COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN EXAMINATION BY THE PUBLIC SERVICE COMMISSION OF THE APPLICATION OF THE FUEL ADJUSTMENT CLAUSE OF KENTUCKY UTILITIES COMPANY FROM NOVEMBER 1, 1994 TO APRIL 30, 1995	)	CASE NO. 94-461-A
AN EXAMINATION BY THE PUBLIC SERVICE COMMISSION OF THE APPLICATION OF THE FUEL ADJUSTMENT CLAUSE OF KENTUCKY UTILITIES COMPANY FROM MAY 1, 1995 TO OCTOBER 31, 1995	)	CASE NO. 94-461-B
AN EXAMINATION BY THE PUBLIC SERVICE COMMISSION OF THE APPLICATION OF THE FUEL ADJUSTMENT CLAUSE OF KENTUCKY UTILITIES COMPANY FROM NOVEMBER 1, 1995 TO APRIL 30, 1996	)	CASE NO. 94-461-C
AN EXAMINATION BY THE PUBLIC SERVICE COMMISSION OF THE APPLICATION OF THE FUEL ADJUSTMENT CLAUSE OF KENTUCKY UTILITIES COMPANY FROM NOVEMBER 1, 1994 TO OCTOBER 31, 1996	)	CASE NO. 96-523
AN EXAMINATION BY THE PUBLIC SERVICE COMMISSION OF THE APPLICATION OF THE FUEL ADJUSTMENT CLAUSE OF KENTUCKY UTILITIES COMPANY FROM NOVEMBER 1, 1996 TO APRIL 30, 1997	)	CASE NO. 96-523-A
AN EXAMINATION BY THE PUBLIC SERVICE COMMISSION OF THE APPLICATION OF THE FUEL ADJUSTMENT CLAUSE OF KENTUCKY UTILITIES COMPANY FROM MAY 1, 1997 TO OCTOBER 31, 1997	)	CASE NO. 96-523-B

AN EXAMINATION BY THE PUBLIC SERVICE COMMISSION OF THE APPLICATION OF THE FUEL ADJUSTMENT CLAUSE OF KENTUCKY UTILITIES COMPANY FROM NOVEMBER 1, 1997 TO APRIL 30, 1997	)))))	CASE NO. 96-523-C
AN EXAMINATION BY THE PUBLIC SERVICE COMMISSION OF THE APPLICATION OF THE FUEL ADJUSTMENT CLAUSE OF KENTUCKY UTILITIES COMPANY FROM NOVEMBER 1, 1996 TO OCTOBER 31, 1998	)))))	CASE NO. 98-564

<u>O R D E R</u>

Kentucky Utilities Company (KU) has petitioned for rehearing of the Commission s Orders of July 15, 1999 and July 21, 1999 in the above styled cases. Kentucky Industrial Utility Customers (KIUC) opposes this petition. By this consolidated Order, we grant rehearing and direct a reduction in the amount of refunded fuel charges from $10,079,660 to $6,720,987. We further direct that this amount be refunded over 12 months.

In our Orders of July 15, 1999 and July 21, 1999, we found that KU had improperly calculated the cost of fuel recovered from intersystem sales by failing to include the cost of fuel associated with intersystem sales line losses. We further found that, based upon a line loss factor of 3.1 percent for such sales, KU s failure led to an overstatement of the cost of fuel by $4,579,854 for the periods under review. Finally, we found that KU s methodology for calculating total system losses resulted in an understatement of monthly sales and an overcollection of $5,499,806 in fuel charges from KU s Kentucky retail customers.

In its petition for rehearing, KU alleges numerous legal and factual errors in the Orders. It requests that the Orders be vacated and that the charges and credits billed through its fuel adjustment clause (FAC) for the review periods be approved. In the

alternative, it requests that, should the Commission not grant its requested relief in toto, oral argument be scheduled on the issues raised in its petition. We will address each alleged error separately.

