

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN ELECTRONIC EXAMINATION BY THE PUBLIC)	
SERVICE COMMISSION OF THE)	
ENVIRONMENTAL SURCHARGE MECHANISM)	
OF EAST KENTUCKY POWER COOPERATIVE,)	
INC. FOR THE SIXTH-MONTH EXPENSE)	CASE NO.
PERIODS ENDING NOVEMBER 30, 2019, MAY)	2022-00141
31, 2020, NOVEMBER 30, 2020, AND NOVEMBER)	
30, 2021, THE TWO-YEAR EXPENSE PERIOD)	
ENDING MAY 31, 2021, AND THE PASS-)	
THROUGH MECHANISM OF ITS SIXTEEN)	
MEMBER DISTRIBUTION COOPERATIVES)	

ORDER

This case arises as a result of a Commission Order entered on June 3, 2022, opening an investigation of the Environmental Surcharge for East Kentucky Power Cooperative, Inc. (EKPC) and its 16-member cooperatives for: (1) the six-month review of EKPC's environmental surcharge for expense months ending February 28, 2020, August 31, 2020, February 28, 2021, and February 28, 2022; (2) the corresponding six-month reviews of Member Cooperatives' pass-through mechanism for expense months ending February 28, 2020, August 31, 2020, February 28, 2021, August 31, 2021, and February 28, 2022; (3) the two-year review of EKPC's environmental surcharge for the expense month ending August 31, 2021; and (4) the corresponding two-year reviews of

Member Cooperatives' pass-through mechanism for the expense month ending August 31, 2021.¹

LEGAL STANDARD

KRS 278.183(3) requires, in pertinent part, that:

At six (6) month intervals, the commission shall review past operations of the environmental surcharge of each utility, and after hearing, as ordered, shall, by temporary adjustment in the surcharge, disallow any surcharge amounts found not just and reasonable and reconcile past surcharges with actual costs recoverable pursuant to subsection (1) of this section. Every two (2) years the commission shall review and evaluate past operation of the surcharge, and after hearing, as ordered, shall disallow improper expenses, and to the extent appropriate, incorporate surcharge amounts found just and reasonable into the existing base rates of each utility.

Additionally, KRS 278.183(5) states

The commission shall retain all jurisdiction granted by this section and KRS 278.020 to review the environmental surcharge authorized by this section and any complaints as to the amount of any environmental surcharge or the incorporation of any environmental surcharge into the existing base rate of any utility.

BACKGROUND

On March 17, 2005, the Commission approved EKPC's environmental surcharge application and established a surcharge mechanism.² The Commission also approved a mechanism to pass through the environmental surcharge to EKPC's 16-member

¹ Opening Order (Ky. PSC June 3, 2022). The case heading of the opening Order was amended, *nunc pro tunc*, by an Order issued on June 24, 2022.

² Case No. 2004-00321, *Application of East Kentucky Power Cooperative, Inc. for Approval of an Environmental Compliance Plan and Authority to Implement an Environmental Surcharge* (Ky. PSC Mar. 17, 2005).

distribution cooperatives (Member Cooperatives).³ The Commission's last review was completed on May 6, 2020.⁴

The Commission issued a procedural schedule as Appendix A to the Opening Ordering.⁵ EKPC and the 16-member distribution cooperatives responded to one request for information.⁶ There were no intervenors. On August 16, 2022,⁷ the parties requested that the decision be made based on the record.⁸

³ Case No. 2004-00372, *Application of Big Sandy RECC, Blue Grass Energy Cooperative Corporation, Clark Energy Cooperative, Cumberland Valley Electric, Farmers RECC, Fleming-Mason Energy, Grayson RECC, Inter-County Energy Cooperative, Jackson Energy Cooperative, Licking Valley RECC, Nolin RECC, Owen Electric Cooperative, Salt River Electric, Shelby Energy Cooperative, South Kentucky RECC and Taylor County RECC for Authority to Pass Through the Environmental Surcharge of East Kentucky Power Cooperative, Inc.* (Ky. PSC Mar.17, 2005).

