

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF KENERGY)	CASE NO.
CORP. FOR A DECLARATORY ORDER)	2020-00095

ORDER

On March 25, 2020, Kenergy Corp. (Kenergy) filed an application, pursuant to 807 KAR 5:001, Section 19, requesting a declaratory order that its proposed method of allocating a potential rate change by Big Rivers Electric Corporation (BREC) is consistent with the requirements of KRS 278.455. Specifically, Kenergy proposed to allocate any potential change in BREC's rates "based on the ratio of cost of service of each class" and requested a declaration from the Commission that the "proportional basis" required by KRS 278.455 should be "gauged by the cost of service among each class." The Commission granted motions to intervene filed by the Attorney General of Kentucky (Attorney General) and Kentucky Industrial Utility Customers (KIUC). Kenergy filed a response to a request for information from the Commission. KIUC and the Attorney General filed a joint response to Kenergy's application for a declaratory order. Kenergy did not file a reply in support of its application for a declaratory order. This matter is now before the Commission for a decision.

PARTIES

Kenergy is a nonprofit electric cooperative organized under KRS Chapter 279 and is engaged in the business of distributing retail electric power to customers in the Kentucky counties of Daviess, Hancock, Henderson, Hopkins, McLean, Muhlenberg,

Ohio, Webster, Breckinridge, Union, Crittenden, Caldwell, Lyon, and Livingston.¹ The Attorney General represents the interests of utility customers in actions before the Commission pursuant to KRS 367.150(8). KIUC is an association of large electric and gas public utility customers in Kentucky whose members include large industrial customers served by Kenergy.

BACKGROUND

Kenergy purchases all of its energy from BREC at rates regulated by the Commission.² Kenergy asserted that an application filed by BREC in Case No. 2020-00064 “theoretically could result in a flow through adjustment of rates among Kenergy members pursuant to KRS 278.455.”³ Kenergy filed this application for a declaratory order to request an interpretation of how any change in BREC’s rates should be flowed through KRS 278.455.⁴

KRS 278.455 creates a mechanism in which authorized increases and decreases in a generation and transmission (G&T) cooperative’s rates may be flowed through to the customers of a distribution cooperative. Specifically, KRS 278.455(2) states, in relevant part, that an authorized increase or decrease in a G&T cooperative’s rates:

[M]ay, at the distribution cooperative’s discretion, be 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. In the event of an increase in the wholesale rates and tariffs of the wholesale supplier by the Public Service Commission, the rates and tariffs of the distribution cooperative that have been

¹ *Annual Report of Kenergy Corp. to the Public Service Commission of the Commonwealth of Kentucky for the Calendar Year Ended December 31, 2019* at 1, 52.

² Application at 1.

³ *Id.*

⁴ *Id.*

revised on a proportional basis to result in no change in the rate design shall be authorized and shall become effective on the same date as those of the wholesale supplier

Kenergy observes that a change in a G&T cooperative's rates flowed through to the customers of the distribution cooperative pursuant to KRS 278.455 must be done on a "proportional basis." Kenergy indicates that "proportional basis" is not a term defined in the statute.⁵ However, Kenergy argues that "proportional basis" should be interpreted as "one that is gauged by the cost of service among each class so that changes in rates are borne in proportion to the cost of serving each respective class."⁶ Kenergy explained that under its proposed application "any proportional flow through must be based on the cost of service study in Kenergy's last application for a general adjustment in rates."⁷ Kenergy argued that "[a]llocating based on any other method results in a flow through allocation that potentially leaves one class subsidizing another class."⁸

In response to Kenergy's application, KIUC and the Attorney General first argued that there is no actual controversy justifying a declaratory order. They noted that Case No. 2020-00064⁹, which is the subject of Kenergy's declaratory order request, is not a base rate case. Rather, they state that it is an application to modify BREC's Member Rate Stability Mechanism (MRSM) tariff, to cease deferring depreciation expenses on

⁵ Application at 1.

