

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION OF THE NECESSITY)
AND USEFULNESS OF THE COST)
RESPONSIBILITY FOR THE HANGING) CASE NO. 8904
ROCK-JEFFERSON 765 KV TRANSMISSION)
LINE UNDER CONSTRUCTION BY KENTUCKY)
POWER COMPANY)

ORDER DENYING REHEARING

On August 23, 1984, Kentucky Power Company ("KPC") filed a petition for rehearing requesting clarification and/or rehearing of the Commission's Order entered August 3, 1984. Specifically, KPC seeks an affirmation that during the 5 year phase-in of its investment in the Hanging Rock-Jefferson 765 KV transmission line KPC will be entitled to recover the carrying costs of all of its investment in EHV transmission facilities including the amount in excess of its member load ratio ("MLR"); and that during such phase-in KPC will be allowed to accrue a deferred return on the investment in the Hanging Rock-Jefferson line that is not in rate base with such deferred return being amortized over the life of the line. KPC further states that if either or both of these results are not authorized by the Commission's Order of August 3, 1984, a rehearing should be granted.

On August 31, 1984, the Attorney General's Office, Consumer Protection Division ("AG"), an intervenor herein, filed a

response in opposition to KPC's petition for rehearing. The AG argues that the Commission is within its jurisdiction to adjudicate KPC's need for the Hanging Rock-Jefferson line since the issues relate to the prudence and appropriateness of intrastate rate base investment and that any investment in excess of that found to be used and useful can be accounted for below the line. On September 7, 1984, Residential Intervenors, by counsel, filed a response in opposition to KPC's petition for rehearing and in concurrence with the AG's petition.

KPC's petition alleges that the Commission's Order authorizes KPC to phase into rate base over 5 years its MLR share of the American Electric Power ("AEP") system EHV [Extra High Voltage] transmission investment but the Order does not address its proposal to accrue a deferred return on the investment that exceeds its MLR share. Although the Commission is not of the opinion that its Order entered August 3, 1984, is in need of clarification, the Commission does recognize the significance of the issues addressed therein and consequently will take this opportunity to respond to KPC's petition for rehearing.

The Commission's Order explicitly limited KPC to include in its rate base only that portion of its investment in the Hanging Rock-Jefferson line which will result in KPC's investment in EHV transmission lines being equal to its MLR times the AEP system's EHV transmission investment. Any EHV investment by KPC which exceeds this amount will neither be included in rate base nor allowed to accrue a deferred return. The accrual of a deferred return on KPC's EHV investment in excess of its MLR share, with a

subsequent amortization, would be equivalent to allowing 100 percent of the EHV investment into rate base. That is precisely what the Commission's Order found to be unfair and unreasonable.

Regarding that portion of KPC's investment in EHV facilities that will be allowed into rate base (i.e., KPC's MLR share of AEP EHV investment), the Commission's Order requires a 5 year rate base phase-in. The issue of allowing a deferred return on KPC's EHV investment that is not in rate base due to the phase-in, but will be in rate base within 5 years, was not decided by the Order of August 3, 1984. The Commission specifically deferred that issue to KPC's pending rate case because the record in this proceeding was devoid of any financial evidence necessary for an adjudication. (PSC Order entered August 3, 1984, p. 6.)

KPC further alleges three grounds for rehearing. The first is a claim that the Commission's Order is inconsistent with and infringes upon the jurisdiction of the Federal Energy Regulatory Commission ("FERC") as enunciated in the case of Narragansett Electric Co. v. Burke, 381 A.2d 1358 (R.I. 1977), cert. den. 435 U.S. 972 (1982). In that case, the Rhode Island PUC held that although it lacked jurisdiction to set the wholesale rate at which Narragansett purchased power, it could review the costs underlying a Federal Power Commission ("FPC") [predecessor of the FERC] approved rate and prevent Narragansett from passing through to its retail customers any portion of those costs found to be grossly unreasonable. In overturning the PUC decision, the Rhode Island Supreme Court held that "for the purpose of fixing

intrastate rates, the PUC must treat [the wholesale] interstate rate filed with the FPC as a reasonable operating expense." Narragansett at 1363.

