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PUBLIC SERVICE
COMMISSION

VIA HAND DELIVERY

Gwen R. Pinson, Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, KY 40602

Re: RIVERSIDE GENERATING COMPANY, L.L.C. v. KENTUCKY POWER COMPANY
Formal Complaint - Case No. 2017-00 472

Ms. Pinson:

Please find enclosed and accept for filing on behalf of Riverside Generating Company, L.L.C., an original and three (3) copies of its Complaint against Kentucky Power Company.

Please return a file-stamped copy of this filing to my office. I appreciate your assistance with this matter, and please do not hesitate to contact me with any questions or concerns.

Respectfully submitted,



David S. Samford

Enclosures

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

RIVERSIDE GENERATING COMPANY, L.L.C.)	
)	
v.)	Case No. 2017-00 <u>472</u>
)	
KENTUCKY POWER COMPANY)	

COMPLAINT

Comes now Riverside Generating Company, L.L.C. (“Riverside”), by counsel, pursuant to KRS 278.260, 807 KAR 5:001 Section 20, and other applicable law, and for its Complaint against Kentucky Power Company (“Kentucky Power”), respectfully states as follows:

1. Riverside is a Delaware limited liability company and merchant power generator with its principal office in East Brunswick, New Jersey. Riverside’s post office address is 1 Tower Center, 21st Floor, East Brunswick, New Jersey 08816. Counsel authorized to represent Riverside in this matter and take service of all documents is identified below. Said counsel possesses the facilities to receive electronic transmissions at the electronic mail addresses provided.

2. Kentucky Power is a public utility principally engaged in the provision of electricity to Kentucky consumers and, as such, is subject to the Commission’s jurisdiction. Kentucky Power’s post office address is 855 Central Avenue, Suite 200, Ashland, Kentucky 41101.

3. Riverside owns and operates two (2) generation sites in Lawrence County, Kentucky. The first site, which is identified and classified by PJM Interconnection, LLC (“PJM”) as the “Zelda” site, is located on real estate originally acquired in the year 2000 and includes three (3) natural gas-fired generating units. The second site, which is identified and classified by PJM

as the “Foothills” site, is located on real estate originally acquired in the year 2001 and includes two (2) natural gas-fired generating units. The Zelda site and the Foothills site are adjacent to each other and each has its own interconnection with Kentucky Power at its nearby Baker Switchyard. Riverside sells the output of its Kentucky facilities, which have a total combined capacity of approximately 836 MW, at wholesale into the marketplace of PJM consistent with PJM’s Open Access Transmission Tariff (“OATT”).

4. Riverside has historically received (and presently receives) from Kentucky Power the electrical energy and capacity necessary to power the auxiliary loads (“Station Power”) at its two (2) generating sites under the utility’s retail Tariff N.U.G. (Non-Utility Generator). Although an important exception exists (as discussed *supra*), the terms of Kentucky Power’s Tariff N.U.G. generally require a generator customer seeking Station Power to accept service “under the generally available demand-metered tariff appropriate for the customer’s Station Power requirements.” As a result, Kentucky Power has historically charged Riverside the rates prescribed in its Tariff I.G.S. (Industrial General Service) for Station Power.

5. For the past several months, Riverside and Kentucky Power have been engaged in a dispute regarding the appropriate interpretation (and resulting applicability) of Tariff N.U.G. as it pertains to Riverside’s Lawrence County facilities. These discussions have focused on Riverside’s ability to remotely self-supply its Station Power and take service under PJM’s OATT, consistent with the “Special Terms and Conditions” portion of Kentucky Power’s Tariff N.U.G. The relevant portion of the tariff states as follows:

Customers desiring to provide Startup and Station Power from commonly owned generation facilities that are not located on the site of the customer’s generator (remote self-supply), shall take service under the terms and conditions contained within the

applicable Open Access Transmission Tariff as filed with and accepted by the Federal Energy Regulatory Commission.¹

6. Pursuant to the language of Tariff N.U.G., a generator in Kentucky Power's service territory may satisfy its Station Power needs utilizing PJM's wholesale transmission framework so long as there exists "commonly owned generation facilities that are not located on the site of customer's generator" sufficient to supply the power. PJM's OATT, of course, also recognizes that Station Power may be self-supplied (and remotely self-supplied) by member generators, and its OATT provides for netting of output and consumption as part of the PJM Station Power settlement process. Because both of Riverside's Kentucky generation sites (Zelda and Foothills) are interconnected with the wholesale transmission grid and consistently produce significantly more energy than consumed for their operation, the ability of Riverside to self-supply its Station Power under PJM's OATT represents significant cost savings for the generator and the best option available to it consistent with Kentucky Power's Tariff N.U.G.