⁴ Case No. 2019-00380 *An Electronic Examination by the Public Service Commission of the Environmental Surcharge Mechanism of East Kentucky Power Cooperative, Inc. for the Two-Year Expense Period Ending May 31, 2019, and the Pass-Through Mechanism of Its Sixteen Member Distribution Cooperatives* (Ky. PSC June 2, 2020).

⁵ Opening Order (Ky. PSC June 3, 2022).

⁶ EKPC's Response to Commission Staff's First Request for Information (Staff's First Request) (filed June 24, 2022). Nolin Rural Electric Cooperative Corporation's (Nolin RECC) Response to Staff's First Request (filed June 24, 2022). Salt River Electric Cooperative Corp.'s (Salt River Electric) Response to Staff's First Request (filed June 24, 2022). Licking Valley Rural Electric Cooperative Corporation's (Licking Valley RECC) Response to Staff's First Request (filed June 24, 2022). Fleming-Mason Energy Cooperative's (Fleming-Mason Energy) Response to Staff's First Request (filed June 24, 2022). Inter-County Energy Cooperative's (Inter-County Energy) Response to Staff's First Request (filed June 24, 2022). Owen Electric Cooperative, Inc.'s (Owen Electric) Response to Staff's First Request (filed June 24, 2022). Grayson Rural Electric Cooperative Corporation's (Grayson RECC) Response to Staff's First Request (filed June 24, 2022). Shelby Energy Cooperative, Inc.'s (Shelby Energy) Response to Staff's First Request (filed June 24, 2022). Cumberland Valley Electric Cooperative Inc.'s (Cumberland Valley Electric) Response to Staff's First Request (filed June 24, 2022). Clark Energy Cooperative, Inc.'s (Clark Energy) Response to Staff's First Request (filed June 23, 2022). Jackson Energy Cooperative Corporation's (Jackson Energy) Response to Staff's First Request (filed June 23, 2022). Blue Grass Energy Cooperative Corp.'s (Blue Grass Energy) Response to Staff's First Request (filed June 23, 2023). Big Sandy Rural Electric Cooperative Corporation's (Big Sandy RECC) Response to Staff's First Request (filed June 23, 2022). Farmers Rural Electric Cooperative Corporation's (Farmers RECC) Response to Staff's First Request (filed June 23, 2022). Taylor County Rural Electric Cooperative Corporation's (Taylor RECC) Response to Staff's First Request (filed June 23, 2022). South Kentucky Rural Electric Cooperative Corporation's (South Kentucky RECC) Response to Staff's First Request (filed June 23, 2022).

⁷ EKPC and its 16 Member-Owner Cooperative's for a Decision to Submit the Matter on the Record (filed Aug. 16, 2022).

⁸ EKPC's Motion for a Decision (filed July 31, 2023).

That matter stands submitted for a decision.

SURCHARGE ADJUSTMENT

EKPC is proposing a Base Environmental Surcharge Factor (BESF) to be applied prospectively of 0.16 percent from the current zero percent.⁹ EKPC reclassified a dozen employees to be identified specifically with the coal combustion residual rule (CCR) and effluent limitations guidelines (ELG) work.¹⁰ Previously, the expensed portion of those employees' salaries, payroll taxes, and benefits were recovered through base rates and therefore, according to EKPC, the reclassification of these employees also needs to be recognized in the BESF.¹¹ EKPC also proposed to amend its environmental surcharge tariff to reflect a BESF of 0.16 percent.¹²

As a result of the calculation, with the correction to the Operations and Maintenance (O&M) expenses and the application of the BESF, the O&M expenses resulted in an over-recovery of the environmental surcharge of \$294,711 and the inclusion of the BESF results in an over-recovery of \$337,100.¹³ EKPC's proposal included a plan to return the total over-recovery of \$631,811 to its Member Cooperatives in the first monthly surcharge filing made after the issuance of the final Order in this proceeding.¹⁴

⁹ EKPC's Response to Staff's First Request, Direct Testimony of Isaac Scott (Scott Direct Testimony) (filed June 24, 2022) at 22.

¹⁰ EKPC's Response to Staff's First Request, Scott Direct Testimony at 21.