Cost of Fuel Recovered From Intersystem Sales

KU argues that our finding that its current method of calculating the cost of fuel recovered from intersystem sales, which fails to include the cost of fuel associated with intersystem line losses, is improper, results in a double recovery of fuel costs, and is arbitrary. It contends that this finding ignores the Commission s treatment of KU s revenues from intersystem sales in KU s last general rate adjustment case.[1] Because off-system sales revenues were used to reduce KU s revenue requirement at the time of the Company s last rate case, the fuel cost associated with all losses, including off-system sales transactions, must be included in the fuel adjustment clause. [2] The Commission s Orders, it contends, will result in asymmetrical ratemaking and provide retail customers with a double recovery by providing retail customers the benefit of the revenues paid to cover the cost of line loss twice once in base rates and again when they are excluded from the fuel adjustment clause. [3]

This argument merely restates the position that KU advanced throughout Case No. 96-523. We addressed this argument in detail in our Order of July 15, 1999 and rejected it. We find no basis to support KU s allegation of error and therefore deny the petition on this ground.

[1] Case No. 8624, General Adjustment of Electric Rates of Kentucky Utilities Company (Mar. 18, 1983).

[2] KU s Petition for Rehearing at 24.

[3] Id.

KU next argues that the Commission s Orders represent an abrupt and radical departure from prior Commission interpretation of Administrative Regulation 807 KAR 5:056 and are unsupported by any persuasive or convincing reasons. [4] It notes that Commission Staff conducted several reviews of KU s FAC and never took issue with KU s treatment of line losses for FAC purposes. Prior to the review periods in question, it further notes, the Commission routinely approved KU s FAC charges without comment. Accordingly, it argues, KU is entitled to rely upon these prior rulings. If any change in the Commission s interpretation is made, it should be done prospectively. To impose such a change in interpretation retroactively, KU argues, violates the utility s right to due process.

The Commission finds this argument unpersuasive. Until our Order of July 15, 1999, we had not expressly addressed the issue of line loss in any formal Commission proceedings involving KU.[5] During the same period in which KU used its methodology, two of the remaining three electric generation utilities in Kentucky included the cost of fuel associated with their intersystem sales line losses in the cost of fossil fuel recovered from intersystem sales. The existence of these mutually exclusive methodologies reflects the absence of any Commission recognition of KU s past practices. Despite its claim of longstanding interpretation, KU has not pointed to any FAC review proceeding in which KU s methodology was expressly addressed and approved.

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[4] KU s Petition for Rehearing at 33.

[5] The Commission first addressed this issue in its final Order in Case No. 96-524, which was issued after Case No. 96-523 stood submitted for decision. See Case No. 96-524, An Examination by the Public Service Commission of the Application of the Fuel Adjustment Clause of the Louisville Gas and Electric Company from November 1, 1994 to October 31, 1996 (Feb. 9, 1999).

The Commission further finds that KU gives excessive weight to the results of Commission Staff field reviews. Such reviews are not part of the formal FAC review process.[6] Their findings are non-binding and unenforceable. Interested third parties do not participate in the field review process. The field review process, furthermore, does not provide for any opportunity for an interested third party to question or comment upon Commission Staff findings or suggest other areas of investigation. The final product of these field reviews is less thorough, less reliable, and less comprehensive than the record of a contested FAC review proceeding in which interested parties have the opportunity to review the utility s records, examine utility witnesses, and present evidence and argument in opposition to the utility s position.

We further find that KU has presented no compelling reason to apply our ruling prospectively. During the periods under review, KU attributed fuel costs clearly associated with and recovered from its intersystem sales to its retail customers. These costs are not properly attributed to KU s Kentucky retail ratepayers. Permitting KU s continued recovery of these costs is unfair to those ratepayers.[7]

KU next focuses its attention upon the line loss factor that the Commission used to compute the cost of fuel recovered from intersystem sales. It contends that we erred in the use of a 3.1 percent line loss factor. It notes that, contrary to the Commission s finding in the Order of July 15, 1999, that KU s Transmission Services Tariff on file with the Federal Energy Regulatory Commission (FERC) set forth a line loss factor of 3.1 percent, the line loss factor in its transmission service tariffs during the periods never

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[6] Administrative Regulation 807 KAR 5:056 makes no reference to Commission field reviews or audits.

