

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

EAST KENTUCKY POWER COOPERATIVE'S)
REQUEST FOR A DECLARATORY RULING ON)
THE APPLICATION OF ADMINISTRATIVE) CASE NO. 2004-00430
REGULATION 807 KAR 5:056 TO ITS PROPOSED)
TREATMENT OF NON-ECONOMY ENERGY)
PURCHASES)

ORDER

The Commission's February 7, 2005 Order in this proceeding declared unlawful a method proposed by East Kentucky Power Cooperative ("EKPC") to report its fuel costs for fuel adjustment clause ("FAC") purposes for non-economy energy purchases when all available generating capacity is serving native load. Salt River Electric Cooperative Corporation ("Salt River"), an electric distribution cooperative served by EKPC, has moved for full intervention for the purpose of petitioning for rehearing of that Order. We deny the motion.

BACKGROUND

On October 5, 2004, EKPC submitted a letter requesting a written interpretation from Commission Staff regarding a proposed change to its FAC reporting procedures. EKPC proposed to report as \$0.00 the cost of any non-economy energy purchases made at times when all available EKPC generating capacity is serving native load. EKPC further requested that Commission Staff identify any additional reporting requirements. Salt River's president, along with his counterparts at four other electric distribution cooperatives served by EKPC, was a signatory to this letter.

The Commission treated EKPC's request as a petition for declaratory ruling. On November 9, 2004, we established this proceeding to address the petition and directed that parties who had participated in EKPC's previous FAC review proceedings be made parties to this proceeding. We further directed these parties to submit, within 10 days, any comments regarding EKPC's proposed action and the treatment required by Administrative Regulation 807 KAR 5:056. No comments were received. Although Salt River had not participated in any recent EKPC FAC review, the Commission's Executive Director served a copy of our Order on Salt River's president.

On February 7, 2005, we issued an Order that declared EKPC's proposal in conflict with KRS 278.160(2) and Administrative Regulation 807 KAR 5:056 and that implementation of the proposal is unlawful. We found that Administrative Regulation 807 KAR 5:056 prescribes a strict procedure for accounting and reporting fuel costs and requires the reporting of all fuel costs. We further found that this regulation did not allow any discretion to a utility to ignore or underreport such costs that are otherwise considered a "fuel cost" or to use other than actual costs. "The regulation makes no exceptions and provides for no variations or deviations from the stated reporting methodology."¹ Finally, we found that, since the proposal required a method of calculating EKPC's FAC charge that was at variance with the method of calculation set forth in EKPC's filed rate schedule, the implementation of the proposal would violate KRS 278.160(2).²

¹ Order of February 7, 2005 at 5.

² KRS 278.160(2), "No utility shall charge, demand, collect, or receive from any person a greater or **less compensation** for any service rendered or to be rendered than that prescribed in its filed schedules, and no person shall receive any service from any utility for a compensation greater or less than that prescribed in such schedules." [emphasis added]

On March 1, 2005, Salt River moved for intervention in this proceeding. With its motion for intervention, it tendered a motion for rehearing of our Order of February 7. It also tendered a memorandum in support of its motion and the written testimony of its general manager regarding the EKPC proposal.

Salt River, a rural electric cooperation corporation organized pursuant to KRS Chapter 279, owns and operates facilities that distribute electricity to approximately 39,876 customers in Anderson, Bullitt, Jefferson, Larue, Marion, Mercer, Nelson, Shelby, Spencer, and Washington counties, Kentucky.³ It purchases its electricity requirements from EKPC.⁴

MOTION FOR INTERVENTION

In support of its motion, Salt River argues that the Commission's Order of February 7, 2005 "directly affects the amount charged to Salt River by EKPC."⁵ It argues that the EKPC proposal, if adopted, would have reduced its cost of purchase power. It further argues that, by refusing to permit the implementation of the proposal, the Commission requires EKPC to charge to Salt River "rates that are not fair, just and reasonable as required by KRS 278.030(1)."⁶

Administrative Regulation 807 KAR 5:001, Section 3(8), that governs intervention in Commission proceedings, provides that "[i]n any formal proceeding, any person who wishes to become a party to a proceeding before the commission may by *timely motion* request that he be granted leave to intervene [emphasis added]." Salt River had notice

³ Annual Report of Salt River Electric Cooperative Corporation to the Public Service Commission for the Year Ended December 31, 2003 at 13 and 19.

⁴ *Id.* at 19.

⁵ Motion at 1.

⁶ *Id.*

of the pending case for more than 90 days prior to the issuance of the Commission's February 7, 2005 Order. Its president was served with a copy of the Order by which we established this case. Despite the significant interest which it alleges to have in the subject matter of this proceeding, Salt River took no action to intervene until the issuance of a final Order. Consistent with previous Commission rulings involving similar factual situations,⁷ we find that Salt Rivers' motion is untimely and should be denied.

