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From: Mark Hite

Sent: Tuesday, September 20, 2011 10:31:37 AM

To: Eric M. Robeson; Bob Berry; Bill Blackburn; Albert Yockey; Lindsay Barron

Subject: RE: Environmental Compliance Planning Notes

Importance: Normal

Your questions (in dark blue), and the preliminary response to each, are below...

What does the timing of financing look like? We should plan on a minimum 4 month process, including the PSC, the documents, the rating agencies, etc.

Who do we have to get approval from? U.S. Bank National Association, Indenture Trustee (see relevant Indenture excerpts below). **PSC?** Yes (see KRS 278.300 excerpts below [60 days from filing date; same for CCN]). **Other lenders?** No (CFC and CoBank) **RUS?** No (see relevant RUS Loan Contract and Indenture excerpts below).

-Indenture specifications? See Articles III and IV of the Indenture

-What does this timeline for approval look like? See above (estimated 4 month process)

-Approximately how long will it take to get creditor approval? See above (estimated 4 month process)

-What is the actual process? See Articles III and IV of the Indenture

The following are certain relevant excerpts from the RUS Loan Contract, the Indenture, KRS 278.300/807 KAR 5:001:

RUS Loan Contract, Section 8.1. Notice to RUS; Objection of RUS

Before undertaking any transaction described in Article V or the schedules attached hereto that requires compliance with the requirements of Section 8.1, the Borrower shall give to the RUS (i) notice in writing describing in reasonable detail the proposed transaction and clearly stating that the transaction is covered by this Section 8.1 and (ii) drafts of any documents to effect such transaction. If the RUS delivers to the Borrower written notice that it objects to the proposed transaction within sixty (60) days (or such shorter period as the parties

shall agree to in

writing), the Borrower shall not complete the transaction without RUS approval.

RUS Loan Contract, Section 5.9. Indenture Restrictions

Notwithstanding the provisions of the Indenture, the Borrower shall not, without first

complying with the requirements of Section 8.1 :

(f) enter into a Supplemental Indenture pursuant to Section 13.1B or 13.1C **(reference should be to section 12, not section 13)** of the

Indenture if (i) the Holders of the Obligations issued under such Supplemental Indenture are

granted greater security rights in and to the Trust Estate than those security rights enjoyed by the

Government in its capacity as a Holder of Obligations under the Indenture, provided, however,

that neither (I) the existence of Credit Enhancement nor (II) the creation and maintenance of debt

service or similar funds for the payment of the principal and interest on Obligations issued under

such Supplemental Indenture (to the extent such debt service or other similar funds are funded

from the proceeds of the issuance of such Obligations or funded in connection with the

refinancing of other debt by such Obligations), shall constitute greater security rights in and to

the Trust Estate requiring the Borrower to comply with the requirements of Section 8.1 ; (ii) the

Supplemental Indenture provides for covenants, restrictions, limitations, conditions, events of

defaults or remedies not applicable to all Obligations then Outstanding or not equally available to

all Holders of Obligations then Outstanding, provided, however, that provisions for covenants

and events of default that relate solely to assuring that the interest on such Obligations (or other

indebtedness secured by such Obligations) is excludable from the gross income of the holder

thereof pursuant to the Internal Revenue Code, as amended, shall not constitute the providing of

covenants or events of default requiring the Borrower to comply with the requirements of

Section 8.1; or (iii) the Obligations issued under such Supplemental Indenture, or the

indebtedness secured by such Obligations, can be (a) accelerated or (b) effectively accelerated

through a mandatory purchase or similar mechanism, in either case~ as a consequence of a breach

or default by the Borrower under the related loan agreement or similar agreement entered into in

connection with such Obligation or indebtedness, provided, however, that acceleration and

similar rights may be granted to development authorities and trustees without first complying

with the requirements of Section 8.1 in connection with the issuance of Obligations (or other

indebtedness secured by such Obligations) the interest on which is excludable from the gross

income of the holder thereof pursuant to the Internal Revenue Code, as amended, if such

acceleration and similar rights are substantially similar to those currently granted to development

authorities and trustees in connection with the Existing Obligations;

(k) issue any Additional Obligations under the Indenture to

Additions unless the following additional requirements are satisfied in

requirements set forth in the Indenture for issuing such Additional Obligations:

finance Property

addition to the

(1) If the proceeds of such Additional Obligations are being used to finance the

initial cost of the construction or acquisition of identified tangible assets, the weighted

average life of the loan evidenced by such Additional Obligations does not exceed the

weighted average of the expected remaining useful lives of the assets being financed;

(2) The principal of the loan evidenced by such Additional Obligations is

amortized at a rate that shall yield a weighted average life that is not greater than the

weighted average life that would result from level payments of principal and interest; and

(3) The principal of the loan being evidenced by such Additional Obligations has a maturity of not less than five years.