¹¹ EKPC's Response to Staff's First Request, Scott Direct Testimony at 21.

¹² EKPC's Response to Staff's First Request, Scott Direct Testimony at 22.

¹³ EKPC's Response to Staff's First Request, Scott Direct Testimony at 13.

¹⁴ EKPC's Response to Staff's First Request, Scott Direct Testimony at 13.

EKPC stated that, as approved in the Commission’s November 5, 2010 Order in Case No. 2010-00021,¹⁵ the Member Cooperatives propose that the over- or under-recovery amounts be amortized over a period of six months beginning in the first month after the Commission’s Order in this proceeding.

Member Cooperative	Total (Over)/Under Recovery		Months to Amortize	Monthly Amortization	
	(Over)	Under		(Over)	Under
Big Sandy RECC		\$208,757	6		\$34,793
Blue Grass Energy		\$790,195	6		\$131,699
Clark Energy	(\$21,370)		6	(\$3,562)	
Cumberland Valley Electric		\$69,018	6		\$11,503
Farmers RECC		\$340,897	6		\$56,816
Fleming-Mason Energy		\$77,867	6		\$12,978
Grayson RECC	(\$35,546)		6	(\$5,924)	
Inter-County Energy		\$176,386	6		\$29,398
Jackson Energy		\$729,974	6		\$121,662
Licking Valley RECC	(\$62,743)		6	(\$10,457)	
Nolin RECC		\$744,991	6		\$124,165
Owen Electric		\$719,899	6		\$119,983
Salt River Electric		\$695,078	6		\$115,846
Shelby Energy		\$768,192	6		\$128,032
South Kentucky RECC		\$863,830	6		\$143,972
Taylor RECC		\$49,079	6		\$8,180
Cumulative Totals	(\$119,659)	\$6,234,163			

¹⁵ Case No. 2010-00021, *An Examination by the Public Service Commission of the Environmental Surcharge Mechanism of East Kentucky Power Cooperative, Inc. for the Six-Month Billing Period Ending December 31, 2009 and the Pass-Through Mechanism for Its Sixteen Member Distribution Cooperatives* (Ky. PSC Nov. 5, 2010), Order.

After considering the evidence and based on the record, the Commission finds that both EKPC's request to adjust the BESF to 0.16 percent and amend the tariff accordingly is granted.

RATE OF RETURN (ROR)

Four RORs were in effect during the periods under review.¹⁶ For the expense months of June and July 2019, the ROR was 6.032 percent, which was approved by the Commission in Case No. 2018-00306.¹⁷ For the expense months of August 2019 through March 2020, the ROR was 6.047 percent, which was approved by the Commission in Case No. 2019-00171.¹⁸ For the expense months of April 2020 through September 2021, the ROR was 5.975 percent, which was approved by the Commission in Case No. 2019-00380.¹⁹ In the first three referenced cases, the Commission approved EKPC's request to incorporate a Times Interest Earned Ratio (TIER) of 1.50 in the determination of the rate of return. In EKPC's base rate case, the Commission approved a unanimous settlement agreement in which the environmental surcharge would incorporate a TIER of

¹⁶ EKPC's Response to Staff's First Request, Scott Direct Testimony at 8.

¹⁷ Case No. 2018-00306, *An Electronic Examination by the Public Service Commission of the Environmental Surcharge Mechanism of East Kentucky Power Cooperative, Inc. for the Six-Month Expense Period Ending May 31, 2018, and the Pass-Through Mechanism for Its Sixteen Member Distribution Cooperatives* (Ky. PSC Jan. 29, 2019).

¹⁸ Case No. 2019-00171, *An Electronic Examination by the Public Service Commission of the Environmental Surcharge Mechanism of East Kentucky Power Cooperative, Inc. for the Six-Month Expense Period Ending November 30, 2018, and the Pass-Through Mechanism for Its Sixteen Member Distribution Cooperatives*, (Ky. PSC Sep. 4, 2019).

¹⁹ Case No. 2019-00380, *An Electronic Examination by the Public Service Commission of the Environmental Surcharge Mechanism of East Kentucky Power Cooperative, Inc. for the Two-Year Expense Period Ending May 31, 2019, and the Pass-Through Mechanism of Its Sixteen Member Distribution Cooperatives* (Ky. PSC May 6, 2020).

