

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC TARIFF FILING OF THE EAST)	
KENTUCKY POWER COOPERATIVE, INC.)	CASE NO.
DISTRIBUTION COOPERATIVES TO ESTABLISH)	2023-00135
AN EARNING MECHANISM TARIFF)	

ORDER

This matter is before the Commission on a motion and modified tariff sheets filed by Big Sandy R.E.C.C., Blue Grass Energy Cooperative Corp., Clark Energy Cooperative Corp., Cumberland Valley Electric, Inc., Farmers R.E.C.C., Fleming-Mason Energy Cooperative, Inc., Grayson R.E.C.C., Inter-County Energy Cooperative Corporation, Jackson Energy Cooperative Corporation, Licking Valley R.E.C.C., Nolin R.E.C.C., Owen Electric Cooperative, Inc., Salt River Electric Cooperative Corp., Shelby Energy Cooperative, Inc., South Kentucky R.E.C.C., and Taylor County R.E.C.C. (collectively, Distribution Cooperatives). The Distribution Cooperatives seek to modify the tariff approved by the Commission on April 27, 2023, and request an extension of time in which to file an updated tariff. The Commission’s April 27, 2023 Order required the Distribution Cooperatives to file updated tariffs within 20 days of the date of service of the Commission’s Order. The Distribution Cooperatives request an extension until such time as the Commission enters a decision regarding the tariff modifications proposed in the motion.

Although the Distribution Cooperatives’ motion is not styled as a motion for rehearing, the Commission will regard it as such because the relief sought is a

reconsideration of a decision that has been entered. The motion does not seek mere clarification of a statement or finding of the Commission, but rather seeks to substitute a newly modified tariff for a tariff previously submitted and approved. The Distribution Cooperatives stated this is necessary because the tariffs they originally submitted were “not clear.”¹ As such, the request is a request for rehearing.

LEGAL STANDARD

The standard of review for motions for rehearing is established in KRS 278.400, which limits rehearing to new evidence not readily discoverable at the time of the original hearing, 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.”² An Order can only be unlawful if it violates a state or federal statute or constitutional provision.³

By limiting rehearing to correct material errors or omissions, and findings that are unreasonable or unlawful, or to weigh new evidence not readily discoverable at the time of the original hearing, 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. The Commission has exclusive jurisdiction over the regulation of rates and service of utilities in Kentucky.⁴ Kentucky law provides

¹ Motion to Modify and Extension of Time (filed May 17, 2023) at 2.

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

³ *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).

⁴ KRS 278.040(2).

that a utility may demand, collect and receive fair, just and reasonable rates⁵ and that the service it provides must be adequate, efficient and reasonable.⁶ Kentucky law also provides that a utility must file with the Commission schedules of all rates and conditions for service established by it and collected or enforced.⁷ KRS 278.190 permits the Commission to investigate any schedule of new rates to determine its reasonableness.

DISCUSSION AND FINDINGS

On March 28, 2023, the Distribution Cooperatives filed a Rate EM, Earnings Mechanism, Member Tariff (Rate EM Tariff) using the Commission's electronic Tariff Filing System.⁸ The purpose of the proposed Rate EM Tariff was to provide a pass-through bill credit for the Distribution Cooperatives' retail customers of any excess margins received as bill credit to the Distribution Cooperatives from East Kentucky Power Cooperative, Inc. (EKPC) as a result of EKPC's Earnings Mechanism Tariff.⁹ On April 27, 2023, the Commission approved the proposed tariff with modifications. The Commission also noted in its April 27, 2023 Order that challenges may arise related to using the past year's customer account information in determining bill credits, and thus, the Commission advised the Distribution Cooperatives that should such issues arise, the Distribution Cooperatives could propose in subsequent years a modification for Commission consideration to provide a bill credit to all current customers based on expected or anticipated usage, or based on customer count. However, the Distribution

⁵ KRS 278.030(1)

⁶ KRS 278.030(2).

⁷ KRS 278.160(1).

⁸ Distribution Cooperatives Tariff Filing (filed into the record for this proceeding Apr. 24, 2023).

⁹ See Distribution Cooperatives Tariff Filing Original Sheet No.30.

