COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION FOR REVISED QUARTERLY GAS COST RECOVERY SCHEDULES FOR KENTUCKY FRONTIER GAS, LLC.	))))	CASE NO. 2023-00067

<u>O R D E R</u>

On April 17, 2024, Kentucky Frontier Gas, LLC (Kentucky Frontier) filed a motion pursuant to KRS 278.400 for rehearing/clarification of the Commission's March 28, 2024 final Order denying Kentucky Frontier's request to revise its Purchased Gas Cost Adjustment and its Gas Cost Recovery (GCR) calculation methodology. The March 28, 2024 final Order (final Order) also granted a deviation to increase the line loss limiter from 5 percent to 7.5 percent in Kentucky Frontier's GCR rate reports for a period of up to two years.

<u>LEGAL STANDARD</u>

Under KRS 278.400, which establishes the standard of review for rehearing motions, rehearing is limited to new evidence not readily discoverable at the time of the original hearings, to correct any material errors or omissions, or to correct findings that are unreasonable or unlawful. A Commission Order is deemed unreasonable only when "the evidence presented leaves no room for difference of opinion among reasonable minds."[1] An Order can only be unlawful if it violates a state or federal statute or

[1] *Energy Regulatory Comm'n v. Kentucky Power Co.*, 605 S.W.2d 46 (Ky. App. 1980).

constitutional provision.[2] By limiting rehearing to the correction of material errors or omissions, findings that are unreasonable or unlawful, or to weigh new evidence not readily discoverable at the time of the original hearings, KRS 278.400 is intended to provide closure to Commission proceedings. Rehearing does not present parties with the opportunity to relitigate a matter fully addressed in the original Order.

BACKGROUND

On February 24, 2023, Kentucky Frontier tendered an application with proposed modifications to the calculation methodology of the GCR rate, along with a motion for deviation from certain filing requirements. On April 10, 2023, the Commission issued an Order finding that the proposed changes to the GCR rate methodology required changes to Kentucky Frontier's Purchased Gas Cost Adjustment Tariff and proper customer notice was required. The Order further stated that it would accept the application in this matter if Kentucky Frontier filed a revised proposed final and redlined tariff in the form required by 807 KAR 5:011 reflecting Kentucky Frontier's proposed tariff changes, and provided customer notice pursuant to 807 KAR 5:011, Section 8, subject to certain deviations granted in the April 10, 2023 Order.[3] The Commission found that by proposing a change in the manner in which the GCR rate is calculated, Kentucky Frontier proposed to revise a charge, fee, or rule regarding the provision of service that will affect the amount customer pays for service.[4] Kentucky Frontier filed a revised tariff along with proof of

[2] *Public Service Comm'n v. Conway*, 324 S.W.3d 373, 377 (Ky. 2010); *Public Service Comm'n v. Jackson County Rural Elec. Coop. Corp.*, 50 S.W.3d 764, 766 (Ky. App. 2000); *National Southwire Aluminum Co. v. Big Rivers Elec. Corp.*, 785 S.W.2d 503, 509 (Ky. App. 1990).

[3] Order (Ky. PSC Apr. 10, 2023) at 11.

[4] Order (Ky. PSC Apr. 10, 2023) at 9.

customer notice subject to certain deviations granted in the April 10, 2023 Order, and the Commission deemed the application and revised tariff filed as of June 5, 2023. Kentucky Frontier responded to two rounds of discovery and participated in a virtual Informal Conference (IC) with Commission Staff.[5]

Kentucky Frontier's current Purchased Gas Cost Adjustment Tariff calculates the GCR rate as: Expected Gas Cost (EGC); plus a supplier Refund Adjustment (RA) component; plus four quarters of Actual Adjustment (AA) equating to a total AA component; and, plus four quarters of an Balancing Adjustment (BA) equating to a total BA component.[6] The tariff establishes a 30-day notice filing period and sets forth the calendar quarters for which each GCR rate, comprised of its respective components, are to be in effect. With the exception of the waiver of the 5 percent limit, Kentucky Frontier's

[5] IC was held on December 14, 2023. IC Memo was filed into the case record on February 7, 2024. Kentucky Frontier filed the Handouts discussed during the IC on February 1, 2024, and subsequently its response to the filed IC memo on February 8, 2024.

