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October 22, 2012

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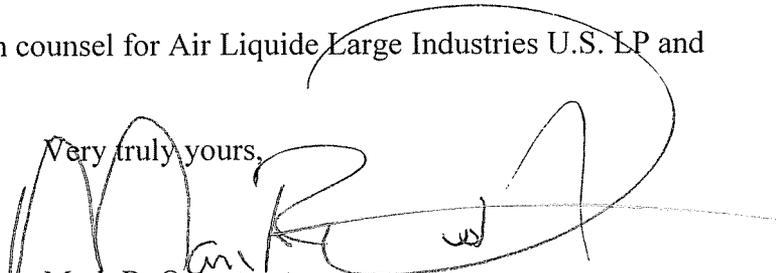
RE: Case No. 2012-00351

Dear Mr. Derouen:

Enclosed please find and accept for filing the original and ten copies of Kentucky Power Company's brief in this matter, along with the affidavit of Ranie K. Wohnhas.

Copies of both are being served on counsel for Air Liquide Large Industries U.S. LP and the Office of the Attorney General.

Very truly yours,


Mark R. Overstreet

MRO

Enclosures

cc: Michael L. Kurtz
Dennis G. Howard II

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

Air Liquide Large Industries U.S. LP)	
)	
COMPLAINANT)	
v.)	Case No. 2012-00351
)	
Kentucky Power Company)	
)	
DEFENDANT)	

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BRIEF OF KENTUCKY POWER COMPANY

Kentucky Power Company states for its brief:

Introduction

Air Liquide Large Industries U.S. LP's complaint must be dismissed. Its claim that there are only four customers currently taking service under Tariff RTP, and hence that Air Liquide is eligible to take service under the tariff, is contrary the decisions and regulations of the Public Service Commission of Kentucky. To the extent the Commission believes the tariff language is ambiguous, the term's use by the Company in its filings with the Commission and other regulatory bodies, along with its use in other tariff provisions, reinforces the Company's construction of the term "customer."

Air Liquide's complaint should be dismissed with prejudice.

Factual Background

1. The Development Of Tariff RTP And The Company's Use Of The Term "Customer" In Its Tariffs And The Conduct Of Its Business.

The Commission approved Kentucky Power's Tariff RTP by Order dated February 1, 2008.¹ The Commission's Order approving the tariff repeatedly refers to the tariff as a pilot program.² That is, it is a limited program for the purpose of gauging the efficacy of the tariff and the attractiveness of real-time pricing to Kentucky Power's customers. Thus, the Commission found Kentucky Power's educational program, which was limited to participating customers, was reasonable notwithstanding the Attorney General's criticism that the program should be expanded to include all customers.³ In so doing, the Commission noted Kentucky Power's explanation that: "the broader educational program suggested by the AG is not appropriate for a pilot program and is beyond the goals set out in the Commission's directive."⁴ This limitation on the scope of the program is consistent with the Commission's earlier Order directing Kentucky Power and two other utilities "to develop voluntary, pilot real time pricing programs for their large commercial and industrial customers."⁵

The Company also was clear that Tariff RTP was to be a limited offering. The tariff itself repeatedly describes the program as experimental.⁶ Most pertinent to this dispute, Tariff

¹ *In The Matter Of: Application of Kentucky Power Company For An Order Approving A Pilot Real Time-Pricing Program For Large Commercial And Industrial Customers*, Case No. 2007-00166 at 14 (Ky. P.S.C. February 1, 2008).

² *Id.* at 1, 6, 7, 8, 9, 11, 13, 14.

³ *Id.* at 8.

⁴ *Id.*

⁵ *In The Matter Of: Consideration Of The Requirements Of The Federal Energy Policy Act Of 2005 Regarding Time-Based Metering, Demand Response, And Interconnection*, Case No. 2006-00045 at 13 (Ky. P.S.C. December 21, 2006).

⁶ See e.g. Direct Testimony of Larry C. Foust, Exhibit LCF-1, *In The Matter Of: Application of Kentucky Power Company For An Order Approving A Pilot Real Time-Pricing Program For Large Commercial And Industrial*

RTP is limited to ten customers: “The experimental tariff will be limited to a maximum of ten customers.”⁷

This ten customer limit was necessary to limit the costs to be incurred in connection with the experiment. When asked why the pilot was limited to ten customers, the Company explained:

Kentucky Power limited the number of participants in the pilot program to limit the amount of fixed expenses associated with the pilot program. Ten participants allow the Company to manually bill the participating customers rather than develop an expensive computer billing program that would be required for a large number of customers.⁸

The Company did not casually choose the term “customer” to express the limit on participation in the pilot program. “Customer” has a well-understood and long-established meaning in the electric utility industry.⁹ By custom and usage the term “customer” is understood to mean billing account.¹⁰ A separate billing account in turn is maintained for each point of delivery.¹¹

In reporting customer numbers to state and federal regulatory officials, the Company defines the term customer in the same fashion it uses in administering its tariffs, including Tariff

Customers, Case No. 2007-00166 (Ky. P.S.C. Filed April 20, 2007) (Availability of Service, “Available for Real-Time Pricing (RTP) on an experimental basis ...”; Program Description “The Experimental Real-Time Pricing Tariff is voluntary and will be offered on a pilot basis for a three year period.”)

⁷ *Id.* Availability of Service; Tariff RTP Availability of Service. *See also* Direct Testimony of Larry C. Foust, *In The Matter Of: Application of Kentucky Power Company For An Order Approving A Pilot Real Time-Pricing Program For Large Commercial And Industrial Customers*, Case No. 2007-00166 at 3 (Ky. P.S.C. Filed April 20, 2007) (“The Company proposes to limit the experiment to 10 customers.”)

⁸ Kentucky Power Company’s Response to Staff’s First Set of Data Requests, Item 2(b), *In The Matter Of: Application of Kentucky Power Company For An Order Approving A Pilot Real Time-Pricing Program For Large Commercial And Industrial Customers*, Case No. 2007-00166 at 3 (Ky. P.S.C. Filed June 5, 2007).

