COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

EAST KENTUCKY POWER COOPERATIVE'S REQUEST FOR A DECLARATORY RULING ON THE APPLICATION OF ADMINISTRATIVE REGULATION 807 KAR 5:056 TO ITS PROPOSED TREATMENT OF NON-ECONOMY ENERGY PURCHASES	)	CASE NO. 2004-00430

O R D E R

East Kentucky Power Cooperative ("EKPC") has requested a declaratory ruling from the Commission regarding a proposed method to report its fuel costs for fuel adjustment clause ("FAC") purposes for non-economy energy purchases when all available generating capacity is serving native load.[1] At issue is whether the proposed method, which requires EKPC to underreport its cost of fuel, conflicts with Administrative Regulation 807 KAR 5:056. Finding that Administrative Regulation 807 KAR 5:056 requires an electric utility to report its actual cost of fuel, we find that the proposal conflicts with that regulation.

[1] On October 5, 2004, EKPC requested a written interpretation from Commission Staff regarding a proposed change to its FAC reporting procedures. Interpreting EKPC's request as a petition for declaratory ruling, on November 9, 2004, we established a formal proceeding to address the petition and directed that the Attorney General and Gallatin Steel Company, parties who had previously participated in EKPC's FAC review proceedings, be made parties to this proceeding. We further directed these parties to submit any comments regarding EKPC's proposed action and the treatment that Administrative Regulation 807 KAR 5:056 requires within 10 days. No comments were received.

EKPC proposes to report in its monthly FAC reports the cost of any non-economy energy purchases made at times when all available EKPC generating capacity is serving native load as $0.00. Under this proposal, the cost of such non-economy energy purchases will not be reflected in and recovered through EKPC's monthly FAC charges. EKPC instead will voluntarily absorb these costs. EKPC asserts that, given its plans for constructing new generation in the near future, the costs of this action will not be a significant burden and that such costs can be recovered in a base rate case proceeding.

An FAC is "a means for [an electric] utility to recover from its customers its current fuel expense through an automatic rate adjustment without the necessity for a full regulatory rate proceeding. This rate may increase or decrease from one billing cycle to the next depending on whether the utility's cost of fuel increased or decreased in the same period. The rate provides for a straight pass-through of fuel costs, with no allowance for a profit to the utility." Kentucky Power Company, Case No. 6877 (Ky. P.S.C. Dec. 15, 1977) at 2.

Administrative Regulation 807 KAR 5:056 permits electric utilities to establish FACs to adjust their rates to reflect changing fuel prices. It requires that an FAC "provide for periodic adjustment per KWH [kilowatt hour] of sales equal to the difference between the fuel costs per KWH sale in the base period and in the current period." 807 KAR 5:056, Section 1(1). It establishes an adjustment factor based upon the following formula:

$$\text{Adjustment Factor} = \frac{\text{Monthly Fuel Costs}}{\text{Monthly Sales}} - \frac{\text{Base Fuel Costs}}{\text{Base Sales}}$$

This factor, which is also expressed in terms of cents per KWH, is multiplied by the customer's usage to determine his or her monthly FAC charge. The charge, which may be positive or negative, appears as a separate line item on the customer's bill.

Administrative Regulation 807 KAR 5:056, Section 1, provides the following formula to determine monthly and base fuel costs:

$$\text{Fuel Costs (\$)} = \begin{array}{c} \textbf{Fuel Consumed in Utility's Own Plants} \\ + \\ \textbf{Fuel Cost of Purchased Power} \\ + \\ \textbf{Energy Cost of Power Purchased on Economic Dispatch} \\ - \\ \textbf{Cost of Fuel Recovered Through Intersystem Sales} \end{array}$$

Administrative Regulation 807 KAR 5:056, Section 1(3), governs the recovery of purchased energy costs through an electric utility's FAC. It permits the inclusion of economy energy purchases,[2] exclusive of capacity or demand charges, in the cost of fuel as calculated for FAC purposes when such energy is purchased on an economic

