

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In The Matter Of:

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|--|---------------------|
| The Application Of Kentucky Power Company For:) | |
| (1) The Approval Of The Terms And Conditions) | |
| Of The Sixth Amendment To The Renewable) | |
| Energy Purchase Agreement For Biomass Energy) | |
| Resources Between The Company And) | Case No. 2015-00190 |
| ecoPower Generation-Hazard, LLC;) | |
| (2) Authorization To Enter Into The Sixth) | |
| Amendment to The Agreement; (3) The Grant Of) | |
| Certain Declaratory Relief; And (4) The Grant Of) | |
| All Other Required Approvals And Relief) | |

Kentucky Power Company's Reply In Support Of Its Motion For Rehearing

Kentucky Power Company submits the following reply to KIUC's response to the Company's Motion for rehearing of the Commission's August 27, 2015 Jurisdiction Order. Nothing in KIUC's response changes the necessary conclusion that rehearing should be granted, the Jurisdiction Order should be reversed, and this case should proceed.

A. KIUC Ignores the Relevant Holdings in the Cases Cited by the Company.

KIUC argues that recent Kentucky Supreme Court decisions cited by Kentucky Power are irrelevant because they address only broad subject matter jurisdiction.¹ KIUC's argument misses the point. The cases cited by the Company are important because they identify the narrow universe of cases where an appeal of a prior order divests the Commission of jurisdiction. An appeal of an order divests the lower tribunal of "jurisdiction over the case" not over the subject matter of the case.² The jurisdictional dividing line is not, as KIUC would have the Commission believe, between general subject matter jurisdiction over a broad category of cases

¹ KIUC Response at 2-3.

² *Kentucky v. Steadman*, 411 S.W.3d 717, 721-22 (2013).

on one side and jurisdiction over a particular set of facts at issue in a case under appeal.³ Rather the dividing line falls between the case on appeal and everything else. Quite simply, if the subsequent case does not seek to modify an order on appeal, that appeal does not divest the Commission of jurisdiction. This is the situation with the Company's application, and, accordingly, the Commission should retain jurisdiction over the case.

B. KIUC Misapprehends The Relief Sought By Kentucky Power In This Proceeding.

At the root of KIUC's argument is its continued misrepresentation of the nature of the request sought by the Company in this application. Kentucky Power is not, through this application, seeking to modify, alter, or amend the REPA Approval Order. As is clear from the application, the Company seeks only (1) the Commission's approval of the Sixth Amendment to the REPA and (2) a declaration that the none of amendments to the REPA have altered or changed the REPA Approval Order. The Commission need not re-open, alter or amend the REPA Approval Order to rule on the Company's application in this case. It does not even have to undertake a ministerial act with respect to the REPA Approval Order.

KIUC's response makes this clear. KIUC identifies four areas where it alleges that Kentucky Power has altered the REPA.⁴ But that is not the issue. While the Company disagrees with KIUC's characterization of the Sixth Amendment, the application poses two questions: whether the Sixth Amendment complies with the relevant authority and whether declaratory relief is appropriate. Answering these questions, either in the affirmative or negative, does not require the Commission to modify, alter, or amend the REPA Approval Order.

³ KIUC Response at 2.

⁴ Response at 5.

C. KIUC's Attempts to Distinguish Prior Commission Precedent Fail.

KIUC argues that the Commission's decision to retain jurisdiction over Duke Energy Kentucky's annual AMRP Rider adjustments while the legality of the AMRP Rider itself was under appeal is distinguishable from the Commission's Jurisdiction Order because Duke Energy was merely "implementing" the AMRP Rider rate.⁵

KIUC strains at a gnat. In the original AMRP Approval Order⁶ the Commission reviewed and established an AMRP tariff rate. In the subsequent AMRP cases the Commission reviewed and approved amended AMRP tariff rates.⁷ Here, the Commission reviewed and approved the REPA through the REPA Approval Order. This case asks the Commission to review and approve amendments to the previously approved REPA. KIUC offers no explanation – principled or otherwise – as to why the review and approval of amendments to the previously approved AMRP tariff rate was within the Commission's jurisdiction, but the review and approval of amendments to the previously approved REPA are not. Moreover, even if such a distinction existed, KIUC's argument overlooks the fact that in Case No. 2005-00042⁸ the Commission again considered the underlying merits of the AMRP despite the fact that those merits, and the Commission's legal ability to approve the AMRP, were the subject of pending appeals:

Finally, to the extent the subsequent AMRP cases were implementing directives included in an order then under appeal, the Commission's consideration of the subsequent applications

⁵ KIUC Response at 4.

⁶ *In the Matter of: Adjustment Of The Gas Rates of Union Light, Heat And Power Company*, Case No. 2001-00092 (Ky. P.S.C. January 21, 2002).

⁷ *See, In the Matter of: An Adjustment Of Rider AMRP of Union Light, Heat And Power Company*, Case No. 2004-00098 (Ky. P.S.C. August 24, 2004); *In the Matter of: An Adjustment Of Rider AMRP of Union Light, Heat And Power Company*, Case No. 2003-00103 (Ky. P.S.C. August 25 2003); *In the Matter of: An Adjustment Of Rider AMRP of Union Light, Heat And Power Company*, Case No. 2002-00107 (Ky. P.S.C. August 30, 2002)

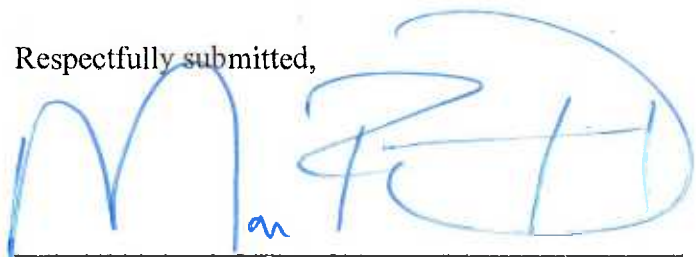
⁸ *In the Matter of: Adjustment Of The Gas Rates of Union Light, Heat And Power Company*, Case No. 2005-00042 (Ky. P.S.C. December 22, 2005).

supports – not undercuts – the Commission’s jurisdiction over this case. This direct relationship between the order under appeal and the subsequent annual AMRP Rider adjustments proceedings referenced by KIUC makes the annual AMRP tariff rate adjustments closer to being part of the case under appeal – hence beyond the Commission’s jurisdiction under KIUC’s argument – than the Company’s application in this case. Yet, the Commission exercised jurisdiction over four cases relating to the original AMRP Rider order (three annual rate adjustments and a rate case seeking reauthorization of the AMRP Rider) all while appeals of the original AMRP Rider order and each prior annual rate adjustment were pending. To the extent the Commission exercised jurisdiction over the AMRP cases following the appeal of the original AMRP order, it retains jurisdiction over this application.

CONCLUSION

For the reasons set forth in this reply and in the Company’s motion, Kentucky Power respectfully requests that the Commission grant rehearing, reverse the Jurisdiction Order, and establish a procedural schedule providing for the expeditious resolution of the Company’s application.

Respectfully submitted,



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Certificate of Service

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this the 25th day of September, 2015.