⁹ Affidavit of Ranie K. Wohnhas at ¶ 5.

¹⁰ *Id.*

¹¹ *Id.* at ¶ 6.

RTP.¹² Thus, the number of customers listed in Kentucky Power’s annual report filed with the Commission pursuant to 807 KAR 5:006, Section 2(1) is calculated based upon the number of customer locations and not unique customer entities.¹³ Likewise, in reporting customer outages the Company reports the number of billing accounts without service.¹⁴ This same definition of the term “customer” is used by Kentucky Power in its Annual Report (Form 10-K) filed with the Securities and Exchange Commission.¹⁵

The Company’s well-understood and commonly applied definition of “customer” also finds application in other provisions of Kentucky Power’s tariffs. Customer deposits are calculated based upon the usage associated with each individual billing account.¹⁶ If an entity has multiple billing accounts each is a separate customer and the deposit requirements are applied individually with respect to each.¹⁷ Under Tariff QP and Tariff CIP-TOD the service charge and minimum charge are calculated with respect to each individual billing account.¹⁸ Likewise, the determination of whether a customer meets the minimum demand requirements to take service under Tariff QP or Tariff CIP-TOD are calculated individually, and not based upon the total aggregated demand of a single entity.¹⁹

The Company’s rates likewise are designed using this well-understood definition of the term “customer.” For example, when designing the service charge applicable to a particular rate

¹² *Id.* at ¶ 8.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at ¶ 12.

¹⁷ *Id.*

¹⁸ *Id.* at ¶ 10.

¹⁹ *Id.*

classification the Company divides the total revenue to be collected from each tariff class by the number of billing accounts taking service under the class.²⁰ Thus, in approving the service charge, the Commission in effect is approving a rate based upon the Company's well-established definition of "customer."

Finally, provisions of the Company's tariffs other than Tariff RTP also reflect this commonly used definition of "customer." In particular, those portions of Tariff SGS, Tariff MGS, Tariff LGS, Tariff QP, and Tariff CIP-TOD describing the availability of the tariff each employ the Company's well-established definition of the term "customer."²¹ Similarly, in applying the energy rates under Tariff SGS and MGS Kentucky Power uses the energy the energy consumption at each point of delivery, without regard to whether one or more of the points of delivery are maintained by the same entity.²²

2. Events Leading To This Dispute.

Earlier this year the Company received inquiries from a limited number of its industrial customers regarding service under Tariff RTP.²³ Company representatives discussed the tariff with interested customers, and on at least one occasion met with the customer to assist the customer in its investigation of whether to take service under Tariff RTP.²⁴ In addition, the Company provided billing analyses to customers requesting them.²⁵ Kentucky Power also provided a contract addendum, which is required to take service under Tariff RTP, to each

²⁰ *Id.* at ¶ 11.

²¹ *Id.* at ¶¶ 9-10.

²² *Id.* at ¶ 13.

²³ *Id.* at ¶ 15.

²⁴ *Id.*

²⁵ *Id.*

customer requesting to take service under Tariff RTP.²⁶ Upon receipt of an executed addendum, the customer was added to the RTP queue in the order in which the executed addenda were received.²⁷

Executed addenda were received from customers seeking to take service under Tariff RTP in the following order:²⁸

<u>Date Addendum Received</u>	<u>Customer</u>
May 11, 2012	Catlettsburg Refining LLC (Located near Catlettsburg, Kentucky)
June 12, 2012	AK Steel Corporation Inc. (Located near Ashland, Boyd County, Kentucky)
June 14, 2012	EQT Gathering LLC – Oliver Compressor Station (Located near Avawam, Perry County, Kentucky)
June 14, 2012	EQT Gathering LLC – Blackberry Compressor Station (Located near Ransom, Pike County, Kentucky)
June 14, 2012	EQT Gathering LLC – Myra Compressor Station (Located near Myra, Pike County, Kentucky)
June 14, 2012	EQT Gathering LLC – Perry Compressor Station (Located near Jeff, Perry County, Kentucky)
June 14, 2012	EQT Gathering LLC – Right Beaver Compressor Station (Located near Dema, Floyd County, Kentucky)
June 14, 2012	EQT Gathering LLC – Rockhouse Compressor Station (Located near Kimber, Pike County, Kentucky)
June 14, 2012	EQT Gathering LLC – Jenkins Compressor Station (Located near Jenkins, Letcher County, Kentucky)
June 20, 2012	Air Products And Chemicals Inc. (Located near Ashland, Boyd County, Kentucky)

EQT Gathering LLC – Derby Compressor Station also submitted an executed addendum to take service under Tariff RTP. The Company refused to execute the addendum because the

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* at ¶ 16.

customer's demand was less than one MW, and hence it was not eligible to receive service under the tariff.²⁹ On June 28, 2012, the Company received an addendum executed by Air Liquide seeking service under Tariff RTP.³⁰ Because ten customers were slated to take service under Tariff RTP, Air Liquide's request was declined in conformity with the terms of the tariff.³¹

Air Liquide filed its complaint on July 20, 2012. At bottom, Air Liquide argues that the term "customer" as used in Tariff RTP should be interpreted to mean a single eligible commercial or industrial entity taking service from Kentucky Power under Tariff QP or Tariff CIP-TOD without regard to the number of billing accounts in that entity's name or the location of the points of delivery. Under Air Liquide's construction of the term "customer," the seven compressor stations which are located in four different counties, would be treated as a single customer. Such a construction would reduce the number of customers taking service under Tariff RTP at the time Air Liquide submitted its executed addendum to four, thereby opening slots in the queue for six additional customers, including Air Liquide.

