

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF CLARK ENERGY)	
COOPERATIVE, INC. TO PASS-THROUGH AN)	CASE NO.
INCREASE OF ITS WHOLESALE POWER)	2006-00476
SUPPLIER PURSUANT TO KRS 278.455(2))	

INTERIM ORDER

On January 29, 2007, Clark Energy Cooperative, Inc. ("Clark") submitted an application to pass-through any wholesale rate adjustment granted to East Kentucky Power Cooperative, Inc. ("EKPC") in Case No. 2006-00472.¹ Clark submitted its application pursuant to the authority of KRS 278.455(2) and 807 KAR 5:007, Section 2. By letter dated February 1, 2007, Clark was informed that its application was not signed by an attorney and that documentation would need to be submitted demonstrating that it was being represented by a licensed member of the Kentucky Bar Association. Clark filed an entry of appearance by its legal counsel on February 7, 2007, and the application was accepted as filed on that date.

In its application, Clark described how its pass-through rates were developed:

Clark Energy, in turn, followed the same process by first increasing the demand charges for its industrial "B" and "C" rates, as applicable, and then allocating the remaining dollar increase to all remaining classes and increasing the energy charges for those rate schedules. In each instance, the retail rates for a particular class have been developed in a

¹ Case No. 2006-00472, General Adjustment of Electric Rates of East Kentucky Power Cooperative, Inc.

manner that is consistent with the method proposed by EKPC. The proposed rate design structure at retail does not change the rate design currently in effect and is consistent with the rate design methodology used at wholesale.²

In support of its proposed pass-through methodology, Clark stated that each Member System must recover the dollar increase from the new wholesale rates and that it is important to implement retail rates that mirror the change at wholesale, while still complying with the proportionality and rate design requirements.³ It further states that EKPC and the Member Systems understand that a “pure” proportional increase at retail would result in increases to customer, demand, and energy charges, but it does not agree that strict adherence to the existing proportion of revenue at retail by these components is reasonable. In support of this position it stated, for example, that EKPC and the Member Systems cannot justify a change to the customer charge as EKPC’s proposed wholesale rate increase has no relationship to customer cost because EKPC has not proposed an increase in its substation or metering point charge.⁴

Clark argues that KRS 278.455(2) explicitly recognizes “proportional” allocation without stating a specific method and, that it is reasonable for it to maintain the rate design relationship from wholesale to retail that has existed for a number of years.

Clark also provided comparative analyses of its present and proposed revenues that reflected the percentage that each rate schedule or class represented of the total

² Application at 2.

³ Response to the Commission Staff’s First Data Request dated March 12, 2007, Item 2(b).

⁴ Id.

revenues and that reflected the percentage that each component of the base rates within each rate schedule or class represented of the total base rate revenues.⁵

KRS 278.455(2) provides that a distribution cooperative may change its rates to reflect a change in the rate of its wholesale supplier if the effects of an increase or decrease are allocated to each class and within each tariff on a proportional basis that will result in no change in the rate design currently in effect. Further, 807 KAR 5:007, Section 2(2), provides that the distribution cooperative shall file an analysis demonstrating that the rate change does not alter the rate design currently in effect and the revenue change has been allocated to each class and within each tariff on a proportional basis.

The Commission has reviewed the approach proposed by Clark to pass-through any increases in the wholesale rates from EKPC and to allocate any increases to its retail rates. Based upon this review, the Commission finds that Clark's approach does not comply with the provisions of KRS 278.455(2) and 807 KAR 5:007, Section 2(2), and therefore it should be rejected. Both the statute and administrative regulation are quite clear that the allocation of the wholesale rate increase must not change the retail rate design currently in effect and that the wholesale rate increase must be allocated to each retail class and within each retail tariff on a proportional basis. There is no provision in either KRS 278.455 or 807 KAR 5:007 requiring that there be a correlation between the proposed wholesale rate design and the proposed retail rate design. Moreover, there is no provision or requirement that the process utilized to develop the wholesale rates must be followed or duplicated in the retail rates.

⁵ Id., Item 3(a).

What is required is an allocation of the wholesale rate increase to the retail rates, on a proportional basis to each retail class and within each retail tariff, in a manner that does not change the existing distribution cooperative rate design. Contrary to the arguments of Clark and EKPC, the Commission finds that the statute and administrative regulation require the distribution cooperative to follow a “strict adherence” to the existing proportion of revenues at retail, by rate mechanism component. Clark and EKPC have offered no evidence supporting their contention that the pass-through at retail must follow the proposed wholesale rate design process in a proportional manner.

The Commission today has issued an Order in Case No. 2006-00472 authorizing an interim \$19.0 million annualized increase in EKPC’s wholesale rates, subject to refund, which becomes effective for service rendered on and after April 1, 2007. Clark’s share of this interim increase is \$735,903. A post-hearing data response filed by EKPC in Case No. 2006-00472 on March 27, 2007⁶ included the determination of Clark’s rates reflecting the \$735,903 interim increase. However, those rates were developed using the same approach Clark submitted with its application. As the Commission has found that approach should be rejected, the rates submitted for Clark on March 27, 2007 should also be rejected. Under the provisions of KRS 278.455(2), the change in Clark’s retail rates to reflect this increase must become effective for service rendered on and after April 1, 2007.

⁶ Case No. 2006-00472, Responses to Commission Staff’s Data Request at Hearing on March 22, 2007, Item 2(b), Case No. 2006-00476, Attachments 1 and 2.

IT IS THEREFORE ORDERED that:

1. The approach proposed by Clark to allocate its portion of any increase in the wholesale rates authorized in Case No. 2006-00472 is rejected.
2. The proposed rates submitted with Clark's application and the revised rates provided in a post-hearing data response in Case No. 2006-00472 are not consistent with the provisions of KRS 278.455 and 807 KAR 5:007 and are denied.
3. Clark shall develop retail rates that allocate the \$735,903 interim increase in wholesale rates authorized for EKPC on a proportional basis consistent with the requirements of KRS 278.455(2) and 807 KAR 5:007, Section 2(2).
4. Clark shall file these new interim retail rates with the Commission within 10 days of the date of this Order.
5. Clark shall submit within 10 days of the date of this Order analyses which demonstrate the interim increase has been allocated on a proportional basis to each class and within each tariff, in a manner that does not change Clark's existing rate design. The analyses shall follow the format required in the Commission Staff's First Data Request dated March 12, 2007, Item 3(a)(1) and 3(a)(2). The analyses are to be provided in both hard copy and electronic Excel formats. The electronic analyses shall be provided on either CD-ROM or diskette with all formulas intact.
6. The increase in interim rates approved herein is subject to refund and shall become effective for service rendered on and after April 1, 2007.
7. Clark shall maintain its records in such a manner as will enable it, the Commission or its customers, to determine the amounts to be refunded and to whom they are due in the event that the rates approved herein are required to be refunded.

Done at Frankfort, Kentucky, this 1st day of April, 2007 @ 12:04 p.m.

By the Commission

ATTEST:

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the end.

Executive Director