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OCT 23 2012

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**Via Overnight Mail**

October 22, 2012

Mr. Jeff Derouen, Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard  
Frankfort, Kentucky 40602

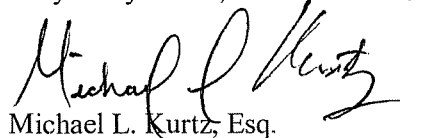
**Re:** *Air Liquide Large Industries U.S. LP vs. Kentucky Power Company*  
Docket No. 2012-000351

Dear Mr. Derouen:

Please find enclosed the original and ten (10) copies of BRIEF OF AIR LIQUIDE LARGE INDUSTRIES U.S. LP for filing in the above-referenced matter.

By copy of this letter, all parties have been served. Please place these documents of file.

Very Truly Yours,

 <sup>cc</sup>

Michael L. Kurtz, Esq.

Kurt J. Boehm, Esq.

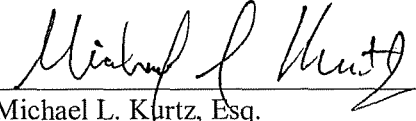
Jody M. Kyler, Esq.

**BOEHM, KURTZ & LOWRY**

MLKkew  
Attachment

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served by electronic mail (when available) and by mailing a true and correct copy by regular, U.S. Mail, unless other noted, this 22<sup>nd</sup> day of October, 2012 to the following

  
Michael L. Kurtz, Esq.  
Kurt J. Boehm, Esq.  
Jody M. Kyler, Esq.

Ranie Wohnhas, Managing Director, Reg & Finance  
American Electric Power  
101 A Enterprise Drive  
P. O. Box 5190  
Frankfort, KENTUCKY 40602

Honorable Mark R Overstreet  
Stites & Harbison  
421 West Main Street  
P. O. Box 634  
Frankfort, KENTUCKY 40602-0634

**COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION**

**AIR LIQUIDE LARGE INDUSTRIES U.S. LP**

**Complainant**

v.

**KENTUCKY POWER COMPANY**

**Defendant**

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Case No. 2012-00351

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**BRIEF OF  
AIR LIQUIDE LARGE INDUSTRIES U.S. LP**

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Air Liquide Large Industries U.S. LP (“Air Liquide”) hereby submits this Brief in support of its request that the Kentucky Public Service Commission (“Commission”) order Kentucky Power Company (“Kentucky Power” or “Company”) to allow Air Liquide’s Ashland, Kentucky facility to immediately begin taking service under existing Tariff RTP. The reasons in support of Air Liquide’s request are set forth below. Air Liquide requests that the Commission issue an expedited ruling on this matter since each day that this case proceeds unresolved may result in lost savings to Air Liquide that it would otherwise have received if Kentucky Power permitted Air Liquide to take service under existing Tariff RTP.

## BACKGROUND

On June 19, 2012, Air Liquide contacted Kentucky Power by e-mail requesting that its Ashland, Kentucky facility be permitted to begin taking service under existing Tariff RTP.<sup>1</sup> Kentucky Power denied Air Liquide's request on June 21, 2012, stating that Tariff RTP "*has reached the limit of 10 customer participants.*"<sup>2</sup> Kentucky Power's e-mail seemingly refers to the language of existing Tariff RTP, which provides that the experimental tariff "will be limited to a maximum of 10 customers."

On June 28, 2012, the Commission entered an Order in Case No. 2012-00226, stating that if any customer believes that it is eligible for service under Tariff RTP, or under any other tariff, and its request for that service has been denied, that customer has recourse by filing a complaint under KRS 278.260. That same day, Air Liquide again contacted Kentucky Power by e-mail, requesting to take service under existing Tariff RTP effective July 1, 2012.<sup>3</sup> And again, Kentucky Power denied Air Liquide's request, stating that "*Tariff RTP, which is an experimental tariff, is limited to ten customers. As used in Tariff RTP each billing account represents a customer. Requests for service under Tariff RTP were processed in the order received. There are ten customers who requested service under Tariff RTP prior to Air Liquide.*"<sup>4</sup>