Cooperatives' motion stated that the intention was to provide bill credits only to current customers, and that this was not clear in the tariff filing.¹⁰ Therefore the Commission finds that rehearing should be granted upon the motion of the Distribution Cooperatives.

The Commission further finds that a procedural schedule should be established to review the reasonableness of the proposed tariff. The procedural schedule is attached as an Appendix to this Order.

Additionally, any hearing scheduled in this matter shall be held on the designated day or days and continued until called from the bench by the presiding officer. Pursuant to 807 KAR 5:001E, Section 2, if the hearing is not concluded on the designated day, the hearing may be continued upon verbal announcement by the presiding officer. A verbal announcement made by the presiding officer shall be proper notice of the continued hearing. Hearings are held in the Richard Raff Hearing Room at the offices of the Public Service Commission at 211 Sower Boulevard, Frankfort, Kentucky. Witnesses who sponsor schedules, testimony, or responses to requests for information are expected to participate in person at a hearing.

IT IS THEREFORE ORDERED that:

1. The Distribution Cooperatives motion for rehearing is granted.
2. This proceeding is reopened to investigate the reasonableness of the proposed tariff.
3. Unless otherwise ordered by the Commission, the procedures set forth in 807 KAR 5:001E, Section 8, related to service and electronic filing of papers shall be followed in this proceeding.

¹⁰ Motion to Modify and Extension of Time at 2.

4. The procedural schedule set forth in the Appendix to this Order shall be followed.

5. The Distribution Cooperatives shall respond to all requests for information propounded by Commission Staff, whether identified on the procedural schedule or otherwise, as provided in those requests.

6. The Distribution Cooperatives shall give notice of any hearing in accordance with the provisions set forth in 807 KAR 5:001E, Section 9(2). In addition, the notice of the hearing shall include the following statements: “This hearing will be streamed live and may be viewed on the PSC website, psc.ky.gov” and “Public comments may be made at the beginning of the hearing. Those wishing to make oral public comments may do so by following the instructions listed on the PSC website, psc.ky.gov.” At the time publication is requested, the Distribution Cooperatives shall forward a duplicate of the notice and request to the Commission.

7. At any public hearing in this matter, neither opening statements nor summarization of direct testimonies shall be permitted.

8. Any hearing scheduled in this matter shall be held on the designated day or days and continued until called from the bench by the presiding officer. Pursuant to 807 KAR 5:001E, Section 2, if the hearing is not concluded on the designated day, the hearing shall be continued upon verbal announcement by the presiding officer. A verbal announcement made by the presiding officer shall be proper notice of the continued hearing.

9. Witnesses who sponsor schedules, testimony, or responses to requests for information shall participate in person at any hearing scheduled in this matter.

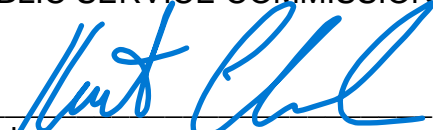
10. Pursuant to KRS 278.360 and 807 KAR 5:001E, Section 9(9), a digital video recording shall be made of the hearing.

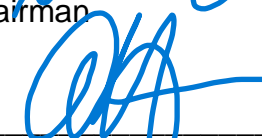
11. The Commission does not look favorably upon motions for continuance. Accordingly, motions for extensions of times with respect to the schedule herein shall be made in writing and will be granted only upon a showing of good cause.

12. The Commission does not look favorably upon motions to excuse witnesses from testifying at Commission hearings. Accordingly, motions to excuse a witness from testifying at a Commission hearing or from testifying in person at a Commission hearing shall be made in writing and will be granted only upon a showing of good cause.

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PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ENTERED
JUN 01 2023
rcs
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2023-00135 DATED JUN 01 2023

Initial requests for information to the Distribution Cooperatives
shall be filed no later than 06/09/2023

The Distribution Cooperatives shall file responses to
initial requests for information no later than.....06/23/2023

All supplemental requests for information to the Distribution Cooperatives
shall be filed no later than 07/07/2023

The Distribution Cooperatives shall file responses to supplemental requests
for information no later than 07/14/2023

The Distribution Cooperatives shall request either a
hearing or that the case be submitted for decision
based on the record no later than.....07/17/2023

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