Air Liquide premises its complaint on the definition of "customer" set out at 807 KAR 5:006, Section 1(2).³² It also points to what it argues is the use of the term "customer" by Kentucky Power in five tariff provisions that Air Liquide contends is consistent with its preferred definition of the term.³³ Finally, Air Liquide relies upon the dictionary definition of "customer" to support its claim.³⁴

²⁹ *Id.* at ¶ 17.

³⁰ *Id.* at ¶ 18.

³¹ *Id.*

³² Complaint, Air Liquide Large Industries U.S. LP v. Kentucky Power Company, Case No. 2012-00351 at ¶¶ 24, 31 (Filed July 20, 2012).

³³ *Id.* at ¶¶ 25-29, 31.

³⁴ *Id.* at 30-31.

Kentucky Power filed its answer on August 3, 2012.

By agreement, this matter is submitted for decision by the Commission on the parties' briefs and any additional evidence developed by affidavit.

Argument

1. The Company's Application Of The Term "Customer" As Used In Tariff RTP Conforms To The Commission's Regulations And Decisions.

- a. 807 KAR 5:041, Section 9(2) Governs The Construction Of The Term "Customer" As Used In Tariff RTP.

Regulation 41 of Chapter 5 of Title 807 of the Kentucky Administrative Regulations is expressly applicable to electric utilities. By its terms, it "establishes general rules which apply to electric utilities."³⁵ 807 KAR 5:041, Section 9(2) defines the term "customer" in a fashion consistent with its use in Tariff RTP:

The utility shall regard each point of delivery *as an independent customer* and meter the power delivered at each point. Combined meter readings shall not be taken at separate points, nor shall energy used by more than one residence or place of business be measured to obtain a lower rate.³⁶

Service to each of the seven compressor station customers is delivered to, and metered at, a separate point of delivery.³⁷ In conformity with 807 KAR 5:041, Section 9(2), Kentucky Power maintains a separate billing account for each of the compressor stations.³⁸ Thus, under the

³⁵ 807 KAR 5:041, "Necessity, Function, And Conformity."

³⁶ (emphasis supplied.)

³⁷ Affidavit of Ranie K. Wohnhas at ¶ 16.

³⁸ *Id.*

express language of the regulation the Company is required to “regard each point of delivery [and hence each compressor station] as an “independent customer.”³⁹

Commission decisions construing 807 KAR 5:041, Section 9(2) give effect to the plain language of the regulation and treat each point of delivery to an entity as an independent customer. In *In The Matter Of: Paducah Airport Corporation v. Jackson Purchase Electric Cooperative Corporation*,⁴⁰ for example, the Commission examined whether service to the airport corporation through 17 separate meters could be treated as service to a single customer so that a single bill could be rendered to the airport corporation. Although the utility did not oppose the airport’s request, the Commission nevertheless concluded that the airport had failed to demonstrate “unusual or compelling circumstances” to justify a deviation from the express language of 807 KAR 5:041, Section 9(2) so as to permit Jackson Purchase to treat each of the 17 points of delivery to the airport as a single customer.⁴¹

More recently, the Commission addressed a similar issue in *In The Matter Of: Revised Agreement For Electric Service Between Kentucky Utilities Company And The University Of Kentucky*.⁴² There, Kentucky Utilities sought Commission approval for a revised special contract with the university under which the utility would provide service through four delivery points. Kentucky Utilities also sought a deviation from 807 KAR 5:041, Section 9(2) so that it could treat the four delivery points as a single customer and render a single bill to the

³⁹ Treating each of the seven compressor stations as an independent customer conforms not only to the requirements of 807 KAR 5:041, Section 9(2), but is consistent with the plain meaning of the term. Indeed, nothing in Air Liquide’s complaint, or the authority upon which it purports to rely, is to the contrary.

⁴⁰ Case No. 92.345 (Ky. P.S.C. December 9, 1992).

⁴¹ *Id.* at 3.

⁴² Case No. 2012-00101 (Ky. P.S.C. March 29, 2012).

university.⁴³ Because the university operated a private distribution system connecting the four delivery points the Commission granted the deviation. In so doing, it explained, “[b]illing UK as a single customer requires a deviation from the provision of 807 KAR 5:041, Section (9)(2).”⁴⁴ Fundamental to the Commission’s decision is the recognition that absent a Commission granted deviation from the requirements of 807 KAR 5:041, Section 9(2), each delivery point (or billing account as termed by Kentucky Power) must be treated as a separate customer. This principle is identical to the definition of the term “customer” employed by the Company in administering Tariff RTP.

None of the ten customers taking service under Tariff RTP have sought or been granted a deviation from 807 KAR 5:041, Section 9(2). Thus, in treating the seven compressor stations as individual customers the Company acted in accordance with the Commission’s regulation and decisions. Accordingly, Kentucky Power properly refused to allow Air Liquide to take service under Tariff RTP, and Air Liquide’s complaint must be dismissed with prejudice.

b. Air Liquide’s Reliance Upon The Definition Of “Customer” Set Forth At 807 KAR 5:006, Section 1(2) Is Unavailing.

Air Liquide’s claim in large part rests upon the definition of “customer” contained at 807 KAR 5:006, Section 1(2). It provides:

“Customer” means any person, firm, corporation or body politic applying for or receiving service from any utility.

Air Liquide’s reliance upon the regulation is misplaced for two reasons.

First, the definition of “customer” contained in 807 KAR 5:006, Section 1(2) is inapposite to the question posed by Air Liquide’s complaint. At issue here is not whether the seven

⁴³ *Id.* at 1.

