

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION INTO THE )  
FUEL PROCUREMENT PRACTICES ) CASE NO. 9631  
OF KENTUCKY UTILITIES COMPANY )

O R D E R

On July 10, 1986, the Commission entered an Order initiating this investigation of the fuel procurement practices of Kentucky Utilities Company ("KU"). In accord with the findings of fact in that Order, the Commission has prepared a draft Request for Proposals ("RFP"), Appendix A attached hereto, and a list of consultants to whom the RFP will be sent, Appendix B attached hereto.

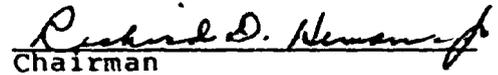
The Commission is of the opinion that a final RFP should not be prepared until the parties have had time to review the draft RFP and been afforded an opportunity to file written comments thereon. Therefore, the Commission finds that all parties should have until December 5, 1986, to file written comments on the draft RFP. The parties' comments should also indicate their respective positions on the need for a conference or hearing to evaluate the filed comments. The Commission will ultimately determine whether a conference or hearing will be necessary prior to issuing a final RFP.

The Commission further finds that the parties' comments may include recommendations for consultants to be added to or deleted from the attached list of consultants. Each consultant recommendation should be supported by a detailed explanation.

IT IS THEREFORE ORDERED that all parties shall have until December 5, 1986, to file comments on the draft RFP and list of consultants.

Done at Frankfort, Kentucky, this 12th day of November, 1986.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

\_\_\_\_\_  
Executive Director

APPENDIX A

PUBLIC SERVICE COMMISSION OF KENTUCKY

REQUEST FOR PROPOSAL

1. Invitation to Propose

The Public Service Commission of Kentucky ("Commission") is seeking proposals for consulting services required for a prudency investigation of the fuel procurement practices of Kentucky Utilities Company ("KU").

KU's headquarters are in Lexington, Kentucky. KU, the largest electric utility in the state, provides electric service in 77 of Kentucky's 120 counties. KU had 384,600 retail customers at year end 1985. KU owns and operates 7 generating stations with a total capacity of 3,174 megawatts. Approximately 99 percent of KU's electricity is generated from coal. In 1985, KU had a summer peak load of 2,277 megawatts and winter peak load of 2,453 megawatts. Energy sales for 1985 were 10,918,349 megawatt-hours. KU's revenues from operations for 1985 were approximately \$538 million and net operating income was \$98 million.

If your firm is interested in proposing to perform the investigation described herein, you should submit 10 bound copies of your proposal not later than close of business on (date to be specified). Any proposal received after this deadline will not be considered. Your response should be addressed to:

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Public Service Commission  
730 Schenkel Lane  
Post Office Box 615  
Frankfort, Kentucky 40602

Attention: Tom Petersen  
Branch Manager

Mr. Tom Petersen the Project Officer for the Commission and Mr. ( \_\_\_\_\_ ) of KU will be available to answer questions you may have in preparation of your proposal. Mr. Petersen can be reached at (502) 564-2486 and Mr. \_\_\_\_\_ can be reached at (606) 255-1461, ext. \_\_\_\_\_.

2. Objectives of the Investigation

a. Background

On May 19, 1983, the Commission issued an order in Case No. 8590, An Examination By The Public Service Commission Of The Application Of The Fuel Adjustment Clause Of Kentucky Utilities Company From November 1, 1980, To October 31, 1982, which initiated an investigation into the fuel procurement practices of KU. In particular, the Commission indicated its concern with the relatively high prices that KU was paying for coal delivered to its Ghent plant under contracts with River Processing, Inc., ("River Processing") and South East Coal Company ("South East"). The order requested KU to provide responses to several questions about specific provisions of the two contracts. KU moved to hold the investigation in abeyance to avoid disclosing sensitive "opinions concerning legal and other questions which have been and are issues between KU and other parties" to the coal supply agree-

ments. To prevent the premature disclosure of this information at a time when KU was seeking to reduce its coal prices, the Commission held its information request in abeyance.

During this same period, KU had initiated a declaratory judgment action against River Processing in the Circuit Court of Fayette County, Kentucky. The suit was subsequently settled and dismissed upon a renegotiation of the coal supply agreement. However, the Commission continued to hold its investigation in abeyance because KU was attempting to renegotiate its South East coal contract. Subsequently, KU initiated litigation against South East over its coal supply agreement. That litigation has yet to be resolved.

In order to protect KU's ratepayers during this period, the Commission designated all fuel adjustment clause orders since 1982 as interim orders. Consequently, all revenue received by KU under its fuel adjustment clause since November 1, 1980, has been collected subject to refund.