[7] See also the text accompanying note 25.

exceeded 3.07 percent. While conceding that it used a 3.1 percent line loss factor in its monthly FAC reports to calculate intersystem sales line loss, KU states that this factor was not part of any FERC tariff, but the product of 16-year-old average line loss analysis.

KU further claims that the Commission gave too much weight to its failure to adjust the line loss factors in its monthly FAC reports to reflect the results of the 1997 Normand Study. It suggests that it delayed reducing the line loss factor until a final decision in Case No. 96-523 was issued. It notes that its use of a lower line loss factor would have reduced the sales component of the fuel charge and thus increased the overall retail fuel charge.

The Commission finds that KU s arguments justify revisiting the line loss factor issue. Less weight was given to the findings of the Normand Study because of the line loss factor contained in KU s FERC tariffs and KU s failure to apply the Study s findings to its monthly FAC filings. The Commission acknowledges that our finding in the Order of July 15, 1999 regarding the line loss factor in KU s FERC Transmission System tariff is in error. We find that KU s explanation of its delay in implementing the Normand Study s findings is reasonable under the circumstances.

KU proposes an incremental one percent line loss factor for intersystem system sales. It argues that intersystem sales differ from the electric utility s other sales. They are made at higher voltages, are at 100 percent power factor and are non-firm. These sales, furthermore, are priced using incremental fuel costs. Losses associated with intersystem sales, KU therefore contends, should be calculated on an incremental basis to be consistent with their load characteristics and incremental pricing. KU Witness

Paul Normand prepared a line loss study in 1997 that found the incremental line loss for intersystem sales was one percent.

KIUC produces no line loss study to challenge the Normand Study, but instead refers to earlier line loss studies that KU submitted to the FERC. These earlier studies found a line loss factor of 3.1 percent for intersystem sales. The line loss factor for intersystem sales that KU reported in its monthly FAC reports since 1990 reflects the results of these studies. KIUC further argues that a one-percent line loss factor also differs from the line loss factors set forth in KU s Transmission Services Tariff and its Open Access Transmission Tariff (OATT). Under the FERC comparability standards, KIUC asserts, KU must treat its transmission customers in the same manner it treats itself. The line loss factor in KU s transmission service tariffs, KIUC asserts, must be given controlling weight. Finally, KIUC insists that the incremental approach would not accurately reflect the full line loss.

Administrative Regulation 807 KAR 5:056 does not mandate any specific approach to determining a line loss factor. The key factor is whether the method is reasonable given the totality of the circumstances. In determining the appropriate line loss factor, electric utilities in this state have adopted different methods. American Electric Power calculates the line loss for each intersystem transaction based upon its system load models. East Kentucky Power merely uses an industry average. Given the nature of intersystem sales and the manner in which KU prices those transactions, its use of an incremental line loss study to determine a line loss factor is not unreasonable.

The Commission finds that use of the 3.1 percent line loss factor set forth in KU s monthly FAC reports is not appropriate for three reasons. First, it is based upon a 16-year-old line loss study. Second, the line loss factor is for sales made on a firm basis

and for voltages less than 138 KV. Most intersystem sales are made at 138 KV voltage and on a non-firm basis. Third, an electric utility s intersystem sales line loss factor for FAC purposes need not be tied to a FERC-tariffed rate.

While the line loss factor set forth in an electric utility s OATT is generally a reliable indicator of the appropriate line loss factor where the utility fails to produce any evidence of a differing factor, we must evaluate each study on its own merits. If the study appears accurately to reflect the line loss incurred in (and thus the fuel cost of) the transaction, we should not reject the study because of the utility s use of a different line loss factor in a FERC-filed rate. While this approach may result in differences between our treatment of a transaction for FAC purposes and FERC s treatment for the regulation of wholesale rates and services, such differences are immaterial so long as Kentucky ratepayers pay fuel charges that accurately reflect the cost of fuel to serve them.

The Commission finds that, given the studies contained in the record of this proceeding and the limitations of the line loss factor studies that support the 3.1 percent line loss factor, a line loss factor of one percent should be used to determine KU s cost of fuel associated with line losses incurred to make an intersystem sale.[8] Based upon a one-percent line loss factor, we find that KU understated its cost of fossil fuel recovered through intersystem sales by $1,221,181 and thus overstated its fuel costs for the review period by that amount. The Commission s calculations are for each review period are shown in Tables I-A through I-E.

