

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC INVESTIGATION OF SOUTH)	
KENTUCKY RURAL ELECTRIC)	
COOPERATIVE CORPORATION, THE)	CASE NO.
REASONABLENESS OF EXISTING TARIFF)	2020-00367
SHEET NO. R-32, AND THE AFFILIATE)	
RELATIONSHIP WITH THE PEOPLE FUND)	

ORDER

The Commission, on its own motion, establishes this proceeding to conduct a formal investigation to determine the continued reasonableness of South Kentucky Rural Electric Cooperative Corporation's (South Kentucky RECC) Tariff Sheet No. R-32 and whether South Kentucky RECC is in compliance with requirements in KRS 278.2201 to KRS 278.2219 and 807 KAR 5:080.

South Kentucky RECC is a nonprofit, member-owned rural electric cooperative corporation organized under KRS Chapter 279 and is subject to the Commission's jurisdiction pursuant to KRS 278.010(a), KRS 278.040, and KRS 279.210. South Kentucky RECC is engaged in the distribution and sale of electric energy to 68,203 customers in Adair, Casey, Clinton, Cumberland, Lincoln, McCreary, Pulaski, Rockcastle, Russell, and Wayne counties, Kentucky.¹

On May 15, 2020, South Kentucky RECC filed a proposed revision to its existing Tariff Sheet No. R-32 with an effective date of July 1, 2020. On June 29, 2020, the

¹ *Annual Report of South Kentucky RECC to the Public Service Commission of the Commonwealth of Kentucky for the Calendar Year Ended December 31, 2019* at 46 and 54.

Commission initiated Case No. 2020-00205² to investigate the reasonableness of the revised tariff sheet. On August 18, 2020, South Kentucky RECC filed a motion to hold this case in abeyance for 90 to 180 days to provide The People Fund necessary time to resolve issues with respect to its corporate and federal tax-exempt status identified during the course of discovery and receive reinstatement from both the Kentucky Secretary of State's Office and the Internal Revenue Service (IRS). On August 27, 2020, South Kentucky RECC filed a motion to dismiss this case without prejudice. On November 10, 2020, the Commission allowed South Kentucky RECC to withdraw its revised tariff sheet and dismissed the case.

In its motion to hold Case No. 2020-00205 in abeyance, South Kentucky RECC committed to instituting the following procedures while the case was being held in abeyance if the Commission granted its motion:

1. It would account for and retain amounts collected under the existing tariff without transfer to The People Fund until this case is resolved and Commission Orders otherwise.
2. It would ensure that The People Fund neither awards nor pays further grants to recipient organizations but will allow for the payment of incidental non-grant related incidental charges, if any, incurred during normal course of The People Fund's activities.
3. It would provide periodic status reports the Commission desires during the abeyance period.³

Despite the dismissal of Case No. 2020-00205, South Kentucky RECC's original Tariff Sheet No. R-32, which became effective on February 1, 2004, is still in effect. It allows customers to voluntarily have their electric bills rounded up to the nearest dollar to

² Case No. 2020-00205, *Electronic Tariff Filing of South Kentucky Rural Electric Cooperative Corporation to Revise The People Fund Tariff*, Order (Ky. PSC Nov. 10, 2020).

³ *Id.*

be collected by South Kentucky RECC and donated to The People Fund. However, information obtained during the course of the investigation in Case No. 2020-00205 raises questions about The People Fund's corporate and federal tax status and the manner in which South Kentucky RECC administers Tariff Sheet No. R-32.

The People Fund was organized by South Kentucky RECC to receive donations collected pursuant to Tariff Sheet No. R-32 and distribute funds to charitable causes in South Kentucky RECC's service area.⁴ Pursuant to The People Fund's by-laws, its Board of Directors are appointed by majority vote of South Kentucky RECC's board of directors⁵ and must be composed of employees of South Kentucky RECC.⁶ Further, the president and CEO of South Kentucky RECC is an ex officio member of The People Fund's board.⁷ Finally, as noted above, South Kentucky RECC indicated that it would ensure that The People Fund neither awards nor pays further grants to recipient organizations,⁸ which indicated that South Kentucky RECC had a significant amount of control over The People Fund.