⁶ *Id.* at 2.

⁷ Kenergy's Response to the Commission's April 13, 2020 Order (filed Apr. 17, 2020) (Response to April 13, 2020 Order) at 1.

⁸ Application at 2.

⁹ Case No. 2020-00064, *Electronic Application of Big Rivers Corporation for Approval to Modify Its MRSM Tariff, Cease Deferring Depreciation Expenses, Establish Regulatory Assets, Amortize Regulatory Assets, and Other Appropriate Relief* (Ky. PSC Jun. 25, 2020).

plants, to establish regulatory assets and cost recovery process for the remaining net book costs of retired plants, and to begin amortizing previously approved regulatory assets. They then state that because BREC is not applying to increase base rates, there will not be anything to flow through pursuant to KRS 278.455. Thus, they argue that Kenergy is seeking an improper advisory opinion and, therefore, that the Commission should decline to issue an order on the merits of the application.¹⁰

With respect to the merits of Kenergy's interpretation, KIUC and the Attorney General argued that KRS 278.455 should be interpreted as requiring each rate within each rate class to be increase in proportion to the increase in total rates as compared to the test year revenue. KIUC and the Attorney General explained that:

If there is a wholesale G&T base rate increase of \$5 million to a distribution cooperative that has \$100 million of test year revenue, then each component of the distribution cooperative's base rates (customer charge, demand charge and energy charge) would be increased by 5%. . . . The 5% across the board rate increase would maintain the most recent Commission-approved wholesale revenue allocation and rate design.¹¹

KIUC and the Attorney General argued that this method "would flow through the wholesale rate increase 'to each class and within each tariff on a proportional basis that will result in no change in the rate design currently in effect,'" as required by KRS 278.455.¹²

¹⁰ Response to the Application (filed Apr. 20, 2020) at 2–4.

¹¹ *Id.* at 5.

¹² *Id.* quoting KRS 278.455(2).

KIUC and the Attorney General indicate that their interpretation of KRS 278.455 is consistent with the intent of the statute. Specifically, they argue that KRS 278.455 was intended, in part, to avoid requiring every distribution cooperative served by a G&T cooperative to file a base rate case when the generation and transmission cooperative changed its base rates by creating a simple method by which they could flow through the G&T cooperative's rate changes. They argue that Kenergy's proposed interpretation of KRS 278.455 would turn "a simple flow-through case into litigation regarding whose cost of service study . . . is most appropriate," which would be inconsistent with the intent of the statute.¹³

If the Commission accepted Kenergy's argument that KRS 278.455 requires a rate increase to be flowed-through based on the cost of service, KIUC and the Attorney General argued in the alternative that the Commission should require Kenergy and other distribution cooperatives seeking to flow through a G&T's rate increase to file a cost of service study including recommended allocations. They argued that until the distribution cooperatives file such a cost of service study that the pass through should be based on the allocation in the most recent base rate case.¹⁴

DISCUSSION

Before addressing the substance of Kenergy's application, the Commission must resolve the threshold issue raised by the Intervenors that an application for a declaratory order is not appropriate in this matter because there is no actual controversy. Applications for declaratory orders from the Commission must be made pursuant to 807 KAR 5:001,

¹³ *Id.* at 4–5.

¹⁴ *Id.* at 5–6.

Section 19. Notably, unlike the Declaratory Judgment Act, to which Intervenors cite, 807 KAR 5:001, Section 19 does not state that an “actual controversy” is necessary for the Commission to issue a declaratory order. Rather, it states, in relevant part, that the Commission may issue a declaratory order with respect to the meaning and scope of a provision of KRS Chapter 278 “upon application by a person substantially affected”

Here, Kenergy is a distribution cooperative that is a member of and purchases all of its energy from BREC. BREC filed an application in Case No. 2020-00064 in which it requested, among other things, that it be permitted to begin amortizing certain regulatory assets through rates to its members beginning in 2021. The Commission has already issued a final Order on BREC’s application and agrees with the Intervenors that the accounting treatment ordered did not alter base rates.

