

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF NOLIN RURAL)
ELECTRIC COOPERATIVE CORPORATION)
FOR A DEVIATION FROM THE PSC STAFF'S)
POSITION THAT NOLIN CANNOT OFFSET) CASE NO. 97-502
LOSSES AGAINST MARGINS IN DETERMINING)
A PAYOUT OF CAPITAL CREDITS AND THE)
DEVIATION FROM THE SETTLEMENT)
AGREEMENT OF OCTOBER, 1990 IN CASE)
NO. 90-064)

O R D E R

Nolin Rural Electric Cooperative Corporation ("Nolin") has applied for a deviation from the Commission's Order of October 31, 1990 in Case No. 90-064¹ ("1990 Order") concerning the method of calculating required capital credit retirements and for indefinite deferral of its obligation under the same Order to retire capital credits in calendar year 1997. By this Order, we grant Nolin's motion to withdraw its application for deviation to offset 1995 earnings by 1994 losses in the calculation of retired capital credit retirements and deny its application for deferral.

PROCEDURE

On December 15, 1997, Nolin filed separate applications with the Commission for deviations from the 1990 Order to (1) permit Nolin to calculate required 1996 capital credit retirements by offsetting calendar year 1995 earnings by calendar year 1994

¹ Case No. 90-064, The Application of Nolin Rural Electric Cooperative Corporation of Elizabethtown, Kentucky for an Order Authorizing an Adjustment in Its Retail Rates Applicable to All Customers, Order dated October 31, 1990.

losses and (2) permit Nolin to defer any capital credit retirements to be paid in calendar year 1997 until "such time that its board of directors and management determines that it is fiscally responsible to pay such credits." The Commission docketed these applications as a single case and proceeded to conduct discovery. On April 24, 1998, Nolin advised the Commission of a change of position on the method of calculating required capital credit retirements and requested an informal conference with Commission Staff. On July 20, 1998, following a conference with Commission Staff, Nolin withdrew the application related to the calculation of required capital credit retirements. Nolin's application to defer capital credit retirements in calendar year 1997 remains.

DISCUSSION²

In Case No. 90-064, Nolin applied to the Commission for a general rate adjustment. During this proceeding, Nolin entered into a settlement agreement with Commission Staff which provide, inter alia, that Nolin's rates should be based upon a Times Interest Earned Ratio ("TIER") of 2.5 and that all earnings in excess of a 1.5 TIER should be used to rotate capital credits to Nolin's members. By its Order of October 31, 1990, the Commission approved this settlement agreement and adopted the agreement's terms as its own.

In December 1994, Nolin applied for authority to retain revenues resulting from a reduction in its wholesale power costs and for release from its obligation to rotate capital credits to its members for all total margins in excess of a 1.5 TIER. After extensive

² Because the Commission is granting Nolin's Motion to Withdraw, this section addresses only Nolin's motion to defer payment of capital credits owed in calendar year 1997.

negotiations, Nolin entered a settlement agreement with Commission Staff that permitted Nolin to retain the full amount of the reduction in its wholesale power costs. The settlement agreement required Nolin to continue using all total margins in excess of a 1.5 TIER to rotate capital credits to its patrons and to make such rotations within 120 days of the close of the calendar year. It limited the time period for any request for deviation from this requirement to 60 days from the close of the calendar year. By Order of August 7, 1995 ("1995 Order") in Case No. 94-402,³ the Commission approved this settlement agreement and adopted the terms of this agreement as its own.

At the outset, the Commission notes that Nolin's repeated references to the 1990 Order are misplaced. Nolin's existing obligation to use all total margins in excess of a 1.5 TIER to rotate capital credits to its patrons derives from the 1995 Order. Any request for a deferral from Nolin's obligation to make mandatory capital credit retirements is a request for a deviation from the terms of the 1995 Order, not the 1990 Order.

The Commission further notes that Nolin's request for deferral is untimely and should be denied. Paragraph 7 of the Settlement Agreement that forms the basis of the 1995 Order states:

7. When required by this Settlement Agreement to rotate its capital credits, Nolin RECC shall make payment of these capital credits to its patrons within 120 days of the close of the calendar year in which its total margins exceeded a 1.5 TIER unless relief is sought pursuant to provision of paragraph 14 of this Settlement Agreement within 60 days of the close of the calendar year.

³ Case No. 94-402, Application of Nolin Rural Electric Cooperative Corporation Concerning Existing Rates, Order dated August 7, 1995.

Nolin seeks deferral of margins that were earned during calendar year 1996 and were required to be refunded as retired capital credits no later than April 30, 1997. Under the terms of the 1995 Order, any request for deferral should have been submitted on or before March 1, 1997. Nolin's request for deferral was not submitted until December 15, 1997.

The Commission finds that, assuming arguendo that Nolin's application was timely filed, it is contrary to the essential premise of the settlement agreement upon which the 1995 Order is based. Nolin bargained for retention of certain rate levels in exchange for required capital credit retirements at regular intervals. To defer such retirements to an uncertain time and to place the ultimate retirement solely at Nolin's discretion raises the possibility that the required retirements may not occur for several years. Such a result is clearly contrary to the purpose of the capital rotation provisions and requires denial of Nolin's application.

In reaching our decision, the Commission is fully cognizant of Nolin's financial position. As of December 31, 1997, Nolin is obligated to refund to its members cumulative capital credits of \$3,793,265.⁴ The Commission, therefore, finds that Nolin should promptly develop a reasonable proposal to meet its obligations under the 1995 Order. Due to its ongoing inability to retire capital credits, it should consider a

⁴ This total is based upon Nolin's calculations and is comprised of a retirement of \$1,208,988 for calendar year 1995 operations; a retirement of \$1,551,071 for calendar year 1996 Operations; and a retirement of \$1,033,206 for calendar year 1997 Operations.

base rate adjustment as well as a request to modify or eliminate its current capital credit rotation requirements.⁵

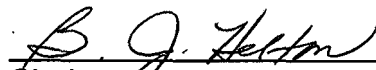
CONCLUSION

IT IS THEREFORE ORDERED that:

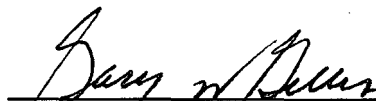
1. Nolin's Motion to Withdraw Application is granted.
2. Nolin's Application to terminate its mandatory obligation to retire capital credits is denied.
3. With 30 days of the date of this Order, Nolin shall file with the Commission its plan for meeting its obligations under the Commission's Order of August 7, 1995 to retire capital credits for calendar years 1995, 1996, and 1997. Nolin shall state in this plan the amounts of capital credits required to be retired for each of the affected years.

Done at Frankfort, Kentucky, this 20th day of October, 1998.

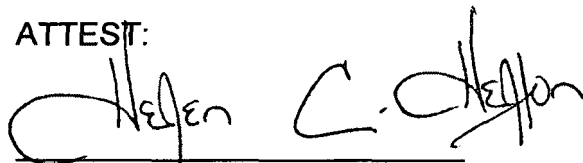
PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director

⁵ As its current rates are based upon its obligation to rotate capital credits to its members for all total margins in excess of a 1.5 TIER, Nolin's obligation can be modified or eliminate only through another general rate adjustment proceeding.