

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC INVESTIGATION OF KENTUCKY	)	CASE NO.
POWER COMPANY'S DEVIATION FROM 807 KAR	)	2020-00134
5:054, SECTION 5(1)(A) AND (2)	)	

ORDER

The Commission, on its own motion, establishes this proceeding, pursuant to KRS 278.260 and KRS 278.390,<sup>1</sup> to provide Kentucky Power Company (Kentucky Power) an opportunity to present evidence to demonstrate why Kentucky Power's deviation from filing requirements under 807 KAR 5:054 granted by the Commission in Case No. 2000-00279<sup>2</sup> remains reasonable, allowing the Commission to determine whether the Order should be revoked or modified.

Kentucky Power is an investor-owned utility that provides electric service to 166,603 residential, commercial, and industrial customers in 21 counties in eastern Kentucky, with annual retail sales of 5,847,628 kilowatt-hours in 2018.<sup>3</sup>

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<sup>1</sup> KRS 278.390 provides, *inter alia*, that a Commission order continues in force until revoked or modified by the Commission. See *Com. ex rel. Stephens v. South Central Bell Tel. Co.*, 545 S.W.2d 927, 931 (Ky. 1976) ("It is as obvious as the acropolis of Athens that an order of the [C]ommission continues in force until revoked or modified by the [C]ommission.").

<sup>2</sup> Case No. 2000-00279, *Request of Kentucky Power Company d/b/a American Electric Power for Deviation from 807 KAR 5:054, Section 5(1)(a) and (2)* (Ky. PSC Aug. 4, 2000) (Final Order).

<sup>3</sup> Annual Report of Kentucky Power for Calendar Year Ending Dec. 31, 2018 (filed May 13, 2019) at 4, 5. Kentucky Power serves Boyd, Breathitt, Carter, Clay, Elliott, Fleming, Floyd, Greenup, Johnson, Knott, Lawrence, Leslie, Letcher, Lewis, Magoffin, Martin, Morgan, Owsley, Perry, Pike, and Rowan counties, Kentucky.

The regulations set forth in 807 KAR 5:054 were developed pursuant to Title II of the Public Utility Regulatory Policies Act of 1978 (PURPA), Section 210(f), which required the Commission to implement rules adopted by the Federal Energy Regulatory Commission (FERC) to encourage cogeneration and small power production. These rules require, *inter alia*, electric utilities to sell electricity to qualifying cogeneration and small power production facilities and to purchase electricity from such facilities.

Pursuant to 807 KAR 5:054, Section 5(1)(a), Kentucky Power is required to file data from which its avoided costs<sup>4</sup> may be derived biennially with the Commission. Pursuant to 807 KAR 5:054, Section 5(2), Kentucky Power is required to file estimated avoided costs on its system with respect to the energy component of its avoided costs, as well as its capacity plan for the next ten years.

The Commission's decision to grant Kentucky Power's request to deviate from 807 KAR 5:054, Section 5(1)(a) and (2), was based on Kentucky Power's assertion that it did not have any customers qualifying as small power production facilities or possessing cogeneration facilities. Specifically, in that Order, we found that the avoided cost data filed pursuant to 807 KAR 5:054, Section 5(1)(a) and (2), was "not essential" due to Kentucky Power's lack of experience with customers with their own generation facilities.<sup>5</sup> The Commission directed Kentucky Power to maintain its records so that the information necessary to create the avoided cost reports specified by 807 KAR 5:054, Section 5(1)(a)

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<sup>4</sup> 807 KAR 5:054, Section 1(1): Avoided costs are incremental costs to an electric utility of electric energy or capacity, or both, which, if not for the purchase from a qualifying facility, the utility would generate itself or purchase from another source.

<sup>5</sup> Case No. 2000-00279, Final Order at 2.

and (2), is available if the Commission or an interested person requested the information in the future.

The Commission finds that, given the passage of time, that Kentucky Power should present evidence to demonstrate that its deviation from the filing requirements of 807 KAR 5:054, Section 5(1)(a) and (2), continues to be reasonable. Notably, upon further review, the Commission finds that as opposed to many of its other regulations, 807 KAR 5:054 does not have a section explicitly providing for a waiver or deviation from its provisions upon a showing of good cause. Finally, the Commission notes that a contributing factor for the impetus as it relates to timing in initiating this investigation, but not its decision to initiate it, is Kentucky Power's public comment and proposal in Case No. 2019-00256<sup>6</sup> that "Net metering customer-generators could sell all of the energy generated by the systems at market-based prices."<sup>7</sup> Although the Commission has previously determined that market energy price may be a utility's avoided energy rate,<sup>8</sup> that determination has not been made as it relates to Kentucky Power. Insofar as an examination of Kentucky Power's avoided cost data becomes necessary in the context of determining rates and service related to the implementation of the amended Net Metering Act,<sup>9</sup> the timing of this investigation is directly implicated.

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<sup>6</sup> Case No. 2019-00256, *Electronic Consideration of the Implementation of the Net Metering Act* (Ky. PSC Dec. 18, 2019).

<sup>7</sup> Case No. 2019-00256, Kentucky Power Company's Initial Comments (filed Oct. 15, 2019) at 14.

<sup>8</sup> Case No. 2017-00212, *Tariff Filing Of East Kentucky Power Cooperative, Inc. and Its Member Distribution Cooperatives for Approval Of Proposed Changes to Their Qualified Cogeneration and Small Power Production Facilities Tariffs and The Implementation of Separate Tariffs for Power Purchases from Solar Generation Qualifying Facilities* (Ky. PSC Mar. 27, 2018) at 8.

<sup>9</sup> KRS 278.465-.467.

IT IS THEREFORE ORDERED that:

1. This proceeding is established to investigate the reasonableness of permitting Kentucky Power to deviate from the filing requirements of 807 KAR 5:054, Section 5(1)(a) and (2).

2. Within 20 days of the date of entry of this Order, Kentucky Power shall submit to the Commission a written response to this Order.

3. Within 20 days of the date of entry of this Order, Kentucky Power shall file with the Commission avoided cost reports specified by 807 KAR 5:054, Section 5(1)(a) and (2), for 2010 through 2019.

4. The Commission directs Kentucky Power to the Commission's March 16, 2020 and March 24, 2020 Orders in Case No. 2020-00085<sup>10</sup> regarding filings with the Commission. The Commission expects the original documents to be filed with the Commission within 30 days of the lifting of the current state of emergency.

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<sup>10</sup> Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19* (Ky. PSC Mar. 16, 2020), Order at 5–6. Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19* (Ky. PSC Mar. 24, 2020), Order at 1–3.

By the Commission



ATTEST:

A handwritten signature in blue ink, consisting of stylized initials and a surname, positioned above a horizontal line.

Executive Director

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