

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CONSIDERATION OF THE NEW FEDERAL)	
STANDARDS OF THE ENERGY INDEPENDENCE)	CASE NO.
AND SECURITY ACT OF 2007)	2008-00408

ORDER

The Energy Independence and Security Act of 2007 ("EISA 2007") was signed into law on December 19, 2007. Part of EISA 2007 amends the Public Utility Regulatory Policies Act of 1978 ("PURPA") by adding four new PURPA standards applicable to electric utilities and two new PURPA standards applicable to natural gas utilities. EISA 2007 also includes one non-PURPA standard applicable to electric utilities. The Commission initiated this proceeding on November 13, 2008 to investigate the adoption of the EISA 2007 standards and issued its final Order ("Order") in this proceeding on October 6, 2011.

Among other things, the Commission's October 6, 2011 Order adopted the Smart Grid Investment Standard as set forth in EISA 2007 and required each jurisdictional electric generating utility to adopt a Kentucky Integrated Resource Plan ("IRP") Standard. The Commission directed each jurisdictional electric generating utility to submit a statement to the Commission indicating its adoption of the Smart Grid Investment Standard as set forth in EISA 2007 and to submit a statement indicating its adoption of the Kentucky IRP Standard, both statements to be filed within 30 days of the date of the Order.

Although the EISA 2007 Gas Energy Efficiency Standard was not adopted, the Commission required each of the five major local gas distribution companies (“LDCs”) to submit policies and procedures within 90 days of the date of the Order to ensure that cost-effective energy efficiency is considered as a priority resource.

The Commission also indicated its intention to establish a new administrative proceeding to focus solely on Smart Grid and Smart Meter initiatives and to manage the efforts of the Smart Grid Collaborative established in this case. The Commission ordered that a record of the efforts of the collaborative, as detailed in the Commission Staff’s (“Staff’s”) informal conference (“IC”) memo of November 2, 2009; Staff’s IC memo of February 19, 2010; and in the Joint Response on behalf of the parties filed on April 29, 2010, be incorporated into the record of the proposed new administrative proceeding.

On October 28, 2011, East Kentucky Power Cooperative, Inc. (“EKPC”) requested rehearing and asked the Commission to clarify or modify five items in the Order. On October 31, 2011, Louisville Gas and Electric Company, Kentucky Utilities Company, Kentucky Power Company, Duke Energy Kentucky, Inc., and Big Rivers Electric Corporation (collectively “Movants”) filed a motion to clarify and amend several aspects of the Commission’s October 6, 2011 Order in this case.

EKPC’s Requests

EKPC requests that the Commission address the applicability of PURPA and EISA 2007 to EKPC. EKPC notes the Commission’s statement at page 2 of the Order that EKPC and several of its member-cooperatives are not subject to PURPA or the new PURPA standards set forth in EISA 2007. As EKPC points out, the Commission

later states, at page 4 of the Order, that all jurisdictional electric utilities are made parties to this proceeding and then, at page 10, states that the EISA 2007 standards apply to all the jurisdictional electric utilities that were made parties to this proceeding. EKPC believes that the Commission's statements are inconsistent and asks the Commission to reconcile those statements.

EKPC asks that the Commission incorporate the comments of the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention ("AG"), and the Community Action Council for Lexington-Fayette, Bourbon, Harrison, and Nicholas Counties, Inc. ("CAC") into the record of the proposed new smart grid administrative case. EKPC points out that, in ordering paragraph 5 of the October 6, 2011 Order, the Commission stated that the record of the efforts of the Smart Grid Collaborative, as detailed in the Staff's IC memos of November 2, 2009 and February 19, 2010, and E.ON's Joint Response on behalf of the parties filed on April 29, 2010, were to be incorporated into the record of the upcoming administrative proceeding on smart grid issues. EKPC notes that the Commission failed to state that the comments submitted by the AG and CAC on April 29, 2010 would also be incorporated and asks that the Commission do so.

EKPC requests that the Commission clarify the requirement to adopt the Kentucky IRP Standard. In the October 6, 2011 Order, the Commission decided not to require adoption of the EISA 2007 IRP Standard and instead developed a Kentucky IRP Standard and required its adoption. EKPC states that it does not object to the provisions of the Kentucky IRP Standard per se. However, EKPC cites a 1991 Opinion of the Franklin Circuit Court ("1991 Opinion") which held that the implementation of a

new policy by the Commission must be implemented through the promulgation of an administrative regulation. EKPC asks for rehearing and clarification on this issue. EKPC also asks that the Commission clarify inconsistent statements relating to the utilities that are required to adopt this standard. In the event that rehearing is denied for this issue, EKPC asks that the Commission clarify several statements regarding the Kentucky IRP that are included in the Order.