In a July 10, 1986, order in Case 9631, An Investigation Into The Fuel Procurement Practices Of Kentucky Utilities Company, the Commission determined that the original justification for holding its investigation in abeyance is no longer valid. During the course of KU's litigation with both its coal suppliers and its wholesale municipal customers, KU has made public thousands of pages of documents and been obligated to permit its adversaries full and complete discovery of its files. As a result, KU's

internal documents and legal theories are now a matter of public record. Thus it is appropriate for the Commission to resume its investigation at this time.

b. Purpose of Consultants in the Investigation

The investigation will be a broad review of KU's fuel procurement practices from the early-1970s to present. Fuel procurement practices encompasses management's planning for generation resources (including alternatives considered), the negotiation and administration of coal contracts and related transportation activities. Particular emphasis shall be made to determine whether the long term contracts with River Processing and South East were prudently entered into, whether they were effectively and efficiently managed once they were negotiated, whether the terms of the contract were prudently enforced, and whether reasonable consideration was given to the renegotiation of these contracts.

The Commission believes that a consultant is required to provide an independent evaluation of KU's fuel procurement practices. The consultant based on its investigation shall recommend to the Commission whether KU prudently managed its fuel procurement activities and be prepared to defend its recommendation in a public hearing before the Commission. Further, if the consultant determines that KU has been imprudent in its fuel procurement practices or the administration of its fuel contracts, then the consultant shall also recommend the amount of refund to which KU's ratepayers are entitled. In determining the prudence of KU's actions the consultant shall evaluate the reasonableness

of KU's fuel procurement activities and contract administration under the same circumstances as prevailed when the actions were taken.

3. Role of Commission and Staff

The consultant should realize that the Commission is the principal client. Therefore, it is necessary that the Commission maintain control of this engagement. Mr. Tom Petersen will be the staff Project Officer designated by the Commission to insure satisfactory and timely performance of the proposed work. The Project Officer will be the sole source of contact for the consultant in any discussions with the Commission.

In order to be kept apprised of the study's progress, periodic oral and written reports will be necessary in addition to the informal contact between the consulting staff and the Project Officer. These reports are described below.

Weekly Informal Reports: Each week, the consultant should report to the Project Officer in person or by phone the activities planned for the coming week and provide a review of the progress to date.

Monthly Written Status Reports: Based on the task plan submitted with the proposal, the monthly reports should consist of two parts:

1. General narrative briefly describing progress to date and outlining reasons for any discrepancies between the task plan schedule and progress to date. This narrative should also contain a statement indicating the status of the study in relation to time -- ahead, behind, or on schedule.

2. Status sheet indicating actual hours logged by consultant, material and supplies cost, and other costs, showing percentage of each in relation to proposal costs.

Monthly reports should be in the hands of the Project Officer by the tenth working day following the month's end and shall be submitted for any month worked.

#### 4. Contractual Arrangement

It is anticipated that proposals in response to this RFP will be two part proposals. The first part relates to the investigation. The second part relates to the efforts required in the event a hearing is needed.

For the first part of the proposal it is expected that the consultant would propose a not to exceed budget. The contract for this part of the engagement will be between the Commission and the consultant. Payments to the consultant will be based upon hours actually expended on this engagement at rates quoted in the proposal. Total payments under this contract will not exceed the cost quoted in this part of the proposal. Total cost includes itemized cost of supplies and materials, cost of transportation and per diem expenses, and subcontract cost. The final fifteen percent (15%) of the budgeted amount will be withheld until delivery of a copy of the final report to the Commission. Work under this contract is not to be subcontracted without the prior written consent of the Commission. Neither the rights nor duties of the consultant under this contract are to be assigned without the written consent of the Commission.

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For the second part of the proposal which is related to the hearing, it is expected that the consultant will quote an hourly rate for the appropriate witnesses and legal counsel required for a hearing. The quoted rate shall be applied for any hours expended by the witnesses and counsel related to the hearing. The contract for this part of the engagement will be between the Commission and the consultant. Payments to the consultant will be based upon hours actually expended at rates quoted in the proposal. Total payments under this contract for this part of the proposal will be for actual expenses incurred and approved by the Project Officer.

All invoices shall be presented by the tenth of the month for services provided in the previous month. The staff Project Officer shall review and approve all invoices. The invoices will then be forwarded to KU for payment to the consultant within 10 working days.

In case of termination for reason without fault of the consultant, the consultant shall be paid all money due for services rendered up to the termination date, as well as all money due for commitments which cannot be terminated at such termination date. If the termination is because of the fault of the consultant, he shall be entitled to compensation only for such work that has been completed to date and is accepted by the Commission.

It is the intent of the Kentucky Public Service Commission to assure itself that any consulting firm, or any of the employees of such a firm who are in a position to directly affect the outcome of the report or services rendered under this contract, shall

during the course of this contract, be in strict compliance with the following provisions concerning conflict of interest:

A. Solicitation or Acceptance of Gifts or Favors:

No firm or employee (as referred to above) shall solicit or accept anything of value to the recipient, including a gift, loan, reward, meal, promise of future employment, favor, or service from employees or representatives of the business entity (or any of its affiliates) which is the subject of this contract.

