

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF)
KENTUCKY UTILITIES COMPANY FOR AN)
ORDER AUTHORIZING THE ISSUANCE OF) CASE NO. 2020-00109
INDEBTEDNESS)

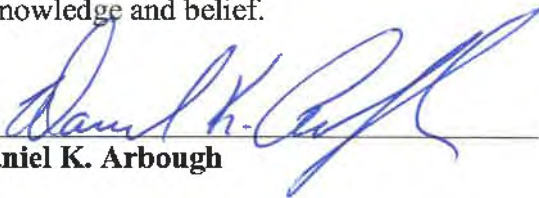
SUPPLEMENTAL RESPONSE OF
KENTUCKY UTILITIES COMPANY
TO COMMISSION STAFF'S INITIAL REQUEST FOR INFORMATION
DATED MAY 1, 2020

FILED: JUNE 5, 2020

VERIFICATION

COMMONWEALTH OF KENTUCKY)
)
COUNTY OF JEFFERSON)

The undersigned, **Daniel K. Arbough**, being duly sworn, deposes and says that he is Treasurer for Kentucky Utilities Company and an employee of LG&E and KU Services Company, and that he has personal knowledge of the matters set forth in the responses for which he is identified as the witness, and the answers contained therein are true and correct to the best of his information, knowledge and belief.


Daniel K. Arbough

Subscribed and sworn to before me, a Notary Public in and before said County and State, this 5th day of June 2020.

 (SEAL)
Notary Public

Notary Public, ID No. 603967

My Commission Expires:

7/11/2022

Kentucky Utilities Company
Supplemental Response to Commission Staff's Initial Request for Information
Dated May 1, 2020

Case No. 2020-00109

Question No. 1

Witness: Daniel K. Arbough/Counsel

Q-1. Refer to the application, paragraph 8, in which KU notes it has been working toward the refunding and replacement of the Series B First Mortgage Bonds authorized in Case No. 2019-00242,¹ but refunding and replacement has become administratively and legally problematic for the foreseeable future due to the closing of courthouses and County Clerk offices from the COVID-19 pandemic.

- a. Describe what actions KU made toward the refunding and replacement of the Series B First Mortgage Bonds.
- b. Define "the foreseeable future."
- c. With the recent announcement of the reopening of the state via a phased-in approach, explain whether KU believes that the constraints surrounding the recording of documents at courthouse and County Clerk offices will lessen.

A-1. Response (May 11, 2020)

- a. The Company had been actively negotiating documents with underwriters and preparing to launch a transaction within a few days when the governor issued his emergency orders and the County Clerk offices closed.
- b. Unfortunately, at this point KU does not know when the County Clerk offices will open to process the Company's documents on a timely basis. See the response to part c below. The request for authorization in this case is being made to avoid a situation where the Company is forced into a transaction at a point in time when markets are not functioning well. It is in the best interest of customers to provide the requested flexibility to approach the markets in an orderly fashion with a structure that has a high certainty of execution.
- c. As referenced in KU's application, KRS 382.380 states:

¹ Case No. 2019-00242 Electronic Application of Kentucky Utilities Company for an Order Authorizing the Issuance of Securities and Assumption of Obligations, (Ky. PSC Sep. 11, 2019).

“If a deed of trust or mortgage is made to a trustee or to a mortgagee to secure the payment of bonds or other obligations to be issued thereafter, the grantor in the deed of trust or the mortgagor in the mortgage, *when or before such additional bonds or other obligations are issued*, shall cause to be recorded in the office of the county clerk of the county in which such deed of trust or mortgage was first recorded, a statement by the grantor or the mortgagor acknowledged as deeds are required to be acknowledged, setting forth the amount, the date, the maturity and the description of such additional obligations, *and until such statement is so lodged for record no such bonds or other obligations shall be issued by the grantor or the mortgagor or certified by the trustee.*” (Emphasis added).

To comply with this statute, in order to obtain financing utilizing First Mortgage Bonds as security, the Company would first need to lodge for record a Supplemental Indenture (which amends the original First Mortgage Indenture filed by the Company and the Supplements thereto), containing the information required by the statute, in all 69 Counties in Kentucky where the Company owns real property. In order for the Supplemental Indenture to be “lodged for record”, the Company needs each County Clerk office to either issue a receipt for the recording, stamp and return the original or a copy of the document as recorded or both. By being able to record the Supplemental Indentures in-person, the Company is able to get instantaneous lodging in each County.

If a County Clerk’s office does not allow in-person recordings, and instead only allows the Supplemental Indenture to be mailed in or ‘dropped off’ in a box at a Clerk’s Office, there is no way to guarantee that the Supplemental Indenture will be ‘lodged for record’ by a given Clerk within any prescribed time frame. Under the terms of the First Mortgage Bond financing, the investors require that the Supplemental Indentures be lodged for record, to enable the issuance of the Bonds, within a fixed number of days that can vary from 5 to 7 days. If just 1 of the 69 Clerk’s offices cannot guarantee lodging within the prescribed time period, the First Mortgage Bonds cannot be issued.

