

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF KENTUCKY)	
POWER COMPANY TO AMEND THE)	
SETTLEMENT AGREEMENT APPROVED IN)	
CASE NO. 2018-00035 TO PROVIDE FOR THE)	
ONE-TIME AMORTIZATION OF)	CASE NO.
UNPROTECTED ACCUMULATED DEFERRED)	2020-00176
FEDERAL INCOME TAX IN AN AMOUNT)	
SUFFICIENT TO ELIMINATE CUSTOMER)	
DELINQUENCIES GREATER THAN 30 DAYS)	
AS OF MAY 28, 2020)	

ORDER

On June 1, 2020, Kentucky Power Company (Kentucky Power), pursuant to KRS 278.170(2)¹ and the Commission’s March 16, 2020 Order in Case No. 2020-00085,² filed an application requesting authorization to apply \$10,798,596 of current unprotected excess accumulated deferred federal income tax (ADIT) to issue a one-time bill credit to those Kentucky Power customers who are 30 days or more delinquent as of May 28, 2020, in an amount equal to the balance of each customer’s account. Kentucky Power also requested to amend a settlement agreement approved by the Commission that, among other things, provided for Kentucky Power to amortize the unprotected excess ADIT over 18 years.³

¹ KRS 278.170(2) provides, among other things, that a utility may grant free or reduced service for the purpose of providing relief in case of an epidemic.

² Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19* (Ky. PSC Mar. 16, 2020).

³ Case No. 2018-00035, *Kentucky Industrial Utility Customers, Inc. v. Kentucky Power Company* (Ky. PSC June 28, 2018).

The Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention (Attorney General) and Kentucky Industrial Utility Customers, Inc. (KIUC) are intervenors in this proceeding. Pursuant to a procedural schedule established June 18, 2020, Kentucky Power responded to two rounds of discovery, and KIUC and the Attorney General filed comments. On August 6, 2020, Kentucky Power filed a first amended settlement agreement as well as a motion to approve said agreement. On August 12, 2020, Kentucky Power, KIUC, and the Attorney General filed a joint motion to submit this matter for a decision on the record. The Commission concurs with the parties that this matter should stand submitted for a decision based on the written record.

BACKGROUND

This matter has its genesis in the federal Tax Cuts and Jobs Act of 2017 (TCJA) and in the economic consequences of the COVID-19 pandemic. The TCJA lowered the federal income tax rate for corporations from 35 percent to 21 percent that resulted in excess ADIT collected from customers through rates that now had to be returned to customers.⁴ In Case No. 2018-00035, the Commission approved an 18-year amortization period for the unprotected excess ADIT, with Kentucky Power returning approximately \$125.13 million⁵ in unprotected excess ADIT over that same 18 years in the form of a bill credit to all of its customers. The 18-year amortization period was significantly longer

⁴ ADIT represents funds collected from customers through rates in anticipation of future tax liability. With the reduction in the corporate tax rate, the future tax liability would no longer be due, and therefore was excess ADIT.

⁵ Case No. 2018-00035, *Kentucky Industrial Utility Customers, Inc. v. Kentucky Power Company*, (filed Apr. 12, 2018) Kentucky Power Response to Staff's First Request for Information (Staff's First Request), Item 9.

than the amortization period the Commission allowed for other utilities.⁶ The Commission found that Kentucky Power provided sufficient evidence to conclude that its unique financial and operational issues, such as a recent downgrade in Kentucky Power's credit outlook, supported a longer amortization period in order to mitigate any financial harm that would adversely impact Kentucky Power's ability to serve its customers.⁷

Regarding COVID-19, Kentucky Power contended that the impact of the COVID-19 pandemic and corresponding limitations on economic and other activity adversely affected the ability of Kentucky Power's customers to pay for electric service. Governor Andy Beshear issued Executive Order 2020-00215 on March 6, 2020, declaring a state of emergency due to COVID-19. The nature of the pandemic and closing of nonessential businesses adversely affected the opportunity to work. In light of the impacts, the Commission entered an Order on March 16, 2020, directing utilities to suspend disconnections due to nonpayment and waive late payment fees.⁸ The March 16, 2020 Order stated that customers were not relieved of the obligation to pay for service