In determining its compliance with the requirements of clause (2) of this paragraph

(k), the

Borrower shall be permitted to make reasonable assumptions as to the interest rate which such

Additional Obligations will bear as the Borrower deems appropriate in light of the prevailing

interest rate environment in which such Additional Obligations are to be issued; or

Indenture, Section 12.1 Supplemental Indentures Without Consent of Holders.

Without the consent of the Holders of any Obligations, the Company, when authorized by a Board Resolution, and the Trustee, at any time and from time to time, may enter into one or more Supplemental Indentures, in form satisfactory to the Trustee, for any of the following purposes:

C. to create any series of Obligations and make such other provisions as provided in

Section 3.3

807 KAR 5:001. Rules of procedure.

RELATES TO: KRS Chapter 278

Section 8. Applications. (1) Contents of application. All applications must be by petition in writing. The petition must set forth the full name and post office address of the applicant, and must contain fully the facts on which the application is based, with a request for the order, authorization, permission or certificate desired and a reference to the particular provision of law requiring or providing for same.

(2) Number of copies. At the time the original application is filed, ten (10) additional copies must also be filed, and where parties interested in the subject matter of the application are named therein, there shall be filed an additional copy for each named

party and such other additional copies as may be required by the secretary.

(3) Articles of incorporation. If the applicant is a corporation, a certified copy of its articles of incorporation, and all amendments thereto, if any, shall be annexed to the application. If applicant's articles of incorporation and amendments thereto, if any, have already been filed with the commission in some prior proceeding, it will be sufficient if this fact is stated in the application and reference is made to the style and case number of the prior proceeding.

Section 11. Application for Authority to Issue Securities, Notes, Bonds, Stocks or Other Evidences of Indebtedness. (1) When application is made by the utility for an order authorizing the issuance of securities, notes, bonds, stocks or other evidences of indebtedness payable at periods of more than two (2) years from the date thereof, under the provisions of KRS 278.300, said application, in addition to complying with the requirements of Section 8 of this administrative regulation, shall contain:

(a) A general description of applicant's property and the field of its operation, together with a statement of the original cost of the same and the cost to the applicant, if it is impossible to state the original cost, the facts creating such impossibility shall be stated.

(b) The amount and kinds of stock, if any, which the utility desires to issue, and, if preferred, the nature and extent of the preference; the amount of notes, bonds or other evidences of indebtedness, if any, which the utility desires to issue, with terms, rate of interest and whether and how to be secured.

(c) The use to be made of the proceeds of the issue of such securities, notes, bonds, stocks or other evidence of indebtedness with a statement indicating how much is to be used for the acquisition of property, the construction, completion, extension or improvement of facilities, the improvement of service, the maintenance of service and the discharge or refunding of obligations.

(d) The property in detail which is to be acquired, constructed, improved or extended with its cost, a detailed description of the contemplated construction, completion, extension or improvement of facilities set forth in such a manner that an estimate of cost may be made, a statement of the character of the improvement of service proposed, and of the reasons why the service should be maintained from its capital. Whether any contracts have been made for the acquisition of such property, or for such construction, completion, extension or improvement of facilities, or for the disposition of any of the securities, notes, bonds, stocks or other evidence of indebtedness which it proposes to issue or the proceeds thereof and if any contracts have been made, copies thereof shall be annexed to the petition.

(e) If it is proposed to discharge or refund obligations, a statement of the nature and description of such obligations including their par value, the amount for which they were actually sold, the expenses associated therewith, and the application of the proceeds from such sales. If notes are to be refunded, the petition must show the date, amount, time, rate of interest, and payee of each and the purpose for which their proceeds were

expended.

(f) Such other facts as may be pertinent to the application.

(2) The following exhibits must be filed with the application:

(a) Financial exhibit (see Section 6 of this administrative regulation).