The Commission notes that 807 KAR 5:001, Section 19, gives the Commission discretion regarding whether to accept an application for a declaratory order even where a declaratory order may be otherwise appropriate. In this case, the Commission finds that it should exercise its discretion and address Kenergy’s application for a declaratory order on the merits because Kenergy and Intervenors have proposed different interpretations. Kenergy has an interest in knowing whether its proposed interpretation is consistent with KRS 278.455 before being required to file rates pursuant to that statute, and a declaratory order will likely promote the economic use of resources by avoiding future filings by multiple cooperatives that are inconsistent with the statute. Thus, the Commission now moves to the merits of Kenergy’s application.

The goal when interpreting a statute is to effectuate the intent of the legislature.¹⁵ The plain, or literal, meaning of the statutory language is presumed to reflect the intent of the legislature.¹⁶ “We ascertain the intention of the legislature from words used in enacting statutes rather than surmising what may have been intended but was not expressed.”¹⁷ Extrinsic aides such as the legislative history and canons of construction should only be used when the plain language of a statute is ambiguous.¹⁸

The Commission believes that the task at hand is to define proportional and define it in such a manner that when a G&T increases its rates, the result avoids undoing any past rate design and avoids distorting the current rate design while maintaining the spirit of the regulation. Proportional is defined as having a constant ratio to another quantity.¹⁹ Therefore, after the increase is passed through from the G&T to the Member System each rate and rate component should retain the same ratio to each other. To accomplish this, the revenue generated from each class and each of the class’s rate components must continue to contribute in the same proportion to the total Member System revenue. To accomplish this, each class’s revenue contribution percentage is determined based upon the most recent Commission approved revenue allocation and this percentage is applied to the total of the Member System’s portion of the G&T increase. Then for each rate

¹⁵ *King Drugs, Inc. v. Com.*, 250 S.W.3d 643, 645 (Ky. 2008).

¹⁶ *Revenue Cabinet v. O’Daniel*, 153 S.W.3d 815, 819 (Ky. 2005); see also *University of Louisville v. Rothstein*, 532 S.W.3d 644, 648 (Ky. 2017) (quoting *Cosby v. Com.*, 147 S.W.3d 56, 59 (Ky. 2004)) (stating that “[w]e have a duty to accord to words of a statute their literal meaning unless to do so would lead to an absurd or wholly unreasonable conclusion.”).

¹⁷ *Id.* (quoting *Flying J Travel Plaza v. Com., Transp. Cabinet, Dep’t of Highways*, 928 S.W.2d 344, 347 (Ky.1996)).

¹⁸ *Rothstein*, 532 S.W.3d at 648.

¹⁹ See Dictionary.com

class, the approved rate component's revenue allocation is applied to the class increase and the rates are developed. This method maintains a proportional increase to the revenue generated from each rate class and rate component and is markedly similar to applying the Member System's percent increase to each rate component.

For example, the G&T rate increase results in a \$1,000,000 or 2.10% increase to the Member System. From the Member System's most recent approved revenue allocation, the allocation of the \$1,000,000 is proportionally allocated to the rate classes:²⁰

	Total Bills	Energy Sales (kWh)	Demand (kW)	Ordered Rates Revenue	Percent of Revenue	Allocation of Pass Through	
Residential	275,000	300,000,000		\$ 30,720,000	65.18%	\$ 651,752	\$31,371,752
Commercial	22,000	105,000,000		\$ 10,654,535	22.60%	\$ 226,045	\$10,880,580
Industrial	36	100,000,000	170,000	\$ 5,760,020	12.22%	\$ 122,204	\$ 5,882,224
Total	297,036	505,000,000	170000	\$ 47,134,555	100.00%	\$ 1,000,000	\$48,134,555

Next, the allocated class revenue is proportionally allocated between the class rate components based upon the most recent approved rate class revenue allocations:

Rate Class	Billing Determinants	Current Rate	Revenue	Allocation	New Revenue	New Rate	% Increase
Residential	Customer Charge	275,000	\$ 15.00	\$ 4,125,000	13.43%	\$ 4,212,516	\$ 15.32 2.13%
	Energy Charge	300,000,000	\$ 0.08865	\$ 26,595,000	86.57%	\$ 27,159,237	\$ 0.09053 2.12%
	Total			\$ 30,720,000	100.00%	\$ 31,371,752	
Commercial	Customer Charge	22,000	\$ 21.50	\$ 473,000	4.44%	\$ 483,035	\$ 21.96 2.14%
	Energy Charge	105,000,000	\$ 0.09697	\$ 10,181,535	95.56%	\$ 10,397,545	\$ 0.09902 2.12%
	Total			\$ 10,654,535	100.00%	\$ 10,880,580	
Industrial	Customer Charge	36	\$ 1,145.00	\$ 41,220	0.72%	\$ 42,094.52	\$ 1,169.29 2.12%
	Energy Charge	100,000,000	\$ 0.04376	\$ 4,375,800	75.97%	\$ 4,468,636.35	\$ 0.04469 2.13%
	Demand Charge	170,000	\$ 7.90	\$ 1,343,000	23.32%	\$ 1,371,492.90	\$ 8.07 2.15%
Total			\$ 5,760,020	100.00%	\$ 5,882,224		

²⁰ Pass through increases will be allocated to special contracts either as specified in the contract or, if not specified, proportionally.

This method increases the revenue so that each rate class and each rate class component still contributes to the total revenue in the same proportion:²¹

	Total Bills	Energy Sales (kWh)	Demand (kW)	New Rate Revenue	Percent of Revenue
Residential	275,000	300,000,000		\$ 31,372,000	65.17%
Commercial	22,000	105,000,000		\$ 10,880,580	22.60%
Industrial	36	100,000,000	170,000	\$ 5,882,994	12.22%
Total	297,036	505,000,000	170,000	\$ 48,135,575	100.00%

The Commission notes that this relates to revenue only, not the cost to serve the customer, and does not differentiate between whether or not the increase from the G&T is energy related, demand related, or a combination. If the G&T rate increase distorts the total revenue received by the Member System as compared to revenue prior to the rate increase, the Member System may seek to adjust their rate design through a rate case.

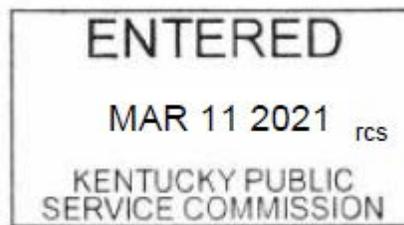
IT IS HEREBY ORDERED that:

1. Kenergy's application for a declaratory order is denied.
2. This matter is closed and removed from the Commission's docket.

²¹ Applying the percent increase to each rate component results in a similar rate design:

Rate Class		Billing Determinants	Current Rate	2.10% Increase	Revenue
Residential	Customer Charge	275,000	\$ 15.00	\$ 15.32	\$ 4,213,000
	Energy Charge	300,000,000	\$ 0.08865	\$ 0.09051	\$ 27,153,000
					<u>\$ 31,366,000</u>
Commercial	Customer Charge	22,000	\$ 21.50	\$ 21.95	\$ 482,900
	Energy Charge	105,000,000	\$ 0.09697	\$ 0.09900	\$ 10,395,000
					<u>\$ 10,877,900</u>
Industrial	Customer Charge	36	\$ 1,145.00	\$ 1,169.05	\$ 42,086
	Energy Charge	100,000,000	\$ 0.04376	\$ 0.04468	\$ 4,468,000
	Demand Charge	170,000	\$ 7.90	\$ 8.07	\$ 1,371,900
					<u>\$ 5,881,986</u>
				Total	<u>\$ 48,125,886</u>

By the Commission



ATTEST:



Executive Director

Case No. 2020-00095

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