7. Perhaps unsurprisingly, Riverside's expressed desire to utilize the relevant exception under Tariff N.U.G. (and thereby obtain Station Power under PJM's OATT) has been met by Kentucky Power with curt disregard. With little factual explanation to support its position, Kentucky Power has erroneously concluded that Riverside is not eligible to obtain Station Power through PJM because the Zelda and Foothills sites are (according to Kentucky Power) one (1) large site. This factual conclusion is unreasonable and contrary to fact, making it also inconsistent

¹ As part of its ongoing general rate adjustment case pending before this Commission (Case No. 2017-00179), Kentucky Power seeks to revise this portion of its Tariff N.U.G., *to wit*: "Customers desiring to provide Startup and Station Power from ~~commonly-owned~~ *other* generation facilities, *owned by the same individual business entity* that are not located on the site of the customer's generator (remote self-supply), shall take service...". Riverside sought intervention in Case No. 2017-00179 to ensure its interests were protected, but intervention was ultimately denied by Commission Order entered August 3, 2017. Notably, while the Commission determined that Riverside did not possess a sufficient interest in Kentucky Power's general rate adjustment case to warrant intervention, the Commission also found in its August 3rd Order that, "...if Riverside has a complaint under the existing Tariff N.U.G., it may file a complaint with the Commission pursuant to KRS 278.260." (*See* Order, at p. 5).

with the plain meaning of Kentucky Power's tariff on file with the Commission. Kentucky Power's refusal to abide by the express terms of its tariff is unfair, unjust, unreasonable and a violation of the Filed Rate Doctrine.

8. As mentioned *supra*, Riverside's Zelda site and Foothills site sit upon unique parcels of real estate that were acquired at different times. The facilities at each site were developed and built separately by two (2) different contractors. While the two (2) sites share a common property line, that same border is marked by fencing and other barriers that provide apparent and actual partitioning. Moreover, each site is individually identified by PJM for various purposes and is uniquely reported to PJM. Each site is uniquely metered and has its own infrastructure and connections to Kentucky Power's nearby Baker Switchyard. There is no cross feed/tie-breaker between the sites, no parasitic load, and no need for the respective units to operate in unison. Even the local taxing authority has recognized the individual nature of the facilities, as evidenced by the unique Payment in Lieu of Taxes Agreement in place for each site. Indeed, for every relevant intent and purpose, the Zelda site and the Foothills site, as well as the generators each houses, are distinct.

9. Based on these facts, any contention that Riverside's Units 1-3 are located on the same site as Riverside's Units 4-5 is unfounded. Instead, these distinct sites house "commonly owned generation facilities" capable of remotely supplying Riverside's Station Power needs when required. Therefore, consistent with the plain language of the Special Terms and Conditions of Kentucky Power's Tariff N.U.G., Riverside contends it is eligible to take its Station Power service under PJM's OATT.

10. Kentucky Power's refusal to appropriately interpret and effectuate the language of its tariff is unreasonable. While the utility may desire to maintain the significant annual revenues

it has historically collected from Riverside, relevant law (most notably KRS 278.030 and KRS 278.160) requires Kentucky Power to conduct its business reasonably and consistent with the terms prescribed in its filed schedules. Therefore, in light of the foregoing and consistent with KRS 278.270, KRS 278.280, and other applicable law, Riverside seeks a determination from this Commission that Kentucky Power must observe and implement the language of its Tariff N.U.G. in a fair, just, and reasonable manner, as described herein.


WHEREFORE, Riverside respectfully requests the following relief:

1. That the Commission assert jurisdiction over this Complaint and the parties herein named;
2. That the Commission immediately initiate an investigation of the allegations made in this Complaint;
3. That the Commission enter an Order requiring Kentucky Power to either satisfy the matters complained of in this Complaint or, alternatively, to answer and admit and/or deny each allegation of this Complaint;
4. That the Commission enter appropriate Orders allowing for discovery, pre-filed testimony and other similar pre-hearing activities necessary to accomplish due process and a thorough investigation of the allegations in this Complaint;
5. That the Commission enter an Order scheduling this matter for a formal public hearing;
6. That the Commission enter an Order sustaining this Complaint in all respects, thereby requiring Kentucky Power to proceed reasonably and adhere to its tariff, and thus allowing Riverside to self-supply Station Power in accordance with Tariff N.U.G.; and
7. That the Commission grant to Riverside any and all other relief to which it may appear entitled.

VERIFICATION

STATE OF New York)
)
COUNTY OF New York)

Comes now Anthony Hammond, Vice President of Riverside Generating Company, L.L.C., and, after being duly sworn, does hereby verify, swear and affirm that the averments set forth in the foregoing Complaint are true and correct based upon my personal knowledge and belief, formed after reasonable inquiry, as of this 13 day of December, 2017.



Anthony Hammond

The foregoing Verification was verified, sworn to and affirmed before me, the NOTARY PUBLIC, by Anthony Hammond of Riverside Generating Company, L.L.C., on this 13th day of December, 2017.



NOTARY PUBLIC

Commission No. 01 LI 6192833

My Commission Expires: 09/15/2020

ALEXANDRA LINARES-PENA MEJIA
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01LI6192833
QUALIFIED IN QUEENS COUNTY
COMMISSION EXPIRES 09/15/2020

This 13th day of December, 2017.

Respectfully submitted,



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