⁴⁴ *Id.* at 2. *Accord, In The Matter Of: An Agreement For Electric Service Between Kentucky Utilities Company And The University Of Kentucky*, Case No. 2003-00320 (Ky. P.S.C. August 29, 2003).

compressor stations, some of which are separated by at least 30 miles, are customers of Kentucky Power. Clearly they are.⁴⁵ Rather, at issue is whether the seven compressor stations constitute one customer or seven customers of Kentucky Power. Nothing in the regulation addresses the issue. Indeed, it is only by reading the terms “same” or “single” into the term being defined could the regulation be deemed even arguably applicable. Regulations must be applied as written, and an agency may not modify or expand a regulation, as Air Liquide urges here, by any form of administrative action.⁴⁶ Indeed, any effort to do so is “null, void, and unenforceable.”⁴⁷

Second, 807 KAR 5:006. Section 1(2) is a regulation of general application. Indeed, Regulation 6 of Chapter 5 of Title 807 of the Kentucky Administrative Regulations is labeled “general rules” in both the regulation’s heading and in its statement of “necessity, function and purpose.” By contrast, Regulation 41 of Chapter 5 of Title 807 of the Kentucky Administrative Regulations is limited to electric utilities.⁴⁸ Even if there were a conflict between 807 KAR 5:006, Section 1(2) and 807 KAR 5:041, Section 9(2) the former is inapplicable because 807 KAR 5:041, Section 9(2) as the more specific regulation controls.⁴⁹

Although not cited in Air Liquide’s complaint, Kentucky Power anticipates that Air Liquide may seek to rely upon the Commission’s decision in *In The Matter Of: 271 West Main*

⁴⁵ The only other provision of the regulation, 807 KAR 5:006, Section 1(1), defines the term “utility.” It thus appears the definitions set forth at 807 KAR 5:006, Section 1(1) and Section (2) are intended to distinguish between utilities and customers, and not, as Air Liquide would have it, to declare that a single entity with multiple points of service is to be considered a single customer.

⁴⁶ KRS 13A.130(1)(a); KRS 13A.130(1)(b).

⁴⁷ KRS 13A.130(2).

⁴⁸ 807 KAR 5:041, Necessity, Function, And Conformity.

⁴⁹ *Reisinger v. Grayhawk Corp.*, 860 S.w.2d 788, 790 (Ky. App. 1993) (“Even if we were to find a conflict to exist between §§ 5 and 17 of the Board Regulations, we would be required to find the former controlling here. It is axiomatic that where two or more statutes or regulations are directed to the same subject matter, the more specific regulation controls the more general one.”)

*Street, LLC v. Kentucky Utilities Company*⁵⁰ to support its claim. *271 West Main Street, LLC* involved the effort by the new owner of a commercial building to continue to receive service at the same rate received by the former owner which had been “grandfathered” under an earlier tariff.⁵¹ The new owner, which was an entity distinct from the former owner, relied upon foreign authority to argue that for purposes of the tariff the “customer” was the service location without regard to the fact that it was serially owned by two separate entities.⁵² Rejecting the new owner’s foreign authority, the Commission instead looked to the language of the tariff and 807 KAR 5:006, Section 1(2) to conclude that the term customer as used in the tariff meant the entity receiving service.⁵³

Like the regulation upon which it is premised, the Commission’s decision in *271 West Main Street, LLC* is inapposite. Most fundamentally, *271 West Main Street, LLC* addressed a question different from that presented here. At issue in *271 West Main Street, LLC* was whether two otherwise unrelated business entities could be considered the same “customer” for the purposes of the grandfather clause of Kentucky Utilities’ tariff simply because they serially owned the same commercial building. Here, the question presented is whether seven compressor stations owned simultaneously by the same entity but located miles apart, sometimes in different counties, must be treated as a single customer. As a result, *271 West Main Street, LLC* presents the mirror image of the question before the Commission here. Likewise, nothing in the decisional principle upon which the Order was premised – that different business entities serially occupying the same business location are not the same customer for purposes a

⁵⁰ Case No. 2005-00389 (Ky. P.S.C. October 18, 2006).

⁵¹ *Id.* at 1-2.

⁵² *Id.* at 3.

⁵³ *Id.*

grandfather provision of a tariff – requires the Commission to conclude that the seven compressor stations located miles apart should be treated as a single customer for purposes of a different tariff.

Nor does the decision in *271 West Main Street, LLC* undermine 807 KAR 5:041, Section 9(2), or the fact that its application to this case requires the dismissal of Air Liquide’s complaint. Indeed, the regulation, which provides “[t]he utility shall regard each point of delivery as an independent customer...,” had no applicability to the question before the Commission in *271 West Main Street, LLC* and thus was never addressed by the Commission.

2. The Company’s Tariffs Do Not Support Air Liquide’s Claim.

Air Liquide also points to five provisions of Kentucky Power’s tariff that it claims distinguish between a “customer” and a billing account.⁵⁴ Its argument fails for four reasons.

First, at least three of the five provisions noted by Air Liquide⁵⁵ cannot even arguably be read to distinguish between the term “customer” and billing account. For example, Air Liquide quotes the following from Tariff Sheet 2-4 (Terms and Conditions of Service):

Any one delayed payment billed against the Customer for non-payment of bill may be remitted, provided the Customer’s previous accounts are paid in full and provided no delayed payment or forfeited discount has been remitted under this clause during the preceding 6 months.⁵⁶

But nothing in the plain language of the regulation even hints at a distinction between the terms “customer” and “billing account.” Whether defined as advocated by Air Liquide, or consistent with Kentucky Power’s construction of the term, a customer will always have an account. The

⁵⁴ Complaint, Air Liquide Large Industries U.S. LP v. Kentucky Power Company, Case No. 2012-00351 at ¶¶ 25-29 (Filed July 20, 2012).

⁵⁵ Complaint, Air Liquide Large Industries U.S. LP v. Kentucky Power Company, Case No. 2012-00351 at ¶¶ 27-29 (Filed July 20, 2012).

⁵⁶ *Id* at ¶ 27.

same holds true for the language quoted in paragraph 28 of the complaint: “The tariffs of the Company are net if the account of the Customer is paid within the time limit specified in the tariff applicable to the Customer’s service.”