The relationship between South Kentucky RECC and The People Fund raises questions regarding the applicability affiliate transaction requirements in KRS 278.2201 to KRS 278.2219 and 807 KAR 5:080 to The People Fund and whether South Kentucky RECC is complying with the requirements, including KRS 278.2213(2), KRS 278.2213(13), and 807 KAR 5:080, Section 6(1). Further, the administrative

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

dissolution of The People Fund and questions about its tax-exempt status pursuant to federal law raise further questions, including whether South Kentucky RECC's continued affiliation with The People Fund, through tariff R-32 or otherwise, may open South Kentucky RECC to costs, penalties, or liabilities that may ultimately have a negative impact on South Kentucky RECC's rates, given its nonprofit status. Thus, the Commission finds that it is necessary to initiate this investigation to determine whether South Kentucky RECC has complied with the affiliate transaction requirements and whether it is reasonable to allow South Kentucky RECC to continue to collect donations under tariff sheet no. R-32.

To facilitate its investigation in this matter, the Commission finds that it is necessary to incorporate the record of Case No. 2020-00205 into this matter. Further, the Commission finds that it is necessary to obtain some additional information pursuant to the requests for information attached as an Appendix to this Order. Lastly, the Commission finds that during the pendency of this matter or until the Commission orders otherwise that the South Kentucky RECC should abide by the commitment it made in its motion to hold Case No. 2020-00205 in abeyance, that South Kentucky RECC will account for and retain amounts collected under tariff sheet no R-32 without transfer to The People Fund until this case is resolved or the Commission orders otherwise.

As 807 KAR 5:001, Section 8, permits the Commission to direct the use of electronic filing procedures for proceedings that we initiate on our own motion, we find that electronic filing procedures should be used. As such, South Kentucky RECC should follow the procedures set forth in 807 KAR 5:001, Section 8, when filing any document or paper in this matter. The Commission directs South Kentucky RECC to the Commission's

March 16, 2020 and March 24, 2020 Orders in Case No. 2020-00085⁹ regarding filings with the Commission. The Commission expects the original documents to be filed with the Commission within 30 days of the lifting of the current state of emergency.

IT IS THEREFORE ORDERED that:

1. This proceeding is initiated to investigate and examine the continued reasonableness of South Kentucky RECC's Tariff Sheet No. R-32 and South Kentucky RECC's compliance with KRS 278.2201 to KRS 278.2219 and 807 KAR 5:080.

2. All documents, records, and orders included in the record of Case No. 2020-00205 are incorporated by reference into the record of this proceeding.

3. Unless otherwise ordered by the Commission, the procedures set forth in 807 KAR 5:001, Section 8, related to service and electronic filing of papers shall be followed in this proceeding.

4. Pursuant to 807 KAR 5:011, Section 8(9), within seven days of entry of this Order, South Kentucky RECC shall file by electronic means a written statement that it waives any right to service of Commission orders by United States mail and that it or its authorized agents possesses the facilities to receive electronic submissions. The paper original shall be filed within 30 days of the ending of the current state of emergency caused by COVID-19.

5. Unless a party granted leave to intervene states its objection to the use of electronic filing procedures in a motion for intervention, the party shall:

⁹ Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19* (Ky. PSC Mar. 16, 2020), Order at 5–6. Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19* (Ky. PSC Mar. 24, 2020), Order at 1–3.

a. Be deemed to have consented to the use of electronic filing procedures and the service of all papers, including Orders of the Commission, by electronic means; and

b. Within seven days of the date of entry of an Order of the Commission, granting intervention, file with the Commission a written statement that:

(1) It, or its authorized agent possesses the facilities to receive electronic transmissions; and

(2) Sets forth the electronic mail address to which all electronic notices and messages related to this proceeding should be served.

