

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN EXAMINATION BY THE PUBLIC SERVICE	)	
COMMISSION OF THE ENVIRONMENTAL	)	
SURCHARGE MECHANISM OF EAST KENTUCKY	)	
POWER COOPERATIVE, INC. FOR THE	)	CASE NO.
SIX-MONTH BILLING PERIODS ENDING	)	2009-00039
DECEMBER 31, 2007; JUNE 30, 2008 AND	)	
DECEMBER 31, 2008 AND THE PASS-THROUGH	)	
MECHANISM FOR ITS SIXTEEN MEMBER	)	
DISTRIBUTION COOPERATIVES	)	

O R D E R

On March 17, 2005, the Commission approved East Kentucky Power Cooperative, Inc.'s ("EKPC") environmental surcharge application and established a surcharge mechanism.<sup>1</sup> The Commission also approved a mechanism to pass through the environmental surcharge to EKPC's 16 member distribution cooperatives.<sup>2</sup> Pursuant to KRS 278.183(3), at 6-month intervals, the Commission must review the past operations of the environmental surcharge. After hearing, the Commission may, by temporary adjustment in the surcharge, disallow any surcharge amounts found not to be

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<sup>1</sup> Case No. 2004-00321, Application of East Kentucky Power Cooperative, Inc. for Approval of an Environmental Compliance Plan and Authority to Implement an Environmental Surcharge, final Order dated March 17, 2005.

<sup>2</sup> Case No. 2004-00372, Application of Big Sandy RECC, Blue Grass Energy Cooperative Corporation, Clark Energy Cooperative, Cumberland Valley Electric, Farmers RECC, Fleming-Mason Energy, Grayson RECC, Inter-County Energy Cooperative, Jackson Energy Cooperative, Licking Valley RECC, Nolin RECC, Owen Electric Cooperative, Salt River Electric, Shelby Energy Cooperative, South Kentucky RECC and Taylor County RECC for Authority to Pass Through the Environmental Surcharge of East Kentucky Power Cooperative, Inc., final Order dated March 17, 2005.

just and reasonable and reconcile past surcharges with actual costs recoverable pursuant to KRS 278.183(1). The Commission has determined that it will be administratively efficient and reasonable to review the pending 6-month periods in the same case. Therefore, the Commission hereby initiates the three 6-month reviews of the surcharge as billed from July 1, 2007 to December 31, 2007; January 1, 2008 to June 30, 2008; and July 1, 2008 to December 31, 2008 to the member distribution cooperatives. The Commission also initiates the corresponding reviews of the pass-through mechanism as billed from August 1, 2007 to January 31, 2008; February 1, 2008 to July 31, 2008; and August 1, 2008 to January 31, 2009 to retail member customers.<sup>3</sup>

To facilitate this review, a procedural schedule is set forth in Appendix A, attached hereto and incorporated herein. In accordance with that schedule, EKPC is to file prepared direct testimony: (a) in support of the reasonableness of the application of its environmental surcharge mechanism during the time periods under review; and (b) in

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<sup>3</sup> The Settlement Agreement approved in Case Nos. 2004-00321 and 2004-00372 allows the member distribution cooperatives to pass through the environmental surcharge to their customers at approximately the same time as EKPC bills the environmental surcharge to the member distribution cooperatives, thus avoiding a billing lag for the member distribution cooperatives. Therefore, the costs incurred from June 2007 through November 2007 are billed to the member distribution cooperatives in the months of July 2007 through December 2007, with these same costs passed through to the member customers on the bills for August 2007 through January 2008. The costs incurred from December 2007 through May 2008 are billed to the member distribution cooperatives in the months of January 2008 through June 2008, with these same costs passed through to the member customers on the bills for February 2008 through July 2008. The costs incurred from June 2008 through November 2008 are billed to the member cooperatives in the months of July 2008 through December 2008, with these same costs passed through to the member customers on the bills for August 2008 through January 2009.

support of the reasonableness of the application of the pass-through mechanism during the time periods under review.<sup>4</sup> In addition, EKPC is to file its response to the information requested in Appendix B, attached hereto and incorporated herein. Since each of the periods under review in this proceeding may have resulted in over- or under-recoveries, the Commission will entertain proposals to adopt one adjustment factor to net all over- or under-recoveries.

Since the approval of its original environmental compliance plan and surcharge mechanism, EKPC has sought and been granted one amendment to its original compliance plan and surcharge mechanism.<sup>5</sup> As a result of previous 6-month and 2-year surcharge reviews, the environmental surcharge provides recovery of the incremental costs associated with the original and first amendment to the compliance plan. When determining its over and under-recovery of the surcharge in this proceeding, EKPC should reflect the impacts of these prior cases, as applicable.