1.475 in the determination of the rate of return.²⁰ EKPC proposed a ROR that is consistent with the Settlement Agreement approved in Case No. 2004-00321, which provided that the ROR on compliance-related capital expenditures would be updated to reflect current average debt cost as of the end of each six-month review period.²¹ In this case, EKPC requested a ROR of 4.894 percent.

Additionally, EKPC included a ROR on all environmental surcharge assets, including emission allowances and its limestone inventory. However, EKPC explained that no sulfur dioxide allowance purchases and nitrogen oxide allowance purchases were made during the review period.²²

Having considered the record, the Commission finds that EKPC's requested 4.89 percent ROR is reasonable and should be approved. EKPC filed sufficient evidence for the average debt costs and also provided sufficient evidence that its environmental compliance investments are financed with long-term debt. Additionally, the Commission finds that a ROR on its environmental surcharge assets is reasonable and should be approved. However, the Commission notes that the ROR for the environmental surcharge assets should begin accruing for purchases after the last review period in this case rather than on any previous purchased and unused allowances.

²⁰ Case No. 2021-00103, *Electronic Application of East Kentucky Power Cooperative, Inc. for a General Adjustment of Rates, Approval of Depreciation Study, Amortization of Certain Regulatory Assets, and Other General Relief* (Ky PSC Sept. 30, 2021) at 5.

²¹ Case No. 2004-00321, *Application of East Kentucky Power Cooperative, Inc. for Approval of an Environmental Compliance Plan and Authority to implement an Environmental Surcharge* (Ky PSC Mar. 17, 2005), Appendix A, paragraph 4 at 3.

²² EKPC's Response to Staff's First Request, Item 3.

PASS THROUGH MECHANISM REPORT

EKPC proposed a revision to the Pass Through Mechanism Report for Cumberland Valley Electric as a result of two Industrial power agreements (IPA) with interruptible service with Exponential Digital, Inc. (EDI).²³ As part of these agreements, the parties agreed that Cumberland Valley Electric would pass-through the whole environmental surcharge billed by EKPC to Cumberland Valley Electric.²⁴ EKPC stated that the surcharge amount billed to EDI and the retail revenues generated from EDI would be excluded from the monthly calculation of Cumberland Valley Electric's Rate Schedule ES – Environmental Surcharge.²⁵ EKPC noted that the direct pass-through has been approved for other member cooperatives.²⁶ EKPC requested the Commission allow it to revise the pass-through mechanism report to reflect this agreement.²⁷

The Commission finds that EKPC's proposal is reasonable and should be approved. EKPC should revise the pass-through mechanism report for Cumberland Valley Electric to reflect the direct pass-through to EDI. However, in its next rate case, EKPC should reconcile its Rate Schedule ES – Environmental Surcharge to reflect this revision.

SURCHARGE ROLL-IN

The environmental surcharge statute, KRS 278.183, directs the Commission to incorporate surcharge amounts found just and reasonable into the utility's existing base

²³ EKPC's Response to Staff's First Request, Scott Direct Testimony at 20.

²⁴ EKPC's Response to Staff's First Request, Scott Direct Testimony at 20.

²⁵ EKPC's Response to Staff's First Request, Scott Direct Testimony at 20.

²⁶ EKPC's Response to Staff's First Request, Scott Direct Testimony at 20.

²⁷ EKPC's Response to Staff's First Request, Scott Direct Testimony at 21.

rates, but only to the extent appropriate. EKPC did not propose to incorporate, or roll-in, any of its environmental surcharge amounts into its existing base rates in this proceeding.²⁸ EKPC stated that there are several reasons why a roll-in of the environmental surcharge is not appropriate at this time.²⁹ If EKPC is required to roll-in its environmental surcharge into its wholesale base rates, EKPC stated that the roll-in will have to be allocated to both the demand and energy charges.³⁰ EKPC did not undertake a cost-of-service study that would provide a reasonable allocation of an environmental surcharge roll-in into demand and energy related components.³¹ EKPC stated that including a roll-in as part of a wholesale base rate case would allow for the allocation of environmental costs in a manner consistent with other costs through the utilization of a cost-of-service study.³² EKPC noted that the Commission has accepted the argument that a surcharge roll-in should be undertaken as part of a base rate case in previous environmental surcharge reviews.³³

²⁸ EKPC's Response to Staff's First Request, Scott Direct Testimony at 15.