(b) Copies of trust deeds or mortgages, if any, unless they have already been filed with the commission, in which case reference should be made, by style and case number, to the proceeding in which the trust deeds or mortgages have been filed.

(c) Maps and plans of the proposed property and constructions together with detailed estimates in such form that they can be checked over by the commission's engineering division. Estimates must be arranged according to the uniform system of accounts prescribed by the commission for the various classes of utilities.

KRS 278.300 Issuance or assumption of securities by utilities.

(1) No 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.

(2) Application for authority to issue or assume securities or evidences of indebtedness shall be made in such form as the commission prescribes. Every such application shall be made under oath, and shall be signed and filed on behalf of the utility by its president, or by a vice president, auditor, comptroller, or other executive officer having knowledge of the matters set forth and duly designated by the utility. Every such application shall be placed at the head of the docket of the commission and disposed of promptly within sixty (60) days after it is filed with the commission, unless it is necessary for good cause to continue the application for longer time than sixty (60) days, in which case the order making the continuance shall state fully the facts that make it necessary.

(3) 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.

(4) The commission may grant or deny the application in whole or in part, or may grant it with such modifications and upon such terms and conditions as the commission deems necessary or appropriate. The order of the commission shall specify that the securities or evidences of indebtedness, or the proceeds thereof, shall be used only for the lawful purposes specified in the application, and both the application of the utility and the order of the commission shall state in general terms the purpose of the issuance or assumption.

(5) A copy of any order made and entered by the commission under this section, duly certified by the executive director of the commission, shall be sufficient evidence for all purposes of full and complete compliance by the utility with all procedural and other matters required precedent to the entry of the order.

(6) Securities and evidences of indebtedness issued and obligations and liabilities assumed by a utility, for which, under the provisions of this section, the authorization of the commission is required, shall comply with the terms and conditions of the order of authorization entered prior to the issue or assumption, and where the order has been fully complied with the validity of the issue or assumption shall not be affected by a failure to comply with any provision of this section or rule of the commission relating to procedure or other matters preceding the entry of the

order of authorization or order supplemental thereto.

(7) The commission may require periodical or special reports from the utility issuing any security or evidence of indebtedness. The report shall show, in such detail as the commission requires, the disposition made of such securities or evidences of indebtedness, and the application of the proceeds thereof.

(8) 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, or to like notes, payable at a period of not more than two (2) years from date thereof, that are issued to pay or refund in whole or in part any such notes, or to renewals of such notes from time to time, not exceeding in the aggregate six (6) years from the date of the issue of the original notes so renewed or refunded.

(9) Nothing in this section implies any guarantee of securities or evidences of indebtedness by the state, or any obligation on the part of the state with respect thereto, and nothing in this section limits the power of any court having jurisdiction to authorize or cause receiver's certificates or debentures to be issued according to the rules and practice obtaining in receivership proceedings in courts of equity.

(10) 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, but the commission may appear as a party to any proceeding filed or pending before any federal agency if the issuance of the securities or evidences of indebtedness will materially affect any utility over which the commission has jurisdiction.

(11) This section also does not apply to the issuance of securities or evidence of indebtedness by a utility principally engaged in transportation of gas by pipeline in

interstate commerce and subject to the supervision, control or jurisdiction of the federal government or any agency, board or commission thereof.

Thanks,

Mark

From: Eric M. Robeson
Sent: Monday, September 19, 2011 4:04 PM
To: Bob Berry; Bill Blackburn; Albert Yockey; Mark Hite; Lindsay Barron
Cc: Mark Bailey
Subject: Environmental Compliance Planning Notes

The following describes our discussion and issues to be researched further

I will schedule our next meeting for mid October

Al Yockey

What is required for Environmental Compliance Plan?

-Statutory Requirements?

-Timeline for commission approval?

-Supporting documentation?

-Does it roll into base rates or environmental surcharge?

Current Environmental Surcharge

- What does it cover? Coal-fired capital only?
- Reagents, disposal, allowances? Is anything else allowable?
- Will current surcharge allow collections under CSAPR?
- Will it cover capital costs as well as O&M?

Who can we trade with under CSAPR?

Mark Hite

What does the timing of financing look like?

- Who do we have to get approval from? PSC? Other lenders? RUS?
- Indenture specifications?
- What does this timeline for approval look like?
- Approximately how long will it take to get creditor approval?
- What is the actual process?