IT IS THEREFORE ORDERED that:

1. The procedural schedule set forth in Appendix A, attached hereto and incorporated herein, shall be followed in this proceeding.

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<sup>4</sup> The lawfulness of the retail pass-through methodology of EKPC's environmental surcharge appears to be called into question by the Opinion and Order entered by the Franklin Circuit Court on August 1, 2007 in the case of Commonwealth of Kentucky, ex rel., Gregory D. Stumbo, Attorney General v. Kentucky Public Service Commission and The Union Light, Heat and Power Company, Civil Action 06-CI-269, which is currently pending a Motion for Discretionary Review before the Kentucky Supreme Court, Case No. 2008-SC-00489-D. The impact of the Opinion and Order upon the pass-through methodology may be an issue in this proceeding.

<sup>5</sup> Case No. 2008-00115, Application of East Kentucky Power Cooperative, Inc. For Approval of an Amendment to Its Environmental Compliance Plan and Environmental Surcharge, final order dated September 29, 2008.

2. EKPC shall appear at the Commission's offices on the date set forth in Appendix A to submit itself to examination on the application of its environmental surcharge as billed to its member distribution cooperatives from (a) July 1, 2007 through December 31, 2007; (b) January 1, 2008 through June 30, 2008; and (c) July 1 through December 31, 2008. EKPC shall also submit itself to examination on the application of the pass-through mechanism as billed to the distribution cooperatives' member customers from (d) August 1, 2007 through January 31, 2008; (e) February 1, 2008 through July 31, 2008; and (f) August 1, 2008 through January 31, 2009. There shall be no opening statements or summaries of testimony at the public hearing.

3. East Kentucky shall, by the date set forth in Appendix A, file its prepared direct testimony in support of the reasonableness of the application of its environmental surcharge mechanism and the application of the pass-through mechanism during the period under review.

4. Any party filing testimony shall file an original and 10 copies.

5. a. The information requested herein is due on or before March 26, 2009. Responses to requests for information shall be appropriately bound, tabbed and indexed and shall include the name of the witness responsible for responding to the questions related to the information provided, with copies to all parties of record and 7 copies to the Commission.

b. Each response shall be answered under oath or, for representatives of a public or private corporation or a partnership or association or a governmental agency, be accompanied by a signed certification of the preparer or person supervising the preparation of the response on behalf of the entity that the

response is true and accurate to the best of that person's knowledge, information, and belief formed after a reasonable inquiry.

c. Any party shall make timely amendment to any prior response if it obtains information which indicates that the response was incorrect when made or, though correct when made, is now incorrect in any material respect.

d. For any request to which a party fails or refuses to furnish all or part of the requested information, that party shall provide a written explanation of the specific grounds for its failure to completely and precisely respond.

6. Within 7 days of the Commission granting intervention to a party, EKPC shall provide the party with a copy of its monthly environmental surcharge reports as filed with the Commission for the review period.

7. EKPC's monthly environmental surcharge reports and supporting data for the review period shall be incorporated by reference into the record of this case.

8. The case records of Case Nos. 2004-00321, 2004-00372, 2007-00378 and 2008-00115 shall be incorporated by reference in the record of this case.

9. The Commission does not look favorably upon motions for continuance. Accordingly, motions for extensions of time with respect to the schedule herein shall be made in writing and will be granted only upon a showing of good cause.

10. Nothing contained herein shall prevent the Commission from entering further Orders in this matter.

Done at Frankfort, Kentucky, this 23rd day of February, 2009.

By the Commission

ATTEST:

  
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Executive Director

Case No. 2009-00039

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2009-00039 DATED FEBRUARY 23, 2009

EKPC shall file its prepared direct testimony and responses to the information requested in Appendix B no later than..... March 26, 2009

An informal technical conference is to begin at 1:30 p.m., Eastern Daylight Time, in Conference Room No. 1 of the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky for the discussion of issues..... April 2, 2009

All additional requests for information to EKPC shall be filed no later than ..... April 16, 2009

EKPC shall file responses to additional requests for information no later than ..... April 30, 2009

Intervenor testimony, if any, in verified prepared form shall be filed no later than..... May 14, 2009

All requests for information to Intervenors shall be filed no later than ..... May 28, 2009

Intervenors shall file responses to requests for information no later than ..... June 11, 2009

Public Hearing is to begin at 10:00 a.m., Eastern Standard Time, in Hearing Room 1 of the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky, for the purpose of cross-examination of witnesses of EKPC and Intervenors ..... To be scheduled

Briefs, if any, shall be filed by ..... To be scheduled

## APPENDIX B

### APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2009-00039 DATED FEBRUARY 23, 2009

#### FIRST DATA REQUEST OF COMMISSION STAFF TO EAST KENTUCKY POWER COOPERATIVE, INC.

1. Prepare a summary schedule showing the calculation of E(m) and the surcharge factor for the expense months covered by the billing periods under review. Form 1.1 can be used as a model for this summary. Include the expense months for the 2 expense months subsequent to the billing period in order to show the over- and under-recovery adjustments for the months included for the billing period. Include a calculation of any additional over- or under-recovery amount EKPC believes needs to be recognized for each 6-month review. Include all supporting calculations and documentation for the additional over- or under-recovery.