Even less availing is the final tariff provision relied upon by Air Liquide:

This tariff is due and payable in full on or before the date stated on the bill. On all accounts not so paid, an additional Charge of 5% of the unpaid balance will be made.

Not only is there no distinction drawn between the term “customers” and billing account in the tariff provision, the term “customer” is nowhere to be found in the quoted language.

Second, neither of the first two provisions quoted by Air Liquide⁵⁷ purports to provide a definition of the term “customer” as used in the Terms and Conditions Of Service, where the provisions are found, much less for Tariff RTP. Moreover, even if Air Liquide were correct in its assertion that the first two quoted provisions distinguish between “customer” and billing account, and it is far from clear that they do, such definition by implication in two sentences in a document totaling 153 pages is hardly suggestive, much less persuasive, of how the term should be interpreted in an unrelated tariff provision. This is particularly true in light of the fact that the term “customer” is used repeatedly throughout the tariff without drawing any distinction between “customer” and “billing account.” This occurs not only in the final three instances cited by Air Liquide and discussed above, but also in numerous other places in the Company’s tariff.⁵⁸

⁵⁷ Complaint, Air Liquide Large Industries U.S. LP v. Kentucky Power Company, Case No. 2012-00351 at ¶¶ 25-26 (Filed July 20, 2012).

⁵⁸ See e.g. Terms and Conditions of Service, Section 4(A) (Tariff Sheet 2-2); “Availability of Service” Tariff SGS, Tariff Sheet 7-1; “Availability of Service” Tariff MGS, Tariff Sheet 8-1; “Availability of Service” Tariff LGS, Tariff Sheet 9-1; “Availability of Service,” Tariff QP, Tariff Sheet 10-1; “Availability of Service,” Tariff CIP-TOD, Tariff Sheet 11-1.

Third, even if the Commission were to credit Air Liquide’s definition by implication argument, it at best creates an ambiguity regarding the meaning of the term “customer” in light of the multiple instances where no such distinction is drawn between the terms customer and billing account. Tariffs are to be interpreted using the same rules governing the interpretation of contracts and other instruments.⁵⁹ Chief among these is the requirement that the instrument be interpreted to give effect to the intent of the parties in light of the circumstances surrounding the instrument at the time of its execution.⁶⁰ Where, as with a court order or tariff, there is only one party to the instrument, the intent to be considered is that of the party promulgating the instrument.⁶¹

The term “customer” has a well-established meaning in Kentucky Power’s regulatory filings.⁶² Kentucky Power uses the term in its Annual Report filed with the Commission, in its Annual Report filed with the Securities and Exchange Commission, and in reporting storm outages to mean billing accounts.⁶³ Thus, any ambiguity should be resolved in favor of Kentucky Power’s use of the term in other regulatory filings.

Finally, any claimed inconsistent use of the term “customer” in other provisions of the Company’s tariffs should yield to the express and directly applicable provisions of 807 KAR 5:041, Section 9(2). That regulation makes clear that each point of service (or in Kentucky Power’s parlance billing account) is an independent customer.

⁵⁹ *Louisville Water Co. v. Louisville, Henderson & St. L. Ry. Co.*, 110 S.W.2d 668, 670 (Ky. 1937).

⁶⁰ *Roberts v. Conley*, 626 S.W.2d 634, 638 (Ky. 1981).

⁶¹ *Crouch v. Crouch*, 201 S.W.3d 463, 465 (Ky. 2006) (court order).

⁶² Affidavit of Ranie K. Wohnhas at ¶ 5.

⁶³ *Id.* at ¶¶ 5, 7-8.

3. Air Liquide's Definition Of The Term "Customer" Is Inconsistent With The Term's Use Throughout The Company's Tariffs.⁶⁴

The term "customer" appears throughout the Company's tariffs. Construing the term as Air Liquide suggests, would result in incongruities, yield results contrary to long-standing Company practice and intent, and would require the Company to violate the Commission's regulations.

An example of the incongruities produced by Air Liquide's definition of "customer" is its application to the Company's tariff governing deposits. The tariff provides in part: "The Company will not pay interest on deposits after discontinuance of service."⁶⁵ If the term "customer" were defined as argued by Air Liquide, a single entity receiving service at multiple delivery points would continue to be paid interest on the deposit for a delivery point to which service was discontinued because the entity continued to receive service at other delivery points. At best this would render the tariff provision meaningless. At worst, if the term were defined as urged by Air Liquide, the Company would be required to discriminate among "customers" based upon the number of delivery points at which the entity receives service.

Air Liquide's definition of the term "customer" also would yield results contrary to industry practice and the Company's well-established administration of its tariffs.⁶⁶ For example, Kentucky Power's tariffs include three General Service classifications based upon the

⁶⁴ Tariff RTP by definition is an experimental program limited to ten customers. Direct Testimony of Larry C. Foust, Exhibit LCF-1, *In The Matter Of: Application of Kentucky Power Company For An Order Approving A Pilot Real Time-Pricing Program For Large Commercial And Industrial Customers*, Case No. 2007-00166 (Ky. P.S.C. Filed April 20, 2007). It was necessary to limit participation in the program to ten customers to permit manual billing and thereby avoid the computer programming expenses that would be required for a larger number of customer bills. Kentucky Power Company's Response to Staff's First Set of Data Requests, Item 2(b), *In The Matter Of: Application of Kentucky Power Company For An Order Approving A Pilot Real Time-Pricing Program For Large Commercial And Industrial Customers*, Case No. 2007-00166 at 3 (Ky. P.S.C. Filed June 5, 2007). Air Liquide's expansive definition of "customer," with the possibility, as in the case of the seven compressor stations, of multiple bills being rendered to a single "customer" would undermine this effort.

⁶⁵ Terms and Conditions of Service, Section 4(A) (Tariff Sheet 2-2).

