finalized, Inland will become Fleming-Mason's largest consumer of energy. Inland presently holds an option to purchase the Maysville property from Transcontinental Terminals, Inc.

It is hoped that construction on the mill can begin in the second quarter of 1991, with production scheduled to commence as early as the fourth quarter of 1992. The new mill will be equipped to produce both linerboard and corrugating medium with an initial production capacity of 600 tons per day. The new mill will initially consume approximately 270,000 tons of old corrugated containers per year. It is expected that approximately 125 employees will be employed at the mill.

Inland has long recognized the excellent synergy between a paper mill and an adjacent utility generating facility. Since 1974, Inland has enjoyed a partnership between its Newport, Indiana recycle paper mill and the Public Service Company of Indiana, Inc. ("PSI").

The partnership formula at Newport is very similar to and served as a model for the arrangements we have negotiated with EKPC. In 1974, Inland and PSI entered into an agreement for Inland's purchase of all its high pressure steam requirements for process and steam heating purposes at its Newport mill from PSI.

Lee M. MacCracken
June 20, 1990
Page Three

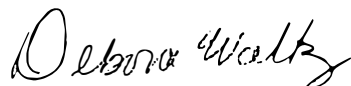
Under this agreement, PSI provided all capital improvements to its facility required to deliver steam to Inland's main steam supply line, including all station steam piping and control additions and modifications, safety devices, water treating facilities, pressure reducing equipment, steam flow meters for billing purposes and approximately 500' of main steam supply line to a point where Inland continued construction of the line to the mill site. Inland also constructed the facilities associated with the withdrawal of water from and discharge of effluent to the adjacent river.

Inland reimbursed PSI its capital cost to construct these additional facilities over the term of the original 17-year contract in the form of a "monthly fixed charge," similar to the "monthly facilities charge" included in the proposed "Steam Service Agreement" with EKPC and Fleming-Mason.

More recently, Inland entered into a similar steam service venture with Sharyn Steam, Inc., a California corporation. In this 1989 transaction, Sharyn Steam agreed to construct, operate and maintain a steam generation facility which would operate, in part, for the production of Inland's steam requirements at its recycle paper mill located in Ontario, California. Once again, Inland agreed to reimburse Sharyn Steam for the capital invested in constructing the boiler over the life of the parties' 20-year contract.

Inland looks forward to this opportunity to bring a new recycling facility to the State of Kentucky. We appreciate the warm reception we have received, and hope our relationship with EKPC and Fleming-Mason will prove to be long and mutually rewarding. If we can provide any further information or answer any questions, please do not hesitate to call me.

Sincerely,



Debora J. Waltz

DJW/lkc

cc: Phyllis Fannin ✓
Donald Norris
Gary Crawford
Ken Steppe

EAST KENTUCKY POWER COOPERATIVE, INC.

4758 Lexington Road • P.O. Box 707
Winchester, Kentucky 40391
Phone: (606)744-4812

April 20, 1990

Mr. Lee M. MacCracken
Executive Director
Kentucky Public Service Commission
730 Schenkel Lane
P. O. Box 615
Frankfort, KY 40602

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RATES AND TARIFFS

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APR 23 1990

PUBLIC SERVICE
COMMISSION

Dear Mr. MacCracken:

East Kentucky Power Cooperative, Inc. ("EKPC") and our member distribution cooperative Fleming-Mason Rural Electric Cooperative Corporation ("Fleming-Mason RECC") are currently engaged in negotiations with Inland Container Corporation ("Inland") regarding terms for electric and steam service to a recycle paper mill that Inland proposes to construct near Maysville, Kentucky. EKPC and Fleming-Mason RECC have previously advised the Commission of the existence of this project and the progress of our negotiations through the submission of various draft documents and in meetings with Commission staff personnel on January 29, and April 3, 1990. During those meetings, we have discussed various issues concerning the Commission's approach toward the review and approval of the steam supply aspects of this transaction. We are now at the point in our negotiations where one of these key issues--the need for a certificate of convenience and necessity for certain facilities and equipment required for providing the requested steam service--must be resolved. By this letter, we are requesting an opinion from the Commission on the need for a certificate for such facilities.