It is Air Liquide's understanding that no customers were taking service under Tariff RTP prior to July 1, 2012, though some customers had submitted requests to take service under the tariff. Air Liquide also understands that four corporations began taking service under Kentucky Power's existing Tariff RTP on July 1, 2012 – AK Steel Corporation, Inc. ("AK Steel"), Air Products & Chemicals, Inc. ("Air Products"), EQT Gathering Corporation ("EQT"), and Catlettsburg Refining LLC, a subsidiary of

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<sup>1</sup> Air Liquide's June 19, 2012 e-mail is attached as Exhibit A.

<sup>2</sup> Kentucky Power's June 21, 2012 e-mail is attached as Exhibit B.

<sup>3</sup> Air Liquide's June 28, 2012 e-mail and Addendum are attached as Exhibit C.

<sup>4</sup> Kentucky Power's June 29, 2012 e-mail is attached as Exhibit D.

Marathon Petroleum LP (“Marathon”). Three of these corporations - AK Steel, Air Products, and Marathon - have one billing account currently taking service under existing Tariff RTP. EQT currently has seven billing accounts taking service under Tariff RTP. Hence, the ten billing accounts currently taking service under Tariff RTP represent only four corporations.

Based upon its misinterpretation of the term “customer” as an individual billing account, Kentucky Power refuses to allow Air Liquide’s Ashland, Kentucky facility to take service under Tariff RTP. Commission intervention is now necessary in order to correct Kentucky Power’s misinterpretation and to enable Air Liquide’s Ashland, Kentucky facility to begin taking service under Tariff RTP - a right which Air Liquide is entitled to by law.

### ARGUMENT

Kentucky Power’s interpretation of the term “customer” in Tariff RTP is inconsistent with the Commission’s regulations, relevant Kentucky law, the Company’s own tariffs, and the manner in which dictionaries use the term. As those sources reflect, the term “customer” is not synonymous with an individual billing account of a corporation. Rather, the term refers to an entire corporation receiving service from Kentucky Power, regardless of whether that corporation has one or multiple billing accounts.

Under the Commission’s general rules, a “customer” is defined as “any person, firm, corporation or body politic applying for or receiving service from any utility.”<sup>5</sup> The Commission’s rules do not subdivide these categories of entities any further, e.g. into individual billing accounts. And Kentucky law governing public utilities provides that a “*corporation’ includes private, quasipublic, and public corporations, and all boards, agencies, and instrumentalities thereof, associations, joint-stock*

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<sup>5</sup> 807 KAR 5:006, Section 1(2).

*companies, and business trusts.*”<sup>6</sup> Thus, the Commission’s rules and relevant Kentucky law define “customer” as an entire corporation, regardless of the number of individual billing accounts that the corporation has with Kentucky Power. That is the same definition that applies to the term “customer” in Tariff RTP.

Further, 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. For example, Defendant’s Tariff Sheet No. 7-2 (Small General Service) provides:

*“[e]ach separate service delivery point shall be considered a contract location and shall be separately billed under the service contract. In the event one Customer has several accounts for like service, the Company may meter one account to determine the appropriate kilowatt-hour usage applicable for each of the accounts.”*

Defendant’s Tariff Sheet No. 2-1 (Terms & Conditions of Service) provides:

*“[w]hen the Customer desires delivery of energy at more than one point, a separate agreement may be required for each separate point of delivery. Service delivered at each point of delivery will be billed separately under the applicable tariff.”*

Defendant’s Tariff Sheet 2-4 (Terms & Conditions of Service) provides:

*“[a]ny one delayed payment charge billed against the Customer for non-payment of bill or any one forfeited discount applied 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 charge or forfeited discount has been remitted under this clause during the preceding 6 months.”*

Defendant’s Tariff Sheet No. 30-3, for existing Tariff RTP itself, provides:

*“[t]his tariff is due and payable in full on or before the due date stated on the bill. On all accounts not so paid, an additional Charge of 5% of the unpaid balance will be made.”*<sup>7</sup>

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<sup>6</sup> KRS 278.010(1).

