COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AIR LIQUIDE LARGE INDUSTRIES U.S. LP	)	
	)	
COMPLAINANT	)	
	)	CASE NO.
V.	)	2012-00351
	)	
KENTUCKY POWER COMPANY	)	
	)	
DEFENDANT	)	

ORDER

On July 20, 2012, Complainant, Air Liquide Large Industries U.S. LP ("Air Liquide"), filed a complaint against Defendant, Kentucky Power Company ("Kentucky Power"), petitioning the Commission for an order requiring Kentucky Power to allow Air Liquide's Ashland, Kentucky facility to immediately begin taking service under Kentucky Power's existing Tariff RTP. On or about June 28, 2012, Air Liquide sought written permission from Kentucky Power to begin taking service under the existing Tariff RTP. Kentucky Power declined to honor that request on the grounds that the subject tariff is limited to ten customers and that there are currently ten billing accounts who are taking service under the existing Tariff RTP. Kentucky Power contends that each billing account represents a customer and, therefore, Kentucky Power cannot accept Air Liquide's request to take service under Tariff RTP. Air Liquide contends that there are only four corporations taking service under Tariff RTP and that it should be allowed to take service under that program. The parties agreed to a briefing schedule and have the matter decided by the Commission based on the evidentiary record.

BACKGROUND

Kentucky Power's existing Tariff RTP was originally approved by the Commission in 2008.[1] Tariff RTP is a voluntary real-time pricing program for Kentucky Power's large commercial and industrial customers. The program was designed as a market-based, hourly real-time pricing program in which the customers will have an opportunity to manage their electric costs by shifting load periods. As approved, Tariff RTP will be implemented by Kentucky Power as a pilot program for a term of three years. As part of a unanimous settlement agreement in its most recent rate case,[2] Kentucky Power agreed to continue Tariff RTP for an additional three years beyond the end of the pilot period and to allow customers to enroll at any point during a year for a minimum 12-consecutive-month period. Kentucky Power's Tariff RTP, attached hereto as Exhibit A, provides that the "tariff will be limited to a maximum of 10 customers."

As of June 20, 2012, there were four corporations taking service under Kentucky Power's Tariff RTP: AK Steel Corporation, Inc.; Air Products & Chemicals, Inc.; EQT Corporation; and Catlettsburg Refining LLC. All of the corporations except for EQT Corporation have one billing account taking service under Tariff RTP. EQT Corporation has seven billing accounts taking service under that tariff.

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[1] Case No. 2007-00166, *Application of Kentucky Power Company for an Order Approving a Large Commercial and Industrial Real-Time Pricing Pilot Program* (Ky. PSC Feb. 1, 2008).

[2] Case No. 2009-00459, *Application of Kentucky Power Company for a General Adjustment of Electric Rates* (Ky. PSC Jun. 28, 2010).

AIR LIQUIDE'S ARGUMENT

On October 23, 2012, Air Liquide filed its brief in support of its request that it be allowed to begin taking service under the existing Tariff RTP. Air Liquide argues that Kentucky Power's interpretation of the term "customer" is inconsistent with the Commission's regulations and law, Kentucky Power's own tariffs, and the plain meaning of that term. Air Liquide maintains that the term "customer" is not synonymous with an individual billing account of a corporation, but rather should be defined to mean "an entire corporation receiving service from Kentucky Power, regardless of whether that corporation has one or multiple billing accounts."[3] Air Liquide contends that, pursuant to 807 KAR 5:006, Section 1(4),[4] customer is defined as "person, firm, corporation, or body politic applying for or receiving service from any utility." Thus, under the Commission's general rules, a "customer" is not subdivided into additional categories like individual billing accounts. Air Liquide further points out that KRS 278.010(1)[5] defines a "corporation" as a single entity.

Air Liquide contends that Kentucky Power's own tariffs do not treat the term "customer" as synonymous with an individual billing account and reflect that one "customer" may have multiple billing accounts.

Lastly, Air Liquide argues its definition of the term "customer" is consistent with several dictionaries, which define a "customer" as a single person or entity.

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[3] Brief of Air Liquide Large Industries U.S., LP, at 3.

[4] 807 KAR 5:006 was revised effective on January 4, 2013. References to this regulation herein reflects the revised version.

[5] KRS 278.010(1) states, in full, as follows: "'Corporation' includes private, quasipublic, and public corporations, and all boards, agencies, and instrumentalities thereof, associations, joint-stock companies, and business trusts[.]"

KENTUCKY POWER'S ARGUMENT

Kentucky Power states that the term "customer" has a well understood and long established meaning in the electric utility industry. By custom and usage, the term "customer" is understood to mean billing account. Kentucky Power notes that in reporting customer numbers to state and federal regulatory officials, such as the number of customers identified in its annual report filed with the Commission pursuant to 807 KAR 5:006, Section 4(1), reporting customer outages, and its Annual Report (Form 10-K) filed with the Securities and Exchange Commission, it defines the term customer in the same fashion it uses in administering its tariffs, including Tariff RTP—that is, based on the number of billing accounts.

