

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN EXAMINATION BY THE PUBLIC SERVICE	)	
COMMISSION OF THE ENVIRONMENTAL	)	CASE NO.
SURCHARGE MECHANISM OF KENTUCKY	)	2013-00325
POWER COMPANY FOR THE TWO-YEAR	)	
BILLING PERIOD ENDING JUNE 30, 2013	)	

ORDER

On September 11, 2013, the Commission issued an Order initiating this action to review the preceding two-year operation of Kentucky Power Company's (Kentucky Power") environmental surcharge for the period July 1, 2011, through June 30, 2013. On April 29, 2014, the Commission rendered a final Order in this matter wherein it found that, while Kentucky Power had experienced an under-recovery of \$3,518,900 for the review period, in accordance with the terms of the Settlement Agreement in Case No. 2012-00578,<sup>1</sup> Kentucky Power could not collect the under-recovery. The Commission's Order was predicated upon paragraph 5 to the Settlement Agreement, which stipulated that Kentucky Power's environmental surcharge factor would be fixed and maintained at zero percent beginning on January 1, 2014, until new base rates are established.<sup>2</sup>

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<sup>1</sup> Case No. 2012-00578, *Application of Kentucky Power Company for (1) A Certificate of Public Convenience and Necessity Authorizing the Transfer to the Company of an Undivided Fifty Percent Interest in the Mitchell Generating Station and Associated Assets; (2) Approval of the Assumption by Kentucky Power Company of Certain Liabilities in Connection with the Transfer of the Mitchell Generating Station; (3) Declaratory Rulings; (4) Deferral of Costs Incurred in Connection with the Company's Efforts to Meet Federal Clean Air Act and Related Requirements; and (5) All Other Required Approvals and Relief* (KY. PSC Oct. 7, 2013).

<sup>2</sup> Letter from Jeff Derouen, Executive Director, Kentucky Public Service Commission (Feb. 7, 2014), Stipulation and Settlement Agreement.

On May 15, 2014, Kentucky Power moved for rehearing in this matter. In support it states that it initially requested to recoup the under-recovery through a single adjustment in its first monthly environmental surcharge filing following issuance of an Order in this case. However, it states that upon further review of the Settlement Agreement, it determined that it should instead accumulate and defer the under-recovery until new base rates were set. It states that this request was made in the course of the November 14, 2013 informal conference held with Commission Staff.

Kentucky Power argues that the Commission's April 29, 2014 Order failed to address this modified request. Kentucky Power states that the Settlement Agreement does not *per se* preclude recovery of the environmental surcharge under-recovery. Instead, it argues that, at most, the Settlement Agreement precludes recovery only during the period between January 1, 2014, and the setting of new base rates in 2015. It contends that it would unquestionably have been entitled to collect the instant under-recovery at any time prior to January 1, 2014, had an Order been entered at an earlier date.

The record in this case comprises Kentucky Power's witness testimony, procedural orders and motions, two sets of data requests and four informal conferences with three supporting intra-agency memorandums detailing the discussions held during the informal conferences with Commission Staff. The evidentiary record is devoid of any request by Kentucky Power to defer recovery of the instant environmental costs or to create a regulatory asset.

The intra-agency memorandum filed November 26, 2013, in reference to the November 14, and November 21, 2013 informal conferences notes that the parties

discussed the resetting of Kentucky Power's environmental surcharge as well as the necessity of future surcharge filings during the period in which the environmental surcharge factor is set at zero.<sup>3</sup> It does not note any request by Kentucky Power to defer recovery of the environmental cost under-recovery. The record is also bereft of any comments or revisions to the informal conference memorandum submitted by Kentucky Power.

A fourth informal conference was held on February 6, 2014, and memorialized in a February 7, 2014 intra-agency memorandum,<sup>4</sup> wherein despite, again, discussing the Settlement Agreement, the memorandum is silent as to any request to defer recovery. Additionally, in responding to Staff's Second Request for Information on December 11, 2013, regarding whether the environmental surcharge factor should be fixed at the expense or billing month, in stating that the expense months should be utilized, Kentucky Power noted, "This will also allow for any adjustment approved by the Commission in this instant case to be recovered currently versus being set up as a regulatory asset to be recovered at the end of the Stipulation period (July 2015)."<sup>5</sup> In so stating, Kentucky Power implicitly admitted that it had not requested the costs to be deferred and that creation of a regulatory asset was not requested. Accordingly, because the record is absent of any formal or informal request by Kentucky Power to defer recovery of any under-recovery, rehearing is unwarranted. However, even had

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<sup>3</sup> Letter from Jeff Derouen, Executive Director, Kentucky Public Service Commission (Nov. 26, 2013).

<sup>4</sup> Letter from Jeff Derouen, Executive Director, Kentucky Public Service Commission (Feb. 7, 2014).

<sup>5</sup> Kentucky Power's Response to Commission Staff's Second Request for Information, Item 2.

Kentucky Power requested deferral of recovery, Kentucky Power would not be entitled to relief.

The Commission finds that the Settlement Agreement precludes any type of refund or recovery of environmental surcharge over or under-recoveries effective as of January 2014, to include deferring costs until after new base rates are set.

The argument Kentucky Power presses in favor of deferring the approximately \$3.5 million under-recovery could equally be applied to environmental costs incurred between January 2014 and the setting of new base rates. In its motion, Kentucky Power does not argue that these future costs, if any, would be recoverable. However, the identical argument that the costs could be accumulated and deferred, would apply in support of recovering these costs after the exclusion period ends in 2015.

Therefore, were the Commission to accept Kentucky Power's argument that the instant surcharge costs could be assessed after January 2014, paragraph 5 of the Settlement Agreement would be largely eviscerated and stripped of meaning. The Settlement Agreement does not speak to delaying the imposition of environmental costs for recovery after June 2015; instead it explicitly states that the surcharge factor would be set at zero. Permitting the costs to be deferred until after new base rates are set in 2015, would circumvent the purpose of the clause to waive any costs that would have otherwise been charged through the environmental surcharge during the period between January 2014 and the setting of new base rates.

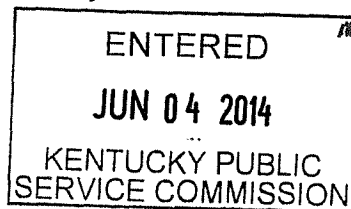
While Kentucky Power contends that recovery could have been authorized had a final Order been entered prior to January 2014, an Order was not entered until April 2014 – four months after the environmental surcharge factor was to be set at zero

pursuant to the unambiguous term of the Settlement Agreement. Kentucky Power willingly entered into the mutually agreed upon Settlement Agreement and must be bound to its terms, which results in the negotiated prohibition on recovering the instant environmental costs that were deemed otherwise proper and recoverable pursuant to KRS 278.183.

Accordingly, because Kentucky Power has not presented any new evidence that was not or could not have been presented in the course of this matter, its motion should be denied.

IT IS THEREFORE ORDERED that Kentucky Power's motion for rehearing is denied.

By the Commission



ATTEST:

  
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