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[8] The Commission places KU on notice that in future FAC proceedings the utility may be directed to update its line loss study for intersystem sales or to prepare line loss studies to determine the line loss for each intersystem sales transaction made during a review period.

TABLE I-A

UNREPORTED RECOVERED INTERSYSTEM FUEL COST-REVISED CASE NO. 96-523		
Month	**Reported Recovered Intersystem Fuel Cost ($)**	**Unreported Recovered Intersystem Fuel Cost ($)**
November 1994	3,208,206	32,082
December 1994	3,327,857	33,279
January 1995	393,670	3,937
February 1995	421,652	4,217
March 1995	493,600	4,936
April 1995	237,359	2,374
May 1995	1,233,505	12,335
June 1995	1,965,540	19,655
July 1995	3,301,565	33,016
August 1995	4,622,440	46,224
September 1995	1,395,362	13,954
October 1995	1,536,842	15,368
November 1995	1,498,113	14,981
December 1995	1,436,776	14,368
January 1996	2,316,821	23,168
February 1996	2,445,122	24,451
March 1996	2,271,310	22,713
April 1996	1,695,934	16,959
May 1996	1,567,753	15,678
June 1996	1,679,079	16,791
July 1996	1,448,023	14,480
August 1996	1,505,761	15,058
September 1996	1,806,399	18,064
October 1996	2,641,588	26,416
TOTAL	44,450,277	444,504

TABLE I-B

UNREPORTED RECOVERED INTERSYSTEM FUEL COST- REVISED CASE NO. 96-523-A		
Month	**Reported Recovered Intersystem Fuel Cost ($)**	**Unreported Recovered Intersystem Fuel Cost ($)**
November 1996	3,860,496	38,605
December 1996	2,403,647	24,036
January 1997	1,421,801	14,218
February 1997	1,481,809	14,818
March 1997	2,122,431	21,224
April 1997	1,251,897	12,519
TOTAL	12,542,081	125,420

TABLE I-C

UNREPORTED RECOVERED INTERSYSTEM FUEL COST-REVISED CASE NO. 96-523-B		
Month	**Reported Recovered Intersystem Fuel Cost ($)**	**Unreported Recovered Intersystem Fuel Cost ($)**
May 1997	1,209,941	12,099
June 1997	1,453,096	14,531
July 1997	2,032,296	20,323
August 1997	1,528,864	15,289
September 1997	1,739,980	17,400
October 1997	2,094,826	20,948
TOTAL	10,059,003	100,590

TABLE I-D

UNREPORTED RECOVERED INTERSYSTEM FUEL COST-REVISED CASE NO. 96-523-C		
Month	**Reported Recovered Intersystem Fuel Cost ($)**	**Unreported Recovered Intersystem Fuel Cost ($)**
November 1997	1,696,521	16,965
December 1997	2,751,064	27,511
January 1998	1,257,650	12,577
February 1998	2,359,732	23,597
March 1998	2,753,542	27,535
April 1998	2,716,775	27,168
TOTAL	13,535,284	135,353

TABLE I-E

UNREPORTED RECOVERED INTERSYSTEM FUEL COST-REVISED CASE NO. 98-564		
Month	**Reported Recovered Intersystem Fuel Cost ($)**	**Unreported Recovered Intersystem Fuel Cost ($)**
May 1998	4,835,030	48,350
June 1998	5,534,762	55,348
July 1998	11,762,548	117,625
August 1998	9,062,820	90,628
September 1998	5,941,009	59,410
October 1998	4,395,349	43,953
TOTAL	41,531,518	415,314

KU also alleges two errors in the Commission s calculation of the unreported fossil fuel costs recovered through intersystem sales. First, it states that when calculating this amount for August 1997, the Commission misstated KU s reported

intersystem fuel cost as $15,288,664.[9] KU s monthly FAC reports show only $1,528,864 in reported recovered intersystem fuel cost.