⁶⁶ Affidavit of Ranie K. Wohnhas at ¶ 5.

customers' average monthly demand and maximum monthly demand. Customers otherwise qualifying for service under one of the General Service tariffs are assigned to the Small General Service Tariff (Tariff SGS),⁶⁷ the Medium General Service tariff (Tariff MGS),⁶⁸ or the Large General Service Tariff, (Tariff LGS)⁶⁹ based upon their demand.⁷⁰ In calculating a customer's demand for purposes of determining the applicable General Service tariff classification the Company uses the demand at each point of delivery.⁷¹ The Company does not aggregate demand for all points of delivery for a single entity.⁷² Rather, a separate billing account is maintained for each point of delivery.⁷³ That is, consistent with industry practice,⁷⁴ as well as the Company's intent in drafting the tariff,⁷⁵

Application of Air Liquide's definition of the term "customer" similarly yields results under Tariff QP and Tariff CIP-TOD at odds with Company's practice and its intent in drafting the regulations. Service is provided to commercial and industrial customers with demands less than 7,500 kW under Tariff QP.⁷⁶ Commercial and industrial customers with normal maximum

⁶⁷ Under "Availability of Service" Tariff SGS, Tariff Sheet 7-1, provides: "[a]vailable for general service to **customers** with average monthly demands less than 10KW and maximum monthly demands of less than 15 KW (excluding the demand served by the Load Management Time-of-Day provisions." (emphasis supplied).

⁶⁸ Under "Availability of Service" Tariff MGS, Tariff Sheet 8-1, provides: "[a]vailable for general service to **customers** with average monthly demands greater than 10KW or maximum monthly demands greater than 15 KW, but not more than 100 KW (excluding the demand served by the Load Management Time-of-Day provisions." (emphasis supplied).

⁶⁹ Under "Availability of Service" Tariff LGS, Tariff Sheet 9-1, provides: "[a]vailable for general service to **customers** with normal maximum demands of greater than 100 KW but not more than 1,000 KW (excluding the demand served by the Load Management Time-of-Day provisions." (emphasis supplied).

⁷⁰ Affidavit of Ranie K. Wohnhas at ¶ 9.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.* at ¶ 8. *See also*, "Availability of Service," Tariff QP, Tariff Sheet 10-1 ("Available for commercial and industrial **customers** with demands less than 7,500 KW.") (emphasis supplied).

demands of 7,500 kW and above receive service under Tariff CIP-TOD.⁷⁷ For purposes of determining whether service will be provided under Tariff QP or Tariff CIP-TOD the Company makes the determination on a delivery point by delivery point basis, and a separate billing account is established for each.⁷⁸ Kentucky Power does not aggregate the demand of multiple points of delivery even if the facilities being served are maintained by the same entity.⁷⁹ Yet, Air Liquide’s definition of the term “customer” would require the Company to do so in contravention of industry practice and Kentucky Power’s intent in drafting the tariff.⁸⁰

Particularly problematic is that Air Liquide’s definition, if applied to the term “customer” as used by Kentucky Power in Tariff SGS, Tariff MGS, Tariff QP, and Tariff CIP-TOD. would require the Company to violate 807 KAR 5:041, Section 9(2). The rates for energy under Tariff SGS and Tariff MGS decline with energy consumption.⁸¹ Air Liquide’s definition of “customer” would require that energy use at multiple points of service maintained by a single entity be aggregated for purpose of determining the energy rate to be applied under Tariff SGS and Tariff MGS. Doing so would allow the entity to receive a lower rate. It also would violate the express terms of 807 KAR 5:041, Section 9(2) which provides “[c]ombined meter readings shall not be taken at separate points”

The same result obtains for commercial and industrial customers seeking to obtain the lower demand rates under Tariff CIP-TOD. The per kW demand charge is less under Tariff CIP-TOD, which is available only to commercial and industrial customers with

⁷⁷ *Id.* See also, “Availability of Service,” Tariff CIP-TOD, Tariff Sheet 11-1 (“Available for commercial and industrial *customers* with normal maximum demands of 7,500 KW and above.”) (emphasis supplied).

⁷⁸ Affidavit of Ranie K. Wohnhas at ¶ 10.

⁷⁹ *Id.*

⁸⁰ *Id.* at ¶ 7.

⁸¹ *Id.* at ¶ 13.

demands of 7,500 kW and greater, than under Tariff QP, under which commercial and industrial customers with demands less than 7,500 kW receive service.⁸² Air Liquide's definition would permit an entity with multiple points of delivery, each of which was less than 7,500 kW and thus required to be served under Tariff QP, to aggregate its demand and thereby qualify to take service under Tariff CIP-TOD with its lower demand charge in violation of 807 KAR 5:041, Section 9(2).

4. Air Liquide's Proffered Dictionary Definitions Of The Term "Customer" Are Unavailing.

Air Liquide finally argues that "[d]ictionaries also define "customer" as a single person or an entire organization purchasing a service."⁸³ It then provides definitions from three dictionaries. Significantly, none of the definitions use the terms "single person" or "entire organization" as Air Liquide's argument would otherwise suggest. Rather, because the term defined is a singular noun, the definitions also employ singular nouns.

Moreover, like Air Liquide's reliance upon the definition set forth at 807 KAR 5:006, Section 1(2), its reliance on the dictionary definitions misses the point. At issue is not whether a customer (a singular noun) is a single organization or person. Rather, Air Liquide's complaint raises the issue of whether the seven compressor stations constitute one customer or seven customers of Kentucky Power. Not surprisingly, nothing in the dictionary definitions addresses the issue.

Finally, the specific provisions of 807 KAR 5:041, Section 9(2), which declare each point of a delivery an "independent customer" trump any inconsistent dictionary definition.