MOTION FOR REHEARING⁸

In support of its motion for rehearing, Salt River argues that we incorrectly interpreted Administrative Regulation 807 KAR 5:056 when ruling on EKPC's request for a declaratory order. Salt River argues that EKPC should not be allowed to charge through its FAC any purchases of electric power when those purchases are to meet native load demand in excess of available generation capacity. Such purchases, which Salt River terms "reliability purchases," are not within the definition of "fuel" as set forth in Administrative Regulation 807 KAR 5:056, Section (1)(3). It asserts that our description of these purchases as permissible "non-economy" transactions is erroneous.

We find no merit in this argument. Administrative Regulation 807 KAR 5:056 makes no reference to "reliability purchases" nor does it contain any prohibition against

⁷ See, e.g., Case No. 1996-00322, Application of Sprint Spectrum, L.P. on Behalf of Wirelesco, L.P. For the Issuance of a Certificate of Public Convenience and Necessity to Construct a Personal Communications Services Facility in the Louisville Major Trading Area [Prospect PSC Facility LV03C075B2] (Ky. PSC. Jan. 17, 1997); Case No. 2000-00095, Joint Application of Powergen PLC, LG&E Energy Corp., Louisville Gas and Electric Company, and Kentucky Utilities Company for Approval of a Merger (Ky. PSC May 15, 2000); Case No. 2001-00092, Adjustment of Gas Rates of Union Light, Heat and Power Company (Ky. PSC Sep. 13, 2001).

⁸ Having found that Salt River's motion to intervene is untimely and should be denied, we are not required to address the merits of its motion for rehearing. Assuming *arguendo* that the Motion was timely filed, however, we will proceed to address the merits of that motion.

the inclusion of the fuel costs associated with “reliability purchases.” The regulation makes references to only two types of transactions: economy purchases and non-economy purchases. Section (1)(3)(c) of the regulation expressly defines the costs of economy purchases that are recoverable through an FAC.⁹ Section (1)(3)(b) identifies the elements of all other types of energy purchases (i.e., non-economy purchases) that are recoverable:

The actual identifiable fossil and nuclear fuel costs associated with **energy purchased for reasons other than identified in paragraph (c) of this subsection**, but excluding the cost of fuel related to purchases to substitute for the forced outages . . . [emphasis added].

This section makes clear that its coverage extends to purchases that are not economy purchases.

In its motion, Salt River relies heavily upon the interpretation of Administrative Regulation 807 KAR 5:056 that we set forth in Case No. 2000-00496-B.¹⁰ In that case, we defined “non-economy energy purchases” as “purchases made to serve native load that have an energy cost greater than the avoided variable cost of the utility’s highest cost generating unit available to serve native load during that FAC expense month.”¹¹ Since EKPC’s purchases to meet native load demand in excess of native generation

⁹ The net energy cost of energy purchases, exclusive of capacity or demand charges (irrespective of the designation assigned to such transaction) when such energy is purchased on an economic dispatch basis. Included therein may be such costs as the charges for economy energy purchases and the charges as a result of scheduled outage, all such kinds of energy being purchased by the buyer to substitute for its own higher cost energy.

¹⁰ Case No. 2000-496-B, An Examination by the Public Service Commission of the Application of the Fuel Adjustment Clause of East Kentucky Power Cooperative, Inc. from May 1, 2001 to October 31, 2001 (Ky. PSC May 2, 2002).

¹¹ *Id.* at 4.

have no avoided costs and generally are less than the avoided cost of EKPC's highest cost generating unit available to serve native load during an FAC expense month, Salt River argues, they do not meet this definition of "non-economy energy purchases."

While Salt River is correct on this point, its argument does not require reconsideration of our February 7, 2005 Order. The definition of "non-economy energy purchases" set forth in our Order in Case No. 2000-00496-B too narrowly construes 807 KAR 5:056 and conflicts with the regulation. A more accurate definition of non-economy energy purchases recognizes that the energy costs thereof may be greater or less than the variable cost of the highest cost generating unit available to serve native load. To the extent that the definition in our Order in Case No. 2000-00496-B conflicts with our Order of February 7, 2005, we find that it was incorrect and should be overruled.

SUMMARY

Having considered Salt River's motion to intervene and motion for rehearing, the Commission HEREBY ORDERS that:

1. Salt River's motion to Intervene is denied.
2. Salt River's motion for rehearing is denied.
3. To the extent that the May 2, 2002 Order in Case No. 2000-00496-B is in conflict with the Order of February 7, 2005 in this proceeding, it is overruled.
4. These proceedings are closed. The Executive Director shall place any future filings in the appropriate utility's general correspondence file or shall docket the filing as a new proceeding.

Done at Frankfort, Kentucky, this 21st day of March, 2005.

By the Commission

ATTEST:

A handwritten signature in black ink, consisting of several overlapping loops and flourishes, positioned above a horizontal line.

Executive Director

Case No. 2004-00430