On March 16, 2020, Governor Beshear ordered all in-person government services to be closed as of 5:00 p.m. EDT on Tuesday, March 17, 2020. (Link - <https://kentucky.gov/Pages/Activity-stream.aspx?n=GovernorBeshear&prId=94>). (At that time, most of the required 69 County Clerks’ Offices had already closed on their own). As of the date of that action, it became impossible for KU to guarantee the lodging for record of the Supplemental Indentures in all 69 Counties within a prescribed time frame, and therefore the First Mortgage Bonds could not be issued, making that financing option not viable. Governor Beshear has not, as of this date, re-opened government offices for in-person services.

Both the Kentucky Bankers Association and the Kentucky Land Title Association lobbied the Governor and the Secretary of State to require the County Clerks to remain open during the pandemic to accept live recordings. On March 25, 2020, Kentucky

Secretary of State Michael Adams forwarded the letter referenced in the application to the Clerks emphasizing the importance of accepting live recordings, to no apparent avail (with the exception of the Fayette County Clerk, which took some minor steps, as shown in the summary chart described below).

In response to this request for information, KU's counsel surveyed the 69 County Clerks Offices to determine if their recording procedures have changed. Specifically, the law firm called the Clerks' offices, checked the Clerks' websites to verify the latest information or both; the law firm prepared the chart shown in Attachment No. 1 with the information on the current status of the required 69 County Clerks' Offices.

As shown on the attachment, most of the Clerks are only accepting mail-in or drop-box recordings, and with no guarantee of lodging the documents for record in all 69 Counties within a prescribed time period.

KU and its counsel have also continued to monitor Governor Beshear's Healthy at Work Reopening Process for Kentucky businesses. As of this time, no specific date has been set for the re-opening of in-person government services; "office-based businesses" are set to reopen on May 11, 2020, at "50% of pre-outbreak capacity". However, governmental services do not appear to be covered under the Plan's definition of office-based services. ("Office-based businesses" are defined to include finance and accounting, legal, insurance, engineering, architecture, real estate, scientific/technical, property management, non-profit organizations performing administrative services, and other corporate offices and private office-based firms – link: https://govsite-assets.s3.amazonaws.com/8Yin84XkREOVdcNilqvz_Healthy%20at%20Work%20Reqs%20-%20Office-Based%20Businesses%20-%20Final%20Version%201.0.pdf).

If the Governor were to *allow* the Clerks Offices to reopen under the Healthy at Work Plan, there is no obligation for all 69 Clerks would do so, absent an actual Executive Order to reopen.

A-1. Supplemental Response (June 5, 2020)

- a. Following submission of the Company's data responses on May 11, 2020, the Company continued to assess the status of the County Clerk offices and the Company's availability to record the Supplemental Indenture in each of the 69 counties where the Company owns real property. KU determined through this assessment that some of the County Clerk offices began to have persons working at the office while the offices remained closed to the public. This change in circumstances allowed KU to be able to contact each County Clerk office and speak directly with a representative regarding the Company's need to make the recording and the public interest to be served through the County Clerk office's cooperation.

During the same time, the Company continued to have discussions with its underwriters about conditions in the bond market. Demand for bonds similar to KU's first mortgage bonds was excellent and volatility was low. This allowed the Company to negotiate with the underwriters for a ten business day period between the pricing of the bonds and the closing date during which the Supplemental Indenture could be recorded with the County Clerks.

Based on the feedback received from the County Clerks and the bond underwriters, the Company approached the market with the bond offering on May 19. The transaction was met with excellent demand and the bonds were sold in the amount of \$500 million at an interest rate of 3.30% for thirty years.

On May 22, 2020, KU's counsel informed the Commission by letter to the Executive Director that the Company was proceeding with the refinancing of \$500 million of its First Mortgage Bonds under its current regulatory authority granted in Case No. 2019-00242. Because the closing date of the transaction was expected shortly after the statutory order date of June 2, 2020, KU requested the Commission extend the period for its review of the Application until June 12, 2020. The Commission granted this extension in its May 28, 2020 Order.

As of May 29, 2020, the Supplemental Indenture had been lodged in all 69 Kentucky counties, and the Company successfully completed the transaction on June 3, 2020. The Company's Form 8-K filed with the United States Securities and Exchange Commission includes the issuance of the \$500 million aggregate principal amount of 3.300% First Mortgage Bonds due in 2050 and can be found here: [SEC Form 8-K](#).

Although KU was able to successfully market and sell the \$500 million First Mortgage Bonds pursuant to the regulatory authority granted in Case No. 2019-00242, KU continues to request the authority set forth in its Application to (a) incur debt in 2020 or 2021 up to \$750 million in the form of First Mortgage Bonds, Intermediate Term Financings, or a combination thereof (of which \$500 million has now recently been issued), (b) increase the Company's authority for a revolving line of credit in 2020 or 2021 in the additional amount of \$150 million (for a total of up to \$650 million), and (c) exercise extensions of its existing multi-year revolving credit line or any new multiyear revolving credit line in 2020 and 2021 to extend the credit facility maturity date to up to five years from the effective date of the amendment. KU believes these requests continue to be appropriate and advisable to ensure it has prudent flexibility and capacity to respond to continuing financial, economic or governmental uncertainties or disruptions due to COVID-19 circumstances during the remainder of 2020 and 2021.

- b. See the response to part a.
- c. See the response to part a.