6. If a party objects to the use of electronic filing procedures and the Commission determines that good cause exists to excuse that party from the use of electronic filing procedures, service of documents on that party and by that party shall be made in accordance with 807 KAR 5:001, Section 4(8).

7. South Kentucky RECC shall respond to the request for information attached as an Appendix to this Order within 14 days from the entry of this Order.

8. a. Responses to requests for information in paper medium shall be appropriately bound, tabbed, and indexed. Electronic documents shall be in portable document format (PDF), shall be searchable, and shall be appropriately bookmarked. The paper original shall be filed within 30 days of the ending of the current state of emergency caused by COVID-19.

b. Each response shall include the name of the witness responsible for responding to the questions related to the information provided and shall be answered under oath or, for representatives of a public or private corporation or a partnership or an

association or a governmental agency, be accompanied by a signed certification of the preparer or person supervising the preparation of the response on behalf of the entity that the response is true and accurate to the best of that person's knowledge, information, and belief formed after a reasonable inquiry.

c. A party shall make timely amendment to any prior response if it obtains information that indicates the response was incorrect when made or, though correct when made, is now incorrect in any material respect.

d. For any request to which a party fails or refuses to furnish all or part of the requested information, that party shall provide a written explanation of the specific grounds for its failure to completely and precisely respond.

e. Careful attention should be given to copied material to ensure that it is legible. When the requested information has been previously provided in this proceeding in the requested format, reference may be made to the specific location of that information in responding to this request.

f. Any party filing a paper containing personal information shall, in accordance with 807 KAR 5:001, Section 4(10), encrypt or redact the paper so that the personal information cannot be read.

9. South Kentucky RECC will account for and retain amounts collected under tariff R-32 without transfer to The People Fund until this case is resolved or the Commission orders otherwise.

By the Commission



ATTEST:



Deputy Executive Director

Case No. 2020-00367

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2020-00367 DATED NOV 25 2020

1. Provide a detailed update regarding the efforts to resolve the issues with The People Fund's corporate and tax-exempt statuses.

2. State whether South Kentucky RECC contends that KRS 278.2201 to KRS 278.2219 and 807 KAR 5:080 apply to the operation of The People Fund, including specifically whether it contends that KRS 278.2213(2) and 807 KAR 5:080, Section 6(1), apply to the operation of The People Fund, and explain the basis for South Kentucky RECC's response.

3. Explain whether South Kentucky RECC has obtained a deviation from the requirements of KRS 278.2201 to KRS 278.2219 and 807 KAR 5:080 for the operation of The People Fund.

4. Explain whether South Kentucky RECC contends that the notice on the bills soliciting donations for The People Fund, produced in South Kentucky RECC's response to Staff's First Request, Item 20, in Case No. 2020-00205 dated July 31, 2020, complies with KRS 278.2213(13) and 807 KAR 5:080, Section 6(1).

5. South Kentucky RECC's Tariff Sheet No. R-32 states that it would not disconnect a customer's electric service if the customer signs up to make a monthly donation to the People Fund, but then only pays South Kentucky RECC for amounts owed for electrical service and does not pay the donations it agreed to make to the People Fund. If this situation were to arise, explain how that is conveyed to customers on their bills.

6. State whether South Kentucky RECC contends that it would be reasonable for the Commission to allow Tariff Sheet No. R-32 to remain effective, and explain each basis for South Kentucky RECC's response.

7. If the Commission were to find that it would be unreasonable or unlawful to allow Tariff Sheet No. R-32 to remain effective, explain how South Kentucky RECC contends that it should unwind its relationship with The People Fund.

8. State whether and, if so, explain why South Kentucky RECC contends that continuing to collect donations from customers pursuant to Tariff Sheet No. R-32 is reasonable and appropriate.

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