COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY POWER COMPANY (1) FOR AUTHORITY TO AMEND TEMPORARILY TARIFF C.S. - I.R.P. AND TARIFF E.D.R.; (2) TO ESTABLISH TEMPORARILY TARIFF C.S. - COAL; (3) FOR LEAVE TO DEVIATE FROM THE NOTICE REQUIREMENTS OF 807 KAR 5:011, SECTION 8; (4) FOR RELATED ACCOUNTING RELIEF; AND (5) FOR ALL OTHER REQUIRED APPROVALS AND RELIEF	)	CASE NO. 2017-00099

ORDER

On February 23, 2017, Kentucky Power Company ("Kentucky Power") filed an application ("Application") requesting Commission authority to 1) amend temporarily its Contract Service – Interruptible Power tariff ("Tariff CS-IRP") and Economic Development Rider tariff ("Tariff EDR"); 2) establish temporarily a Contract Service – Coal Power tariff ("Tariff CS-Coal"); 3) deviate from the notice requirements of 807 KAR 5:011, Section 8; and 4) defer for review and recovery in its next base rate proceeding any financial loss incurred in connection with the proposed amendments to Tariff CS-IRP and Tariff EDR and proposed new Tariff CS-Coal. The proposed tariffs were filed with an effective date of March 25, 2017.

The Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention ("AG"), and Kentucky Industrial Utility Customers, Inc. ("KIUC") sought and were granted intervention in this matter on March 9, 2017, and March 10, 2017, respectively. An informal conference ("IC") was held on March 8,

2017. On March 9, 2017, Kentucky Power filed 1) a cover letter stating that it did not object to amending the effective date of the tariffs to April 2, 2017,[1] 2) a Motion for Leave to File Substitute Paragraph 52 to Application ("Motion"), and 3) its response to a Commission Staff information request made at the IC. On March 20, 2017, Kentucky Power filed a motion for leave to publish notices out of time in two newspapers that failed to timely publish all of the schedule notices. The matter is now before the Commission for a decision on the record.

BACKGROUND

Kentucky Power provides electric utility service to approximately 168,000 retail customers in 20 eastern Kentucky counties.[2] Kentucky Power states that 31 counties in Kentucky produce coal commercially, and 13 of those counties are in its service territory.[3] According to Kentucky Power, coal mining provides a significant economic benefit in the counties where coal is extracted and processed. In 2015, direct coal-mining-related employment yielded $764 million in total wages and benefits in the 31 Kentucky coal-producing counties.[4] In addition, coal severance tax receipts produced by counties in the Eastern Coal Field (which includes counties within Kentucky Power's service territory) totaled $104.5 million in 2014.[5]

[1] Although Kentucky Power stated it did not object to amending the effective date of the proposed tariffs, it did not file revised proposed tariffs with an effective date of April 2, 2017.

[2] Kentucky Power also supplies electric power at wholesale to other utilities and municipalities in Kentucky for resale.

[3] Application at 4.

[4] *Id.*

[5] *Id.*

Kentucky Power asserts that coal mining, particularly in the Eastern Coal Field, is currently facing unprecedented challenges, including: diminishing coal seams resulting in increased costs; competition from cheaper Powder River Basin coal and natural gas produced through advances in hydrologic fracturing and horizontal drilling; and federal environmental regulations.[6] Kentucky Power states that eastern Kentucky coal production has declined from a peak of 131 million tons in 1990 to 28.09 million tons in 2015, a decline of 78.5 percent. This decline in coal production has resulted in a decrease in coal production employment from 24,912 in 1990 to 5,947 in 2015.[7] Kentucky Power maintains that the counties that make up its service territory are among the least wealthy in Kentucky and have seen an outflow of population in recent years.[8] Therefore, in order to supplement its existing economic development efforts, Kentucky Power is proposing the following temporary changes to its tariffs, all of which are proposed to expire on December 31, 2017.

Tariff CS-IRP

Tariff CS-IRP allows customers to receive a credit of $3.68 per kilowatt ("kW") per month for load designated as interruptible. Currently, customers taking service under Tariff CS-IRP must contract to take service for a minimum of four years. Kentucky Power proposes to amend this tariff to include a special provision limited to customers engaged in coal extraction or processing. The provision reduces the minimum term for qualifying customers engaged in coal extraction or processing from

---

[6] *Id.* at 5.

