

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CITIPOWER, L.L.C.)
_____)) CASE NO. 2004-00101
ALLEGED FAILURE TO COMPLY WITH)
KRS 278.300 AND KRS 278.020(1))

O R D E R

On June 1, 2004, the Commission issued an Order directing Citipower, L.L.C. ("Citipower") to appear at the Commission's offices on July 8, 2004 and to show cause why it should not be subject to penalties prescribed in KRS 278.990 for alleged violations of KRS 278.300 and KRS 278.020(1). The Attorney General, by and through his office of Rate Intervention, intervened in this proceeding on September 22, 2004. He later withdrew from the case.

Following the commencement of this proceeding, Citipower and Commission Staff met several times to discuss the facts surrounding the alleged violations. Those discussions led to the filing of a Stipulation of Facts and Settlement Agreement ("Agreement"), a copy of which is appended hereto as Appendix A.

In reviewing the Agreement, the Commission has considered, *inter alia*, Citipower's willingness to cooperate to achieve a resolution of this matter and its efforts

to separate its regulated and unregulated operations.¹ Based on the evidence of record and being otherwise sufficiently advised, the Commission finds that the Agreement is in accordance with the law, does not violate any regulatory principle, results in a reasonable resolution of this case, and is in the public interest.

IT IS THEREFORE ORDERED that:

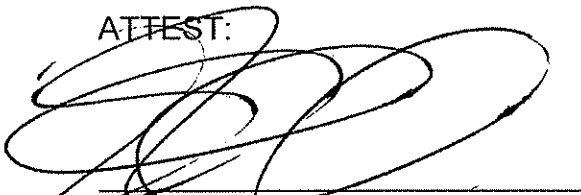
1. The Agreement, appended hereto, is incorporated into this Order as if fully set forth herein.
2. The terms and conditions set forth in the Agreement are adopted and approved as a complete resolution of all issues in this case.
3. Within 10 days of the date of this Order, Citipower shall pay to the Commonwealth of Kentucky the sum of Two Thousand Seven Hundred Dollars (\$2,700). This payment shall be in the form of a cashier's check made payable to the "Treasurer, Commonwealth of Kentucky" and shall be mailed or delivered to the Office of General Counsel, Public Service Commission of Kentucky, 211 Sower Boulevard, Post Office Box 615, Frankfort, Kentucky 40602.
4. Upon payment of the sum set forth in Ordering Paragraph 3 above, this case shall be closed and removed from the Commission's docket without further Order.

¹ See Case No. 2004-00444, Application of Citipower, LLC for Approval of Reorganization Proposal, Citipower transferred certain nonregulated assets to a holding company and an affiliated company.

Done at Frankfort, Kentucky, this 27th day of April, 2006.

By the Commission

ATTEST:



Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2004-00101 DATED April 27, 2006.

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PUBLIC SERVICE
COMMISSION

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|--------------------------------|---|---------------------|
| CITIPOWER, L.L.C. |) | |
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| ALLEGED FAILURE TO COMPLY WITH |) | |
| KRS 278.300 and KRS 278.020(1) |) | |

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into this 16th day of March, 2006, by and between Citipower, LLC ("Citipower") and the Staff of the Kentucky Public Service Commission ("Commission Staff").

WITNESSETH:

WHEREAS, Citipower is engaged in the distribution of natural gas to the public for compensation and as such is a utility subject to the jurisdiction of the Kentucky Public Service Commission ("Commission") pursuant to KRS 278.010(3)(b); and

WHEREAS, Citipower has a duty to comply with the provisions of KRS Chapter 278 and the regulations promulgated thereunder; and

WHEREAS, KRS 278.020(1) requires a utility to obtain a certificate of public convenience and necessity from the Commission prior to beginning the construction of any plant, equipment, property or facility for furnishing to the public any of the services enumerated in KRS 278.010, which includes the provision of gas service; and

WHEREAS, KRS 278.300 requires a utility to obtain Commission approval before issuing securities, assuming any obligation or liability of any other person, and assuming evidence of indebtedness payable in more than two years from the date of issuance and/or renewing such debt for a period exceeding six years from the date of issuance of the original debt; and

WHEREAS, In July and August, 2002 and December, 2003, members of the Commission's Financial Audit Branch performed examinations of Citipower to evaluate Citipower's recordkeeping practices and to evaluate its compliance with its tariff, the Uniform System of Accounts and certain Commission statutes and regulations; and

WHEREAS, during the course of the examinations, Commission Staff noted, among other things, that Citipower had, without seeking prior approval from the Commission, constructed a pipeline to Stearns, Kentucky, issued securities, assumed the debt of another entity, and renewed indebtedness. Commission Staff further noted that Citipower had not filed the documents required by the Commission in Case No. 1999-00225; and

WHEREAS, on June 1, 2004, the Commission found that a prima facie showing had been made that Citipower had violated KRS 278.020(1) and KRS 278.300 and had not complied with the Commission's Order in Case No. 1999-00225; and

WHEREAS, on June 1, 2004, the Commission ordered Citipower to show cause why it should not be subject to the penalties prescribed in KRS 278.990(1) for its alleged violations; and

WHEREAS, On July 15, 2004, Citipower filed a response to the June 1, 2004 Order and while it did not deny the allegations, it asserted that the record did not show that Citipower's actions were willful.

WHEREAS, Citipower and Commission Staff desire to settle the issues raised by this proceeding;

NOW, THEREFORE, for and in consideration of the premises and conditions set forth herein, the signatories hereby agree as follows:

1. Within 10 days after the entry of an Order approving this Settlement Agreement, Citipower shall pay to the Commonwealth of Kentucky the sum of Two Thousand Seven Hundred Dollars (\$2,700). This payment shall be in the form of a cashier's or certified check made payable to the Treasurer, Commonwealth of Kentucky and shall be mailed or delivered to the Office of General Counsel, Public Service Commission of Kentucky, 211 Sower Boulevard, Frankfort, Kentucky 40601.

2. This Agreement resolves all issues raised by the Commission in its June 1, 2004, Order in this proceeding.

3. Nothing contained herein shall be construed as an admission of a willful violation of any statute, administrative regulation or Commission Order nor shall the Commission's acceptance of this agreement be construed as a finding of a willful violation of any statute, administrative regulation or Commission Order.

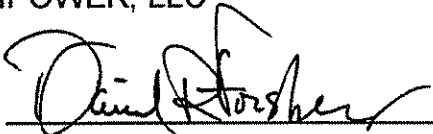
4. This Agreement is subject to the acceptance of and approval by the Commission.

5. Commission Staff shall recommend to the Commission that this Settlement Agreement be accepted and approved.

6. If the Commission fails to accept and approve this Settlement Agreement in its entirety, this proceeding shall go forward and neither the terms of the Settlement Agreement nor any matters raised during settlement negotiations shall be binding on any of the signatories.

7. If the Commission accepts and adopts this Settlement Agreement in its entirety and enters an Order in this proceeding to that effect, Citipower shall not apply for a rehearing in this matter nor bring legal action for judicial review of that Order.

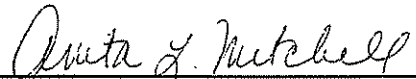
CITIPOWER, LLC

BY: 

TITLE: pres

DATE: MARCH 7, 2006

STAFF, PUBLIC SERVICE
COMMISSION OF KENTUCKY

BY: 

TITLE: Staff Attorney

DATE: March 17, 2006