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PSC STAFF OPINION 2022-007

Mr. Brian West
Vice President
Kentucky Power
1645 Winchester Ave
Ashland, KY 41101

Re: Request for Staff Opinion – Consecutive Extensions of Medical Certificates

Dear Mr. West:

Commission Staff acknowledges receipt on May 9, 2022, of your letter in which you request an opinion on behalf of Kentucky Power Company (Kentucky Power) regarding the use of medical certificates to avoid termination of service where a customer is not in compliance with an existing partial payment plan.

Your letter indicates this question arose based on an informal complaint filed by a customer that received a termination letter and then presented a valid medical certificate. Kentucky Power accepted the medical certificate and then entered into a partial payment plan. The customer then did not comply with the partial payment plan and another termination letter was sent. The customer presented a second medical certificate and requested another partial payment plan, which was denied by Kentucky Power. The customer then filed an informal complaint and Commission Staff directed Kentucky Power to accept the second medical certificate. Kentucky Power is now seeking a staff opinion on the issue of consecutive medical extensions should a similar issue arise in the future.

The first issue Kentucky Power requests an opinion on is the meaning of the phrase “consecutive extensions” as used in 807 KAR 5:006, Section 15(2)(c).

The review of several regulations and statutes is necessary to determine what is required when a second medical certificate is presented and there is a delinquent payment plan. The first is 807 KAR 5:006, Section 15(2)(c). The regulation provides:

(2) A utility shall not terminate service to a customer if:...

(c) A medical certificate is presented. Service shall not be terminated for thirty (30) days beyond the termination date if a physician, registered nurse, or public health officer certifies in writing that termination of service will aggravate a debilitating illness or infirmity currently suffered by a resident living at the affected premises.

807 KAR 5:006, Section 15(2)(c)(1) goes on to state:

1. A utility may refuse to grant consecutive extensions for medical certificates past the original thirty (30) days unless the certificate is accompanied by an agreed partial payment plan in accordance with Section 14 of this administrative regulation.

The regulations in 807 KAR 5:006, Section 15 must be read in conjunction with 807 KAR 5:006, Section 14(2) dealing with partial payment plans. 807 KAR 5:006, Section 14(2) states:

Partial payment plans. Each utility shall negotiate and accept reasonable partial payment plans at the request of residential customers who have received a termination notice for failure to pay as provided in Section 15 of this administrative regulation, except that a utility is not required to negotiate a partial payment plan with a customer who is delinquent under a previous partial payment plan. Partial payment plans shall be mutually agreed upon and subject to the conditions in this section and Section 15 of this administrative regulation. Partial payment plans that extend for a period longer than thirty (30) days shall be in writing or electronically recorded, state the date and the amount of payment due. Written partial payment plans shall be dated and signed by both parties and shall advise customers that service may be terminated without additional notice if the customer fails to meet the obligations of the plan.

807 KAR 5:006, Section 14(2)(b) states in relevant part:

Partial payment plans for customers with medical certificates or certificates of need. For customers presenting certificates pursuant to the provisions of Sections 15(3) and 16 of this administrative regulation, gas and electric utilities shall negotiate partial payment plans based upon the customer's ability to pay, requiring accounts to become current not later than the following October 15. The plans include, for example, budget payment plans and plans that defer payment of a portion of the arrearage until after the end of the heating season through a schedule of unequal payments.

Also relevant to the consideration of the issue is Kentucky Power's tariff. Specifically, Sheet 2-5, Section 6 that deals with payment arrangements.

In accordance with 807 KAR 5:006, Section 14(2), Kentucky Power shall negotiate and accept reasonable payment arrangements at the request of a residential customer who has received a termination notice for failure to pay. Payment arrangements will include the following reasonable provisions: ...

2. Partial Payment Plans are available only for current balances and balances up to 30 days in arrears.
3. Any balance more than 30 days in arrears must be paid in full at least one business day prior to the date the Partial Payment Plan is established.
4. Customers with delinquent or otherwise unsatisfied Partial Payment Plans may not be eligible for a Partial Payment Plan....
8. It is the responsibility of the customer presenting the Medical Certificate to contact the Company to negotiate a payment arrangement based upon the customer's ability to pay. The payment arrangement shall require that the account become current no later than October 15.¹

To determine the meaning of administrative regulations, the normal rules of statutory construction are applied.² The most basic rule of statutory construction, and therefore regulatory construction, is that the plain meaning controls unless it would lead to an absurd result.³

Additionally, KRS 446.10 prescribes the definitions for statutory construction. Since the interpretation of regulations follows the rules of statutory construction these definitions are relevant here. KRS 446.10(26) states that the definition of "may" means permissive. KRS 446.10(39) states that the definition of "shall" means mandatory.