B. Conflicting Employment or Contractual Relationship:

No firm or employee (as referred to above) shall have or acquire any employment or contractual relationship with the business entity (or any of its affiliates) which is the subject of this contract. It is further required that any such relationship (held or acquired during the course of this contract) with any other business entity, which is subject to the regulation of this Commission, shall be disclosed to this Commission as to the timing and subject of such relationships.

C. Disclosure or Use of Certain Information:

No firm or employee (as referred to above) shall disclose or use any proprietary information concerning operations of the business entity being studied, which has been gained by reason of its/his official position as a representative of this Commission and which is not available to the general public, for corporate or personal gain or benefit, or for the gain or benefit of any other business entity or person, without the prior written approval of this Commission.

D. Disclosure of Specified Interests:

If any firm or employee (as referred to above) holds any interest (other than paragraph B above) or owns or acquires a material financial position in the net worth of the business entity under study, a statement shall be filed disclosing such facts prior to signing any contract with this Commission, or immediately upon the establishment of such an interest, if such takes place during the course of a contractual obligation to this Commission.

E. Corporate Conflict of Interest Policy:

All consulting firms desiring to do business with this Commission must submit, as part of their proposal or potential contract, a copy of their Corporate Conflict of Interest Policy, particularly in regard to stock ownership and/or financial relationships with clients. In the case of non-incorporated consultants or where no corporate policy exists, a statement of intention to comply with the preceding provisions must be submitted.

5. Contents of Proposal

Consultant's proposals should include the following:

A. Statement of the Project:

State in succinct terms your understanding of the project presented by this RFP.

B. Management Summary:

Include a narrative description of the proposed effort and a list of the products that will be delivered.

C. Work Plan:

Task descriptions are to be the guide in describing your technical plan for accomplishing the work. The task descriptions should be in sufficient depth to afford the Commission and staff a thorough understanding of your work plan. The description should include an estimate of the number of hours each primary member of the consulting team will devote to each task. Consultants are cautioned that their proposals may be rejected if their work plan does not specifically detail how each of the task descriptions is to be accomplished.

D. Prior Experience:

Submit a statement of similar projects conducted in the previous 5 years. Provide a copy of any recently completed work which would indicate the firm's ability to perform this type of investigation. This would also apply to a subcontractor if appropriate. Experience shown should be work done by your company rather than by individuals. Studies or projects referred to should be identified and the name of the client shown, including the name, address and phone number of the responsible official of the client company or agency who may be contacted.

E. Personnel:

Include the names of all personnel -- executive, professional, management analysts, systems analysts, auditors, staff consultants, etc. -- who will be engaged in the work. Their education and relevant experience should be included.

F. Statement on Potential Conflicts of Interests:

The consultant shall identify any relationships between itself (including prior relationships of individual personnel to be performing the work) and KU. This would include any work done for the utility or related entities during the past 5 years. If there have been no such relationships, a statement to that effect is to be included in the proposal. If, during the engagement, it is determined that an undisclosed conflict has or had existed between the consultant and the utility, the Commission reserves the right to terminate the contract.

G. Budget Estimates:

To perform the investigation as described herein, the consultant shall provide a not to exceed cost estimate. The cost estimate shall include manpower costs, costs of supplies and materials, subcontractor costs, transportation costs and total cost. The manpower costs should be broken down to identify the category of personnel, estimated hours, rate per hour and total cost. A maximum cost for the proposal shall also be provided. The consultant shall also provide a quoted hourly rate for those persons who it anticipates will be needed to testify and be cross-examined in public hearings on the investigation report.

H. Time Estimate:

An estimate of the time required to complete the investigation phase of this engagement shall be provided.

I. Work Space:

Requirements for working/office space at the utility's headquarters should be specified in the proposal.

J. Signatures:

All proposals must be signed by an official authorized to bind the consultant to its provisions. The success-

ful bidder's proposal and the proposal contents will become contractual obligations of the consultant.

6. Selection Criteria

All proposals received shall be evaluated by the Commission and staff. To select the proposal which most closely meets the requirements of this request for proposal, consideration will be given to several factors. One factor will be the consultant's understanding of the Commission's needs and a proposed approach that satisfies these needs. Another important factor will be the experience and ability of the staff assigned to the project and their capability to perform the proposed work. Also attention will be given to the proposal's description of tasks in the work plan to determine if the consultant possesses the knowledge and understanding of the technical functions to be examined in the study. Cost will be given significant consideration, although it will not necessarily be the deciding factor. Finally, demonstrated ability to meet stated deadlines will also be a consideration.

7. Draft/Final Report

It is expected that the final report will evolve from a draft report due at least 30 days prior to the submission of the final report. The Project Officer and Commission staff will review the draft report with the consultant. Based on this review, the consultant can make any changes he finds reasonable before completing the final report.

The consultant shall provide the Commission with 50 copies and the utility with 15 copies of the final report. Also one

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unbound copy shall be provided to the Commission for future copying.

8. Work Papers

It is expected that all work papers utilized by the consultant during the course of the study will be available to the Commission.

APPENDIX B

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