EKPC also requests the Commission clarify the requirement to adopt the Smart Grid Investment Standard. The Commission required the jurisdictional electric utilities to adopt the EISA 2007 Smart Grid Investment Standard. EKPC asks for rehearing and clarification on the adoption of the Smart Grid Investment Standard in light of the 1991 Opinion. EKPC also asks that the Commission clarify inconsistent statements relating to the utilities that are required to adopt this standard.

EKPC further asks the Commission to explain the basis for its statements regarding the commitment of EKPC and its member-owners to Demand-Side Management (“DSM”) and Energy Efficiency. In its comments in the Order, the Commission made several statements relating to DSM and energy efficiency (collectively referred to as DSM) that EKPC viewed as criticism of its and its member-cooperatives’ commitment to DSM. EKPC states that it has reviewed the information provided by the Investor-Owned Utilities (“IOUs”) in this proceeding regarding their DSM efforts and believes that its efforts and those of its member-cooperatives are “on par” with those of the IOUs. EKPC, therefore, asks the Commission to clarify how its conclusions about the cooperatives’ efforts were reached.

Requests of the Movants

The Movants request that the Commission clarify and revise the Kentucky IRP Standard. The Movants state that the term “priority resource” as used in the second paragraph of the Kentucky IRP Standard is inconsistent with the use of the terms “equal priority” and “cost-effective” in the first paragraph thereof and ask that the Commission revise the Kentucky IRP Standard to clarify the requirement.

The Movants request that the Commission amend the Order regarding the Gas Energy Efficiency Standard. The Commission required the five major gas LDCs to develop policies and procedures to ensure that cost-effective energy efficiency is considered as a priority resource. The Movants note the use of the term “priority resource” regarding this requirement and ask the Commission to amend its Order to simply use the term “resource” in the requirement.

The Commission required the jurisdictional electric utilities to adopt the EISA 2007 Smart Grid Investment Standard. In the October 6, 2011 Order, the Commission also stated and briefly discussed its intention to initiate a new administrative proceeding to focus solely on Smart Meter and Smart Grid initiatives. The Movants request that the Commission defer the adoption of the Smart Grid Investment Standard. Given the Commission’s intention to establish a new administrative proceeding to address smart grid and smart meter issues, the Movants state their belief that it is premature to indicate their adoption of the Smart Grid Investment Standard at this time.

Discussion and Conclusions

Based on EKPC’s request for rehearing and the Movants’ request for clarification, which will be treated as a request for rehearing, the Commission finds that

issues have been raised that warrant further review and consideration. To afford all parties to this proceeding a full opportunity to comment on the requests, the Commission finds good cause to grant rehearing of the October 6, 2011 Order to further address the five requests of EKPC and the three requests of the Movants as discussed above.

Accordingly, within 60 days of the date of this Order, any party may submit comments that address any of the issues on which the Commission has granted rehearing. In addition, each utility party will be required to file, individually or jointly, a brief with the Commission on the legal issue raised by EKPC of whether the adoption of the Kentucky IRP Standard and the EISA 2007 Smart Grid Investment Standard constitute the adoption of new policy that can only be done by establishing new administrative regulations. Each non-utility party is encouraged, but not required, to file a brief on this legal issue. The Commission will issue a procedural schedule shortly after the briefs have been submitted.

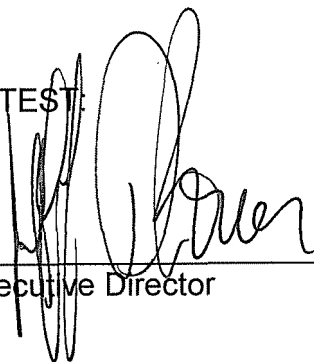
IT IS THEREFORE ORDERED that:

1. The requests for rehearing filed by EKPC and the Movants are granted.
2. Within 60 days of the date of this Order, any party may submit a brief addressing any of the issues upon which rehearing has been granted.
3. Within 60 days of the date of this Order, each non-utility party may file, and each utility party shall file, individually or jointly, a brief on the legal issue of whether adoption of the Kentucky IRP Standard and the EISA 2007 Smart Grid Investment Standard constitute the adoption of new policy that requires the promulgation of new administrative regulations.

By the Commission

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