[7] *Id.* at 7 and Kentucky Energy and Environment Cabinet, *Kentucky Coal Facts, 16th Edition 2016* at 123.

[8] Application at 8–9.

four to two years. In addition, it provides for the early termination of the contract upon permanent cessation of coal extraction or processing, allowing qualifying customers to terminate the contract upon the lesser of two months' notice or the remaining term of the contract.

As previously stated, customers taking service under Tariff CS-IRP receive a credit of $3.68 per kW per month for load designated as interruptible. These credits are recovered by Kentucky Power through its Purchase Power Adjustment Tariff ("Tariff PPA"). As with the credits received by current customers taking service under Tariff CS-IRP, any credits received by qualifying customers under the proposed amendment would also be recovered by Kentucky Power through its Tariff PPA. The maximum potential monthly impact on Tariff PPA of the proposed amendment is $230,368.[9] Any agreement reached between Kentucky Power and a qualifying customer would be submitted to the Commission for approval.

Tariff EDR

Tariff EDR provides limited term reductions in billing demand charges for 1) existing commercial and industrial customers who contract to increase their monthly maximum billing demand by at least 500 kW, and 2) new commercial and industrial customers with a monthly maximum billing demand of at least 500 kW. Currently, Tariff EDR requires that customers contract for service under a contract of either two, four, six, eight, or ten years, with a declining incremental billing demand discount ("IBDD") for the first half of the contract term. This is in accordance with the Commission's

[9] Tariff CS-IRP has a maximum contract load of 75,000 kW for all customers taking service under the tariff. According to Kentucky Power's Motion, there is interruptible load of 12,400 kW subject to the tariff, leaving a remaining amount of 62,600. 62,600 multiplied by $3.68 is $230,368.

requirement in Administrative Case No. 327, which stated, "[t]he term of an EDR contract should be for a period twice the length of the discount period, with the discount period not exceeding five years. During the second half of an EDR contract, the rates charged to the customer should be identical to those contained in a standard rate schedule that is applicable to the customer's rate class and usage characteristics."[10]

Kentucky Power is proposing to add a provision to Tariff EDR which allows customers engaged in coal extraction and processing activities to receive an IBDD under a one-year contract with a 10 percent IBDD or under a two-year contract with an IBDD of 20 percent in the first year and 10 percent in the second year. There would be no requirement for the qualifying customers to maintain the incremental billing demand at full billing rates for an equal period. Kentucky Power contends that "[c]ompanies engaged in the extraction or processing of coal have been unwilling or unable to meet the requirement that the contract term be twice the discount period."[11] Kentucky Power maintains that good cause exists to permit the deviation from the Commission's Order in Administrative Case No. 327. Any agreement reached between Kentucky Power and a qualifying customer under the amended provision would be submitted to the Commission for approval.

Tariff CS-Coal

Kentucky Power is proposing to implement Tariff CS-Coal, which would be available to customers engaged in coal extraction and processing activities. Qualifying customers would be required to contract for at least 1,000 kW of capacity, with a

---

[10] Administrative Case No. 327, *An Investigation in the Implementation of Economic Development Rates by Electric and Gas Utilities*, (Ky. PSC Sept. 24, 1990) at 27.

[11] Application at 14.

60,000-kW limit for all customers taking service under the tariff. According to Kentucky Power, qualifying customers may contract for rates, terms, or conditions that are different from its existing tariffs, including, but not limited to, hours and days of operation, minimum billing demand, and terms governing deposits. Kentucky Power asserts that Tariff CS-Coal is being proposed to encourage qualifying customers to reopen closed facilities or establish new operations in Kentucky Power's territory.[12] Any agreement reached between Kentucky Power and a qualifying customer would be submitted to the Commission for approval.

Deferral Accounting

As mentioned earlier, Kentucky Power requests authority to defer for review and recovery in its next base rate proceeding any financial loss incurred in connection with the proposed amendments to Tariff CS-IRP and Tariff EDR and proposed new Tariff CS-Coal. At the March 8, 2017 IC, KIUC offered its support for Kentucky Power's proposed temporary tariff changes, but stated its belief that "financial losses" should be offset by the "financial gains" or profits Kentucky Power might realize under the temporary tariff changes or temporary tariffs it is proposing. Kentucky Power indicated that it disagreed with including such an offset as a part of its proposed accounting relief. The AG did not express support for, or opposition to, the deferral accounting request or the proposed tariff changes at the IC, but indicated by electronic mail on March 9, 2017, that he would not request a procedural schedule in this proceeding.[13]

---

[12] *Id.* at 16.

