COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC EMERGENCY DOCKET RELATED TO THE NOVEL CORONAVIRUS COVID-19	))	CASE NO. 2020-00085

O R D E R

On November 30, 2020, Kentucky Power Company (Kentucky Power) filed with the Commission a document in which it informed the Commission of Kentucky Power's intent to track and defer foregone late fees in conformity with ASC 980-605-25. Kentucky Power alleged that, by establishing this regulatory asset, Kentucky Power is also conforming with the Commission's September 21, 2020 Order entered in this matter.[1]

Kentucky Power states that due to the Commission's moratorium on the assessment of late fees through December 31, 2020, Kentucky Power has foregone $1,875,587.52 in residential late fee revenue, projects an additional $606,510.85 foregone revenue residential late fees through the end of 2020, and has forgone $1,350,464.75 in commercial and industrial late fees through October 30, 2020. Kentucky Power states that it will update these totals once it closes its books for 2020.[2] Kentucky Power requests that the Commission confirm that Kentucky Power's establishment of the regulatory asset is correct.[3]

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[1] Kentucky Power Company's Notice Of Accounting Entries to Be Made and Other Steps to Be Taken In Furtherance of the Commission's September 21, 2020 Order (Notice of Accounting Entries) (filed Nov. 30, 2020) at 1.

[2] *Id.* at 2–3.

[3] *Id.* at 4–5.

PROPOSED REGULATORY ASSET

Kentucky Power states that it plans to track the amount of the revenue deficiency associated with foregone late fees by making the following accounting entries: (1) debiting Regulatory Asset and credit Revenue in the amount of the foregone late fee revenues to create the COVID-19 Forgone Late Fee regulatory asset; and (2) pursuant to ASC 980-605-25, immediately provisioning, what Kentucky Power refers to as the "COVID-19 Forgone Late Fee regulatory asset," by debiting Revenue and crediting a Contra Regulatory Asset since the standard for revenue recognition under GAAP has not yet been met.[4]

Kentucky Power asserts that ASC 980-605-25 provides for "alternative revenue recognition requirements" and allows for Kentucky Power's planned accounting treatment due to the Commission's September 21, 2020 Order in this proceeding and other broad external factors. Kentucky Power asserts that the economic dislocations and disruptions attributed to COVID-19, the Commission March 16, 2020 and September 21, 2020 Orders in this proceeding, all constitute the broad external factors encompassed by Type A alternative revenue plans under ASC 980-605-25.[5]

Kentucky Power will seek approval to recover the COVID-19 Forgone Late Fee regulatory asset from its customers in a future regulatory proceeding. Kentucky Power states that it will recognize the foregone late fee revenues once the three conditions for

[4] Notice of Accounting Entries at 3.

[5] *Id.*

recognition of alternative revenue listed in ASC 980-605-25-4 are satisfied.[6]

LEGAL STANDARD

A utility must obtain Commission approval for accounting adjustments before establishing any expense as a new regulatory asset. A regulatory asset is created when a utility is authorized to capitalize an expenditure that would be recorded as a current expense under traditional accounting rules. A utility may request recovery of the capitalized amount in future rates, but recovery is subject to Commission review and approval. The authority to establish regulatory assets arises out of the Commission's plenary authority to regulate utilities under KRS 278.040 and its authority to establish a system of accounts for utilities under KRS 278.220.