[6] The ECG is used to estimate the expected cost of gas during the upcoming quarter (e.g. Nov—Jan. for an application filed in Oct.). The AA is used to true-up the difference between the expected and actual gas costs for the quarter proceeding the filing of the GCR report, but the true-up of each quarter is spread across an entire year based on annual sales such that the total AA is made up of four quarterly AA components. The RA is used to true-up refunds received from suppliers in the quarter proceeding the filing of the GCR report, but like the AA, the true-up of each quarter is spread across an entire year based on annual sales such that the total RA adjustment is made up of four quarterly RA adjustments. Finally, the BA is used to true-up the AA, RA, and BA adjustments that ended in the quarter proceeding the filing of the GCR report based on differences in actual sales that occurred during the year they were in effect and the sales used to calculate the adjustment. However, again, the adjustment is trued-up over a year such that the total BA is made up of four quarterly BAs. See, e.g. Case No. 2014-00477, *Purchased Gas Adjustment Filing of Kentucky Frontier Gas, LLC* (filed Dec. 31, 2014), Application; Case No. 2017-00401, *Purchased Gas Adjustment Filing of Kentucky Frontier Gas, LLC* (filed Sept. 29, 2017), Application; Case No. 2022-00196, *Electronic Purchased Gas Adjustment Filing of Kentucky Frontier Gas, LLC* (filed July 1, 2022), Application.

consolidated GCR mechanism has generally been applied in the same manner since it was first approved in 2013.[7]

Kentucky Frontier's proposed modifications to the Purchased Gas Cost Adjustment Tariff and the GCR calculation were as follows: GCR = EGC + Gas Balancing Adjustment (GBA).[8] The proposed changes include: (1) removal of the line loss limiter to the existing EGC component to determine the Total Expected Gas Cost portion;[9] (2) increasing the line loss limiter from 5 percent to 7.5 percent, applying it annually in the GBA, instead of monthly;[10] (3) applying the annual 7.5 percent line loss limiter retroactively dating back three years;[11] and (4) determining GBA factor by using the cumulative over- or under-recovery divided by the rounded five-year average of sales volumes.[12] Kentucky Frontier's proposal also included administrative changes such as

[7] See, e.g. Case No. 2014-00304, *Kentucky Frontier Gas, LLC Purchased Gas Adjustment Filing and Petition for Waiver* (Ky. PSC. Oct. 31, 2014), Order; Case No. 2017-00401, *Kentucky Frontier Gas, LLC Purchased Gas Adjustment Filing* (Ky. PSC. Oct. 17, 2017), Order at 4; Case No. 2018-00013, *Kentucky Frontier Gas, LLC Purchased Gas Adjustment Filing* (Ky. PSC. Jan. 30, 2018), Order; and Case No. 2018-00334, *Kentucky Frontier Gas, LLC Purchased Gas Adjustment Filing* (Ky. PSC. Oct. 30, 2018), Order.

[8] Direct Testimony of Steven Shute (Shute Direct Testimony) (filed June 5, 2023) at 3. The direct testimony and parts of the application uses the term "BA" and "GBA" almost interchangeably. For the purpose of clarity, the Commission will use "BA" when referencing the Commission approved BA component of the GCR rate mechanism and "GBA" when referencing Kentucky Frontier's proposed GCR rate component.

[9] IC Handout (filed. Feb. 1, 2024), File name: "PSC_23-0329_GBA_compare_Oct23.xlsx", tab: "Sched II EGC".