Attached to this letter is a draft copy of the proposed Steam Service Agreement (the "Agreement") with Inland which is subject to future revisions based upon continuing negotiations. In Section II of that Agreement is a listing of the facilities and equipment which the parties anticipate will be needed to meet Inland's steam requirements. The proposed construction would allow Inland to receive steam from either Unit 1 or Unit 2 at EKPC's Spurlock Generating Station. Inland's proposed facility would be located on property adjoining Spurlock Station. EKPC would own and operate the facilities at Spurlock Station, while Inland would own and operate any facilities which it installs on

Mr. Lee M. MacCracken
Page 2
April 20, 1990

its property to enable it to receive and utilize the steam. As provided in Section V (a) of the Agreement, Inland will pay a separate monthly charge to EKPC, above and beyond its monthly steam service bill, as reimbursement of all costs associated with the purchase and installation of the subject facilities located at Spurlock Station. The total cost of these facilities is currently estimated at approximately \$10 million. Inland will also pay EKPC a separate payment to reimburse certain operation and maintenance expenses for the subject facilities.

While EKPC recognizes the jurisdiction of the Commission over this proposed steam service transaction with Inland, and fully anticipates that the Commission will conduct a comprehensive review of the project in its totality, we do not feel that the steam supply facilities should be subject to the requirement for a certificate of convenience and necessity. As we have explained to the Commission staff, EKPC and Fleming-Mason RECC do not desire to become suppliers of steam service to the public. The proposed Inland project is a unique situation which will, if successful, add approximately 24 MW of very high load factor electric load to our system in addition to the steam service load. The total load would be the largest on the EKPC System, but the steam and elect

entire project is not feasible at Maysville. This is the only reason EKPC and Fleming-Mason RECC are proposing to provide steam service to a customer, and we do not foresee such a situation arising again on our system. Therefore, we feel that the steam service portion of this project should be viewed as a special and unique undertaking by EKPC and Fleming-Mason RECC which requires a review and approval process by the Commission which may vary from normal, established procedures.

KRS §278.020, which provides the requirement for certificates of convenience and necessity for the construction of new facilities, is expressly limited in its application to persons or organizations seeking to construct facilities to provide services which are enumerated in KRS §278.010. The steam service proposed for the Inland project does not fall into any of the categories of service enumerated in KRS §278.010. We also wish to re-emphasize the fact that Inland is actually providing the steam service facilities, through its commitment to separately pay all associated costs over the term of the Agreement. These will not be facilities used to serve the public, but rather will be used exclusively for service to the Inland plant. Therefore, we believe that the Commission can statutorily treat the construction of the steam supply facilities for this project as simply an integral part of its process of review and approval of the project

Mr. Lee M. MacCracken
Page 3
April 20, 1990

as a whole, without requiring a certificate of convenience and necessity. We further believe that, in this case, such a comprehensive review process would be more efficient and productive than a "split" review process involving a separate certificate proceeding for the steam supply facilities.

Our request for this opinion is necessitated by the fact that we are now in the late stages of our basic negotiations with Inland. We anticipate that remaining major issues will be resolved in the very near future and that the Steam Service Agreement may be ready for approval in early May. Inland hopes to be in a position to order long lead-time equipment by August 1, 1990, if our negotiations are successful. To do this, all necessary regulatory approvals must be obtained by that time. Since we must initiate the approval process at the earliest possible time, we need to determine at this point whether or not a certificate application will be necessary. We, therefore, request expedited handling of this request for an opinion on the need for such an application in connection with this project.

In addition to the attached copy of the Agreement, we have submitted to the Commission staff other draft documents relevant to this project. If additional copies of any documents, or any other information regarding this matter, are needed, please advise Gary Crawford or Charles Lile at EKPC headquarters, and we will get the information to the Commission as quickly as possible. Your prompt attention to this request will be greatly appreciated.

Very truly yours,



Donald R. Norris
President and General Manager

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