[13] See e-mail from Kent Chandler to parties of record attached as an appendix to this order.

Deviation

Kentucky Power has requested to deviate from the notice requirements of 807 KAR 5:011, Section 8(2)(b)(3), which requires publication of notice in a newspaper of general circulation in its service territory once a week for three consecutive weeks, and that "the first publication to be made no later than the date the tariff filing is submitted to the Commission." Kentucky Power requests to deviate only to the extent required to permit it to begin publishing the notices after the date the application is filed with the Commission. Kentucky Power argues that good cause exists to grant the deviation because complying with the regulation would delay the benefits of the proposed tariff changes.

Kentucky Power also requests a deviation from 807 KAR 5:011, Section 8(4)(b)-(d), which requires that the notice contain: the present rates and proposed rates for each customer classification to which the proposed rates will apply; the amount of the change requested in both dollar amounts and percentage change for each customer classification to which the proposed rates will apply; and the amount of the average usage and the effect upon the average bill for each customer classification to which the proposed rates will apply. Kentucky Power states that application of the proposed amendments to Tariff CS-IRP and Tariff EDR is limited to customers engaged in the extraction and processing of coal, and that there are no such customers currently taking service under either tariff. Kentucky Power also states that the rate effect of each tariff amendment on customers engaged in the extraction and processing of coal will vary based upon the incremental billing demand and interruptible demand nominated under Tariff EDR and Tariff CS-IRP respectively. Thus, Kentucky Power contends that it would be impracticable to provide the information required by 807 KAR 5:011, Section 8(4)(b)-(d), and that the proposed amendment to Tariff EDR would not affect the published tariffed rated paid by any other customer classification.

With respect to Tariff CS-Coal, Kentucky Power asserts that any changes in minimum billing demand, deposit arrangements, or hours or days of operation will not affect the amounts paid by other customers. Kentucky Power further asserts that because the terms of any contract to be negotiated pursuant to Tariff CS-Coal are not now known, it would be impossible for Kentucky Power to determine the effect, if any, of the proposed tariff on customers engaged in coal extraction or mining or other customers.

Motion for Leave to Publish Out of Time

Pursuant to 807 KAR 5:011, Section 8(2)(b)(3), notice of the proposed tariff should be published once a week for three consecutive weeks in a newspaper of general circulation in a utility's service territory. Kentucky Power had arranged to publish notice of the proposed tariffs in 20 newspapers of general circulation in its service territory during the weeks of February 27, 2017; March 6, 2017; and March 13, 2017. The notices were published as scheduled in 18 newspapers. However, the Leslie County News failed to publish the required second and third notices due to staffing issues, and the third notice published in the Troublesome Creek Times was illegible. Kentucky Power states that the Leslie County News will publish the required additional notices on March 23, 2017, and March 30, 2017. Kentucky Power further states that Troublesome Creek Times is scheduled to republish the illegible notice on March 23, 2017. Kentucky Power asserts that, under the modified publication schedule, residents of Leslie County will receive notice of the proposed tariffs two times prior to the tariffs' effective date through publication in the Leslie County News, and that residents of Knott County will receive notice of the proposed tariffs three times prior to the tariffs' effective date through publication in the Troublesome Creek Times. Kentucky Power further asserts that it exercised due care in arranging for the publication of notice in the Leslie County News and the Troublesome Creek Times, and that it relied in good faith on the commitments that the required notices would be timely published.

DISCUSSION AND FINDINGS

As discussed in its Application, Kentucky Power is proposing temporary tariff changes in order to assist the deteriorating coal industry in its service territory. The Commission is aware of the decline in coal production and employment in Kentucky Power's service territory, as well as the low median household income for the residents in its service territory. Kentucky Power also proposes that the changes be temporary, with all proposed changes scheduled to expire on December 31, 2017. Kentucky Power states that the termination date for its proposed tariff changes is based on its desire to have some measures in place to be able to provide economic incentives to assist the ailing coal industry, yet, to retain some flexibility in offering those incentives and to have a specific end date for such incentives.[14]

