

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF KENTUCKY	)	
POWER COMPANY FOR AN ORDER	)	
APPROVING ACCOUNTING PRACTICES TO	)	
ESTABLISH A REGULATORY ASSET RELATED	)	CASE NO.
TO THE EXTRAORDINARY EXPENSES	)	2020-00034
INCURRED BY KENTUCKY POWER COMPANY	)	
IN CONNECTION WITH CHARGES RELATED TO	)	
GREENHAT ENERGY, LLC DEFAULT	)	

ORDER

The matter is before the Commission upon a motion for rehearing filed by Kentucky Power Company (Kentucky Power) filed on October 20, 2020. The motion sought rehearing of the September 30, 2020 Order (Final Order) in this matter. The Final Order denied Kentucky Power’s request to establish a regulatory asset for expenses resulting from the default of GreenHat Energy, LLC (GreenHat) in PJM Interconnection, LLC (PJM). Kentucky Power argues that it lacked a reasonable opportunity to fully address the grounds relied upon by the Commission because the Commission’s denial of Kentucky Power’s application was based on grounds in addition to the four traditional bases for establishing a regulatory asset.<sup>1</sup> Kentucky Power raised three main issues in its motion for rehearing. Each of the issues will be discussed along with the findings as follows:

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<sup>1</sup> Kentucky Power’s Motion for Rehearing (filed Oct. 20, 2020) at 13.

1. PJM Participation

Kentucky Power requests that rehearing be granted to provide additional evidence regarding the extent to which American Electric Power Company, Inc. (AEP) or Kentucky Power participate in PJM stakeholder processes, or the extent to which AEP or Kentucky Power can control the outcome of those processes through their participation, and the extent to which the Commission considers the 2007 default involving affiliates of Tower Research Capital Investments LLC relevant to whether Kentucky Power could have reasonably anticipated the GreenHat default and resulting charges.<sup>2</sup>

The Commission has made no finding related to the appropriateness or recoverability of the proposed regulatory asset as a basis for denial. As discussed below, because the amounts were not “extraordinary,” the qualifying clause of “which could not have reasonably been anticipated or included in the utilities’ planning” was not a basis for denial. The language in the Final Order was only a reminder to Kentucky Power that the Commission expects Kentucky Power to vigorously work through the PJM stakeholder process to protect its customers’ interests.

Having reviewed the relevant record and being otherwise sufficiently advised, the Commission finds that Kentucky Power’s request for a rehearing should be denied.

2. Materiality

Kentucky Power argues that the materiality of the default charges should not impact the request for regulatory asset treatment and is not an appropriate interpretation of precedent.<sup>3</sup> Kentucky Power also argues that the GreenHat default charges are only

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<sup>2</sup> *Id.* at 15–16 and 18.

<sup>3</sup> *Id.* at 18–19.

immaterial because it negotiated a lower amount through a settlement, approved by the Federal Energy Regulatory Commission (FERC).<sup>4</sup> Kentucky Power requests rehearing to provide additional evidence regarding the materiality of the GreenHat default charges and the extent to which Kentucky Power mitigated the default charges through settlement negotiations and participation.<sup>5</sup> Kentucky Power further argues that the Commission cites two Kentucky-American Water Company cases to read a “materiality” threshold into this inquiry, which appear to be the only two Commission decisions to have addressed the concept of materiality in the context of utility expense deferrals.<sup>6</sup>

Kentucky Power argued that the GreenHat default charges are extraordinary, nonrecurring expenses, which could not have reasonably been anticipated or included in the utility’s planning.<sup>7</sup> The Commission is unpersuaded by this argument and finds that materiality is synonymous with the term “extraordinary” for this category of expenses appropriate for deferral. Expenses that are not material cannot be considered “extraordinary.” Kentucky Power argues that materiality is not addressed in most requests for regulatory asset treatment; however, the records of regulatory asset requests are replete with discussion of materiality, albeit the language used is most often “magnitude” or “significance.”<sup>8</sup> Further, FERC entered an Order approving the settlement

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<sup>4</sup> *Id.* at 20–21.

<sup>5</sup> *Id.* at 20–21.

<sup>6</sup> *Id.* at 18.

<sup>7</sup> *Id.* at 18.

<sup>8</sup> See Case No. 2006-00472, *General Adjustment of Electric Rates of East Kentucky Power Cooperative, Inc.* (Ky. PSC July 7, 2007); Case No. 2008-00456, *Application of Louisville Gas and Electric Company for an Order Approving the Establishment of a Regulatory Asset* (Ky. PSC Dec. 22, 2008); Case No. 2008-00457, *Application of Kentucky Utilities Company for an Order Approving the Establishment of a Regulatory Asset* (Ky. PSC Dec. 22, 2008); Case No. 2009-00168, *Application of Columbia Gas of Kentucky, Inc. to Establish a Regulatory Asset Related to Pension and Other Post-Retirement Benefit*

on December 30, 2019; however, Kentucky Power did not claim that its GreenHat default charges were minimized by the settlement in its application.

Kentucky Power has not offered any new evidence that could not have been reasonably available in the former hearing. Having reviewed the relevant record and being otherwise sufficiently advised, the Commission finds that Kentucky Power's request for a rehearing should be denied.

