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January 22, 2015

PSC STAFF OPINION 2015-002

Secretary Leonard K. Peters
Energy and Environment Cabinet
500 Mero Street
12th Floor, Capital Plaza Tower
Frankfort, Kentucky 40601

Re: Special Contracts, Utilities and Energy Users
Request for an Advisory Opinion

Dear Secretary Peters:

Commission Staff acknowledges receipt of your January 12, 2015 letter in which you request a staff opinion clarifying that utilities may enter into special contracts with energy users. You note that these special contracts may include, but may not be limited to, renewable energy purchases.

This opinion represents Commission Staff's interpretation of the law as applied to the facts presented, is advisory in nature, and is not binding on the Commission should the issues herein be formally presented for Commission resolution.

Based on your letter, Commission Staff understands the facts as follows:

The Energy and Environment Cabinet, as well as the Cabinet for Economic Development, are often contacted by energy intensive industries contemplating locating in the Commonwealth. Therefore, you request a staff opinion clarifying that utilities may enter into special contracts with energy users. These contracts might include, but are not limited to, renewable energy purchases.

Your letter presents the following question: Is it permissible for utilities to enter into special contracts with users from energy intensive industries who are contemplating locating in the Commonwealth?

KRS 278.040(2) provides:

The jurisdiction of the commission shall extend to all utilities in the state. The commission shall have exclusive jurisdiction over the regulation of rates and service of utilities, but with that exception nothing in this chapter is intended to limit or restrict the police jurisdiction, contract rights or powers of cities or political subdivisions.

With respect to utility rates, KRS 278.030(1) requires that they be "fair, just and reasonable," while utility service under KRS 278.030(2) must be "adequate, efficient and reasonable." In addition, KRS 278.160(1) requires the Commission to prescribe rules for each utility to file "schedules showing all rates and conditions of service established by it and collected or enforced." Pursuant to this statute, the Commission has promulgated 807 KAR 5:011, which requires regulated utilities to submit a complete tariff with the Commission setting forth, among other things, the utility's rates, charges, regulations and conditions of service over which the Commission has jurisdiction. Furthermore, special contracts are expressly provided for in 807 KAR 5:011, Section 13, which states:

Each utility shall file a copy of each special contract that establishes rates, charges, or conditions of service not contained in its tariff.

Further, KRS 278.170(1) provides that:

No utility shall, as to rates or service, give any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage, or establish or maintain any unreasonable difference between localities or between classes of service for doing a like and contemporaneous service under the same or substantially the same conditions.

Finally, KRS 278.030(3) authorizes utilities to adopt "reasonable classifications of its service, patrons and rates," and those classifications:

[M]ay, in any proper case, take into account the nature of the use, the quality used, the quantity used, the time when used, the purpose for which used, and any other reasonable consideration.

Based on the authority cited above, utilities may adopt multiple classifications of service offered to the public. Those classifications are set forth in tariffs and they may be broad in application, such as including all residential customers, or very narrow in application, such as to customers whose consumption is within certain specific limits or during certain specific time periods. When proper circumstances exist and a tariff is not available, a utility may enter into a special contract tailored to the needs of that specific customer, rather than adopting a new tariff to be generally available to multiple customers.

For many years electric utilities have entered into special contracts with energy intensive customers when circumstances exist to utilize rates and/or conditions of service that differ from those in their respective filed tariffs. These special contracts must be filed with the Commission and they are similar to a tariff except that the rates and/or service are offered to only one customer, not generally offered to the public. Such contracts may properly contain rates and/or conditions of service that differ from those set forth in the utilities' filed tariffs.

Considering the authority for utilities to enter into special contracts, Commission Staff believes that a request by an energy intensive customer to purchase renewable energy is a "reasonable consideration" within the scope of KRS 278.030(3) to justify the use of a special contract for that customer. Upon the filing of a special contract with the Commission, a review is conducted to ensure that the rates are fair, just and reasonable under KRS 278.030(1), that there is no undue discriminatory in violation of KRS 278.170(1), and that there are reasonable considerations to justify the use of a special contract as a unique classification as required by KRS 278.030(3).

This letter represents Commission Staff's interpretation of the law as applied to the facts presented. This opinion is advisory in nature and is not binding on the Commission should the issues herein be formally presented for Commission resolution. Questions concerning this opinion should be directed to Aaron Ann Cole, Staff Attorney, at (502) 564-3940.

Sincerely,



Jeff Derouen
Executive Director

AC/kg