

August 19, 2010

Plaintiffs Re-File Patronage Capital Lawsuit in Missouri and Add Generation Cooperative as a Defendant

Burks v. White River Valley Electric Cooperative (Missouri) (1031-CV10307)

After voluntarily dismissing their case this past spring, two former members of the White River Valley Electric Cooperative recently re-filed their patronage capital suit in another Missouri county. This class action suit (filed July 12, 2010) is still based on White River's failure to refund capital credits, but with two significant changes.

First, the plaintiffs have dropped current members from the proposed class, which now includes only former members. This change may be in response to White River's motion to dismiss filed in the prior case. White River argued that a conflict of interest existed between the current and former members of the proposed class, because the return of capital credits would force the current members of the cooperative to pay more for electric service. Additionally, at least one trial court in another patronage capital case has denied class certification based, in part, on conflicts between current and former members. *Denton County Electric Cooperative, Inc. d/b/a/ CoServ Electric v. Glover* (Texas) (2009-10087-16).

Second, the new complaint also includes a new defendant – Associated Electric Cooperative, Inc. (AECI). Under a three-tier system, AECI supplies power to six regional generation and transmission cooperatives (G&Ts), that in turn provide power to distribution cooperatives, including White River. The plaintiffs allege a conspiracy among White River, two of the G&Ts (Kamo Power Cooperative and Sho-Me Electric Cooperative), and AECI to withhold payments of capital credits. The plaintiffs assert that these cooperatives maintain high equity-to-asset ratios and high patronage capital balances. (The G&Ts are not named as defendants.)

Apart from these changes, the complaint is largely the same as the plaintiffs' previous complaint. The plaintiffs allege that White River possesses "millions of dollars" in capital credits, that White River has not refunded any capital credits in more than two decades, and that White River does not notify its members about the existence or amount of their capital credits.

The defendants' responsive pleadings are expected to be filed soon.

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