The Financial Accounting Standards Board's Statement of Financial Accounting Standards No. 71, Accounting for the Effects of Certain Types of Regulation, which was codified as Accounting Standards Codification (ASC) 980, Regulated Operations,

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[6] ASC 980-605-25-4 provides:

> Once the specific events permitting billing of the additional revenues under Type A . . . programs have been completed, the regulated utility shall recognize the additional revenues if all of the following conditions are met:
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> a. The program is established by an order of the utility's regulatory commission that allows for automatic adjustment of future rates. Verification of the adjustment to future rates by the regulator would not preclude the adjustment from being considered automatic.
>
> b. The amount of additional revenues for the period is objectively determinable and is probable of recovery.
>
> c. The additional revenues will be collected within 24 months following the end of the annual period in which they are recognized.

provides the criteria for recognition of a regulatory asset.[7] Supplemental to generally accepted accounting principles (GAAP), longstanding Commission precedent provides that regulatory assets may be established when a utility incurs (1) an extraordinary, nonrecurring expense that could not have been reasonably anticipated or included in the utility's planning; (2) an expense resulting from a statutory or administrative directive; (3) an expense in relation to an industry-sponsored initiative; or (4) an extraordinary or nonrecurring expense that, over time, will result in a savings that fully offsets the cost.[8]

In response to the COVID-19 pandemic and state of emergency declared by Governor Andy Beshear, the Commission initiated an administrative case, Case No. 2020-00085, that, among other things, ordered utilities to suspend disconnections due to nonpayment and waive the assessment of all late payment fees, noting that customers still had the obligation to pay for service received.[9] By Order entered September 21,

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[7] ASC 980-340-25-1 provides, in full, as follows:

> 25-1 Rate actions of a regulator can provide reasonable assurance of the existence of an asset. An entity shall capitalize all or part of an incurred cost that would otherwise be charged to expense if both of the following criteria are met:
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> a. It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.
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> b. Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.
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> A cost that does not meet these asset recognition criteria at the date the cost is incurred shall be recognized as a regulatory asset when it does meet those criteria at a later date.

[8] *See* Case No. 2008-00436, *The Application of East Kentucky Power Cooperative, Inc. for an Order Approving Accounting Practices to Establish a Regulatory Asset Related to Certain Replacement Power Costs Resulting From Generation Forced Outages* (Ky. PSC Dec. 23, 2008).

[9] Order at 3 (Ky. PSC Mar. 16, 2020).

2020, the Commission terminated the moratorium on residential disconnections for nonpayment as of October 20, 2020, but found good cause to continue the moratorium on the assessment of late payment fees for residential customers until December 31, 2020.[10] The Commission prohibited utilities from assessing of late fees on any past due residential amounts accrued between March 16, 2020, and December 31, 2020, directing that such residential customer accounts should be considered “on time” for all purposes as long as the customers timely pay their bill for current service and any amount required under the default or an agreed-upon payment plan.[11] The Commission terminated the moratorium on disconnection and the assessment of late payment fees for nonresidential accounts as of October 20, 2020, finding that commercial and industrial customers had access to forgivable federal loans and other financing options not available to residential customers.[12]

Utilities were expressly permitted to apply and defer carrying charges to past-due amounts paid pursuant to a payment plan in order to finance the payment plans for arrearages accumulated between March 16, 2020, and October 1, 2020.[13] The Commission approved such financing costs for deferral accounting, with recovery in a subsequent proceeding either through rate base or as part of capitalization in later proceedings.[14] The Commission, however, made no specific provision for recovery or

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[10] Order at 6–7 (Ky. PSC Sept. 21, 2020).

[11] *Id.* at 8.

[12] *Id.* at 12.

[13] *Id.* at 10.

[14] *Id.* at 10–11.

other regulatory accounting treatment of foregone late fees, only directing utilities to continue to track "lost revenue" from uncollected late fees.[15]

DISCUSSION AND FINDINGS

A regulatory asset is created when a rate-regulated business is authorized by its regulatory authority to capitalize an expenditure that, under traditional accounting rules, would be recorded as a current expense. Lost revenues are not incurred costs that would otherwise be charged as an expense, and therefore do not meet the criteria under ASC 980-340-25-1 for recognition of a regulatory asset.[16] To meet the recognition criteria, these amounts would need to qualify as alternative revenue program, for which there are specific requirements under ASC 980-605 related to accounting recognition as revenues and a regulatory asset. ASC 980-605-25-1 and 25-2 segregate the major alternative revenue programs into two categories, Type A and Type B. As ASC 980-605-25-2 explains:

- "Type A programs adjust billings for the effects of weather abnormalities or broad external factors or to compensate the [rate-regulated] utility for demand-side management initiatives." Examples include no-growth plans and similar conservation efforts.
- "Type B programs provide for additional billings (incentive awards) if the [rate-regulated] utility achieves certain objectives, such as reducing costs, reaching specified milestones, or demonstratively improving customer service."[17]

The Uniform System of Accounts for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act[18] requires late fees to be recorded as Other

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[15] *Id.* at 6–7.

[16] https://www2.deloitte.com/content/dam/Deloitte/us/Documents/energy-resources/pur-covid-update-september2020.pdf

[17] https://www2.deloitte.com/content/dam/Deloitte/us/Documents/energy-resources/us-er-power-utilities-accounting-financial-reporting-and-tax-research-guide.pdf

[18] 18 C.F.R. Part 101 *et seq.*

Operating revenues in Account No. 450 - Forfeited Discounts. As argued by Kentucky Power, the late fees requested represent lost revenue. The Commission concludes that Kentucky-Power's claimed lost revenues do not meet the requirements that would allow for GAAP recognition as a regulatory asset and, therefore, Kentucky Power's request to establish its "lost revenues" from forfeited late fees as a regulatory asset should be denied.

Although unclear from its Notice of Accounting Entries, Kentucky Power appears to argue, or assume, that by the Commission directing utilities to track "lost revenue" associated with uncollected late fees the Commission somehow established a program or mechanism by which Kentucky Power could subsequently recover the "lost revenue" from uncollected rate fees. To the extent that Kentucky Power believes that this was the Commission's intent, the Commission hereby clarifies that it was not. The Commission, through various requests for information in this proceeding, had sought and received information from dozens of utilities pertaining to "lost revenue" from uncollected late fees. The purpose of the Commission's various requests for information was not only to seek information on the health and ability to pay of utility customers, but also the impact the last ten months has had on the health of utilities under the Commission's jurisdiction. The Commission's direction in its September 21, 2020 Order to continue to track this "lost revenue" was to ensure that the utilities could respond to subsequent requests for information regarding lost revenue due to forfeited late fees. Kentucky Power's proposed regulatory asset, therefore, cannot meet the condition necessary to collect "lost revenues" in ASC 980-605-25-4(a) that "The program is established by an order of the utility's regulatory commission that allows for automatic adjustment of future rates. Verification of the adjustment to future rates by the regulator would not preclude the adjustment from being considered automatic." The Commission neither (1) established such a program; (2) nor provided for any automatic adjustment of rates. Notwithstanding the findings above that Kentucky Power's regulatory asset should be denied pursuant to GAAP principles, the Commission finds it should also be denied because it does not meet the criteria of ASC 980-605-25-4.

Even if Kentucky Power could defer the "lost revenues" resulting from late fees as a regulatory asset, the Commission would not approve recovery under the facts presented. In its September 21, 2020 Order, the Commission ordered that utilities consider residential customer accounts with arrearages subject to a payment plan as current for all purposes so long as those customers timely pay their bill for current service and the amount required under the default or alternative, agreed-upon payment plan.[19] Here, there is even no evidence that Kentucky Power calculated its "lost revenue" by including those customer accounts that are deemed current pursuant to the Commission's Order.

Additionally, in the September 21, 2020 Order, the Commission allowed utilities to apply and defer carrying charges to past due amounts paid pursuant to a payment plan in order to finance the payment plans for arrearages accumulated between March 16, 2020 and October 1, 2020.[20] The Commission approved such financing costs for deferral accounting, with recovery in a subsequent proceeding either through rate base or as part of capitalization in later proceedings. Insofar as a utility incurred expenses to finance the late payment or arrearage of utility service, that cost will be appropriately reflected in the financing costs in the deferral accounting previously approved by the Commission. Each

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[19] Order at ordering paragraph 5 (Ky. PSC Sept. 21, 2020).