Second, KU argues that the Commission erred when including $11,835,599 of fuel costs recovered from sales to the Louisville Gas and Electric Company (LG&E) during the 6-month period ending October 31, 1997 in our calculations of Unreported Recovered Intersystem Fuel Costs. KU states that these transactions are made in accordance with its Power Supply System Agreement (PSSA) with LG&E and represent shifts of generation between KU and L&GE. No intersystem sales occur because no energy flows outside the LG&E/KU control area. Moreover, KU argues, under the PSSA s terms retail customers receive the benefits of any fuel savings from the jointly dispatched operations of KU and LG&E.

The Commission acknowledges these errors and has revised our calculations of Unreported Recovered Intersystem Fuel Cost to reflect KU s correct recovered fuel cost for August 1997[10] and removal of fuel costs associated with energy transfers to LG&E.[11]

<u>Calculation of Sales Component Total System Line Losses</u>

In our Orders of July 15, 1999 and July 21, 1999, we found that in calculating sales during the review periods, KU used a methodology that resulted in reported total

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[9] Case No. 96-523-B, An Examination By The Public Service Commission Of The Application Of The Fuel Adjustment Clause Of Kentucky Utilities Company From May 1, 1997 To October 31, 1997 (July 21, 1997) at 6.

[10] See Table I-C.

[11] See Table I-E. Based upon our review of KU s monthly FAC reports for the 6-month period ending October 31, 1998, KU reported power sales of $11,859,214 to LG&E. Our revised calculation of Unreported Recovered Intersystem Fuel Cost reflects the removal of these sales.

system losses exceeding its actual total system losses. For every month of the periods under review, KU reported total system losses that exceeded its actual total system losses. We further found that KU s practice violated Administrative Regulation 807 KAR 5:056, Section 1(5), which permitted the use of actual line losses only to calculate the FAC sales component and resulted in improper FAC charges of $5,499,806.

In its Petition for Rehearing, KU argues that the Commission has ignored the holdings of prior Commission Orders and Commission Staff field reviews. It asserts that its methodology for calculating the system line loss was extensively reviewed and approved by the Commission and its staff and does not result in an overstatement in the cost of fuel. [12] It then presents an extensive listing of Commission proceedings, beginning with Administrative Case No. 309,[13] in which the methodology was not rejected.

KU suggests that the Commission implicitly approved its methodology for calculating total system sales in its Order of April 16, 1990 in Administrative Case No. 309.[14] KU s methodology, however, was not before the Commission in that proceeding. The Commission originally initiated that proceeding to consider significant modifications or elimination of the FACs. We eventually focused upon the implementation of a procedure for electric generating utilities to incorporate into their calculation of their monthly FAC factor a procedure for billing over- and under-recoveries and directed the use of a FAC reporting format that recognized non-

[12] Petition for Rehearing at 14.

[13] Administrative Case No. 309, An Investigation of the Fuel Adjustment Clause Regulation 807 KAR 5:056.

[14] Petition for Rehearing at 12 (The April 16, 1990 Order thus did not reject the method KU used in the February 20, 1990 filing.).

jurisdictional sales in calculating over- or under-recovery. None of KU s comments expressly proposed the methodology that KU currently uses to calculate total system sales. Less than two months before Administrative Case No. 309 concluded, KU began submitting monthly FAC reports using its new methodology.[15] These reports were not filed in the record of Administrative Case No. 309. There is no evidence that the Commission even considered the methodology before issuing its final Order in that proceeding.[16]

An examination of the FAC review proceedings held since KU s introduction of its new methodology fails to reveal any extensive review. KU has not pointed to any portion of the records of those proceedings in which its methodology was questioned or in which KU explained the methodology or stated how that methodology is consistent with Administrative Regulation 807 KAR 5:056.

In its Petition for Rehearing, KU places great emphasis on the Commission Staff field reviews of KU s FAC. In its report of its 1990 FAC review, Commission Staff discussed KU s new methodology for calculating total system losses and concluded that KU s reports were substantially in compliance with the Commission s policy and regulations. [17] Commission Staff reports from 1990 through 1996 reached similar

[15] In its Petition for Rehearing, KU asserts that its filing conformed to the new format that the Commission approved. The approved format, however, did not contain any format for recalculating total system losses.