[10] IC Memo at 2; and IC Handout (filed. Feb. 1, 2024), File name: "PSC_23-0329_GBA_compare_Oct23.xlsx", tab: "Sched III GBA", rows: 96, 97, 98, 150, 151, 152, 202, 203, 204, 254, 255, and 256; also see Informal Conference Handout (filed. Feb. 1, 2024), File name: "PSC_23-0329_GBA_compare_Oct23.xlsx", tab: "Sched III GBA", cells: R307:S308.

[11] IC Memo at 2.

[12] IC Handout, File name: "PSC_23-0329_GBA_compare_Oct23.xlsx", tab: "Sched I Rate Dtrm", cell E5 and cell F29.

shifting its established calendar quarters as defined in its Purchased Gas Cost Adjustment Tariff[13] and changing the unit of measurement from a Mcf rate to a Ccf rate.[14]

The Commission's March 28, 2024 final Order found as follows. The use of a rounded five-year average of past sales volumes was rejected as unreasonable because the Commission determined that a recent 12-month period based on actuals is the best indicator of sales that will occur in the near future and variables based on actuals that have not been adjusted by rounding is preferred for automatic recovery mechanisms.[15] Kentucky Frontier's proposed GCR mechanism included the recovery of gas costs previously disallowed by the Commission in its Orders, which the Commission determined to be unreasonable.[16] Kentucky Frontier's request for a deviation from the 5 percent line loss limiter to a 7.5 percent limiter was granted for a period of two years.[17] Lastly, the Commission determined that Kentucky Frontier's proposed modifications to its Gas Cost Adjustment Tariff and the calculation methodology of its GCR rate calculation should be denied.[18] The Commission found that Kentucky Frontier did not demonstrate that its proposed changes to the Purchased Gas Cost Adjustment Tariff were needed or were reasonable or an efficient change to the GCR mechanism.[19]

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[13] Kentucky Frontier's Response to Commission Staff's First Request for Information (filed Aug. 2, 2023), Item 1b.

[14] Kentucky Frontier Attachment B to Notice (filed June 5, 2023) at 7 of 14, Shute Direct Testimony at 6.

[15] Order (Ky. PSC Mar. 28, 2024) at 10.

[16] Order (Ky. PSC Mar. 28, 2024) at 11.

[17] Order (Ky. PSC Mar. 28, 2024) at 20.

[18] Order (Ky. PSC Mar. 28, 2024) at 20.

[19] Order (Ky. PSC Mar. 28, 2024) at 17.

DISCUSSION AND FINDINGS

The Commission notes that KRS 278.300 and KRS 278.274 grant the Commission broad discretion to determine the reasonableness of natural gas rates. Therefore, the Commission finds that Kentucky Frontier's motion for rehearing/clarification is not based upon any of the reasons for rehearing listed in KRS 278.400. Kentucky Frontier does not introduce any new evidence not readily discoverable at the time of the original hearing, nor does Kentucky Frontier allege that the final Order is unlawful. Accordingly, the Commission reviewed the claims in Kentucky Frontier's motion in terms of the remaining factors in KRS 278.400--whether material errors or omissions were made and whether findings were unreasonable.

