

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

ELECTRONIC EMERGENCY DOCKET RELATED) CASE NO. 2020-00085
TO THE NOVEL CORONA VIRUS COVID-19)

EAST KENTUCKY POWER COOPERATIVE, INC.'S
REQUEST FOR DECLARATORY RELIEF

Comes now East Kentucky Power Cooperative, Inc. ("EKPC"), by counsel, pursuant to the Commission's March 16, 2020 Order in the above-styled docket, and does hereby request a declaration as to the Commission's jurisdiction and a deviation, pursuant to 807 KAR 5:001 Section 22, respectfully stating as follows:

I. Background

EKPC is a rural electric cooperative corporation established under KRS Chapter 279. It provides electric capacity and energy to its sixteen (16) Owner-Members throughout Kentucky. EKPC is a "utility," as that term is defined in KRS 278.010, and is therefore subject to the Commission's jurisdiction pursuant to KRS 278.040(2).

Congress enacted the Paycheck Protection Program ("PPP") as part of the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), S.3548, on March 27, 2020. The CARES Act was subsequently signed into law by President Donald Trump later that same day. The PPP provides 100% federally guaranteed loans to eligible small businesses, with loan forgiveness built-in for certain eligible expenses if payrolls are maintained during or restored after the COVID-19 pandemic. The program will be administered under a modified and expanded Small Business Administration ("SBA") 7(a) loan program. Borrowers may obtain loans of up to 2.5 times their

average monthly payroll expenses, not to exceed \$10 million. If borrowers maintain their payrolls during the pandemic or restore their payrolls afterward, loan forgiveness is available for up to eight weeks for certain qualified expenses. Loans will be available through SBA-certified banks, credit unions, and nonbank lenders, including newly eligible financial institutions under the CARES Act. Importantly, SBA PPP loans have a maturity of two (2) years and an interest rate of 1%.¹ The window for applying for PPP loans opened on April 3, 2020 and it is widely expected that the loan fund will be fully subscribed within a matter of days.

II. Request for Declaratory Relief

Utilities are generally required to gain Commission approval prior to issuing any securities or evidences of indebtedness.² EKPC believes that a PPP loan would constitute an evidence of indebtedness under the statute. However, two exceptions would appear to make it possible for a regulated utility to enter into a PPP loan arrangement through SBA without having to first obtain Commission approval.

First, KRS 278.300(8) provides: “This section does not apply to notes issued by a utility, for proper purposes and not in violation of law, that are payable at periods of not more than two (2) years from the date thereof...” As set forth above, the term of a PPP note is two years. On this basis, EKPC believes an evidence of indebtedness arising from the PPP would not be subject to the requirement in KRS 278.300(1) to first obtain the Commission’s approval.³ Second,

¹ See “Paycheck Protection Program” Small Business Administration <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program-ppp#section-header-4> (Apr. 3. 2020).

² See KRS 278.300(1).

³ While the proceeds of a PPP loan are not limited to payroll, rents and utilities, the CARES Act creates a heavy incentive for recipients of PPP loans to use the proceeds of such loans for these purposes. EKPC affirms and commits that its use of the proceeds of a PPP loan would be used for the categories of expenses that would make the loan forgivable, which firmly establishes that the loan would be for a “proper purpose” and “not in violation of law” under the statute.

although the PPP involves funds issued by private financial institutions, the program is administered, supervised and controlled by the SBA, which is an agency of the United States government. Thus, another exception to the general requirement to obtain Commission approval prior to entering into an evidence of indebtedness is also implicated. Specifically, KRS 278.300(10) provides: “This section does not apply in any instance where the issuance of securities or evidences of indebtedness is subject to the supervision or control of the federal government or any agency thereof...” Because the PPP is to be conducted under the “supervision” and “control” of the SBA, KRS 278.300(10) provides another basis for declaring that the Commission lacks jurisdiction over PPP loans.

In light of the foregoing, EKPC respectfully requests the following declaratory relief that an electric cooperative established under KRS Chapter 279 does not need Commission approval under KRS 278.300 prior to entering into any loans, notes or other obligations under the PPP program. Moreover, based upon the importance of acting timely, EKPC respectfully requests that the Commission grant it declaratory relief as expeditiously as possible.

III. Request for Deviation

Pursuant to 807 KAR 5:001, Section 19, a request for declaratory relief is required to be filed as an application. However, as set forth above, the deadline for seeking relief under the PPP is very short based upon the expected demand for the limited fund proceeds and time is of the essence for obtaining declaratory relief. As the PPP arises directly out of the federal government’s response to the COVID-19 pandemic and the Commission has opened this docket for the express purpose of addressing various issues related to said pandemic as they arise, EKPC respectfully requests – pursuant to 807 KAR 5:001, Section 22 – a deviation to file this request for declaratory

relief as a motion rather than as a separately docketed application for declaratory relief under 807 KAR 5:001, Sections 14 and 19.

WHEREFORE, on the basis of the foregoing, EKPC respectfully requests the Commission to:


- (1) Declare that an electric cooperative established under KRS Chapter 279 does not need Commission approval under KRS 278.300 prior to entering into any loans, notes or other obligations under the PPP program in light of the statutory exceptions set forth in KRS 278.300(8) and (10);
- (2) Make such declaration on an expedited basis;
- (3) Grant a deviation from 807 KAR 5:001, Section 19, so as to allow EKPC to file this request for declaratory relief as a motion rather than as a new application; and
- (4) Award any other relief to which EKPC may be entitled.

Done this 3rd day of April, 2020.

VERIFICATION

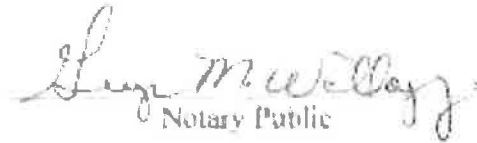
State of Kentucky)
) SS:
County of Fayette)

Comes now, Mike McNalley, Executive Vice President and Chief Financial Officer of East Kentucky Power Cooperative, Inc., in my official capacity, and, after being duly sworn, I do hereby solemnly swear that the averments set forth above are true and correct to the best of my knowledge and belief as of this 3rd day of April, 2020.



Mike McNalley
Executive Vice President and
Chief Financial Officer

Subscribed and sworn to me, the NOTARY PUBLIC, by Mike McNalley, Executive Vice President and Chief Financial Officer of East Kentucky Power Cooperative, Inc., after being duly sworn, on this 3rd day of April, 2020.



Notary Public

Commission Number: 590567

My Commission expires: 11/30/2021

Respectfully submitted,



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