

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

ORDER

On March 16, 2020, the Commission established this docket in response to a state of emergency brought on by the pandemic of the novel coronavirus, COVID-19. On April 3, 2020, East Kentucky Power Cooperative, Inc. (EKPC) filed a request in this docket, pursuant to 807 KAR 5:001, Section 19,¹ for declaratory relief declaring whether EKPC, or any other electric cooperative formed under KRS Chapter 279, must receive Commission approval pursuant to KRS 278.300 before applying for small business loans from the federal government pursuant to the Coronavirus Aid, Relief, and Economic Security Act (CARES Act).²

The loan for which EKPC will apply is administered by the Small Business Administration (SBA), a federal agency, and 100% guaranteed by the federal government. The loans are issued under the Paycheck Protection Program. The loans are provide through SBA-certified banks, credit unions and non-bank lenders. The loan,

¹ EKPC, pursuant to 807 KAR 5:001, Section 22, requests a deviation from the requirements of 807 KAR 5:001, Section 19, which, *inter alia*, require that a request for declaratory relief be filed as a separate application, and a copy be served on any affected person. However, the procedure in 807 KAR 5:001, Section 19 will unnecessarily complicate EKPC's request, frustrate the purpose of the request and unreasonably delay this proceeding. The Commission therefore finds that EKPC's motion for a deviation should be granted.

² S.3548, Pub. Law 116-136.

if received, is provided at a 1% interest rate and for a term of up to two years. Borrowers may obtain loans of up to 2.5 times their average payroll expenses, not to exceed \$10 million. The loans are forgivable if employees of the recipient are kept on payroll for at least eight weeks and the money is to be primarily used on payroll, utilities, mortgages, and rent.³ EKPC commits to using the funds so that it will be eligible for loan forgiveness.⁴

EKPC posits that the loans do not require Commission approval pursuant to KRS 278.300(8) and (10).

278.300 requires that a utility receive Commission approval before issuing any securities of indebtedness or assuming any obligation. KRS 278.300(8), however, exempts evidence of indebtedness that has a term of two years or less.⁵ The SBA loans issued under the Paycheck Protection Program have, at most, a term of two years. Moreover, the loans are forgiven if the recipient of the loans uses the money from the loans for specific purposes, to which EKPC has committed. Based upon these facts and EKPC's representations, the Commission finds that EKPC and other electric cooperatives

³ For specific information on this SBA program, see <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program-ppp#section-header-0> . (Last visited April 3, 2020).

⁴ EKPC's Request for Declaratory Relief (filed Apr. 3, 2020) at 2.

⁵ 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, 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.

formed under KRS Chapter 279 are not required to receive Commission approval under KRS 278.300 in order to apply for loans under the SBA's Paycheck Protection Program.⁶

IT IS THEREFORE ORDERED that:

1. EKPC, and any other electric cooperative formed 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 Paycheck Protection Program in light of the statutory exemption found in KRS 278.300(8);

2. EKPC is granted a deviation from the requirements of 807 KAR 5:001, Section 19; and

3. This Order is limited only to loans, notes, or other obligations under the Paycheck Protection Program and is not a declaration that other evidence of indebtedness, issuance of securities, loans, notes, or other obligations pursuant to the CARES Act or subsequent federal relief do not require Commission approval pursuant KRS 278.300.

⁶ Because KRS 278.300(8) presents a sufficient basis to grant EKPC's requested relief we do not need to reach the issue of the applicability of KRS 278.300(10).

By the Commission



ATTEST:

A handwritten signature in blue ink, consisting of stylized initials and a surname, positioned above a horizontal line.

Executive Director

