

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN EXAMINATION BY THE PUBLIC SERVICE)	
COMMISSION OF THE ENVIRONMENTAL)	
SURCHARGE MECHANISM OF KENTUCKY)	
POWER COMPANY FOR THE SIX-MONTH)	CASE NO.
BILLING PERIODS ENDING DECEMBER 31, 2002,)	2006-00128
DECEMBER 31, 2003, JUNE 30, 2004,)	
DECEMBER 31, 2004, AND DECEMBER 31, 2005,)	
AND FOR THE TWO-YEAR BILLING PERIODS)	
ENDING JUNE 30, 2003 AND JUNE 30, 2005)	

O R D E R

On February 20, 2007, the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention (“AG”), filed a petition for rehearing of the Commission’s January 31, 2007 Order granting Kentucky Power Company (“Kentucky Power”) authority to increase its jurisdictional environmental revenue requirement by \$95,494 in each of the first 6 billing months after the date of the Order. Specifically, the AG requests that the Commission amend the January 31, 2007 Order to require the environmental costs associated with the out-of-state generating facilities that are included in the environmental surcharge to be collected subject to refund and to require Kentucky Power to maintain its records in such a manner that would allow appropriate refunds to be made should refunds be required.

The authorized 6-month increase in the jurisdictional environmental revenue requirement results from the Commission’s determination that Kentucky Power had under-recovered its environmental surcharge during the review periods at issue and

during the seven expense months subsequent to the review periods.¹ A portion of that under-recovery included costs associated with out-of-state generating facilities. In Case No. 2005-00068,² the Commission approved Kentucky Power's request to amend its environmental compliance plan and its environmental surcharge mechanism to permit the recovery of certain environmental costs associated with out-of-state generating facilities. The AG and the Kentucky Industrial Utility Customers, Inc. ("KIUC") appealed the Commission's decision in that case to the Franklin Circuit Court, arguing that it was inappropriate to include the environmental costs associated with the out-of-state generating facilities in Kentucky Power's environmental surcharge. On October 30, 2006, the Franklin Circuit Court upheld the Commission's decision holding that costs related to the out-of-state generating facilities did qualify for environmental surcharge recovery pursuant to KRS 278.183. The AG and KIUC have appealed the Franklin Circuit Court decision to the Kentucky Court of Appeals.

On March 6, 2007, Kentucky Power filed its response in opposition to the AG's petition for rehearing and put forth two arguments in support of its opposition. First, Kentucky Power argues that since the AG did not raise the issue of making the surcharge collections subject to refund during the processing of the review case, he is prohibited by KRS 278.400 from raising the issue on rehearing. Second, Kentucky Power contends that the AG is asking the Commission to presume the September 7,

¹ January 31, 2007 Order at 4-5.

² Case No. 2005-00068, Application of Kentucky Power Company for Approval of an Amended Compliance Plan for Purposes of Recovering Additional Costs of Pollution Control Facilities and to Amend Its Environmental Cost Recovery Surcharge Tariff, final Order dated September 7, 2005.

2005 Order in Case No. 2005-00068 was improper and invalid. Kentucky Power states that the Commission's Orders are presumed valid and continue in full force unless and until modified or vacated by a court of competent jurisdiction. Kentucky Power argues that if the AG believes the environmental costs in question should be collected subject to refund, then the AG should appeal the January 31, 2007 Order and ask for relief from the Franklin Circuit Court. Kentucky Power notes that if the Commission's January 31, 2007 decision is reversed, then the refund question can be addressed by the parties. Kentucky Power reasons that until that time, the AG's request is premature and it is improper to utilize the provisions of KRS 278.400 to plan for a contingency that may never occur.

In previous cases where an issue has been appealed and the outcome of that appeal is not known at the time the Commission is required to enter another Order addressing that same issue, the Commission has found that public policy requires the Commission to recognize the uncertainties surrounding that issue. Under those circumstances, the Commission has found it reasonable to require that the revenues associated with the disputed issue be collected subject to refund.³ Kentucky Power has failed to persuade the Commission that similar treatment is not justified in this case.

Therefore, the Commission finds that the AG's request for rehearing should be granted and the environmental surcharge collections authorized in the January 31, 2007

³ See Case No. 2002-00107, An Adjustment of Rider AMRP of The Union Light, Heat and Power Company, final Order dated August 30, 2002 and rehearing Order dated October 7, 2002; Case No. 2003-00103, An Adjustment of Rider AMRP of The Union Light, Heat and Power Company, final Order dated August 25, 2003; and Case No. 2004-00098, An Adjustment of Rider AMRP of The Union Light, Heat and Power Company, final Order dated August 24, 2004.

Order that are associated with out-of-state generating facilities should be collected subject to refund and that Kentucky Power should maintain its records in such a manner that Kentucky Power, the Commission, or any of Kentucky Power's customers will be able to determine the amounts to be refunded and to whom if the Court should rule that these costs are not eligible for recovery pursuant to KRS 278.183.

IT IS THEREFORE ORDERED that the AG's request for rehearing is granted in that the January 31, 2007 Order is amended to require all environmental surcharge collections associated with the costs of out-of-state generating facilities to be collected subject to refund and to require Kentucky Power to maintain its records in a manner that will permit refunds of these costs to be made should refunds be required by the Courts.

Done at Frankfort, Kentucky, this 12th day of March, 2007.

By the Commission

ATTEST:



Executive Director