

Ernie Fletcher
Governor

Teresa J. Hill, Secretary
Environmental and Public
Protection Cabinet

Timothy J. LeDonne
Commissioner
Department of Public Protection



Commonwealth of Kentucky
Public Service Commission
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Telephone: (502) 564-3940
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Mark David Goss
Chairman

John W. Clay
Commissioner

February 13, 2007

Lawrence W. Cook
Assistant Attorney General
Office of the Attorney General Utility & Rate Intervention Division
1024 Capital Center Drive
Suite 200
Frankfort, KY 40601-8204

RE: Case No. 2006-00472

We enclose one attested copy of the Commission's Order in the above case.

Sincerely,

A handwritten signature in black ink, appearing to read "Beth O'Donnell".

Beth O'Donnell
Executive Director

BOD/sh
Enclosure



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Honorable Michael L. Kurtz
Attorney at Law
Boehm, Kurtz & Lowry
36 East Seventh Street
2110 CBLD Building
Cincinnati, OH 45202

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Honorable Charles A. Life
Senior Corporate Counsel
East Kentucky Power Cooperative, Inc.
4775 Lexington Road
P. O. Box 707
Winchester, KY 40392-0707

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Honorable John J. Scott
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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

GENERAL ADJUSTMENT OF ELECTRIC RATES)
OF EAST KENTUCKY POWER COOPERATIVE,) CASE NO. 2006-00472
INC.)

ORDER

East Kentucky Power Cooperative, Inc. ("EKPC") has requested a deviation from Administrative Regulation 807 KAR 5:001, Section 10(1)(b)(7) and (8), to relieve it of any obligation to file proposed tariff sheets for those portions of its tariff that are unaffected by its application for rate adjustment. It also moves to shorten the notice period to 20 days. We grant the request for deviation, but deny the motion to shorten the notice period.

On January 29, 2007, EKPC tendered its application for a rate adjustment to the Commission. Its application contained, *inter alia*, tariff sheets that reflected the proposed rates and an effective date of April 1, 2007. In its application, EKPC requested that the proposed rates be allowed to become effective on April 1, 2007 subject to refund and that, should the Commission deny the request for immediate implementation of the proposed rates, the proposed rates be effective on March 1, 2007.

On February 2, 2007, the Executive Director rejected EKPC's application as failing to conform to certain provisions of Administrative Regulation 807 KAR 5:001,

Section 10.¹ On February 6, 2007, EKPC supplemented its application to cure its noted deficiencies. In its supplemental submission, EKPC requested a deviation from Administrative Regulation 807 KAR 5:001, Section 10(1)(b)(7), to relieve it of any obligation to file proposed tariff sheets for those portions of its tariff that are unaffected by its application for rate adjustment. It further moved to shorten the notice period to the Commission to 20 days to permit its proposed adjustment to become effective on March 1, 2007.

As to the request for deviation, the Commission notes that EKPC's tariff is comprised of two sections. The first section contains the rates, rules, and regulations for furnishing wholesale power service to EKPC's member distribution cooperatives.² The second section contains the rates, rules, and regulations for purchasing electric power and energy from qualified cogeneration and small power production facilities.³ The proposed wholesale rate adjustment only affects the first section of EKPC's current tariff. In its initial submission, EKPC submitted only this section of its tariff.

Administrative Regulation 807 KAR 5:001, Section 10(1)(b)(7), requires a utility to submit with its application for rate adjustment its proposed tariff in a form that

¹ Administrative Regulation 807 KAR 5:001, Section 2, provides that the Executive Director (formerly known as the Commission's Secretary) "may reject for filing any document which on its face does not comply with the rules and administrative regulations of the commission."

² The full title of the section is "Rates, Rules, and Regulations for Furnishing Wholesale Power Service at Various Locations to Rural Electric Cooperative Members Throughout Kentucky."

³ The full title of the section is "Rates, Rules, and Regulations for Purchasing Electric Power and Energy at Various Locations Throughout Kentucky from Qualified Cogeneration and Small Power Production Facilities." This section also includes EKPC's Emergency Electric Procedures.

complies with 807 KAR 5:011. Section 10(1)(b)(8) requires a utility also to show its proposed tariff changes by providing the present and proposed tariffs in comparative form or indicating the additions by italicized inserts or underscoring and striking over deletions in a copy of the current tariff. By failing to submit its entire tariff, EKPC failed to comply with these sections.

EKPC requests that the Commission permit a deviation from these two provisions to relieve it of any obligation to file the section of its tariff that deals with the purchase of electric energy and to permit the filing of the affected portions of its tariffs only. In support of its request, it argues that the proposed rate adjustment does not affect the tariff section that addresses the purchasing of electric power and is irrelevant to this proceeding.

