

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN ELECTRONIC EXAMINATION BY THE PUBLIC)	
SERVICE COMMISSION OF THE ENVIRONMENTAL)	
SURCHARGE MECHANISM OF EAST KENTUCKY)	
POWER COOPERATIVE, INC. FOR THE SIXTH-MONTH)	
EXPENSE PERIODS ENDING NOVEMBER 30, 2019,)	CASE NO.
MAY 31, 2020, NOVEMBER 30, 2020, AND)	2022-00141
NOVEMBER 30, 2021, THE TWO-YEAR EXPENSE)	
PERIOD ENDING MAY 31, 2021, AND THE)	
PASS-THROUGH MECHANISM OF ITS SIXTEEN)	
MEMBER DISTRIBUTION COOPERATIVES)	

MOTION FOR REHEARING AND/OR CLARIFICATION

Comes now, East Kentucky Power Cooperative, Inc., (“EKPC” or the “Company”), pursuant to KRS 278.400 and respectfully requests the Kentucky Public Service Commission (“Commission”) to grant rehearing/clarification on its March 29, 2024 Order in the above-styled case. In support of this motion, EKPC respectfully states as follows:

On March 29, 2024, the Commission issued an Order approving EKPC’s and its owner-members corresponding amounts billed through its environmental surcharge for certain time periods (the “March 29th Order”). The Commission’s March 29th Order, approved EKPC’s Base Environmental Surcharge Factor (“BESF”) rate, approved the request to return EKPC’s over-recovery in the first month following the Order, approved the request for EKPC’s owner-members to amortize their over/under-recovery over six (6) months, and allowed Cumberland Valley Electric to revise its Pass-Through Mechanism Report.

A. Rehearing and clarification is needed with regard to the proper rate of return going forward.

Ordering Paragraph 5, stated “EKPC shall use a rate of return of 4.894 percent in all monthly environmental surcharge filings subsequent to the date of this Order.” EKPC seeks clarification on what rate of return (“ROR”) that should be used. This case had been pending since June 3, 2022 and involved six separate and unique six (6) month review periods ending respectively on: November 30, 2019; May 31, 2020; November 30, 2020; May 31, 2021; November 30, 2021; and the two-year expense period ending May 31, 2021. During the pendency of this case, EKPC filed Case No. 2023-00177 on July 21, 2023 for approval to amend its environmental compliance plan and recover the costs through the environmental surcharge.¹ The Commission issued an Order in 2023-00177 on January 11, 2024, approximately three and a half months prior to the March 29th Order. In that January 11, 2024 Order, the Commission found that “EKPC should use a rate of return of 6.487 percent for all environmental surcharge monthly filings after the date of this Order.”²

EKPC believes that it should use the 6.487 percent ROR since Case No. 2023-00177 since that ROR was calculated on more recent interest rates than the rates contained in this proceeding and requests clarification from the Commission on which ROR to use. The 6.487 percent was first used in March of 2024, applied to February expenses and included in the April wholesale power bills. Applying a lower rate of return that is no longer valid following a period of increasing interest rates would be unfair, unjust and

¹ *In the Matter of: Electronic Application of East Kentucky Power Cooperative, Inc., for Approval to Amend its Environmental Compliance Plan and Recover Costs Pursuant to its Environmental Surcharge, and for Issuance of Certificates of Public Convenience and Necessity and Other Relief*, Case No. 2023-00177, Order (Ky. P.S.C. Jan. 11, 2024).

² *Id.* at 38.

unreasonable as it would lead to a significant under-recovery based upon data that is no longer timely or accurate. EKPC believes this ROR should be used moving forward, until the ROR is reset in the 6-month review process.

B. Clarification is needed regarding the filing of conforming tariffs.

Ordering Paragraph 7 of the March 29, 2024 Order stated as follows:

EKPC's Member Cooperatives shall include the applicable monthly retail pass-through adjustments, shown in the Appendix to this Order, in the determination of each Member Cooperative's respective pass-through mechanism in each of the first six months following the date of this Order, as discussed herein.

