

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY)	
UTILITIES COMPANY FOR AN ORDER)	
PURSUANT TO KRS 278.300 AND FOR)	CASE NO. 2004-00395
APPROVAL OF LONG-TERM)	
PURCHASE CONTRACT)	

O R D E R

On October 1, 2004, Kentucky Utilities Company (“KU”) filed an application seeking Commission approval of an amended wholesale power contract with the Ohio Valley Electric Corporation (“OVEC”). On October 15, 2004, the Commission entered an Order granting in part and denying in part motions by KU for deviations from 807 KAR 5:001, Section 6(1) through (9), and seeking clarification of whether the Commission was being requested to determine if the proposed transaction was exempt from the provisions of KRS 278.300, which require prior approval of evidences of indebtedness. The Commission previously held in Administrative Case No. 350 that long-term purchase power contracts may require approval as evidences of indebtedness under KRS 278.300 if such contracts include minimum payment obligations or take-or-pay provisions.¹ KU’s application acknowledged that entering the amended contract will obligate it to pay monthly minimum demand charges. KU notified the Commission on October 20, 2004 that it was not requesting an exemption from the

¹Administrative Case No. 350, 1992 Energy Policy Act Requirements, Order dated October 5, 1993.

provisions of KRS 278.300 and on October 28, 2004, it amended its application, curing all outstanding deficiencies.

OVEC was formed in the early 1950s by KU and several other utilities and holding companies located in the Ohio Valley region in response to the request of the United States Atomic Energy Commission (“AEC”) to supply the electric power needs of the AEC’s planned uranium enrichment plant in Pike County, Ohio. OVEC built two coal-fired generating stations and entered into a long-term power agreement with the United States Department of Energy (“DOE”). The agreement gave DOE the right to OVEC’s generation capacity. OVEC and its owners or their affiliates, including KU, entered into the current Inter-Company Power Agreement (“ICPA”), a 50-year power supply agreement that gave each OVEC owner the right to purchase surplus power not required by DOE in proportion to the owner’s participation ratio. Subsequent to the termination of the DOE power agreement on April 30, 2003, all of OVEC’s capacity was considered to be surplus.

In response to a data request, KU states that in light of the relatively low incremental energy cost of surplus energy from OVEC, KU has typically scheduled the full amount of energy available from OVEC, subject to any operating constraints.² KU also provided comparisons between the average annual cost per kWh of its own generation and the cost of OVEC purchases for each of the last 5 years. In each year, 1999 through 2003, the OVEC purchases were made at a lower cost per kWh than KU’s own cost of generation.

² Response to the First Data Request of Commission Staff dated November 10, 2004, Item 2(a).

The current ICPA, which establishes KU's right to OVEC generation, will expire on March 12, 2006. The proposed ICPA would extend the term of the current ICPA for an additional 20 years, allowing KU to continue to receive its share of OVEC's generation in exchange for payment of OVEC's relatively low costs. As in the past, KU will not act as guarantor of OVEC's debts nor will KU issue securities or other evidence of indebtedness for the purpose of financing its participation in the Amended ICPA. However, KU will be obligated to pay monthly minimum demand charges over the life of the amended contract.

The Commission, having considered the evidence of record and being otherwise sufficiently advised, finds that the energy available from OVEC is a cost-effective source of energy to KU, and it is reasonable for KU to secure a portion of this available energy. We further find that KU's participation in the OVEC contract is for lawful objects within the corporate purposes of KU's utility operations, is necessary and appropriate for and consistent with the proper performance of its service to the public, will not impair its ability to perform that service, is reasonably necessary and appropriate for such purposes, and should therefore be approved.

IT IS THEREFORE ORDERED that:

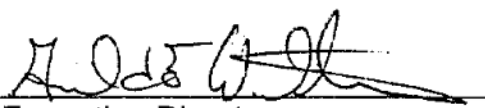
1. KU is authorized to enter into the Amended and Restated Inter-Company Power Agreement as set forth in the provisions and terms in its application.
2. After receiving all necessary regulatory approvals, KU shall, within 30 days of the finalization of the Amended and Restated Inter-Company Power Agreement, file a copy of the agreement with the Commission.

Nothing contained herein shall be construed as a finding of value for any purpose or as a warranty on the part of the Commonwealth of Kentucky or any agency thereof as to the securities authorized herein.

Done at Frankfort, Kentucky, this 30th day of December, 2004.

By the Commission

ATTEST:

fn 
Executive Director