We find that EKPC has shown good cause to grant the requested deviation. EKPC's tariff clearly consists of two separate and distinct documents. The section that EKPC has not submitted is unaffected by the proposed rate adjustment and is not relevant to this proceeding.

As to EKPC's Motion to Shorten Notice, the Commission finds that EKPC has failed to state a need for the requested relief. In its application, EKPC requested that its proposed rate revisions become effective on April 1, 2007 or, in the event that the Commission denied its request for immediate rate relief, the rates become effective on March 1, 2007. EKPC requested the different dates on the theory that, should the Commission reject the request to implement the rates on April 1, 2007, any suspension

of the proposed rates would end no later than August 30, 2007.⁴ EKPC argues that given its current financial condition, an “earlier effective date could be critical to EKPC’s ability to meet its financial covenants for this year . . . and would contribute to EKPC’s resolution of its current financial difficulties.”⁵

KRS 278.180(1) provides that no utility may change “any rate except upon thirty (30) days’ notice to the commission, stating plainly the changes proposed to be made and the time when the changed rates will go into effect.” It further provides that the Commission may shorten this notice period to 20 days upon a showing of good cause.

Administrative Regulation 807 KAR 5:011, Section 9(1), provides:

When a new tariff has been so issued and notice thereof given to the commission and the public in all respects as hereinbefore provided, **such tariff will become effective on the date stated** therein unless the operation thereof be suspended and the rates and administrative regulations therein be deferred by an order of the commission pending a hearing concerning the propriety of the proposed rates and administrative regulations under KRS 278.190 [emphasis added].

In its application and its supplement filing, EKPC filed tariff sheets that set forth an effective date of April 1, 2007. While EKPC proposed in its application and Motion an alternative effective date that was contingent upon the Commission’s failure to take certain actions, this alternative date has no legal effect. KRS 278.180(1), as supplemented by Administrative Regulation 807 KAR 5:011, Section 9(1), prescribes

⁴ KRS 278.190(2) permits the Commission to suspend proposed rate adjustments that are based upon a historical test period for a period of 5 months. At the conclusion of this period, if the Commission has not rendered its final decision on the proposed adjustment, the utility may place the proposed rates into effect subject to refund.

⁵ Motion at 2.

the procedure for providing notice to the Commission. Neither the statute nor the regulation permits the use of an alternative effective date. The date set forth upon the proposed tariff sheets controls.

Having twice specified an effective date of April 1, 2007 on its proposed tariff sheets, the Commission must view that date as the utility's proposed effective date. As EKPC proposes an effective date of April 1, 2007 for its proposed rates and as its notice of the proposed rates were provided more than 30 days in advance of that date, the Commission finds no need to shorten the notice period.

The Commission acknowledges that EKPC's request to place its proposed rates into effect immediately subject to refund. For the Commission to grant the requested relief, KRS 278.190(2) requires a hearing.⁶ We find that, prior to such hearing, the Commission and the parties should be afforded the opportunity to conduct discovery to ascertain whether EKPC's credit or operations will be materially impaired or damaged if the proposed increase in wholesale rates is not immediately implemented. We further find that a procedural schedule should be established to facilitate such discovery and hearing.

IT IS THEREFORE ORDERED that:

1. EKPC's request for a deviation from Administrative Regulation 807 KAR 5:001, Section 10(1)(b)(7) and (8) is granted.

⁶ [P]rovided, however, if the commission, at any time, during the suspension period, finds that the company's credit or operations will be materially impaired or damaged by the failure to permit the rates to become effective during the period, the commission may, after any hearing or hearings, permit all or a portion of the rates to become effective under terms and conditions as the commission may, by order, prescribe.

2. EKPC's application shall be considered filed as of February 6, 2007.
3. EKPC's Motion to Shorten Notice Period is denied as moot.
4. The procedural schedule set forth in Appendix A to this Order shall be followed.

Done at Frankfort, Kentucky, this 13th day of February, 2007.

By the Commission

ATTEST:



Executive Director

for the Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2006-00472 DATED February 13, 2007

All requests for information to EKPC concerning the contention that its credit or operations will be materially impaired or damaged if the proposed increase in wholesale rates is not immediately implemented shall be filed no later than..... 02/20/07

EKPC shall file with the Commission and serve upon all parties its responses to all requests for information no later than 02/27/07

Any intervening party who wishes to present testimony at the hearing in this matter shall file with the Commission and serve on all other parties a list of its expected witnesses and a summary of their expected testimony no later than 03/02/07

Public Hearing is to begin at 9:00 a.m. Eastern Standard Time, in Hearing Room 1 of the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky, for the purpose of cross-examination of witnesses of EKPC and Intervenors 03/06/07

Briefs, if any, shall be filed by 03/22/07