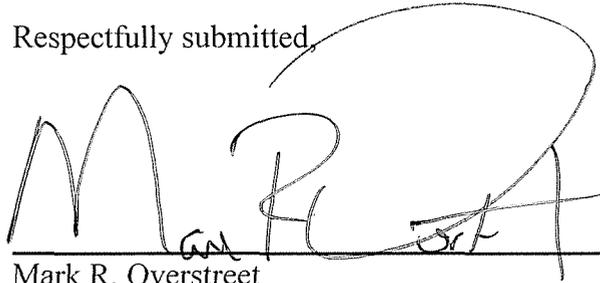
⁸² *Id.*

⁸³ Complaint, Air Liquide Large Industries U.S. LP v. Kentucky Power Company, Case No. 2012-00351 at ¶ 30 (Filed July 20, 2012).

Conclusion

Air Liquide's claim is contrary to 807 KAR 5:041, Section 9(2), the Commission's decisions, and the well-established meaning of the term "customer." Air Liquide's complaint must be dismissed with prejudice.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'M R Overstreet', written over a horizontal line.

Mark R. Overstreet
R. Benjamin Crittenden
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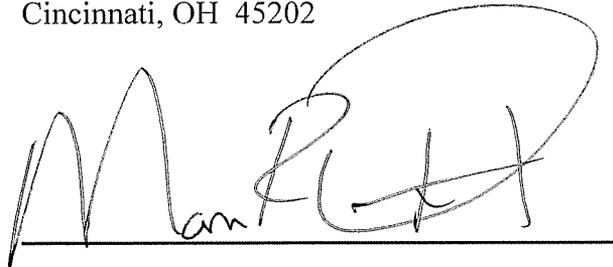
COUNSEL FOR KENTUCKY POWER
COMPANY

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing and the Affidavit of Ranie K. Wohnhas, was served by first class mail, postage prepaid, upon the following parties of record, this 22nd day of October, 2012.

Jennifer B. Hans
Dennis Howard II
Lawrence W. Cook
Assistant Attorneys General
Office for Rate Intervention
P. O. Box 2000
Frankfort, KY 40602-2000

Michael L. Kurtz
Kurt J. Boehm
Boehm, Kurtz & Lowry
Suite 1510
36 East Seventh Street
Cincinnati, OH 45202

A handwritten signature in black ink, appearing to read "Mark R. Overstreet", written over a horizontal line. The signature is stylized and cursive.

Mark R. Overstreet

capacity I supervised all billing and collection activity for the Company. In 1998, I transferred to Appalachian Power Company (“APCo”) and worked in rates. In 2001, I transferred to the AEPSC and was employed as a Senior Rate Consultant. In July 2004, I assumed the position of Manager, Business Operations Support for Kentucky Power and was promoted to Director in April 2006. I was promoted to my current position as Managing Director, Regulatory and Finance effective September 1, 2010.

3. In my capacity as Managing Director, Regulatory and Finance, I am primarily responsible for managing the Company’s regulatory and financial strategy. This includes planning and executing rate filings with both federal and state regulatory agencies and certificate of public convenience and necessity filings before the Public Service Commission of Kentucky. I am also responsible for managing the Company’s financial operating plans, including various capital and operational and maintenance budgets which interact with all other AEP organizations affecting the Company’s performance.

4. As part of my responsibilities as Managing Director, Regulatory and Finance, for Kentucky Power I have access and managing responsibility of the Company’s books and records. I also regularly work with employees of AEPSC. Among the AEPSC personnel I regularly work with are those persons who have responsibility for the preparation of tariffs for the AEP operating companies, including Kentucky Power.

5. 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 a billing account.

6. In accordance with 807 KAR 5:041, Section 9(2), the Company treats each point of delivery as an “independent customer.” In turn, a separate billing account is maintained for each “independent customer.”

7. The term “customer” appears throughout the Company’s tariffs. Based upon my 34 years of experience in electric utility industry, including 33 years with the Company and other AEP subsidiaries, as well as my understanding of industry practice generally, the term “customer” has been understood and applied by the Company in drafting and administering its tariffs, including Tariff RTP, to mean billing account (or point of delivery).

8. In reporting customer numbers to state and federal regulatory officials, the Company defines the term customer in the same fashion it uses in administering its tariffs, including Tariff RTP. Specifically, the Company reports the number of billing accounts (which is coincident with points of delivery) when reporting customer numbers to state and federal regulatory agencies. These include the customer numbers filed with the Commission in connection with the Company’s annual report pursuant 807 KAR 5:006, Section 2(1). Similarly, in reporting customer outages the Company reports the number of billing accounts without service. Other examples of the Company’s use of its total billing accounts to report customer numbers are its Form 10-K filed with the Securities and Exchange Commission.

9. The Company’s tariffs include three General Service classifications. Each otherwise qualifying customer is assigned to one of the three General Service tariffs based upon the customer’s average monthly demand and maximum monthly demand. Customers are eligible to take service under the Small General Service Tariff (Tariff SGS), Tariff Pages 7-1 to 7-2, if its average monthly demand is less than 10 kW, and its maximum monthly demand is less than 15

kW.¹ Customers with average monthly demands greater than 10 kW, or maximum monthly demands greater than 15 kW, but not more than 100 kW, may take service under the Medium General Service tariff (Tariff MGS), Tariff Pages 8-1 to 8-3.² The Large General Service tariff, (Tariff LGS), Tariff Pages 9-1 to 9-3, is applicable to eligible customers with normal maximum demands greater than 100 kW but not exceeding 1,000 kW.³ In determining the applicable tariff classification for customers otherwise eligible to take service under one of its General Service tariffs the Company does so based upon the demand at each point of delivery. The Company does not aggregate demand for all points of delivery for a single entity. Rather, a separate billing account is maintained for each point of delivery. Thus, in administering its tariffs Kentucky Power regularly defines the term “customer” to mean billing account. This definition is consistent with my understanding of industry practice as well as the Company’s intent in drafting its tariffs.