⁶ See Case No. 2018-00034, *Kentucky Industrial Utility Customers, Inc. v. Kentucky Utilities Company and Louisville Gas and Electric Company* (Ky. PSC Sept. 28, 2018) at 15-16; Case No. 2018-00036, *Kentucky Industrial Utility Customers, Inc. v. Duke Energy Kentucky, Inc.* (Ky. PSC Oct. 31, 2018) at 13; Case No. 2018-00040, *Electronic Investigation of the Impact of the Tax Cuts and Job Act on the Rates of Delta Natural Gas Company, Inc.* (Ky. PSC Sept. 21, 2018) at 2; Case No. 2018-00041, *Electronic Investigation of the Impact of the Tax Cuts and Job Act on the Rates of Columbia Gas Of Kentucky, Inc.* (Ky. PSC Oct. 25, 2018) at 4; Case No. 2018-00358, *Electronic Application of Kentucky-American Water Company for an Adjustment of Rates*, (Ky. PSC June 27, 2019) at 36.

⁷ Case No. 2018-00035, *Kentucky Industrial Utility Customers, Inc. v. Kentucky Power Company*, (filed Apr. 12, 2018) Kentucky Power's Response to Staff's First Request, Item 9, (filed Apr. 27, 2018) Settlement Testimony of Matthew A. Horeled (Horeled Testimony) at S8-14; (Ky. PSC June 28, 2018) Order at 5-6.

⁸ Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19* (Ky. PSC Mar. 16, 2020) at 3-4.

rendered. The Order also stated that utilities could seek Commission approval to offer free or reduced rate service pursuant to KRS 278.170(2).

ARGUMENTS

In its application, Kentucky Power proposes to amend the settlement agreement in Case No. 2018-00035 in order to use \$10,798,596⁹ of the balance of its unprotected retail generation and distribution excess ADIT to credit all customer accounts that are 30 or more days delinquent as of May 28, 2020.¹⁰ In support of its application, Kentucky Power states that the economic and other impacts associated with the spread of COVID-19 virus, coupled with the existing suspension of terminations for nonpayment have resulted in a substantial increase in the amount owed by customers whose accounts are delinquent and that Kentucky Power anticipates that the economic and financial challenges facing Kentucky Power's customers will continue after the prohibition on terminations for nonpayment is terminated.¹¹

Kentucky Power stated in its response to Commission Staff's First Request for Information (Staff's First Request) that Tariff Sheet 2-5 of Kentucky Power's terms and conditions allows it to offer relief to customers by extinguishing a delayed payment charge or forfeited discount which is part of delinquent bills, but states that it does not authorize the full relief Kentucky Power is seeking in the current proceeding.¹² Additionally, Kentucky Power states that its proposal is consistent with the requirements of

⁹ Application (filed June 1, 2020), Exhibit 2.

¹⁰ *Id.* at 9, Paragraph 26.

¹¹ *Id.* at 8–9, Paragraph 22 and 23.

¹² Kentucky Power's Response to Commission Staff's First Request for Information (filed July 6, 2020), Item 1.

KRS 278.160(2) because KRS 278.170(2), which Kentucky Power states is a subsection of the prior statute, authorizes a utility to provide free or reduced rate service in the case of a “flood, epidemic, pestilence, or other calamity,” if notice is provided to the Commission and is subsequently authorized to do so by the Commission.¹³

On August 6, 2020, the Attorney General provided comments supporting the proposal in Kentucky Power’s application and stated that it conforms to existing law and provides much needed relief to some of the neediest citizens of the Commonwealth.¹⁴ On August 7, 2020, KIUC provided comments supporting Kentucky Power’s proposal, and stated that the circumstances in Kentucky Power’s service territory have, due to the COVID-19 pandemic, shifted significantly since the 2018 settlement in Case No. 2018-00035 was approved.¹⁵ KIUC also states that Marathon, which is represented by KIUC, is not a delinquent customer that is part of the proposed change to the settlement agreement, but that because of the unprecedented nature of the COVID-19 pandemic, and the difficult circumstances facing many other residential, commercial, and industrial customers within Kentucky Power’s territory, it was willing to forego approximately \$2.37 million in excess unprotected ADIT savings that it would have otherwise received through the settlement.¹⁶ Kentucky Power did not submit a reply to the comments filed by the Attorney General and KIUC.

