

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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)	CASE NO.
PRACTICES TO ESTABLISH REGULATORY)	2020-00174
ASSETS AND LIABILITIES; (4) APPROVAL OF A)	
CERTIFICATE OF PUBLIC CONVENIENCE AND)	
NECESSITY; AND (5) ALL OTHER REQUIRED)	
APPROVALS AND RELIEF)	

ORDER

On February 24, 2023, Kentucky Power Company (Kentucky Power) filed a motion to amend the January 13, 2021 Order issued in this case, which required Kentucky Power to file a general base rate adjustment application for rates effective January 1, 2024.¹ Kentucky Power requested that the January 13, 2021 Order be amended to either delete the requirement to file a rate case for rates effective January 1, 2024 or, in the event that Kentucky Power's acquisition by Liberty Utilities Co. (Liberty) closes, to require Kentucky Power to file a general base rate adjustment application within 180 days after Liberty files with the Commission written notice of Liberty's acquisition of Kentucky Power. Kentucky Power requested a Commission decision on or before March 20, 2023.

Kentucky Industrial Utility Customers, Inc. (KIUC) filed a response stating that it does not oppose Kentucky Power's motion.

¹ See Order (Ky. PSC Jan. 13, 2021) at 32.

LEGAL STANDARD

KRS 278.300 provides that every Order entered by the Commission continues in force until the expiration of time, if any, named by the Commission in the Order, or until revoked or modified by the Commission, unless the Order is suspended or vacated by a court. Relevant here, the language in the January 13, 2021 Order that Kentucky Power requested to amend has not expired or been revoked, modified, suspended, or vacated, and remains in effect.

In accordance with KRS 278.030, Kentucky Power is allowed to charge its customers only fair, just and reasonable rates.

BACKGROUND

The requirement to file a rate case application for rates effective January 1, 2024, is based, in part, upon the termination of the Rockport Unit Power Agreement (Rockport UPA) in December 2022 that would result in the termination of fixed costs associated with the Rockport UPA (Rockport Fixed Cost Savings) recovered through base rates and in the termination of a capacity charge recovered through a rider (Tariff CC).² If base rates are not adjusted to reflect the termination of the Rockport UPA fixed costs, then Kentucky Power would recover from customers expenses that Kentucky Power no longer incurred.

In Kentucky Power's 2017 rate case, Case No. 2017-00179,³ the Commission approved certain terms of a modified nonunanimous settlement agreement, with

² Tariff CC expired and was canceled effective December 9, 2022, and thus is not at issue in this motion.

³ Case No. 2017-00179, *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* (Ky. PSC Jan. 18, 2018).

modifications, that deferred certain Rockport UPA expenses incurred between January 1, 2018, and December 8, 2022, when the Rockport UPA was terminated. In addition to a mechanism to recover the deferred expenses, Kentucky Power agreed to return the Rockport Fixed Cost Savings through a customer credit (Rockport Fixed Cost Savings Credit) effective November 2022 until new base rates were established after the Rockport UPA terminated.⁴

In this case, the Commission found that Kentucky Power should file a general base rate adjustment application for rates effective January 1, 2024 to, among other things, establish a date certain for the savings from the termination of the Rockport UPA to be reflected in base rates. The Commission explained that it would establish a separate proceeding to address the Rockport UPA deferral regulatory asset and Rockport UPA Fixed Cost Savings once Kentucky Power filed certain written information.⁵

In Case No. 2021-00481,⁶ Liberty's proposed acquisition of Kentucky Power, Kentucky Power and Liberty testified they would not seek changes to base rates before the agreed-to timeline for new base rates effective January 1, 2024.

In Case No. 2022-00283,⁷ the Commission approved a mechanism to, among other things, establish the Rockport Fixed Cost Savings Credit to return the expected savings until new base rates were approved on or near the beginning of 2024.

⁴ Case No. 2017-00179, Jan. 18, 2018 Order, Appendix A at 6.

⁵ Order (Ky. PSC Feb. 22, 2021) at 25-26.

⁶ Case No. 2021-00481, *Electronic Joint Application of American Electric Power Company, Inc., Kentucky Power Company and Liberty Utilities Co. for Approval of the Transfer of Ownership and Control of Kentucky Power Company* (Ky. PSC May 4, 2022) at 10.

⁷ Case No. 2022-00283, *Electronic Investigation of Kentucky Power Company Rockport Deferral Mechanism* (Ky. PSC Dec. 8, 2022).