The Narragansett decision has no application in this case. The Commission has not undertaken a review of a FERC approved rate nor refused to recognize a FERC approved rate as an expense for setting retail rates. The AEP transmission equalization filing was accepted by the FERC by Order issued August 21, 1984, 18 days after the Commission's Order herein. The Commission gave no consideration to the FERC filing because it had not been accepted by the FERC and it cannot now be considered as newly-discovered evidence since it is in fact new evidence. See Stephens v. Kentucky Utilities Co., Ky., 569 S.W.2d 155 (1978).

The Commission fully recognizes the FERC's exclusive jurisdiction over interstate facilities and the proper state cost apportionment through a FERC rate for their use. However, KPC has cited no authority to support its argument that the FERC has jurisdiction to require a state commission to include a specific level of investment in a utility's intrastate rate base. The determination of KPC's intrastate rate base lies exclusively within the jurisdiction of this Commission. See FPC v. Southern California Edison Co., 376 U.S. 205 (1964).

KPC's second ground for rehearing is a claim that the Commission's Order is unfair and punitive because KPC will not recover the carrying costs associated with a portion of its investment in the Hanging Rock-Jefferson line. KPC argues that since in the past its investment in EHV facilities was less than

its MLR share, it is reasonable and just for its investment to now be in excess of that share.

The Commission is bound by KRS 278.030 to allow KPC "fair, just and reasonable rates for the services rendered." The legislative function of utility rate-making is prospective in nature. If KPC's rates were insufficient in the past due to its investment in EHV facilities being less than its MLR share there is no available remedy. To raise rates prospectively to recoup lost revenues attributable to past insufficient rates is retroactive rate-making and illegal. Alternatively, to allow KPC's prospective rates to be based on 100 percent of its investment in the Hanging Rock-Jefferson line would violate KRS 278.030 by setting rates based on facilities greatly in excess of those needed to provide retail service.

KPC's third ground for rehearing is that the entire Hanging Rock-Jefferson line is used and useful for KPC and disallowance of a portion of the cost constitutes unlawful confiscation. KPC argues that since the Commission found that the line was designed, planned and built for the AEP system, KPC is responsible for the full cost and the Commission must allow the full cost into rate base.

The Commission recognizes that the AEP Interconnection Agreement, Section 4.3, requires each member company to allow the use of their respective transmission facilities at no cost. However, nothing in that agreement requires a member to construct any transmission facilities for the use of the other members. The fact that KPC constructed facilities to meet the needs of the

AEP system and will not receive any reimbursement from that system does not require this Commission to include those facilities in KPC's rate base to be charged to retail customers. After extensive and detailed hearings on the question of KPC's need for the Hanging Rock-Jefferson line, the Commission concluded that it was greatly in excess of KPC's need and, consequently, only a portion of the investment would be allowed into rate base.

KPC argues that a transmission line, by its very nature, if employed at all by a utility, is employed in full by that utility. KPC then cites numerous cases to support its position that if facilities are used and useful for providing service they should be included in rate base. However, none of the cited cases discuss the issue at hand, i.e, facilities greatly in excess of jurisdictional needs constructed to meet the needs of non-jurisdictional customers. There can be no doubt that the Hanging Rock-Jefferson line is greatly in excess of KPC's needs. The line has the capability to transfer 2,000 to 2,500 megawatts,¹ whereas KPC's peak demand is only 1,033 megawatts.² KPC also admitted that feasibility studies for alternative transmission lines were not performed because the AEP system needed a line from the Hanging Rock Station in Ohio to the Jefferson Station in Indiana.³ Based on the transfer capability

¹ Transcript of Evidence, January 10, 1984, Vol. I, p. 100.

² Transcript of Evidence, February 16, 1984, pp. 129-130.

³ Transcript of Evidence, January 10, 1984, Vol. I, pp. 112-113.

of the Hanging Rock-Jefferson line and its design to meet the AEP system's needs, not KPC's, the Commission found that the line greatly exceeded KPC's needs. Consequently, only a portion of its cost should be included in KPC's rate base and charged to retail customers.

IT IS THEREFORE ORDERED that KPC's petition for rehearing be and it hereby is denied and the Commission's Order entered August 3, 1984, be and it hereby is affirmed in all respects.

Done at Frankfort, Kentucky, this 11th day of September, 1984.

PUBLIC SERVICE COMMISSION

Not Participating

Chairman

Vice Chairman

Commissioner

ATTEST:

Secretary