

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

On April 18, 2024, East Kentucky Power Cooperative, Inc. (EKPC) filed a motion, pursuant to KRS 278.400, requesting reconsideration or clarification on several aspects of the Order entered in this proceeding on March 29, 2024.

LEGAL STANDARD

KRS 278.400, which establishes the standard of review for motions for rehearing, limits rehearing to new evidence not readily discoverable at the time of the original hearings, to correct any material errors or omissions, or to correct findings that are unreasonable or unlawful. A Commission Order is deemed unreasonable only when “the evidence presented leaves no room for difference of opinion among reasonable

minds.”¹ An order can only be unlawful if it violates a state or federal statute or constitutional provision.²

DISCUSSION AND RECOMMENDATION

In its motion, EKPC requested clarification on the appropriate rate of return (ROR). The review in this matter was ongoing when the Commission issued a final Order on January 11, 2024, in Case No. 2023-00177.³ According to the motion, the ROR approved in Case No. 2023-00177 was “6.487 percent for all environmental surcharge monthly filings after the date of this Order.”⁴ However, EKPC stated that when the final Order in this matter was issued a ROR of “4.894 percent in all monthly environmental surcharge filings subsequent to the date of this Order” was ordered.⁵ EKPC stated that the ROR from Case No. 2023-00177 was first used in March of 2024, applied to February expenses and included in the April wholesale power bills.⁶ To disallow the higher rate, which more accurately reflects interest rates, would result in significant under recovery as well as being an unjust and unreasonable rate.⁷

¹ *Energy Regulatory Comm’n v. Kentucky Power Co.*, 605 S.W.2d 46 (Ky. App. 1980).

² *Public Service Comm’n v. Conway*, 324 S.W.3d 373, 377 (Ky. 2010); *Public Service Comm’n v. Jackson County Rural Elec. Coop. Corp.*, 50 S.W.3d 764, 766 (Ky. App. 2000); *National Southwire Aluminum Co. v. Big Rivers Elec. Corp.*, 785 S.W.2d 503, 509 (Ky. App. 1990).

³ Case No. 2023-00177, *Electronic Application of East Kentucky Power Cooperative, Inc. for Approval to Amend Its Environmental Compliance Plan and Recover Costs Pursuant to Its Environmental Surcharge, and for Issuance of Certificates of Public Convenience and Necessity and Other Relief* (Ky. PSC Jan. 11, 2024), Order.

⁴ Case No. 2023-00177, Jan. 11, 2024 Order at 38; EKPC’s Motion for Clarification (filed Apr. 18, 2024) at unnumbered page 2.

⁵ Final Order (Ky. PSC Mar. 29, 2024) at 12, ordering paragraph 5; EKPC’s Motion for Clarification at unnumbered page 2.

⁶ EKPC’s Motion for Clarification at unnumbered page 2.

⁷ EKPC’s Motion for Clarification at unnumbered page 2–3.

Additionally, as part of its motion for clarification, EKPC stated that it made a tariff filing reflecting the approved ROR and that tariff filing was turned into a case.⁸ The tariff filing contained an updated base environmental surcharge factor (BESF) calculation of 0.34 percent.⁹ The Commission notes that, according to EKPC, the BESF reflects its investments in utility plant and associated operating costs for environmental compliance assets being recovered through base rates that have been replaced or retired early due to the deployment of new environmental compliance assets whose costs are recovered through the environmental surcharge.¹⁰ Since EKPC proposed an 0.16 percent BESF in this case, EKPC has since explained that an updated BESF component will be the result of several of the 2023 plan projects having costs that are being recovered in existing base rates such as the original costs for plant in service, construction work in progress (CWIP), accumulated depreciation, depreciation expense, property taxes, and property insurance expense.¹¹ According to EKPC, the updated 0.34 percent BESF reflects the requests in the filings in both Case No. 2022-00141 and Case No. 2023-00177, that have subsequently been approved, and the sources for the BESF do not overlap.¹²

The final issue raised by EKPC is clarification of the following statement in the final Order, “[h]owever, the Commission notes that the ROR for the environmental surcharge assets should begin accruing for purchases after the last review period in this

⁸ Motion for Clarification at 3–4 and Case No. 2024-00084, *Electronic Tariff Filing of East Kentucky Power Cooperative, Inc. to Update Its Environmental Surcharge Tariff* (Ky. PSC Feb. 29, 2024).

⁹ Motion for Clarification at unnumbered page 4.

¹⁰ Direct Testimony on Isaac S. Scott (filed June 24, 2022) at 21.

¹¹ Case No. 2023-00177, June 30, 2023 Direct Testimony of Isaac S. Scott at 13.

¹² Motion for Clarification at unnumbered page 4.

case rather than on any previous purchased and unused allowances.”¹³ EKPC stated that the utility has collected a ROR of 5.093 percent as approved in Case No. 2021-00103.¹⁴ According to EKPC, reducing the ROR for this time period from 5.093 percent to 4.894 percent would place EKPC in a position of over-recovery in the amount of \$3,337,767.¹⁵ EKPC argued that this ROR is representative of that 26-month period.¹⁶ EKPC stated that, had the six month period reviews of the environmental surcharge mechanism reviewed in a timely manner, the ROR would have been adjusted accordingly and resulted in an under-recovery of \$10,471,705 which EKPC proposed to amortize and recover over a 12-month period.¹⁷

Having reviewed the record, the Commission finds that the appropriate ROR should be 6.487 percent for all environmental surcharge monthly filings after the date of this Order as approved in the final Order in Case No. 2023-00177. The Commission acknowledges that, although the ROR calculated in the final Order of this matter may have been accurate at that time, the final Order in Case No. 2023-00177 reflects the most recent information related to the ROR and is reasonable and appropriate. As such, the Commission also confirms that EKPC does not have an obligation to make a tariff filing based on the final Order in Case No. 2022-00141.

¹³ Motion for Clarification at unnumbered page 4 *citing* final Order at 7.

¹⁴ Motion for Clarification at unnumbered page 5; 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), Order.

¹⁵ Motion for Clarification at unnumbered page 5.

¹⁶ Motion for Clarification at unnumbered page 5.

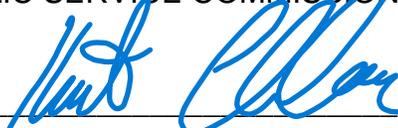
¹⁷ Motion for Clarification at unnumbered page 6.

As to the ROR calculation for December 2021 through January 2024, the Commission finds that EKPC's motion for clarification or rehearing should be granted. EKPC filed several Excel spreadsheets in support of its position in the motion. Granting rehearing will allow time for appropriate review of the tendered documents.

IT IS THEREFORE ORDERED that:

1. The motion for clarification is granted.
2. Rehearing is granted on the issue of the appropriate rate of return for the period of December 2021 through January 11, 2024.
3. The Commission confirms that no additional tariff filing is required of EKPC at this time.
4. The Commission confirms that the appropriate rate of return beginning on January 11, 2024, is 6.487 percent for all environmental surcharge monthly filings after said date.
5. The remainder of the March 29, 2024 Order not in conflict with this Order remains in effect.
6. The case is closed and removed from the Commission's docket.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ENTERED
MAY 07 2024 bsb
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