²⁹ EKPC's Response to Staff's First Request, Scott Direct Testimony at 16.

³⁰ EKPC's Response to Staff's First Request, Scott Direct Testimony at 16.

³¹ EKPC's Response to Staff's First Request, Scott Direct Testimony at 16.

³² EKPC's Response to Staff's First Request, Scott Direct Testimony at 16.

³³ EKPC's Response to Staff's First Request, Scott Direct Testimony at 17. *See also* Case No. 2007-00381, *An Examination by the Public Service Commission of the Environmental Surcharge Mechanism of Kentucky Power Company for the Six-Month Billing Periods Ending June 30, 2006 and December 31, 2006, and for the Two-Year Billing Period Ending June 30, 2007* (Ky. PSC Aug. 19, 2008), Order at 6; Case No. 2009-00317, *An Examination by the Public Service Commission of the Environmental Surcharge Mechanism of East Kentucky Power Cooperative, Inc. for the Two-Year Billing Period Ending June 30, 2009 and the Pass Through Mechanism for Its Sixteen Member Distribution Cooperatives* (Ky. PSC Jan. 28, 2010), Order at 5; Case No. 2012-00486, *An Examination by the Public Service Commission of the Environmental Surcharge Mechanism of East Kentucky Power Cooperative, Inc. for the Two-Year Billing Period Ending June 30, 2011, for the Six-Month Billing Periods Ending December 31, 2011 and June 30, 2012, and the Pass-Through Mechanism for Its Sixteen Member Distribution Cooperatives* (Ky. PSC Aug. 2, 2013), Order at 5-6; Case No. 2013-00324, *An Examination by the Public Service Commission of the Environmental Surcharge Mechanism of East Kentucky Power Cooperative, Inc. for the Two-Year*

EKPC's second concern was how the wholesale base rates would be reflected in the Member Cooperatives' retail base rates.³⁴ The amount of the roll-in each Member Cooperative receives as a result of the change in wholesale base rates would be cost-of-service based.³⁵ The Member Cooperatives indicated a general agreement with this concept during a rate design project EKPC undertook approximately ten years ago.³⁶ While EKPC and its Member Cooperatives have consistently argued that the appropriate proceeding to roll-in the surcharge into base rates was during a base rate case, EKPC did not propose a surcharge roll-in during its last base rate case, Case No. 2021-00103.³⁷ EKPC did have a cost of service study available in that rate case to allocate its environmental costs, but the Member Cooperatives were utilizing the "flow-through" process available under KRS 278.455. As a result, EKPC's allocation of its environmental costs would have been based on a cost-of-service study while the Member Cooperatives' share of the EKPC increase in revenues would have been allocated in total on a proportional basis.

EKPC alleged that the final reason to not allow for a surcharge roll-in is related to the disclosure of the cost of environmental compliance to retail customers.³⁸ EKPC's

Billing Period Ending June 30, 2013 and the Pass Through Mechanism for Its Sixteen Member Distribution Cooperatives (Ky. PSC Mar. 21, 2014).

³⁴ EKPC's Response to Staff's First Request, Scott Direct Testimony at 17.

³⁵ EKPC's Response to Staff's First Request, Scott Direct Testimony at 17-18.

³⁶ EKPC's Response to Staff's First Request, Scott Direct Testimony at 18.

³⁷ EKPC's Response to Staff's First Request, Scott Direct Testimony at 18. See Case No. 2021-00103, *Electronic Application of East Kentucky Power Cooperative, Inc. for a General Adjustment of Rates, Approval of Depreciation Study, Amortization of Certain Regulatory Assets, and Other General Relief* (Ky. PSC May 25, 2022).