Paragraphs 1 and 2 of the motion restated the basic reasons Kentucky Frontier wants to change the way the GCR is calculated, focusing on the approximately $600,000 in gas balance loss beginning November 2020. Kentucky Frontier expressed concern over the lack of recovery for this amount using the existing GCR mechanism. The Commission does not interpret this as an allegation of material error or omission. However, as clarification the Commission will further address the reasonableness of its findings in consideration of Kentucky Frontier's unrecovered balance. There are at least three factors that are affecting Kentucky Frontier's recovery of this balance. First, the balance includes amounts unrecovered due to application of the 5 percent line loss limiter in the AA component after the end of the waiver period. Kentucky Frontier seeks to recover a portion of this balance by retroactively applying a 7.5 percent limiter instead. The Commission has previously determined that the 30-day notice of rate change requirement in KRS 278.180 forbids utilities from retroactively applying changes to the way the GCR is calculated.[20] The Commission may not allow recovery of any portion of the balance excluded by the line loss limiter in effect prior to the final Order in this case. Second, considering the apparent prevalence of supplier overbilling based on incorrect meter reads or estimated readings,[21] the current balance may have been overstated, and gas considered lost and unaccounted-for may be attributable to this overbilling. The utility is in a better position to mitigate the effect of supplier overbilling than customers, who, unlike the utility, have no business relationship with suppliers. Third, as discussed in the final Order,[22] the provisional under-recovery that occurs during a period of high volatility in gas prices is an unfortunate byproduct of the recovery lag that is an inherent risk due to the energy and fuel market. The current method of GCR calculation, using four quarters of consecutive under- and over-recoveries of gas cost due to a shift in annual sales used to determine the total BA, can tend to smooth seasonal price volatility for customers, who are in less of a position to shoulder this volatility than a financially stable utility.

The Commission finds that the sum of the unrecovered balance alone does not make the Commission's findings unreasonable. Reasonable minds can differ on the issue of who should bear the burden of natural gas market volatility between utility and customer. Regarding the determination of EGC and GBA, the difference between using the prior 12-month period of sales volume versus a five-year annual average is negligible,

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[20] *See* Case 2008-00312, *The Notice of Purchased Gas Adjustment Filing of Martin Gas, Inc.* (Ky. PSC Sept. 26, 2008), Order at 2; Case No. 2009-00099, *Purchased Gas Adjustment Filing of Martin Gas, Inc.* (Ky. PSC Mar. 31, 2009), Order at 3,

[21] IC Handout (filed. Feb. 1, 2024), Supplemental Filings, Exhibit A; IC Memo 2.

[22] Order (Ky. PSC Mar. 28, 2024) at 13.

and using either method can result in over- or under-recovery. Due to gas price volatility, Kentucky Frontier had a net over-recovery of almost $600,000 by April 2023.[23] As noted in the final Order, Kentucky Frontier's current Purchased Gas Cost Adjustment Tariff includes a provision for Interim Gas Cost Adjustments for good cause shown.[24] Kentucky Frontier may explore this avenue if confronted with insufficient cash flow as a result of market volatility.

In paragraphs 3 and 4 of the motion, Kentucky Frontier discussed case processing, the discovery process, informal conferences held with Commission Staff, and complained of the timing of the final Order. These comments are unrelated to any substantive issues within the contemplation of KRS 278.400. The Order was issued within the ten-month period required by KRS 278.190 for schedules filed pursuant to a change in rate.[25] Moreover, this Order would have been issued more than three months earlier if Kentucky Frontier had properly filed a proposed tariff with its initial application. In the future, Kentucky Frontier should note that any change to the calculation of a formula-calculated rate which would result in a different rate if the change were not made requires filing a revised tariff. To be clear, a change to the calculation of a variable within another variable is a change to the formula. This is true even if the previous tariff is silent as to how to calculate a variable, but either the utility through practice[26] or the Commission by order

[23] Shute Direct Testimony at 12.

[24] Order (Ky. PSC Mar. 28, 2024) at 13—14. *See* P.S.C. Ky. No. 3, Sheet No. 31 (issued June 21, 2013) effective June 21, 2013.

[25] The tariff was filed on June 5, 2023, and the final Order was issued March 28, 2024.

[26] Kentucky Frontier previously used the prior 12-month period to estimate future purchase volumes and used the 12-month rolling average to determine BA. *See* Case No. 2022-00327, *Electronic Purchased Gas Adjustment Filing of Kentucky Frontier Gas, LLC* (filed Oct. 10, 2022), Schedules II and V.

has previously established a different method of determining the variable. The tariff notice provision set forth in 807 KAR 5:011, Section 8, requires notice when a utility seeks to make a change that will affect the amount a customer pays for service because customers should receive notice of rate changes regardless of whether a previous tariff specified how to calculate a variable.

