



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

JACK CONWAY
ATTORNEY GENERAL

1024 CAPITAL CENTER DRIVE
SUITE 200
FRANKFORT, KENTUCKY 40601

February 24, 2009

VIA HAND-DELIVERY

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FEB 24 2009

PUBLIC SERVICE
COMMISSION

Mr. Jeff Derouen
Executive Director
Kentucky Public Service Commission
211 Sower Blvd.
Frankfort, KY 40601

RE: Case No. 2009-00039

Dear Mr. Derouen:

This letter is written in regard to Case No. 2009-00039, styled "An Examination of the Environmental Surcharge Mechanism of East Kentucky Power Cooperative Inc. . . .", etc.

In that proceeding, on February 23, 2009, the Commission issued an Order that requires EKPC to prepare testimony in support of the reasonableness of the application of the pass-through mechanism during the time periods under review." (Order, pp. 2-3). The Order then in a footnote states the following:

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. [Order at n. 4]

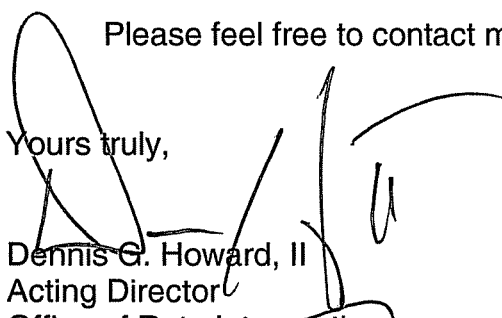
The footnote has material inaccuracies. First, the August 1, 2007, Franklin Circuit Court Opinion and Order to which the footnote refers is not pending before the Kentucky Supreme Court through a Motion for Discretionary Review. Kentucky Supreme Court Case No. 2008-SC-00489-D is The Union Light, Heat and Power Company, N/K/A Duke Energy Kentucky, Inc.'s Motion for Discretionary Review relating to the Franklin Circuit Court's Opinion and Order (entered June 15, 2006) in Civil Action 05-CI-00648. Counsel has contacted the Clerk of the Supreme Court, and, as of today, there is no Motion for Discretionary Review pending relating to Civil Action 06-CI-269. The footnote is in clear error on this point.

The second material inaccuracy concerns the Public Service Commission's comment regarding the August 1, 2007, Opinion and Order impact on the lawfulness of the environmental surcharge. Contrary to the footnote's intimation, no determination that KRS 278.183 is infirm is contained in the Franklin Circuit Court's August 1, 2007, Opinion and Order. No reasonable reading of the Opinion and Order supports the suggestion contained in the footnote, and removal of the error is appropriate.

An examination of the Franklin Circuit Court's August 1, 2007, Opinion and Order will readily verify that the Attorney General did not question the legality of KRS 278.183. For that reason, the Attorney General believes the Commission should issue a *nunc pro tunc* order correcting the footnote.

Please feel free to contact me should you have any questions.

Yours truly,



Dennis G. Howard, II
Acting Director
Office of Rate Intervention
Office of the Attorney General

cc: Robert Marshall
President/CEO
East Kentucky Power Cooperative, Inc.
4775 Lexington Road
P. O. Box 707
Winchester, KY 40392-0707