

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF CITIPOWER, LLC FOR)	CASE NO.
APPROVAL OF NOTE RENEWAL)	2004-00123

O R D E R

On June 1, 2004,¹ Citipower, LLC (“Citipower”) applied for Commission approval of a note with the Bank of McCreary County (“McCreary Bank”) in November 2003 and the anticipated renewal of same in November 2004.²

On November 19, 2002, Citipower combined three separate short-term notes into a single note with the McCreary Bank. The consolidated note was in the amount of \$993,174 and reflected notes previously incurred by Citipower between 1997 and 1999. The proceeds from the three original notes were used to provide working capital for Citipower, to fund the construction of a pipeline for an unregulated business owned by Citipower, and to fund Citipower’s purchase of an interest in an unregulated company.³ Citipower stated that because a portion of the consolidated note had been renewed for

¹ Citipower originally tendered its application on March 26, 2004. The Commission found the application deficient and rejected it on April 20, 2004. Citipower submitted information to cure the deficiencies and requested a waiver on certain cited deficiencies on April 27, 2004. The additional information was accepted, the requested waiver was granted, and the application was accepted for filing on June 1, 2004.

² The only intervening party in this proceeding is the Attorney General, by and through his Office of Rate Intervention.

³ The working capital note was originated on November 11, 1997 and was for \$250,000. The note funding the pipeline construction was originated on December 16, 1998 and was for \$500,000. The note funding the purchase of another company was originated on January 6, 1999 and was for \$243,174. See Application at 1.

a total term of over 6 years, it was necessary under the provisions of KRS 278.300(8) for it to seek Commission approval for the renewal.

Pursuant to KRS 278.300(1), “[n]o utility shall issue any securities or evidences of indebtedness, or assume any obligation or liability in respect to the securities or evidences of indebtedness of any other person until it has been authorized so to do by order of the commission.” KRS 278.300(8) states that this section is not applicable if the indebtedness has a two-year term, and is renewed in aggregate for a total of no more than six years from the date of the original issuance.

KRS 278.300(3) states:

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.

Requiring prior Commission approval ensures that ratepayers will not bear the cost of any securities or indebtedness that are unnecessary, inappropriate, or inconsistent with the utility’s provision of service to the public and that may impair the utility’s ability to perform that service.

The Commission has considered the evidence presented and finds that Citipower’s request for approval of its notes in November 2003 and November 2004 fails to meet the requirements of KRS 278.300(3) and should, therefore, be denied. Approximately \$743,174 of the total \$993,174 consolidated note balance reflects funds devoted to unregulated and non-utility business activities. Citipower has not

demonstrated that borrowing funds for these activities is necessary or appropriate for or consistent with the proper performance of its provision of gas service to its ratepayers, will not impair its ability to perform that service, and is reasonably necessary and appropriate for such purpose. In addition, while the utility states that the remaining \$250,000 of the consolidated note is related to Citipower's regulated activities, the Commission must consider the consolidated note in total. Should Citipower subsequently request approval of that portion of the subject indebtedness that Citipower used for its regulated operations in conjunction with the proper performance of its provision of gas service to its ratepayers, such request will be favorably considered.

The Commission notes that while this case was pending, Citipower applied for approval of its proposed reorganization.⁴ Under the proposed reorganization, a holding company will be created that will own Citipower. All of Citipower's current unregulated business activities will be transferred to unregulated subsidiaries of the new holding company. Citipower's consolidated note with the McCreary Bank will be reconfigured. Under the reorganization proposal, the new holding company will borrow funds to pay off the \$743,174 portion of the McCreary Bank consolidated note associated with unregulated business activities. The remaining balance of \$250,000 will remain with Citipower, and be paid off with funds owed to Citipower by another associated company.⁵

⁴ Case No. 2004-00444, Application of Citipower, LLC for Approval of Reorganization Proposal.

⁵ Id. at 2.

IT IS THEREFORE ORDERED that Citipower's request for approval of its renewal of the consolidated McCreary Bank note in November 2003 and November 2004 is denied.

Done at Frankfort, Kentucky, this 16th day of December, 2004.

By the Commission

ATTEST:

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the end, positioned above a horizontal line.

Executive Director