Additionally, the Commission notes Kentucky Frontier's statement regarding discussions between Commission Staff and Kentucky Frontier personnel. In its motion Kentucky Frontier states, "Kentucky Frontier was simply attempting to seek any guidance and solutions to its regulatory predicament, as any business struggling to regain financial wellness would."[27] As discussed in the Commission's March 28, 2024 final Order: The Commission, like a court, acts and speaks only through its written orders and the representations of Commission Staff members are not binding upon the Commission. As such, any guidance and solutions that may have been suggested by Commission Staff during discussions and informal conferences do not substitute for an Order of this Commission.

Paragraphs 5 through 7 of the motion sought rehearing or clarification regarding the finding that the prior 12 months of purchased volume is a better predictor of future purchase volume than a rounded five-year annual average. The Commission agrees with Kentucky Frontier's statement in its motion that "[b]oth the Commission approved method and the Kentucky Frontier proposed method, must use estimates of forecasted gas sales."[28] Both methods use historical volumes to estimate future volumes.

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[27] Motion for Rehearing/Clarification at 2.

[28] Motion for Rehearing/Clarification at 3.

However, the method used by Kentucky Frontier uses the historical five-year average of sales, then rounded.[29] The use of a rounded variable as the determinate factor of a rolling calculation is unreasonable. An automatic recovery mechanism, such as the GCR rate relies on updated inputs that should be justifiable and readily available in the case records of current and previous cases. Kentucky Frontier's rounding of a variable used in its GCR rate report makes that variable an unjustifiable estimation, thus the Commission finds it to be unreasonable.

Furthermore, the material discussion in the Order regarding the five-year annual average is that using this as the basis for an estimate "without the necessary justification for any part of its standard automatic recovery mechanism"[30] is unreasonable. Kentucky Frontier provided no reasoning for its use of this period. A recent 12-month period would exclude any anomalous usage resulting from the COVID-19 pandemic and would more closely align with present weather trends. A five-year annual average would minimize the increase in purchase volume that could result from growth in customer base due to population growth, and likewise would fail to reflect loss of customers and decreased sales volumes due to warmer weather. The Commission also finds that due to the GCR rate report incorporating a rolling 12-month period in its reporting period and the four set quarters of the RA, AA, and, BA which each include three-month intervals, it is more appropriate to use a historical 12-month period in the calculation of its GCR rate components. The 12-month reporting period also allows the Commission to observe any significant changes to a utility's sales or purchases every GCR rate report filing rather

[29] IC Memo, at 1 and 2.

[30] Order (Ky. PSC Mar. 28, 2024) at 10.

than yearly such as with the annual report filings. The Commission finds that Kentucky Frontier failed to meet its burden of proof regarding its proposed methodology, and that reasonable minds could differ on which method is preferable and that use of the recent 12-month period is more reasonable than Kentucky Frontier's five-year period and rounding method. Kentucky Frontier's justification for using the longer time period appears to be that it would have enjoyed a greater recovery, as opposed to that period being more accurate.[31] Kentucky Frontier did not attempt to provide evidence to justify the use of rounding.

Paragraphs 8 through 15 of the motion addressed the line loss limiter, attempting to correct, add to, and clarify facts or characterizations found in the final Order. The Commission granted Kentucky Frontier's request to increase the limiter to 7.5 percent for a period of up to two years. No additional argument in favor of this change is required. On its own motion, the Commission shall make two clarifications about limiter issues that were not sought in the motion but may be necessary for clarity. First, the 7.5 percent limiter may not be applied retroactively, as discussed above, because KRS 278.180 forbids retroactive application and the Commission in its prior GCR rate report orders for Kentucky Frontier has already disallowed the recovery of gas costs when the line loss is in excess of 5 percent. Second, Kentucky Frontier shall apply the line loss limiter on a monthly, not annual basis, as already implemented in the quarterly AA components of the current GCR rate mechanism. Considering the frequency and degree of supplier overbilling, the limiter should be applied monthly to ensure that Kentucky Frontier detects overbilling in a timely manner or takes steps to compel its suppliers to make proper