¹³ *Id.*, Item 2.

¹⁴ Attorney General’s Comments (filed Aug. 6, 2020) at 3.

¹⁵ Comments of Kentucky Industrial Utility Customers, Inc. (filed Aug 7, 2020) at 2.

¹⁶ *Id.*

DISCUSSION

The Commission observes that this is not the only pending matter in which Kentucky Power has proposed to alter the amortization of unprotected excess ADIT established in Case No. 2018-00035. Rather, in its pending rate case, which involves all of the parties in this case, Kentucky Power requested to apply approximately \$65 million of unprotected excess ADIT to offset the proposed rate increase for the first year the rates are effective.¹⁷

Further, Kentucky Power stated that its unprotected excess ADIT balance was \$113.5 million as of April 30, 2020.¹⁸ When its proposal in the rate case is combined with the request in this proceeding, Kentucky Power would expend approximately \$76 million, or 67 percent, of the unprotected excess ADIT balance in less than two years. This is inconsistent with Kentucky Power's sworn testimony in Case No. 2018-00035 that it would face dire financial consequences impacting its credit metrics and cash flow if it were required to return unprotected excess ADIT to customers any sooner than over an 18-year period.¹⁹ Kentucky Power has not provided any evidence in this matter supporting anything other than an 18-year or more period for the return of the unprotected excess ADIT as it relates to the utility's financial health. In our examination of this inconsistency and the reasonableness of flowing unprotected excess ADIT back at such an expedited

¹⁷ Case No. 2020-00174, *Electronic Application of Kentucky Power Company for (1) A General Adjustment of Its Rates for Electric Service; (2) Approval of Tariffs and Riders; (3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; (4) Approval of a Certificate of Public Convenience and Necessity; and (5) All Other Required Approvals and Relief* (filed June 29, 2020), Direct Testimony of Alex E. Vaughan at VAUGHN-33-34 and Direct Testimony of Brian K. West (West Testimony) at WEST-8.

¹⁸ *Id.* at WEST-8.

¹⁹ Case No. 2018-00035, *Kentucky Industrial Utility Customers, Inc. v. Kentucky Power Company*, (filed Apr. 27, 2018) Horeled Testimony at S8-14.

pace, the Commission finds that the best venue to address accelerating the amortization of excess ADIT is in the context of a base rate case.

All parties to this matter are also parties to Kentucky Power's base rate case. The Commission finds that the instant proposal to accelerate the amortization of excess ADIT is unreasonable, not in the public interest and not supported by substantial evidence. Given Kentucky Power's interest and willingness to accelerate the amortization of excess ADIT, the Commission concludes that addressing such a subject is more appropriate in the pending rate case, where the issue can be examined holistically within the larger context of the financial impact on Kentucky Power and its ratepayers to ensure equitable return of customer funds within each customer class. Consistent with Kentucky Power's proposal in this matter, the Commission looks forward to seeing the utility's evidentiary support for amortizing the vast majority of its unprotected excess ADIT in significantly less than five years, with no corresponding concern for Kentucky Power's balance sheet, income statement or credit metrics. Considering such a change in the context of a base rate case is likely to prove to be a significant benefit to all of Kentucky Power's customers.

IT IS THEREFORE ORDERED that:

1. Kentucky Power, KIUC, and the Attorney General's joint motion to submit this matter for a decision on the written record is granted.
2. Kentucky Power's Application is denied.
3. Kentucky Power's Joint Motion to Approve First Amendment to April 25, 2018 Settlement Agreement is denied.
4. This case is closed and removed from the Commission's docket.

By the Commission



ATTEST:

A handwritten signature in blue ink, consisting of stylized cursive letters, positioned above a horizontal line.

Acting Executive Director

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