[2] Economy energy is "[e]nergy produced and supplied from a more economical source in one system, substituted for that being produced or capable of being produced by a less economical source in another system." Sierra Pacific Power Co. v. Public Service Commission of Nevada, 634 P.2d 1200, 1203 fn.1 (Nev. 1981). Economy energy sales occur when utilities purchase energy from other utilities that can generate the energy at lower cost. Citizens of State v. Public Service Com'n, 464 So.2d 1194 (Fla.1985). Such transactions are generally considered beneficial to utility ratepayers by permitting purchasing utilities to obtain lower cost power to meet their native load requirements while allowing selling utilities the opportunity to earn additional revenue by the sale of excess power.

dispatch basis. It also permits the recovery of "actual identifiable fossil and nuclear fuel costs associated with energy purchased" in non-economy transactions.[3]

The EKPC proposal conflicts with the literal language of Administrative Regulation 807 KAR 5:056, which states:

> Fuel costs (F) **shall be** the most recent **actual** monthly cost of:
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> (a) Fossil fuel consumed in the utility's own plants, and the utility's share of fossil and nuclear fuel consumed in jointly owned or leased plants, plus the cost of fuel which would have been used in plants suffering forced generation or transmission outages, but less the cost of fuel related to substitute generation; plus
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> (b) **The actual identifiable fossil and nuclear fuel costs associated with energy purchased for reasons other than identified in paragraph (c) of this subsection, but excluding the cost of fuel related to purchases to substitute for the forced outages**; plus
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> (c) The net energy cost of energy purchases, exclusive of capacity or demand charges (irrespective of the designation assigned to such transaction) when such energy is purchased on an economic dispatch basis. Included therein may be such costs as the charges for economy energy purchases and the charges as a result of scheduled outage, all such kinds of energy being purchased by the buyer to substitute for its own higher cost energy; and less
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> (d) The cost of fossil fuel recovered through intersystem sales including the fuel costs related to economy energy sales and other energy sold on an economic dispatch basis.

[3] For a discussion of the methodology for calculating the fuel cost of such transactions, see Case No. 2000-00495-B, An Examination By the Public Service Commission of the Application of the Fuel Adjustment Clause of American Electric Power Company from May 1, 2001 to October 31, 2001 (Ky. PSC May 2, 2002); Case No. 2000-00496-B, An Examination By the Public Service Commission of the Application of the Fuel Adjustment Clause of East Kentucky Power Cooperative, Inc. From May 1, 2001 to October 31, 2001 (Ky. PSC May 2, 2002).

Administrative Regulation 807 KAR 5:001, Section (1)(3) (emphasis added). The regulation prescribes a strict procedure for accounting and reporting fuel costs and requires the reporting of all fuel costs. It does not allow any discretion to a utility to ignore or underreport such costs that are otherwise considered a “fuel cost” or to use other than actual costs. The regulation makes no exceptions and provides for no variations or deviations from the stated reporting methodology.

KRS 278.160(2), furthermore, requires EKPC to charge an FAC charge that reflects the total cost of non-economy energy purchases. It provides:

> No utility shall charge, demand, collect, or receive from any person a greater or **less compensation** for any service rendered or to be rendered than that prescribed in its filed schedules, and no person shall receive any service from any utility for a compensation greater or less than that prescribed in such schedules [emphasis added].

EKPC’s filed rate schedules[4] set forth a formula for calculating its FAC charge that contains the same mandatory language that is contained in Administrative Regulation 807 KAR 5:056. As EKPC’s proposal requires EKPC to ignore that formula and to assess an FAC charge other than that set forth in its filed rate schedules, it is contrary to KRS 278.160(2).

Having carefully reviewed and considered EKPC’s proposal, the Commission HEREBY ORDERS and DECLARES that the proposal conflicts with KRS 278.160(2) and Administrative Regulation 807 KAR 5:056 and that any implementation of the proposal is unlawful.

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[4] Tariff of East Kentucky Power Cooperative, Inc., PSC No. 28, Original Sheets 2 and 3.

Done at Frankfort, Kentucky, this 7th day of February, 2005.

By the Commission

ATTEST:

Executive Director