Kentucky Power maintains that the term "customer" is applied in a consistent manner in other provisions of its tariffs. These include the manner in which Kentucky Power calculates customer deposits based upon the usage associated with each individual billing account; the calculation of the service charge and minimum charge under Tariff QP and Tariff CIP-TOD based upon each individual billing account; and the determination of whether a customer meets the minimum demand requirements to take service under Tariff QP or Tariff CIP-TOD, which is calculated individually, and not based upon the total aggregated demand of a single entity.

Kentucky Power contends that its application of the term "customer" as used in Tariff RTP conforms to the regulation specifically governing electric utility, 807 KAR 5:041, Section 9(2). That regulation provides that an electric utility "shall regard each point of delivery as an independent customer and meter the power delivered at each point." The regulation additionally prohibits combining meter readings taken at separate points. Kentucky Power notes that service to each of the seven EQT Corporation's compressor stations is delivered to, and metered at, a separate point of delivery. Thus, in conformity with 807 KAR 5:041, Section 9(2), Kentucky Power maintains a separate billing account for each of the compressor stations and treats each point of delivery, or compressor station, as an independent customer.

Regarding Air Liquide's contention that Kentucky Power's use of the term "customer" in certain of the company's tariff provisions are inconsistent with how Kentucky Power applies that term in Tariff RTP, Kentucky Power argues that those provisions cannot reasonably be interpreted to distinguish between the term "customer" and billing account. Kentucky Power contends that any claimed inconsistent use of the term "customer" in other provisions of its tariffs should yield to the specific provisions of 807 KAR 5:041, Section 9(2), which makes clear that each point of service, or billing account, is an independent customer.

Lastly, Kentucky Power contends that Air Liquide's proffered definition of the term "customer" would yield results contrary to industry practice and Kentucky Power's well-established administration of its tariffs. For example, Kentucky Power has three General Service classifications and eligible customers are assigned to one of the three General Service tariffs based upon their demand, which are calculated based on the demand at each point of delivery. Likewise, Kentucky Power assigns eligible customers under either its Tariff QP or Tariff CIP-TOD based upon a demand level that is determined at each point of delivery. Consistent with industry practice, Kentucky Power's intent in drafting these tariffs, and in conformance with 807 KAR 5:041, Section

9(2), it does not aggregate demand for all points of delivery for a single entity but maintains a separate billing account for each point of delivery.

DISCUSSION

Having reviewed the briefs and being otherwise sufficiently advised, the Commission finds that Kentucky Power's interpretation of the term "customer" as applied to Tariff RTP is reasonable and consistent with the governing regulation. As an initial matter, the Commission takes notice that Kentucky Power's Tariff RTP is set to expire on June 30, 2013[6] and that, under the specific language of that tariff, an eligible customer wanting to take service under Tariff RTP must enroll for a 12-month period and must stay with the service for an entire year.[7] Even assuming, arguendo, that Kentucky Power's application of the term "customer" to Tariff RTP was unreasonable, which the Commission finds to the contrary, Air Liquide would be foreclosed from taking service under Kentucky Power's Tariff RTP in any event given that it will be impossible for Air Liquide to remain enrolled under the tariff for an entire year in light of the fact that the time remaining under the terms of the tariff is less than a year. The Commission clearly recognized the timing issue related to Tariff RTP in Case No. 2012-00226 and accordingly ordered that "no customer of Kentucky Power shall take service under the Tariff RTP" as of December 20, 2012.[8]

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[6] *See*, Case No. 2012-00226, *Application of Kentucky Power Company to Withdraw Its Tariff RTP Pending Submission by the Company and Approval by the Commission of a New Real-Time Pricing Tariff* (Ky. PSC Dec. 20, 2012), Final Order at p. 21.

[7] *Id. See also*, Kentucky Power's Tariff RTP (Experimental Real-Time Pricing Tariff) Original Sheet No. 30-3, stamped effective date June 29, 2010.

[8] Case No. 2012-00226, *Application of Kentucky Power Company to Withdraw Its Tariff RTP Pending Submission by the Company and Approval by the Commission of a New Real-Time Pricing Tariff* (Ky. PSC Dec. 20, 2012), ordering paragraph 3.

Turning to the merits of this matter, the Commission finds that 807 KAR 5:041, Section 9(2), squarely governs this matter. That regulation unequivocally requires an electric utility, like Kentucky Power, to treat each point of delivery as an independent customer and to meter the power delivered at each point of delivery. Kentucky Power's interpretation of the term "customer" to determine the number of participants under Tariff RTP is reasonable and consistent with the express language of 807 KAR 5:041, Section 9(2). In treating each billing account as an independent customer for purposes of Tariff RTP, Kentucky Power acted reasonably and lawfully within the bounds of the Commission's relevant regulation in declining to honor Air Liquide's application to take service under Tariff RTP.

IT IS THEREFORE ORDERED that Air Liquide's request to be allowed to take service under Kentucky Power's Tariff RTP is denied.

By the Commission

ENTERED
FEB 11 2013
KENTUCKY PUBLIC SERVICE COMMISSION

ATTEST:

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