KENTUCKY POWER'S MOTION TO AMEND

Kentucky Power requested to amend the following sentence on page 32 of the January 13, 2021 Order:

Further, due to the anticipated savings from the termination of the Rockport UPA and therefore termination of associated costs that are currently in base rates and the termination of the Capacity Charge, the Commission finds that Kentucky Power should file a general base rate adjustment application for rates effective January 1, 2024.

As a basis for its motion, Kentucky Power argued that the rate effects of returning Rockport Fixed Cost Savings to customers have largely occurred through Case No. 2022-00283 with the Rockport Fixed Cost Savings Credit. Kentucky Power asserted that, because most of the Rockport UPA Fixed Cost Savings are being returned to customers through mechanisms approved in Case No. 2022-00283, the need to file a new rate case for rates effective January 1, 2024 has been reduced. Kentucky Power noted that the remaining rate issue to be determined from the Rockport UPA expiration is the true up of the amount necessary for Kentucky Power to earn its Commission-authorized return on equity offset (Rockport Offset) by the Rockport Fixed Cost Savings Credit, which will be determined in 2024, when Kentucky Power's 2023 net income and adjustments are known.⁸

Kentucky Power argued that, in the alternative, instead of relieving Kentucky Power of the requirement to file a rate case for base rates effective January 1, 2024, the Commission could require Kentucky Power to file a new rate case within 180 days of Liberty filing written notice that its acquisition of Kentucky Power had closed. Kentucky

⁸ Case No. 2022-00283, Dec. 8, 2022 Order at 15.

Power explained that Liberty's acquisition of Kentucky Power has been delayed due to pending approval of the transaction by the Federal Energy Regulatory Commission (FERC). Kentucky Power further explained the parties requested FERC to issue an expedited decision so that the acquisition could be closed by April 26, 2023. Kentucky Power argued that deferring filing a base rate application until its ownership was determined would "avoid customer confusion, promote administrative efficiency, and ensure that [Kentucky Power's] next general rate case filing comports with cost causation principles."⁹

KIUC'S RESPONSE

In its response, KIUC asserted that the benefits from the expiration of the Rockport UPA are currently and will be flowed back to customer. KIUC further asserted that the underlying concern has been addressed regarding Kentucky Power recovering expenses that it no longer incurs and the general base rate case filing deadline is no longer necessary. For that reason, KIUC does not oppose Kentucky Power's motion.

DISCUSSION AND FINDINGS

Based upon a review of the motion and case record, and being otherwise sufficiently advised, the Commission finds that Kentucky Power did not establish good cause to delete the requirement to file a general base rate case with rates effective January 1, 2024, but that Kentucky Power did establish good cause to require it to file a general base rate case within 180 days of Liberty filing written notice that Liberty's acquisition of Kentucky Power has closed, subject to Kentucky Power continuing to return the Rockport Fixed Cost Savings in the form of the Rockport Fixed Cost Savings Credit

⁹ Kentucky Power's Motion to Amend at 3.

until new base rates are set. Allowing Kentucky Power to continue recovering in rates the Rockport UPA expenses that it no longer incurred would result in rates that are not fair, just or reasonable. Thus, the Commission established the requirement to file a new rate case after the termination of the Rockport UPA to ensure that Kentucky Power does not recover in rates costs not being incurred. Deleting the requirement to file a general base rate case is not reasonable because, although the Rockport Fixed Cost Savings Credit is a mechanism that allows for the return of the savings until new base rates are established, the Rockport Fixed Cost Savings Credit should not serve as a proxy to avoid establishing new base rates.

It is reasonable to require Kentucky Power to file a general base rate case within 180 days of Liberty filing notice that its acquisition of Kentucky Power has closed so long as Kentucky Power continues the Rockport Fixed Cost Savings Credit until new base rates are set. So long as Kentucky Power continues to apply the Rockport Fixed Cost Savings Credit to customer accounts until new base rates are established, there will not be an adverse financial impact to customers. As Kentucky Power noted, any change in corporate ownership impacts a utility's operational and financial decisions that may be reflected in a general base rate adjustment application. For rates effective January 1, 2024, Kentucky Power would have to file a rate case application by June 1, 2023, or July 1, 2023, depending upon the test year used in the application. If FERC were to approve the transaction and it closed by April 26, 2023, it would be difficult for Kentucky Power to take necessary actions to timely file a rate case application.

The delay of the rate case filing may affect the Commission's review of the Rockport Offset true-up. As stated in Case No. 2022-00283, the Commission may

exclude from Kentucky Power's 2023 net income "any expenses that are unreasonable, unjust, unfair, disallowed for rate recovery by statute, regulation or Commission precedent, or which are related to the sale to Liberty."¹⁰ Due to the delay in the rate case filing, the Commission will need to determine these expenses without the benefit of the record of the a rate case ending directly before the February 1, 2024 filing for the Rockport Offset true-up. However, the Commission intends to fully investigate the reasonableness of the expenses included in the 2023 net income regardless of the delay in the rate case filling.