Ordering Paragraph 8 of the March 29, 2024 Order stated as follows:

Within 20 days after service of this Order, EKPC and its member cooperatives shall file revised tariff sheets reflecting the rates contained in the Appendix to the Order.

EKPC does not believe that any tariff filing is required due to the timing of this Order. EKPC has filed updated tariffs pursuant to the January 11, 2024 Order in Case No. 2023-00177 (which were subsequently suspended and are the subject of pending Case No. 2024-00048) to address the approved BESF, which is the most recent time period for the environmental surcharge update. EKPC seeks clarification that no tariff filings are due for EKPC or its owner members as a result of this Order, which is from a case initiated prior to Case No. 2023-00177. Cumberland Valley's direct pass-through that was approved in this Order, has been addressed in the contract that has been approved by the Commission with Cumberland Valley's member. In addition, the Commission's Order noted that EKPC should address the Cumberland Valley issue in its next base rate case.

EKPC filed its Environmental Surcharge tariff pursuant to the Order in Case No. 2023-00177. The Commission turned the tariff filing into Case No. 2024-00048³ and suspended the tariff for one day. In that tariff filing, EKPC adjusted the BESF to .34%, which was the summing of the sources of the BESF in Case No. 2022-00141 and Case No. 2023-00177. The Commission's Order stated

[D]ue to the fact that Case No. 2022-00141 is still pending before the Commission, an investigation is necessary to determine the reasonableness of the proposed tariff and that such investigation cannot be completed by March 1, 2024. Therefore, pursuant to KRS 278.190(2), the Commission will suspend the effective date of the proposed tariff for one day until March 2, 2024, to give the Commission time to complete its investigation and to allow EKPC to update the tariff pending a final order an subject to refund, provided it provides written notice to the Commission of its intention to do so as required by KRS 278.190(2).

EKPC believes that now that an Order has been issued in Case No. 2022-00141, that the tariff filed pursuant to the Commission's January 11, 2024 Order, and turned into Case No. 2024-00048, should now be the prevailing tariff for EKPC's environmental surcharge and no additional tariff filings are required.

C. Clarification is required on certain language within the March 29th Order.

EKPC also requests rehearing and/or clarification pertaining to the Commissions statement: "However, the Commission notes that the ROR for the environmental surcharge assets should begin accruing for purchases after the last review period in this case rather than on any previous purchased and unused allowances."⁴ EKPC understands that this sentence is directing EKPC to apply the ROR of 4.894 percent to the period beginning

³ *In the Matter of: Electronic Tariff Filing of East Kentucky Power Cooperative, Inc. to Update its Environmental Surcharge Tariff*, Case No. 2024-00048, Order (Ky. P.S.C. Feb. 29, 2024).

⁴ *See*, March 29, 2024 Order p. 7.

December 2021 through January 2024. During this time period EKPC has collected a ROR of 5.093 percent as approved in Case No. 2021-00103.⁵ Reducing the ROR for this time period from 5.093 percent to 4.894 percent would place EKPC in a position of over-recovery in the amount of \$3,337,767. EKPC does not believe this ROR is representative of that 26-month period as interest rates have increase precipitously. Furthermore, the Settlement Agreement approved in Case No. 2004-00321,⁶ provided that the ROR on compliance-related capital expenditures be updated to reflect current average debt cost as of the end of each six-month review period. The Settlement Agreement states “EKPC will update the return as of the end of each six-month review period and request Commission approval of the updated average cost of debt.”⁷ Normally, the Commission would initiate review cases each six (6) months, which would allow EKPC to update its ROR each six (6) months as outlined in the Settlement Agreement. However, since the pendency of this case, which was initiated June 3, 2022, the Commission has not opened any six (6) month review cases. Therefore, EKPC has not been afforded the opportunity to update their ROR every six (6) months and should not be penalized by having to use a historically low ROR for 26-months. A contrary outcome would clearly violate the filed rate doctrine and amount to retroactive ratemaking.⁸ EKPC proposes that instead of

⁵ *In the Matter of: Electronic Application of East Kentucky Power Cooperative, Inc. For a General Adjustment of Rates, Approval of Depreciation Study, Amortization of Certain Regulatory Assets, and Other General Relief*, Case No. 2021-00103, Order (Ky. P.S.C. Sep. 30, 2021).

