

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

AN INVESTIGATION OF THE PURCHASED	)
POWER COSTS OF KENTUCKY POWER	) CASE NO. 9325
COMPANY	)

O R D E R

On November 15, 1985, Kentucky Power Company ("KPC") filed a petition for rehearing of the Commission's Order entered October 31, 1985, requiring KPC to: (1) cease passing through its fuel adjustment clause ("FAC") the cost of fuel associated with its Rockport unit power purchase; and (2) refund the cost of Rockport fuel billed through its FAC in excess of that which would have been incurred if the power had been purchased from the American Electric Power Pool ("AEP Pool"). Alternatively, KPC requested either a stay of the October 31, 1985, Order or authority to impose a future surcharge if it prevails in the pending judicial appeal of Case No. 9061, General Adjustment In The Electric Rates Of KPC.<sup>1</sup> Responses in opposition to rehearing were filed by the Kentucky Industrial Utility Customers ("KIUC") on November 26, 1985, and the Attorney General's Office on November 27, 1985.

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<sup>1</sup> The issue in this appeal is the Commission's authority to deny recovery through retail rates of Rockport unit power costs.

KPC presented numerous arguments in support of its petition for rehearing. The first was that the Commission erroneously found the billing of Rockport unit power fuel cost to be a violation of the Commission's December 4, 1984, Order in Case No. 9061. KPC claims that it is not prohibited from passing through retail rates the cost of Rockport fuel in excess of AEP Pool fuel.

The Commission finds no merit in this argument. The December 4, 1984, Order in Case No. 9061 prohibits KPC from charging its customers any Rockport unit power costs in excess of AEP pool power costs. The Rockport unit power agreement explicitly discusses KPC's financial obligation to pay 15 percent of all Rockport cost, of which fuel is but one. If KPC had not acted imprudently by entering into the Rockport unit power agreement but had continued to purchase AEP pool power, its FAC charges to retail customers would have been approximately \$350,000 less. These excessive charges must be refunded.

KPC's second argument is that it is entitled to rates sufficient to recover all its reasonable expenses. This is the precise function of the Commission's Order entered October 31, 1985. The Commission determined in Case No. 9061 that Rockport unit power costs were imprudent and unreasonable, and that retail rates should recover only those costs found to be reasonable. KPC's rates are recovering those expenses found to be reasonable.

KPC's third argument is that the payment for Rockport fuel costs are made pursuant to a tariff on file with the Federal Energy Regulatory Commission and, consequently, the doctrine of

federal preemption requires the Commission to allow retail rate recovery of such costs. KPC has failed to present any case law to support its argument. Further, the Commission recognizes that this argument was discussed in detail and overruled by the Commission in its Order entered December 4, 1984, in Case No. 9061.

KPC's last argument is an allegation that the Commission's Order directing refunds is beyond the scope of its authority as set forth in the FAC regulation, 807 KAR 5:056. While the FAC regulation is limited to after-the-fact reviews of a utility's FAC every 6 months, the Commission's authority is not so limited. The Commission is statutorily empowered to investigate the condition of a utility (KRS 278.250) and obligated to prescribe just and reasonable rates (KRS 278.270). KPC's claim that the Commission must knowingly allow a utility to overcharge its customers for a 6-month period before any remedial action can be taken is inopposite to the Commission's statutory authority.

KPC further requests that if a rehearing is not granted the October 31, 1985, Order be stayed pending a resolution of the judicial appeals of Case No. 9061. KPC cites its poor financial condition to support its request. The Commission is cognizant that KPC had similarly requested but was unable to obtain injunctive relief in both state and federal court with respect to Case No. 9061. It would be inconsistent for the Commission to allow KPC to bill its customers for excessive Rockport fuel costs while the courts have denied KPC's requests to do so. At the

start of the winter heating season, it is KPC's ratepayers who are now entitled to a refund of excessive and unreasonable FAC billings.

KPC's final request is that if a stay is not granted the Commission should acknowledge KPC's right to impose a future surcharge if it prevails in its judicial appeal of the Commission's decision in Case No. 9061, denying full retail rate recovery of the Rockport unit power purchase. KPC alleges that such a surcharge would be fair to all parties and protect against any irreparable losses. The Commission's Order entered October 31, 1985, merely implements its decision in Case No. 9061. KPC was unable to obtain a judicial stay of the Commission's Order in Case No. 9061 and it therefore continues in force (KRS 278.390). The Commission finds that under the circumstances of this case, KPC has no right to be authorized a future surcharge.

The final issue for resolution is KIUC's request that any refund due to the account of Kentucky Electric Steel be made by sending a check, in lieu of a credit on its power bill, since the customer is alleged to have shut down. The Commission finds that the record is devoid of any evidence to prove that Kentucky Electric Steel has shut down and is not still receiving monthly electric bills.

IT IS THEREFORE ORDERED that:

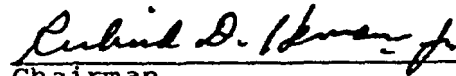
1. KPC's petition for rehearing be and it hereby is denied.
2. KPC's request for a stay of the Commission's October 31, 1985, Order in this case be and it hereby is denied.


3. KPC's request for authorization to impose a future surcharge to recover fuel clause revenues be and it hereby is denied.

4. KIUC's request for Kentucky Electric Steel to receive a refund check, in lieu of a credit on its power bill, be and it hereby is denied.

Done at Frankfort, Kentucky, this 5th day of December, 1985.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

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Secretary