Given the temporary nature of the proposed changes and the considerable need for economic development in Kentucky Power's service territory, especially as it relates to the coal industry, the Commission finds that Kentucky Power's Application is

---

[14] IC memorandum dated March 9, 2017, at 1.

reasonable and should be approved. The Commission also finds that good cause exists to allow Kentucky Power to deviate from the Commission's Order in Administrative Case No. 327 for changes related to its Tariff EDR. The Commission further finds that Kentucky Power should be able to defer any financial loss incurred in connection with the proposed amendments to Tariff CS-IRP and Tariff EDR and the proposed new Tariff CS-Coal for review and recovery in its next base rate proceeding. The amount of any such deferral should be reviewed for reasonableness in a future proceeding. Finally, the Commission finds that Kentucky Power's request to deviate from the notice requirements of 807 KAR 5:011, Section 8, and its motion for leave to publish notices out of time should be granted.

IT IS THEREFORE ORDERED that:

1. Kentucky Power's requests to make temporary changes to Tariff CS-IRP and Tariff EDR and to implement temporary Tariff CS-Coal are granted effective as of March 25, 2017, with an expiration date of December 31, 2017.

2. Kentucky Power's request to defer any financial loss incurred in connection with the proposed amendments to Tariff CS-IRP and Tariff EDR and proposed new Tariff CS-Coal for review and recovery in its next base rate proceeding is granted. The amount of any such deferral shall be reviewed for reasonableness in a future proceeding.

3. Kentucky Power's request to deviate from the notice requirements of 807 KAR 5:011, Sections 8(2)(b)(3) and 8(4)(b)-(d), is granted.

4. Kentucky Power's Motion for Leave to File Substitute Paragraph 52 to Application is granted.

5. Kentucky Power's Motion for Leave to Publish Out of Time is granted.

6. All contracts related to tariff CS-IRP, Tarriff EDR, and Tariff CS-Coal shall be submitted to the Commission for approval.

7. Every six months until the expiration of all executed contracts, Kentucky Power shall file with the Commission a report of the activity generated as a result of the tariff changes approved herein. The first report shall include activity through June 30, 2017, and be filed no later than July 31, 2017. Each subsequent report shall be filed no later than one month after the six-month reporting period.

8. Within 20 days of the date of this Order, Kentucky Power shall file with this Commission, using the Commission's electronic Tariff Filing System, revised tariff sheets setting out the amendments to Tariff CS-IRP and Tariff EDR and the implementation of Tariff CS-Coal approved herein and reflecting that they were approved pursuant to this Order.

By the Commission

ENTERED
MAR 23 2017
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:

Aaron D. Greenwell for

Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2017-00099 DATED MAR 23 2017

Whelan, Chris (PSC)

From: Chandler, Kent A (KYOAG)
Sent: Thursday, March 09, 2017 2:41 PM
To: Nguyen, Quang D (PSC)
Cc: 'Overstreet, Mark R.'; mkurtz@BKLlawfirm.com; Fell, Jennifer (PSC); jkylercohn@BKLlawfirm.com; Goodman, Rebecca (KYOAG)
Subject: 2017-00099

Quang,

The Attorney General will not be requesting a procedural Order in this matter.

Thank you,

Kent

******The Office of Rate Intervention has recently moved offices. Please update your records with the information provided below.******

Kent A. Chandler
Assistant Attorney General
Office of Rate Intervention
Office of the Attorney General
700 Capitol Avenue, Suite 20
Frankfort, Kentucky 40601
(502) 696-5456
Kent.Chandler@ky.gov

*Jody Kyler Cohn
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OHIO 45202

*Honorable Michael L Kurtz
Attorney at Law
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OHIO 45202

*Honorable Kurt J Boehm
Attorney at Law
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OHIO 45202

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

*Kent Chandler
Assistant Attorney General
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Rebecca W Goodman
Assistant Attorney General
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Kentucky Power Company
855 Central Avenue, Suite 200
Ashland, KY 41101

*Kentucky Power Company
Kentucky Power Company
855 Central Avenue, Suite 200
Ashland, KY 41101

*Kenneth J Gish, Jr.
Stites & Harbison
250 West Main Street, Suite 2300
Lexington, KENTUCKY 40507

*Katie M Glass
Stites & Harbison
421 West Main Street
P. O. Box 634
Frankfort, KENTUCKY 40602-0634