10. Service is provided to commercial and industrial customers with demands less than 7,500 kW under Tariff QP.⁴ Commercial and industrial customers with normal maximum demands of 7,500 kW and above receive service under Tariff CIP-TOD.⁵ For purposes of determining whether service will be provided under Tariff QP or Tariff CIP-TOD the Company

¹ “Availability of Service” Tariff SGS, Tariff Sheet 7-1 (“Available for general service to *customers* with average monthly demands less than 10KW and maximum monthly demands of less than 15 KW (excluding the demand served by the Load Management Time-of-Day provisions.”)) (emphasis supplied).

² “Availability of Service” Tariff MGS, Tariff Sheet 8-1 (“Available for general service to *customers* with average monthly demands greater than 10KW or maximum monthly demands greater than 15 KW, but not more than 100 KW (excluding the demand served by the Load Management Time-of-Day provisions.”)) (emphasis supplied).

³ “Availability of Service” Tariff LGS, Tariff Sheet 9-1, (“Available for general service to *customers* with normal maximum demands of greater than 100 KW but not more than 1,000 KW (excluding the demand served by the Load Management Time-of-Day provisions.”)) (emphasis supplied).

⁴ “Availability of Service,” Tariff QP, Tariff Sheet 10-1 (“Available for commercial and industrial *customers* with demands less than 7,500 KW.”) (emphasis supplied).

⁵ “Availability of Service,” Tariff CIP-TOD, Tariff Sheet 11-1 (“Available for commercial and industrial *customers* with normal maximum demands of 7,500 KW and above.”) (emphasis supplied).

makes the determination on a delivery point by delivery point basis, and a separate billing account is established for each. Kentucky Power does not aggregate the demand of multiple points of delivery even if the facilities being served are maintained by the same entity.

11. When designing the service charge applicable to a particular rate classification, the company divides the total revenue to be collected from each tariff class by the number of billing accounts taking service under the class.

12. Customer deposits are calculated based upon the usage associated with each individual billing account. If an entity has multiple billing accounts each account is considered a separate customer, and the deposit requirements are applied individually with respect to each. Under Tariff QP and Tariff CIP-TOD the service charge and minimum charge also are calculated with respect to each individual billing account. Likewise, the determination of whether a customer meets the minimum demand requirements to take service under Tariff QP or Tariff CIP-TOD are calculated individually, and not based upon the total aggregated demand of a single entity.

13. The rates for energy under Tariff SGS and Tariff MGS decline with energy consumption.⁶ For purposes of applying the proper energy rate under Tariff SGS and Tariff MGS the Company calculates consumption on a delivery point by delivery point basis. Kentucky Power does not aggregate the energy consumption of multiple points of delivery even if the facilities being served are maintained by the same entity.

14. Because it is an experimental pilot tariff, and to avoid the necessity of incurring the additional costs required to create an automated billing system for Tariff RTP, Tariff RTP is limited to ten customers.

⁶ "Rate," Tariff SGS, Tariff Sheet 7-2; "Rate, Tariff MGS, Tariff Sheet 8-1.

15. Earlier this year interest was expressed by a limited number of Kentucky Power customers in taking service under Tariff RTP. Company representatives discussed the tariff with interested customers, and on at least one occasion met with the customer to assist the customer in its investigation of whether to take service under Tariff RTP. In addition, the Company provided billing analyses to customers requesting them. Kentucky Power also provided a contract addendum, which is required to take service under Tariff RTP, to each customer requesting to take service under Tariff RTP.

16. The ten positions in the Tariff RTP queue were filled in the order in which executed RTP contract addenda were received by Kentucky Power. The Company's records reflect that it received executed addenda as follows:

<u>Date Addendum Received</u>	<u>Customer</u>
May 11, 2012	Catlettsburg Refining LLC, located near Catlettsburg, Kentucky
June 12, 2012	AK Steel Corporation Inc., located near Ashland, Boyd County, Kentucky
June 14, 2012	EQT Gathering LLC – Oliver Compressor Station, located near Avawam, Perry County, Kentucky
June 14, 2012	EQT Gathering LLC – Blackberry Compressor Station, located near Ransom, Pike County, Kentucky
June 14, 2012	EQT Gathering LLC – Myra Compressor Station, located near Myra, Pike County, Kentucky
June 14, 2012	EQT Gathering LLC – Perry Compressor Station, located near Jeff, Perry County, Kentucky
June 14, 2012	EQT Gathering LLC – Right Beaver Compressor Station, located near Dema, Floyd County, Kentucky
June 14, 2012	EQT Gathering LLC – Rockhouse Compressor Station, located near Kimper, Pike County, Kentucky
June 14, 2012	EQT Gathering LLC – Jenkins Compressor Station, located

<u>Date Addendum Received</u>	<u>Customer</u>
	near Jenkins, Letcher County, Kentucky
June 20, 2012	Air Products And Chemicals Inc., located near Ashland, Boyd County, Kentucky

Service to each of the seven compressor station customers is delivered to, and metered at, a separate point of delivery. In conformity with 807 KAR 5:041, Section 9(2), Kentucky Power maintains a separate billing account for each of the compressor stations.

17. In addition to these ten customers, EQT Gathering LLC – Derby Compressor Station also submitted an executed addendum to take service under Tariff RTP. The Company refused to execute the addendum because the customer’s demand was less than one MW, and hence it was not eligible to receive service under the tariff.

18. On June 28, 2012, the Company received an addendum executed by Air Liquide seeking service under Tariff RTP. Air Liquide’s request was declined because ten customers were at that time taking service under Tariff RTP.

FURTHER THE AFFIANT SAYETH NAUGHT.



 Ranie K. Wohnhas

COMMONWEALTH OF KENTUCKY)
)
COUNTY OF FRANKLIN)

Ranie K. Wohnhas, being personally known to me, was duly sworn, and thereafter subscribed and swore to the foregoing affidavit before me this 22nd day of October, 2012.

My commission expires:

January 13, 2013

Judy K. Resquist
NOTARY PUBLIC

[SEAL]