The plain meaning of the word consecutive is to follow after. Synonyms for consecutive include sequential, succeeding, and successional.⁴ Viewing the synonyms for consecutive leads to the conclusion that the plain meaning of consecutive means after, as in a succession. There is no requirement in the plain meaning that the event come immediately after or that it must come in a prescribed interval after the first, merely that the events come in a succession.

When reading 807 KAR 5:006, Section (15)(2)(c), 807 KAR Section 5:006, 15(2)(c)(1), and 807 KAR 14(2) together Kentucky Power is required accept a second medical certificate even if there was breached payment plan no matter the definition of consecutive. 807 KAR Section 5:006, 15(2)(c) uses the language "shall". Using the

¹ Kentucky Power Company Tariff 2-5.

² *Revenue Cabinet, Com v. Gabba*, 885 S.W. 2d 706, 708 (Ky. App. 1994)

³ *Wheeler & Clevenger Oil Co., Inc. v. Washburn*, 127 S.W. 3d 609, 614 (Ky. 2004).

⁴ Merriam-Webster Dictionary Online, accessed May 17, 2022. [Consecutive Definition & Meaning - Merriam-Webster](#)

definition in KRS 446.10(39) this means the section is mandatory. This means that Kentucky Power must not terminate if there is a valid medical certificate. Even if the normal usage of consecutive was construed to mean one right after then next with no breaks it would not matter based on the use of the word shall in 807 KAR Section 5:006, 15(2)(c). There is no permissive language in this section, so Kentucky Power, or any utility, would have to accept the consecutive medical certificate. The issue does not merely turn on the definition of consecutive, because the mandatory nature of the regulation requiring Kentucky Power to not terminate if there is a valid medical certificate is controlling.

807 KAR 5:006, Section 15(2)(c)(1) uses the word “may” when addressing the issue of the consecutive medical certificate. The permissive portion of this section has a condition, a partial payment plan. If the customer agrees to enter into the partial payment plan, then the consecutive extension should be granted.

The first portion of 807 KAR 5:006, Section 14(2) uses the mandatory language of “shall,” requiring Kentucky Power to negotiate a partial payment plan. The second portion of 807 KAR 5:006, Section 14(2) uses the permissive language of “not required” when addressing the issue of a customer being delinquent under a previous partial payment plan. However, 807 KAR Section 14(2) must be read in conjunction with 807 KAR 5:006, Section 15(2)(c) that is mandatory for the company to accept a medical certificate. In this particular situation, the mandatory nature of accepting the medical certificate does away with the permissive nature of granting a second partial payment plan. This does not lead to an absurd reading of the regulation. This gives prominence to the mandatory acceptance of the medical certificates.

The second question Kentucky Power requested a staff opinion on is, may Kentucky Power require customers presenting medical certificates and obtaining partial payment plans comply with the company’s terms and conditions of service regarding partial payment plans?

KRS 278.160(a) requires a utility to file a schedule of rates and terms of service. KRS 278.160(b) states that no utility may charge, demand, collect, or receive greater or less compensation than what is in its schedule of rates and terms of service. Kentucky Power’s conditions of service relating to partial payment plans are found in Tariff, 5-2, Section 6.

807 KAR 5:006, Section 14(2) does not dictate the terms of the first payment plan, nor the terms of the second payment plan. The section merely states that utilities must negotiate the partial payment plan. The terms of the payment plans can be subject to conditions in the filed tariff. In fact, pursuant to KRS 278.160(b) requires Kentucky Power to follow the terms for partial payment plans in its tariff. Nothing in the regulations indicate that Kentucky Power cannot limit the amounts more than 30 days in arrears. Nor do the regulations prohibit Kentucky Power from requiring arrears greater than 30 days to be paid in full before the partial payment plan. Kentucky Power is not deviating from the

requirements of KRS 278.160(b) or the regulations by placing these conditions on the partial payment plan.

Section 6, Item 4 of the tariff states, "Customers with delinquent or otherwise unsatisfied Partial Payment Plans may not be eligible for a Partial Payment Plan." The partial payment plan in Section 6, Item 4 of the tariff could be for any number of reasons. This use of permissive language in the section does not conflict with the mandatory requirement to accept valid medical certificates. It leaves permissive options for other situations. Additionally, Section 6, Item 8 of the tariff requires that accounts under partial payments plans become current by October 15. This is also in accordance with regulation 807 KAR 5:006, Section 14(2)(b) which has the identical requirement for partial payment plans. Neither this tariff section or 807 KAR 5:006, Section 14(2)(b) have any qualifying limitations or allowances for customers that present medical certificates.

This letter represents Commission Staff's interpretation of the law as applied to the facts as presented. The opinion is advisory in nature and not binding on the Commission should the issues herein be formally presented for Commission resolution. Questions concerning this opinion should be directed to Heather Temple at (502) 782-2021 or heather.temple@ky.gov.

Sincerely,



Nancy J. Vinsel
General Counsel