[16] When approving the new reporting formats in its Order of April 16, 1990, the Commission noted that the change should affect only the over- or under-recovery calculation and **should not affect the determination of the utilities current month system average fuel cost apart from the over- or under-recovery calculation**. Administrative Case No. 309, An Investigation of the Fuel Adjustment Clause Regulation 807 KAR 5:056 (April 16, 1990) at 3 (emphasis added).

[17] Marvin Goff and Jeff Shaw, Field Review of the Fuel Adjustment Clause of Kentucky Utilities Company (June 20, 1990) at 4.

conclusions. These reports are, KU asserts, conclusive evidence that Commission Staff certainly did accept KU s methodology of restating the total system sales as if experienced at the retail level. [18]

Our review of the reports produces a different conclusion. First, Commission Staff did not conclusively endorse the methodology, but noted the need to monitor it in future reviews.[19] KU had only recently changed its methodology. Only one of the months that Commission Staff examined involved the use of the new methodology. Second, Commission Staff never addressed whether the new methodology would produce total system losses for retail customers that exceeded KU s actual total system losses or whether such occurrence was an inherent feature of KU s new methodology. Third, subsequent Commission Staff reviews never discussed the new methodology, reported on the concerns raised in the June 1990 report, or addressed the issue of KU s restatement of total system losses exceeding actual total system losses.

Assuming arguendo that Commission Staff endorsed KU s methodology, its actions are not binding on the Commission. The Commission acts and speaks only through its written orders. Union Light Heat and Power Co. v. Pub. Serv. Comm n, Ky.,

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[18] KU s Petition for Rehearing at 15.

[19]

> The Staff agrees that the separation of KU's system-wide line loss results in a better matching of fuel cost and fuel cost recovery. KU's use of the FERC-approved wholesale line losses *appears to be reasonable* as it is producing approximately the same loss percentages as would a 12-month rolling average of wholesale line losses. The FERC-approved line loss and the wholesale rolling average will be tracked and compared in future FAC reviews.

Marvin Goff and Jeff Shaw, Field Review of the Fuel Adjustment Clause of Kentucky Utilities Company (June 20, 1990) at 4 (italics added).

271 S.W.2d 361, 365 (1954). A written report from members of the Commission s staff is not a Commission order. Bee s Old Reliable Shows v. Kentucky Power Co., Ky., 334 S.W.2d 765 (1960). As noted above, a report that is prepared outside a formal Commission proceeding and which is not subject to review and comment by interested third parties has little value as precedent. [20]

KU also alleges that the Commission has overlooked the undisputed fact that KU has both the wholesale jurisdiction and two retail jurisdictions of customers in addition to the non-firm off-system sales. [21] The Commission is aware that KU operates within several jurisdictions. KU s operations, however, do not justify KU s reading of Administrative Regulation 807 KAR 5:056. That regulation requires the elimination of total system losses in the determination of an FAC s sales component. It does not permit the Commission or an electric utility to adjust total systems to produce a level in excess of actual levels. Nowhere in its Petition for Rehearing does KU dispute the Commission s finding that KU s` restatement of total system sales resulted in reported total system losses that exceeded its actual total system losses.

In its petition for rehearing, KU contends that our decision violated its right to procedural due process since it did not have the opportunity to cross-examine Commission Staff during the proceedings and since Commission Staff has apparently told the Commission that it did not endorse the methodology. KU s Petition for Rehearing at 15. The Commission categorically rejects this argument. In rendering our decision, we **have relied solely upon the contents of the reports**. Moreover, KU had the opportunity to call as witnesses the Commission Staff members who authored the

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[20] See text accompanying footnote 6.

[21] KU s Petition for Rehearing at 14.

reports, but chose instead to rely upon the documents to support its claims. As KIUC raised the issue of Commission Staff approval of KU s methodology in its witness s testimony, KU had adequate notice of this issue. No violation of KU s constitutional rights occurred.

