

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

NOTICE AND APPLICATION FOR ADJUSTMENT )  
OF RATES FOR JACKSON PURCHASE ELECTRIC ) CASE NO. 8863  
COOPERATIVE CORPORATION )

ORDER ON REHEARING

On January 13, 1984, Jackson Purchase Electric Cooperative Corporation ("Jackson Purchase") filed a petition for rehearing of the rate Order issued by the Commission on December 29, 1983. Jackson Purchase alleged that the Commission's policy of disallowing interest expense on funds drawn down after the close of the test year should not be applied to it in this case since the policy was announced by the Commission after the case had been filed. Jackson Purchase therefore contended that it was denied "due process."

In Case No. 8778, Salt River RECC, October 24, 1983, the Commission gave notice of its change in policy and stated that in future proceedings the burden of proof would be upon the utility to show why this post-year interest expense should be allowed for ratemaking purposes. In its Order of October 28, 1983, (data request for Jackson Purchase) the Commission stated its position

on this matter and instructed Jackson Purchase to present any evidence it could in opposition thereto. Jackson Purchase did so in its data response of November 14, 1983, and presented additional testimony on the subject at the hearing before the Commission on December 8, 1983. However, to insure that the utility had been allowed to fully present its position, the Commission granted a limited rehearing whereby all parties could file written memoranda on this issue. Memoranda were received from Jackson Purchase and the Attorney General, the only intervenor in the case.

The thrust of Jackson Purchase's argument is that it did not have sufficient "time" to address the effect of the Commission's new policy. However, this argument simply has no merit. Jackson Purchase was first notified of the Commission's policy on October 28, 1983. It then had 17 days to prepare and file a written response. Moreover, Jackson Purchase could have filed supplemental testimony up to the date of the hearing in this matter which was held on December 8, 1983. And at the hearing itself, Jackson Purchase was given every opportunity to explain why the Commission's policy should not be applied to it.

Jackson Purchase's real complaint appears to be not "lack of time to prepare," but simply that it disagrees with the Commission's new policy on disallowing interest expense on funds drawn down after the close of the test year. However, this policy was adopted to insure that electric consumers' rates reflect only the plant investment and related costs required to provide their service, and thereby provide a better matching between revenues,

expenses and investment. Such a policy is clearly in the public interest and the Commission reaffirms its intention to apply this policy on a case by case basis where warranted by the facts.

Jackson Purchase argues that the Commission was required to codify its policy into a formal regulation having general applicability to all utilities subject to its jurisdiction. However, this position would unnecessarily fetter the Commission's discretion in dealing with each particular rate case on its own merits. There may well be rate cases where the Commission will determine that the particular facts do not warrant application of its policy on interest expense. In Securities and Exchange Commission v. Chenery Corporation, 332 U.S. 194, 202-203 (1947), the Supreme Court of the United States recognized this point when it refused to require a federal regulatory agency to codify all of its policies into regulation form:

[T]he agency may not have had sufficient experience with a particular problem to warrant rigidifying its tentative judgment into a hard and fast rule. Or the problem may be so specialized and varying in nature as to be impossible of capture within the boundaries of a general rule. In those situations, the agency must retain power to deal with the problems on a case-by-case basis if the administrative process is to be effective.

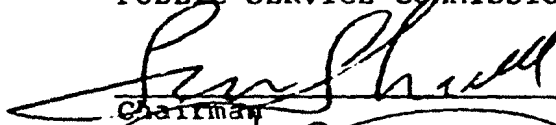
Jackson Purchase's contention that the Commission is required to codify its new policy into a formal regulation clearly has no merit.

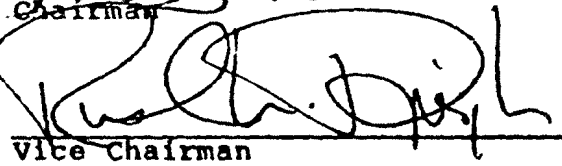
In the instant case, Jackson Purchase was given numerous opportunities to show why the Commission's policy on interest expense should not be applied to it in this case. It failed to meet its burden of proof on this issue, and the Commission's rate

Order issued for Jackson Purchase on December 29, 1983, is hereby reaffirmed in its entirety.

Done at Frankfort, Kentucky, this 29th day of March, 1984.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

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Secretary