[20] *Id.* at 10.

utility, including Kentucky Power, was offered the opportunity to apply those financing costs.

Finally, the Commission carefully chose its language when it directed utilities to "waive"[21] late payment fees for residential customers. In directing that late payment fees be waived, the Commission was directing utilities to forego collecting late payment fees because such fees were not in effect for past-due residential amounts accrued between March 16, 2020, and December 31, 2020, and for past-due nonresidential amounts accrued between March 16, 2020, and October 1, 2020.

The Commission's authority to waive late payment fees arises from its plenary authority pursuant to KRS Chapter 278, exclusive jurisdiction over utility rates and services pursuant to KRS 278.040(2), and the legislative intent to provide economic relief during extraordinary times. As the Kentucky Supreme Court has explained,[22] the General Assembly granted the Commission general powers and plenary authority arising from the Commission's exclusive jurisdiction to regulate utility rates and service under KRS 278.030 and KRS 278.040. In codifying KRS 278.170(2), the General Assembly recognized that utilities may be allowed to provide service at free or reduced rate service "for the purpose of providing relief in case of flood, epidemic, pestilence, or other calamity." Thus, in directing utilities to waive late fees, the Commission's intent was to provide relief to utility customers impacted by the calamitous nature of the COVID-19 pandemic.

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[21] Order, ordering paragraph 2 (Ky. PSC Mar. 16, 2020).

[22] *Public Serv. Comm'n v. Commonwealth ex rel. Conway*, 324 S.W.3d 373, 380-383 (Ky. 2010).

Although the Commission utilized its generalized and specific authority to direct that late payment fees be waived, the Commission also expressly stated that customers were not relieved "from the obligation to pay for service rendered," such as monthly billing for electric, gas, water, or sewer service usage.[23] The Commission also permitted utilities to apply and defer carry charges arising from the expense of financing payment plans for arrearages accumulated during the COVID-19 emergency, with recovery in a subsequent proceeding.[24] Thus, the Commission balanced the interests of utilities and consumers in actions taken in response to the COVID-19 pandemic.

The Commission also points out that, on March 17, 2020, in this docket, Kentucky Power requested deviation from its tariff to the extent that Kentucky Power believed that its tariff required it to charge late payment charges.[25] Kentucky Power requested deviation from its tariff in order to comply with the Commission's March 16, 2020 Order in this case in which the Commission, *inter alia*, directed all utilities to temporarily cease charging late payment fees, and request deviation from the utility's tariff if it deemed it necessary. In its request for deviation, Kentucky Power commended, "the Commission's swift action to protect customers" and requested deviation from its tariff, "[t]o the extent that Kentucky Power's tariff requires the Company to charge and pursue collection of delayed payment charges from customers."[26] Kentucky Power made no mention of seeking to subsequently recover the late fees or asked for Commission direction in

[23] Order at 5 (Ky. PSC Mar. 16, 2020).

[24] Order at 10 (Ky. PSC Sept. 21, 2020).

[25] Request of Kentucky Power Company to Deviate from Late Payment Charge Tariff Requirements (filed Mar. 17, 2020).

[26] *Id.* at 1–2.

accounting treatment for “lost revenue” from forfeited late fees. In fact, it is only at this late hour in 2020 that Kentucky Power has asked for any guidance on this issue at all.

CONCLUSION

Based on the evidence of record and being otherwise sufficiently advised, the Commission finds that Kentucky Power is incorrect in its assumption that it can establish the COVID-19 Forgone Late Fee regulatory asset and that any such request should be denied.

IT IS THEREFORE ORDERED that Kentucky Power shall not establish the COVID-19 Forgone Late Fee regulatory asset.

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By the Commission

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KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:

Executive Director

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