[31] Motion for Rehearing/Clarification at 4.

readings. The Commission notes that as discussed in the Commission's March 28, 2024 final Order, Kentucky Frontier should be diligent in reporting such occurrences to the Commission in its GCR rate report filings.[32]

Lastly, paragraph 16 raises a new issue. The motion stated that "Kentucky Frontier requests the Commission allow Kentucky Frontier to separate line loss calculations for the former Public Gas system, apart from the rest of Kentucky Frontier's systems. Gas Cost will not be bifurcated, just the L&U [lost and unaccounted-for gas] calculations."[33] The Commission cannot grant rehearing of an issue it has not ruled on. If Kentucky Frontier sought clarification of an ambiguity in the final Order, the Commission could resolve that ambiguity. However, this is a new request for a different application of the limiter not within the possible interpretations of the final Order's findings and therefore not a valid request in a rehearing motion under KRS 278.400.

The Commission finds that Kentucky Frontier's motion should be denied because it failed to establish the existence of new evidence not readily discoverable at the time of the original hearings; material errors or omissions in the final Order, or that the final Order is unreasonable or unlawful.

The Commission also notes that Kentucky Frontier has not complied with ordering paragraph 4 of the final Order requiring it to file, in Case No. 2023-00427, a quarterly GCR rate report in conformity with the final Order's findings using the Commission approved GCR rate report mechanism. On April 26, 2024, Kentucky Frontier filed its

[32] Order (Ky. PSC Mar. 28, 2024) at 12.

[33] Motion for Rehearing/Clarification at 8.

notice of a planned refund as required by ordering paragraph 5 in Case No. 2023-00427.[34] However, Kentucky Frontier failed to refile the quarterly GCR rate report in Case No. 2023-00427 using the Commission approved GCR rate report mechanism or provide evidence of how the corrected rate was calculated and how the total under- or –over recovery was determined. Pursuant to KRS 278.390, every order entered by the Commission shall continue in force until revoked or modified by the commission, unless the order is suspended, or vacated in whole or in part, by order or decree of a court of competent jurisdiction. Failure to comply with a Commission Order may impede the Commission's ability to timely process Kentucky Frontier's quarterly GCR rate report filings and may lead the Commission to open an investigation. The Commission reserves its right to initiate an investigation to determine whether Kentucky Frontier reasonably collected monies resulting in any over- or under-recoveries that resulted in the suspension of Case No. 2023-00427 should the Commission deem it necessary.

IT IS THEREFORE ORDERED that:

1. Kentucky Frontier's motion for rehearing/clarification is denied.

2. The Commission, on its own motion, adopts the clarifications regarding application of the 7.5 percent line loss limiter as explained herein.

3. Kentucky Frontier shall comply with all Ordering paragraphs of the Commission's March 28, 2024 final Order issued in this proceeding.

4. The Commission reserves its right to initiate an investigation to determine whether Kentucky Frontier reasonably collected monies resulting in any over- or under-

[34] Case No. 2023-00427, *Electronic Purchased Gas Adjustment Filing of Kentucky Frontier Gas, LLC* (filed Apr. 26, 2024), Notice of Plan of Refund.

recoveries that resulted in the suspension of Case No. 2023-00427 should the Commission deem it necessary.

5. This matter is dismissed and is removed from the Commission's docket.

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PUBLIC SERVICE COMMISSION

Chairman

Vice Chairman

Commissioner

ATTEST:

Executive Director

ENTERED

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KENTUCKY PUBLIC SERVICE COMMISSION

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