³⁸ EKPC's Response to Staff's First Request, Scott Direct Testimony at 19.

currently approved environmental compliance plan contains projects, and the monthly surcharge filings reflect the investment costs and operating expenses associated with those projects.³⁹ According to EKPC, the monthly surcharge pass-through factors would no longer easily disclose to retail customers the full cost of environmental compliance for the approved projects. Several of the Member Cooperatives believe it is important that retail customers be aware of the full cost of environmental compliance for the approved projects and the impact this compliance cost has on the monthly retail bill.⁴⁰

The Commission has reviewed the evidence and finds that EKPC's recommendation to not roll the environmental surcharge amounts into base rates at the present time reasonable.

IT IS THEREFORE ORDERED that:

1. EKPC's request to submit the case for a decision on the existing evidence of record without a hearing is granted.

2. The amounts billed by EKPC through its environmental surcharge for the expense months ending February 28, 2020, August 31, 2020, February 28, 2021, and February 28, 2022; (2) the corresponding six-month reviews of Member Cooperatives' pass-through mechanism for expense months ending February 28, 2020, August 31, 2020, February 28, 2021, August 31, 2021, and February 28, 2022; (3) the two-year review of EKPC's environmental surcharge for the expense month ending August 31, 2021; and (4) the corresponding two-year reviews of Member Cooperatives' pass-through mechanism for the expense month ending August 31, 2021, are approved.

³⁹ EKPC's Response to Staff's First Request, Scott Direct Testimony at 19.

⁴⁰ EKPC's Response to Staff's First Request, Scott Direct Testimony at 19.

3. EKPC's requested BESF rate is approved.
4. EKPC's request to return the total over-recovery of \$631,811 to its Member Cooperatives in the first monthly surcharge filing made after the issuance of the final Order in this proceeding is approved.
5. EKPC shall use a rate of return of 4.894 percent in all monthly environmental surcharge filings subsequent to the date of this Order.
6. EKPC's request to revise Cumberland Valley Electric's Pass-Through Mechanism Report is granted.
7. EKPC's Member Cooperatives shall include the applicable monthly retail pass-through adjustments, shown in the Appendix to this Order, in the determination of each Member Cooperative's respective pass-through mechanism in each of the first six months following the date of this Order, as discussed herein.
8. Within 20 days after service of this Order, EKPC and its member cooperatives shall file revised tariff sheets reflecting the rates contained in the Appendix to the Order.
9. This case is closed and removed from the Commission's Docket.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ENTERED
MAR 29 2024
rCS
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2022-00141 DATED MAR 29 2024

Member Cooperatives' Adjustments to Monthly Pass-Through Mechanism

The EKPC Member Cooperatives shall include the following monthly adjustments in the determination of the applicable pass-through factors for the first six months after the date of this Order.

	Total Amount of Over- Recovery	Monthly Amount To Be Returned	Monthly Bill Impact
Clark Energy Cooperative	\$21,370	\$3,562	\$0.13
Grayson RECC	\$35,546	\$5,924	\$0.37
Licking Valley RECC	\$62,743	\$10,457	\$0.51

	Total Amount of Under- Recovery	Monthly Amount To Be Returned	Monthly Bill Impact
Big Sandy RECC	\$208,757	\$34,793	\$2.43
Blue Grass Energy Cooperative	\$790,195	\$131,699	\$1.80
Cumberland Valley Electric	\$11,503	\$1,917	\$0.46
Farmers RECC	\$340,897	\$56,816	\$1.82
Fleming-Mason Energy Cooperative	\$77,867	\$12,978	\$0.49
Inter-County Energy Cooperative Corp.	\$176,386	\$29,398	\$1.11
Jackson Energy Cooperative	\$729,972	\$121,662	\$2.14
Nolin RECC	\$744,990	\$124,165	\$3.24
Owen Electric Cooperative	\$719,899	\$119,983	\$1.66
Salt River Energy Cooperative Corp.	\$695,078	\$115,846	\$1.55
Shelby Energy Cooperative	\$768,192	\$128,032	\$7.26
South Kentucky RECC	\$863,830	\$143,972	\$1.92
Taylor RECC	\$49,079	\$8,180	\$0.29

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