2. For each of the 16 member distribution cooperatives, prepare a summary schedule showing the distribution cooperative's pass-through revenue requirement for the months corresponding to each 6-month review. Include the 2 months subsequent to the billing period included in the review periods. Include a calculation of any additional over- or under-recovery amount the distribution cooperative believes needs to be recognized for each 6-month review. Include all supporting calculations and documentation for the additional over- or under-recovery.

3. Refer to Form 2.3, Inventory and Expense of Emission Allowances, for each of the expense months covered by each billing period under review.



a. For the sulfur dioxide (“SO<sub>2</sub>”) emission allowance inventory, explain the reason(s) for all purchases of allowances reported during these expense months.

b. For the nitrogen oxide (“NO<sub>x</sub>”) emission allowance inventory, explain the reason(s) for all purchases of allowances reported during these expense months.

c. Explain how the purchase of allowances in the expense months covered by the billing period complies with EKPC’s emissions allowance strategy plan.

4. Refer to Form 2.5, Operating and Maintenance Expenses, for each of the expense months covered by each billing period under review. For each of the 20 expense account numbers listed on this schedule, explain the reason(s) for any change in the expense levels from month to month if that change is greater than plus or minus 10 percent.

5. Provide the percentage of EKPC’s debt issuances directly related to projects in the approved compliance plan that have a variable interest rate as of the November 2008 expense month.

6. The Settlement Agreement in Case No. 2004-00321 provides that the reasonable rate of return on compliance-related capital expenditures will be determined by multiplying the weighted average debt cost of the debt issuances directly related to projects in the approved compliance plan times a Times Interest Earned Ratio (“TIER”)

of 1.15. However, in Case No. 2008-00115,<sup>6</sup> the Commission accepted an agreement that found that a TIER of 1.35 was reasonable to apply when determining EKPC's environmental surcharge. As part of Case No. 2008-00115, EKPC agreed to credit the surcharge in January 2009 by any amount of net margin, for the 12-month period ending December 31, 2008, that exceeded a 1.35 TIER return up to \$3,500,000. Prepare a summary schedule showing the calculation of the net margins for the 12-month period ending December 31, 2008 and any amounts of the surcharge over-recoveries as result of any excess TIER return over 1.35.

7. The Settlement Agreement approved in Case No. 2004-00321 provides that EKPC's rate of return on compliance-related capital expenditures will be updated to reflect current average debt cost at the conclusion of the 6-month surcharge review. Provide the following information as of November 30, 2008:

- a. The debt issuances directly related to projects in the approved compliance plan and subsequent amendment and corresponding outstanding balances of each debt issuance.
- b. The debt cost for each debt issuance directly related to the projects in the approved compliance plan and subsequent amendment.
- c. EKPC's calculation of the weighted average debt cost and the rate of return resulting from multiplying the weighted average debt cost by a 1.35

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<sup>6</sup> Id. at 3. The TIER applied to the environmental surcharge will be 1.35, the same as awarded in the rate case, Case No. 2006-00472, General Adjustment of Electrical Rates of East Kentucky Power Cooperative, Inc., final Order dated December 5, 2007.

TIER. Include all supporting calculations showing how the weighted average debt cost was determined.

8. In Case No. 2007-00378,<sup>7</sup> the Commission ordered that EKPC and its member cooperatives would present any changes to the retail pass-through mechanism necessary to address the revenue allocation issue during the next 6-month surcharge review cases. Provide all documentation and workpapers available for any discussions and calculations that EKPC has had with its member cooperatives regarding changes to its retail pass-through methodology.

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<sup>7</sup> Case No. 2007-00378, An Examination By the Public Service Commission of the Environmental Surcharge Mechanism of East Kentucky Power Cooperative, Inc. for the Six-Month Billing Periods Ending June 30, 2006 and December 31, 2006, for the Two-Year Billing Period Ending June 30, 2007, and the Pass-Through Mechanism for Its Sixteen Member Distribution Cooperatives, final Order dated August 1, 2008.

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