Due Process Concerns[22]

In its Petition for Rehearing, KU argues that the Commission s delay in issuing its Orders violated KU s right to due process. It asserts that as a result of the timing of the Orders issuance, its risk of exposure has been compounded. If the [O]rders had been issued timely, KU asserts, KU would have been afforded the opportunity to . . . plan for the impact of such decisions in its financial planning process. [23] It will instead suffer a very harsh, cumulative effect all in one quarter. [24] As a result of this alleged due process violation, KU argues, it should be relieved of any obligation to refund FAC overcharges.

While the Commission is aware that the refund amount is large, we do not believe that any delay in the issuance of the Orders amounts to a violation of KU s right to due process or relieves KU of its obligations under Administrative Regulation 807 KAR 5:056. First, all FACs are retroactive in nature.[25] All charges collected under a

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[22] As the Commission has modified its Orders of July 15, 1999 and July 21, 1999 to reflect an intersystem sales line loss factor of one percent, certain of KU s arguments regarding alleged violations of its right to due process have been rendered moot and will not be addressed.

[23] KU s Petition for Rehearing at 17.

[24] KU s Reply to KUIC s Response to Petition for Rehearing at 13.

[25] See, e.g., Business and Professional People For the Public Interest v. Illinois Commerce Comm n, 525 N.E.2d 1053, 1058 (Ill. App. Ct. 1988); Equitable Gas Co. v. Pennsylvania Pub. Util. Comm n, 526 A.2d 823 (Pa.Commw. 1987).

FAC are subject to review and possible disallowance. Prudent risk management required KU to plan for the consequences of possible refund. Such planning should have ameliorated much of the harshness of any refund. Second, if the immediate refund of all overcharges increases KU s financial exposure, the appropriate remedy is not relief from the obligation to refund, but an extension of the period in which refunds would be made. KU has not requested such relief.

Recognizing the magnitude of the refund in question and past Commission practice to spread such refunds over an extended period of time, we find that the refund of the FAC overcharges should occur over 12 months. This time period will reduce KU s financial exposure and permit KU to consider the refunds in its financial planning process.

KU also contends that the Commission in its Order of July 15, 1999 exceeded its authority by consolidating Cases No. 94-461-A, No. 94-461-B, and No. 94-461-C into Case No. 96-523. KU also claims the Commission arbitrarily violated KU s right to due process in holding that the results of a 6-month FAC review proceeding are not final and conclusive until completion of the biennial review proceeding. It argues that this holding is not supported by Administrative Regulation 807 KAR 5:056 and renders Section 1(11) of that regulation meaningless.

The Commission has previously addressed the conclusiveness of the results of 6-month FAC review proceedings.[26] In each instance, we held that the Commission

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[26] Case No. 96-524, An Examination By the Public Service Commission of the Application of the Fuel Adjustment Clause of the Louisville Gas and Electric Company From November 1, 1994 to October 31, 1996 (Mar. 11, 1999) at 4-7; Case No. 95-011, Kentucky Industrial Utility Customers v. Big Rivers Electric Corporation (April 1, 1997) at Case No. 9631, An Investigation Into the Fuel Procurement Practices of Kentucky Utilities Company (Sept. 10, 1987) at 2-3.

may revisit the findings of any 6-month FAC review proceeding in the course of the biennial review. Contrary to KU s assertions, our holding on this point in the July 15, 1999 Order is not a radical departure from past interpretations, but a faithful application of past Commission precedent. We therefore deny KU s Petition for Rehearing on this ground.

KU further argues that the Commission has improperly applied Administrative Regulation 807 KAR 5:056, Section 1(12), in lieu of a proper 6-month period review under Section 1(11). We find that KU long ago waived this argument. Since Case No. 10439[27] the Commission has referred to Section 1(12) only when initiating a combined 6-month and biennial FAC review. KU has never before objected to this action and it raised no objection in any of the proceedings currently before the Commission until its Petition for Rehearing. The Commission made clear from the beginning of Cases No. 96-523 and No. 98-564 that our examination also encompassed the 6-month review required by Administrative Regulation 807 KAR 5:056, Section 1(11). We explicitly state here that those proceedings were also brought pursuant to our authority under that regulation.[28]

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[27] Case No. 10439, An Examination by the Public Service Commission of the Application of the Fuel Adjustment Clause of Kentucky Utilities Company from November 1, 1986 to October 31, 1988.