<sup>7</sup> This language or similar language is repeated in Defendant’s other tariff sheets.

Accordingly, Kentucky Power's misinterpretation of the term "customer" as an individual billing account is inconsistent with the use of that term in its own tariffs. The Company's custom and usage regarding the term "customer" does not detract from this inconsistency.

In addition, Kentucky Power's misinterpretation of the term "customer" is inconsistent with the use of that term in a number of dictionaries, which define a "customer" as a single person or an entire organization purchasing a service. Oxford Dictionaries Online defines "customer" as "*a person or organization that buys goods or services from a store or business.*" Merriam-Webster defines "customer" as "*one that purchases a commodity or service.*" And Cambridge Dictionaries Online defines "customer" as "a person who buys goods or a service."<sup>8</sup> Dictionaries do not subdivide the entity purchasing service down into individual accounts, but instead refer to an entire entity.

Kentucky Power may argue that it reports the numbers of customers on its annual FERC Form 1 based upon the number of billing accounts, rather than the number of individual corporations taking service from the Company. However, though FERC may ask utilities to report the average number of customers based upon bills rendered,<sup>9</sup> that is its own practical reporting preference. This preference helps to ensure uniformity in reporting among utilities nationwide. But FERC's reporting preferences have no bearing on how this Commission interprets the term "customer" within Tariff RTP. Rather, the Commission should look to relevant law and regulations in determining whether Tariff RTP's maximum customer limit has been reached.

Because the term "customer" in Tariff RTP refers to an entire corporation, regardless of whether that corporation has one or multiple billing accounts, only four "customers" are currently taking service

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<sup>8</sup> Merriam-Webster definition *available at* <http://www.merriam-webster.com/dictionary/customer?show=0&t=1342547104>; Oxford Dictionaries Online definition *available at* [http://oxforddictionaries.com/definition/american\\_english/customer?region=us&q=customer](http://oxforddictionaries.com/definition/american_english/customer?region=us&q=customer); Cambridge Dictionaries Online definition *available at* <http://dictionary.cambridge.org/dictionary/american-english/customer?q=customer>.

<sup>9</sup> See Kentucky Power 2011 FERC Form 1 at 304, instructions for reporting Sales of Electricity by Rate Schedules.

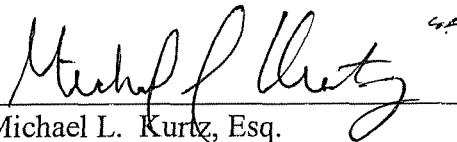
under Tariff RTP. Therefore, the 10 customer maximum limit under existing Tariff RTP has not yet been reached. Given that the 10 customer limit under Tariff RTP has not yet been reached and that Air Liquide satisfies the other eligibility requirements to take service under the tariff, the Commission should order Kentucky Power to allow Air Liquide's Ashland, Kentucky facility to take service under Tariff RTP immediately. To do otherwise would deny Air Liquide a right to which it is entitled by law. Moreover, upholding Air Liquide's right to take service under Tariff RTP will not usher in a wave of additional customers asking to take service under the tariff since customers were required to request service under Tariff RTP prior to July 1, 2012. Such a decision would merely remedy Kentucky Power's unlawful denial of Air Liquide's right to take service under Tariff RTP.



**CONCLUSION**

**WHEREFORE**, Air Liquide petitions the Commission for an order requiring Kentucky Power to allow Air Liquide's Ashland, Kentucky facility to immediately begin taking service under existing Tariff RTP. Air Liquide requests that the Commission issue an expedited ruling on this matter so that Air Liquide may enjoy any savings that can result from taking service under Tariff RTP for as long as possible before Tariff RTP expires in June 2013.

Respectfully submitted,



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October 22, 2012