Based upon the above discussion, the Commission finds that Kentucky Power's motion should be denied as to the request to delete the requirement to file a general base rate case for rates effective January 1, 2024, and that Kentucky Power's motion should be granted as to the request to amend the January 13, 2021 Order to provide that Kentucky Power should file a general base rate case within 180 days of Liberty filing written notice with the Commission that Liberty's acquisition of Kentucky Power has closed.

IT IS THEREFORE ORDERED that:

1. Kentucky Power's motion to amend the January 13, 2021 Order is denied in part and granted in part.
2. Kentucky Power's request to delete the requirement to file a general base rate case for rates effective January 1, 2024 is denied.
3. Kentucky Power's request to amend the January 13, 2021 Order to state that Kentucky Power shall file a general base rate case within 180 days of Liberty filing

¹⁰ Case No. 2022-00283, Dec. 8, 2022 Order at 15.

written notice with the Commission that Liberty's acquisition of Kentucky Power has closed is granted.

4. Kentucky Power shall file a general base rate case within 180 days of Liberty filing written notice with the Commission that Liberty's acquisition of Kentucky Power has closed is granted.

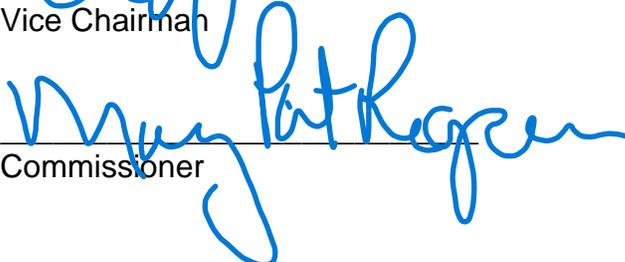
5. All other provisions of the January 13, 2021 Order not in conflict with this Order remain in effect.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner



ATTEST:


Executive Director

*Angela M Goad
Assistant Attorney General
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Honorable David Edward Spenard
Strobo Barkley PLLC
239 South 5th Street
Ste 917
Louisville, KENTUCKY 40202

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

*Barry Alan Naum
Spilman Thomas & Battle, PLLC
1100 Brent Creek Blvd., Suite 101
Mechanicsburg, PENNSYLVANIA 17050

*Thomas J FitzGerald
Counsel & Director
Kentucky Resources Council, Inc.
Post Office Box 1070
Frankfort, KENTUCKY 40602

*Lisa A. Lucas
Administrative Assistant
Jenkins Fenstermaker, PLLC
325 Eighth Street
Huntington, WEST VIRGINIA 25701

*Clay A. Barkley
Strobo Barkley PLLC
239 South 5th Street
Ste 917
Louisville, KENTUCKY 40202

*Hector Garcia-Santana
American Electric Power Service Corporation
1 Riverside Plaza, 29th Floor
Post Office Box 16631
Columbus, OHIO 43216

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

*Carrie H Grundmann
Spilman Thomas & Battle, PLLC
110 Oakwood Drive, Suite 500
Winston-Salem, NORTH CAROLINA 27103

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

*Michael A Frye
Honorable
Jenkins Fenstermaker, PLLC
325 Eighth Street
Huntington, WEST VIRGINIA 25701

*Joe F Childers
Joe F. Childers & Associates
300 Lexington Building
201 West Short Street
Lexington, KENTUCKY 40507

*John Horne
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Matt Partymiller
President
Kentucky Solar Industries Association
1038 Brentwood Court
Suite B
Lexington, KENTUCKY 40511

*Christen M Blend
American Electric Power Service Corporation
1 Riverside Plaza, 29th Floor
Post Office Box 16631
Columbus, OHIO 43216

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

*J. Michael West
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Don C Parker
Spilman Thomas & Battle, PLLC
300 Kanawha Blvd, East
Charleston, WEST VIRGINIA 25301

*Kentucky Power Company
1645 Winchester Avenue
Ashland, KY 41101

*Honorable Michael L Kurtz
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

*Robert D. Gladman
American Electric Power Service Corporation
1 Riverside Plaza, 29th Floor
Post Office Box 16631
Columbus, OHIO 43216

*Randal A. Strobo
Strobo Barkley PLLC
239 South 5th Street
Ste 917
Louisville, KENTUCKY 40202

*Tanner Wolfram
American Electric Power Service Corporation
1 Riverside Plaza, 29th Floor
Post Office Box 16631
Columbus, OHIO 43216