⁶ *In the Matter of: Application of East Kentucky Power Cooperative, Inc. For Approval of and Environmental Compliance Plan and Authority to Implement an Environmental Surcharge*, Case No. 2004-00321, Order (Ky. P.S.C. Mar. 17, 2005).

⁷ *See*, March 17, 2005 Order, page 3 of the Settlement Agreement.

⁸ *See, e.g., Cincinnati Bell Tel. Co. v. Kentucky Pub. Serv. Comm'n*, 223 S.W.3d 829, 837 (Ky. Ct. App. 2007) (“Therefore, the PSC lacked any precedent or authority to order a retroactive reduction of the payphone line rates—including a refund of sums exceeding the rates duly established in prior proceedings....”)

applying the 4.894 percent ROR approved in this case (2022-00141) to the 26-months subsequent to the ended of this review, EKPC should apply an updated ROR for each six (6) month interval as detail below.

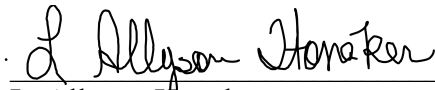
Proposed Rate of Return by Period				
6-months ending May '22 Rate as of 11/30/21	6-months ending November '22 Rate as of 5/31/22	6-months ending May '23 Rate as of 11/30/22	6-months ending November '23 Rate as of 5/31/23	3-months of the 6-months ending May '24 Rate as of 11/30/23
4.894%	4.918%	6.164%	6.747%	6.481%

The RORs proposed would place EKPC in a position of under-recovery of \$10,471,705. These proposed RORs capture the increase experienced in interest rates over this period, allowing EKPC to recover more of the interest expense that it actually incurred. Again, EKPC should not be penalized for the delayed processing of the six (6) month reviews. Had the six (6) month reviews occurred timely, these are the RORs EKPC would have proposed. EKPC proposes amortizing the under-recovery of \$10,471,705 over 12-months at \$872,642 a month. The Excel file entitled *2022-00141 – Rehearing – ROR Proposal.xlsx* details the calculation by month and six (6) month period, comparing the ROR applied, the ROR Ordered in Case No. 2022, and the ROR EKPC proposes. Excel files entitled *Surcharge ROR May 2022.xlsx*, *Surcharge ROR November 2022.xlsx*, *Surcharge ROR May 2023.xlsx*, and *Surcharge ROR November 2023.xlsx* detail the ROR calculation as of those dates. EKPC requests the Commission to clarify the meaning of the sentence, and asks for rehearing on the ROR applied to those subsequent 26-months.

WHEREFORE, EKPC requests the Commission to grant rehearing and clarify its March 29, 2024 Order in this proceeding and determine that no additional tariff filings are

required as a result of this Order and that the tariff filed and contained in Case No. 2024-00048 is the prevailing tariff for the environmental surcharge, and that ROR ordered in Case No. 2023-00177 is the ROR to be used by EKPC going forward. EKPC also requests rehearing on the ROR to be applied to the subsequent 26-months following this review period.

Respectfully submitted,

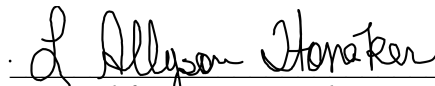


L. Allyson Honaker
HONAKER LAW OFFICE, PLLC
1795 Alysheba Way, Suite, 6202
Lexington, KY 40509
(859) 368-8803
allyson@hloky.com

Counsel for East Kentucky Power Cooperative, Inc.

CERTIFICATE OF SERVICE

This is to certify that foregoing was submitted electronically to the Commission on April 18, 2024 and that there are no parties that have been excused from electronic filing. Pursuant to prior Commission orders, no paper copies of this filing will be submitted.



Counsel for East Kentucky Power Cooperative, Inc.