[28] While KU portrays our Orders of July 15, 1999 and July 21, 1999 as radical departures from precedent and our delay in issuing these Orders as the abandonment of the orderly administration of the fuel adjustment clause, its argument, if correct, would wreak havoc with the FAC. It would mean that 6-month review proceedings for five 6-month periods dating back to 1988 **for all electric utilities** have not been conducted and that charges incurred during those periods are subject to review and possible modification. These charges have long been considered approved and final.

TABLE II

SUMMARY OF PSC ORDERS INVOLVING KENTUCKY UTILITIES COMPANY S FUEL ADJUSTMENT CLAUSE				
Case No.	**Period**	**Total Refund Ordered**	**Amount Related to Cost of Fuel Related to Line Loss Recovered Through Intersystem Sales**	**Amount of Refund Related to Improper Reporting of Total System Losses**
94-461-A	1 November 1994 30 April 1995	680,582	80,825	599,757
94-461-B	1 May 1995 31 October 1995	981,608	140,552	841,056
94-461-C	1 November 1995 30 April 1996	845,607	116,640	728,967
96-523	1 May 1995 31 October 1996	793,791	106,487	687,304
96-523 (consolidated)	1 November 1994 31 October 1996	3,301,588	444,504	2,857,084
96-523-A	1 November 1996 30 April 1997	763,962	125,420	638,542
96-523-B	1 May 1995 31 October 1997	547,105	100,590	446,515
96-523-C	1 November 1997 30 April 1998	687,164	135,353	551,811
98-564	1 May 1995 31 October 1998	1,421,168	415,314	1,005,854
TOTAL	1 November 1994-31 October 1998	6,720,987	1,221,181	5,499,806

Summary

After careful consideration of KU s Petition for Rehearing and the responses thereto and a review of the evidence of record, the Commission finds that:

1. KU s Petition for Rehearing should be granted in part and denied in part.

2. A line loss factor of one percent should be used to determine the cost of fuel associated with line losses incurred to make an intersystem sale and recovered from such sale.

3. As a result of its failure to correctly calculate the cost of fuel recovered from intersystem sales, KU overstated its fuel costs for the periods under review by $1,221,181. The amount of unreported fossil fuel costs recovered through intersystem sales for each period under review is shown in Tables I-A through I-E.

4. For the periods under review, KU overrecovered $6,720,987 through its FAC. The total amount that KU overrecovered through its FAC for each period under review is shown in Table II.

5. Upon the filing of its first monthly fuel adjustment after entry of this Order and for each of the following 11 months, KU should, in calculating its monthly fuel cost, reduce actual monthly fuel cost by $560,082 to reflect unreported fossil fuel costs recovered through intersystem sales during the review period and the overrecovery of fuel costs resulting from its miscalculation of sales.

IT IS THEREFORE ORDERED that:

1. KU s request for oral arguments presented in its Petition for Rehearing is denied.

2. KU s Petition for Rehearing is granted in part and denied in part.

3. The Orders of July 15, 1999 and July 21, 1999 are modified to reflect the changes in the calculation of unreported fossil fuel costs recovered through intersystem sales discussed herein and shown in Tables I-A through I-E.

4. The reductions in actual monthly fuel cost ordered in the Orders of July 15, 1999 and July 21, 1999 are amended to reflect the amounts shown in Table II.

5. Upon the filing of its first monthly fuel adjustment after entry of this Order and for each of the following 11 months, KU shall, in calculating its monthly fuel cost, reduce actual monthly fuel cost by $560,082 to reflect unreported fossil fuel costs recovered through intersystem sales during the review period and the overrecovery of fuel costs resulting from its miscalculation of sales.

6. All issues that are presented in KU s Petition for Rehearing and not expressly addressed in this Order are denied.

7. All provisions of the Orders of July 15, 1999 and July 21, 1999 not expressly modified herein are affirmed.

8. KIUC s Motion to Strike Exhibit H of KU s Petition for Rehearing is denied.

Done at Frankfort, Kentucky, this 30th day of August, 1999.

By the Commission

ATTEST:

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Executive Director