3. Timeliness of Request to Establish the Regulatory Asset

Kentucky Power notes that the Final Order states that the Commission has "historically not allowed a utility to establish a regulatory asset after a cost has been recorded as an expense and the utility has closed its books for the relevant fiscal year," but argues that precedent supports the timing of its request, given the timing of the GreenHat default and the date of the Commission's order in Case No. 2019-00002.<sup>9</sup>

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*Expenses* (Ky. PSC Dec. 23, 2009); Case No. 2009-00174, *Application of Kentucky Utilities Company for an Order Approving the Establishment of a Regulatory Asset* (Ky. PSC Sept. 30, 2009); Case No. 2009-00175, *Application of Louisville Gas and Electric Company for an Order Approving the Establishment of a Regulatory Asset* (Ky. PSC Sept. 30, 2009); Case No. 2009-00352, *Application of Kentucky Power Company for an Order Approving Accounting Practices to Establish Regulatory Assets and Liabilities Related to the Extraordinary Expenses Incurred by Kentucky Power Company in Connection with Three Major Event Storms in 2009* (Ky. PSC Dec. 22, 2009); Case No. 2011-00380, *Application of Louisville Gas and Electric Company for an Order Approving the Establishment of a Regulatory Asset* (Ky. PSC Dec. 27, 2011); Case No. 2012-00445, *Application of Kentucky Power Company for an Order Approving Accounting Practices to Establish Regulatory Assets and Liabilities Related to the Extraordinary Expenses Incurred by Kentucky Power Company in Connection with Four 2012 Major Storm Events* (Ky. PSC Jan. 7, 2013); Case No. 2016-00180, *Application of Kentucky Power Company for an Order Approving Accounting Practices to Establish Regulatory Assets and Liabilities Related to the Extraordinary Expenses Incurred by Kentucky Power Company in Connection with the Two 2015 Major Storm Events* (Ky. PSC Dec. 12, 2016); Case No. 2018-00304, *Electronic Joint Application of Kentucky Utilities Company and Louisville Gas and Electric Company for an Order Approving the Establishment of Regulatory Liabilities and Regulatory Assets* (Ky. PSC Dec. 20, 2018); and Case No. 2018-00416, *Application of Duke Energy Kentucky, Inc. for an Order Approving the Establishment of a Regulatory Asset* (Ky. PSC Mar. 25, 2019).

<sup>9</sup> Kentucky Power's Motion for Rehearing (filed Oct. 20, 2020) at 21. Case No. 2019-00002, *Electronic Examination of the Application of the Fuel Adjustment Clause of Kentucky Power Company from November 1, 2016 through October 31, 2018* (Ky. PSC Dec. 26, 2019).

Kentucky Power further asserts that the denial of deferral accounting would create “administrative inefficacy” in similar situations in the future.<sup>10</sup>

Regarding the timing of its application, Kentucky Power cites to the Commission’s Order in Case No. 2016-00180.<sup>11</sup> However, Kentucky Power did not record a regulatory asset for the GreenHat default charges prior to filing this application, only an internal memorandum, and did not notify the Commission at that time.<sup>12</sup> These defects were nevertheless a negligible concern and not the basis for denial of regulatory asset treatment. The process Kentucky Power describes as “administrative inefficiency,” i.e., requesting approval of any cost it wishes to recover through its fuel adjustment clause (FAC) other than those specifically identified in its tariff outside of the historic six-month or two-year review of its FAC, is not unreasonable. Administrative inefficiency is only introduced if Kentucky Power decides to seek FAC recovery only after an expense is problematic. PJM’s billing line items are established well before any charges are made to Kentucky Power. If a change in PJM’s billing line items necessitates a change in Kentucky Power’s FAC tariff, then those requests should be timely filed.

Kentucky Power has not offered any new evidence that could not have been reasonably available in the former hearing. Having reviewed the relevant record and

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<sup>10</sup> Kentucky Power’s Motion for Rehearing (filed Oct. 20, 2020) at 21.

<sup>11</sup> Case No. 2016-00180, *Application of Kentucky Power Company for an Order Approving Accounting Practices to Establish Regulatory Assets and Liabilities Related to the Extraordinary Expenses Incurred by Kentucky Power Company in Connection with the Two 2015 Major Storm Events* (Ky. PSC Dec. 12, 2016). “The Commission will . . . allow jurisdictional utilities to record expenses for Major Event storms occurring in the fourth quarter of the fiscal year as a deferred asset for accounting purposes only, subject to the utility’s providing the Commission with immediate notice of the establishment of such deferred asset, and also subject to the utility’s filing of an application within 90 days of the occurrence of the Major Event storm seeking Commission approval for such authority.”

<sup>12</sup> Application at 4 and Kentucky Power’s Response to Commission Staff’s First Request for Information (filed Apr. 30, 2020), Item 4.

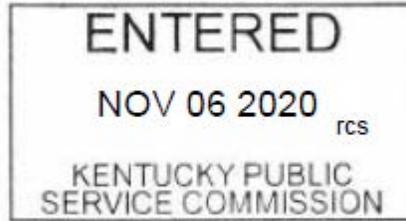
being otherwise sufficiently advised, the Commission finds that Kentucky Power's request for rehearing should be denied.

IT IS THEREFORE ORDERED that:

1. Kentucky Power's motion for rehearing is denied.
2. This case is closed and removed from the Commission's docket.

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By the Commission



ATTEST:

  
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Deputy Executive Director

Case No. 2020-00034

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