

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) An Order)	
Approving Its 2017 Environmental Compliance)	CASE No.
Plan; (3) An Order Approving Its Tariffs and)	2017-00179
Riders; (4) An Order Approving Accounting)	
Practices to Establish a Regulatory Asset or)	
Liability Related to the Big Sandy 1 Operation)	
Rider; and (5) An Order Granting All Other)	
Required Approvals and Relief)	

**ATTORNEY GENERAL’S RESPONSE TO KPCO’S AND KIUC’S
MOTIONS FOR REHEARING**

Comes now the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention, and states as follows for his Response to the Motions for Rehearing filed by Kentucky Power Company [“KPCo” or “Company”] and Kentucky Industrial Utility Customers, Inc. [“KIUC”] in the above-styled matter.

The Attorney General applauds the Commission’s actions in ultimately reducing monthly bills for KPCo residential customers. The Commission’s actions acknowledge an undeniable truth: KPCo’s rate are unaffordable. In this regard, the Commission’s actions were merited and well-received. As public comments in the record of this case have made abundantly clear, many of KPCo’s customers were and are desperate to have their utility bills reduced. For that reason, the Attorney General opposes any argument to change the reasoned and balanced Final Order of January 18, 2018 [“Final Order”], in any manner that would prevent the implementation of the four percent (4%) on-average rate reduction for residential

customers. The Attorney General provides the following responses to each issue raised in KPCo's and KIUC's Motions for Rehearing.

A. Tax Issues

KIUC's motion seeks, *inter alia*, a reduction of \$1.31 million in the revenue increase awarded to KPCo in the Final Order. In support of its motion, KIUC cites the reduction in the federal corporate income tax rate, and thus a reduction in federal income tax expense, associated with KPCo's Unit Power Agreement for power from Rockport Units 1 and 2, brought about by the Tax Cuts and Jobs Act ["TCJA"]. KPCo's motion states, *inter alia*, that the Commission over-calculated its tax expense savings as a result of the TCJA, and, it alleges, under-stated its revenue requirement by \$765,030.

On January 25, 2018 the Commission opened a separate docket in Case No. 2018-00035 to investigate the impacts of the TCJA on KPCo's rates. That docket is still open, and the Commission has yet to set a procedural schedule in it. The Attorney General believes that for purposes of administrative economy, it makes more sense to address any further outstanding issues regarding the impact of the TCJA on KPCo's rates, including those cited by both KIUC and KPCo, within the docket created for that purpose. Additionally, since the final outcome of Case No. 2018-00035 will depend to a significant extent upon data and evidence from KPCo's rate case 2017-00179, the record from that case should be incorporated by reference into Case No. 2018-00035.

B. KPCo's Proposed Changes to Tariff P.P.A.

KPCo's application in the current case proposed to recover through its Tariff P.P.A. alleged costs incurred regarding forced outage expense not recoverable under the Fuel Adjustment Clause ("FAC") as a result of that regulation's Purchased Power Limitation

["PPL"].¹ The PPL calculation compares the cost of actual purchased power on an hourly basis to the cost of KPCo's theoretical peaking unit equivalent,² and caps the FAC-recoverable purchase power expense at the cost of the highest peaking unit equivalent ["PUE"]. KPCo also proposed to revise the method by which it calculated its PUE, to include costs of procuring firm gas service that would be used by its theoretical combustion turbine.

The Final Order: (i) noted that although KPCo elected to use an historic test year, the company's proposal to include *estimates* of PPL expenses in its proposed base rates, and to subsequently true-up those estimates through Tariff P.P.A., was unreasonable and accordingly denied recovery of such costs;³ and (ii) denied KPCo's proposal to include the cost of firm gas service in its PUE calculation, noting that no jurisdictional utility of which the Commission is aware relies upon firm gas service.⁴

KPCo had attempted in at least one prior rate case to recover its PPL costs through its Tariff P.P.A., which the Commission denied.⁵ KPCo's attempts in the instant case to revise its PPL and PUE calculations based on mere cost estimates were naked efforts to boost its profits, at ratepayers' expense. The Commission's actions were thus appropriate, and should be upheld.

C. Clarification on Recovery of the Rockport Deferral

¹ 807 KAR 5:056 § 1(2)(b) does not allow recovery of the cost of fuel related to purchases of power in substitution for forced outages.

² Since KPCo does not own a combustion turbine ["CT"], the Commission in 2002 allowed the company to base its PUE costs on a theoretical unit. Case No. 2014-00396, *Application Of Kentucky Power Co. for: (1) A General Adjustment Of Its Rates For Electric Service; (2) An Order Approving Its 2014 Environmental Compliance Plan; (3) An Order Approving Its Tariffs And Riders; And (4) An Order Granting All Other Required Approvals And Relief*, Final Order dated June 22, 2015, p. 59, n. 163.

³ Case No. 2017-00179, Final Order at p. 55.

⁴ *Id.* at pp. 55-56.

⁵ Case No. 2014-00396, Final Order dated June 22, 2015, pp. 59-60.

The parties provided testimony on, argued and briefed the proposed Rockport Deferral. The Commission fully considered the record when ruling on the issue. As KPCo itself noted, “Rehearing is not a vehicle for a party to reargue or re-litigate an issue fully addressed by the parties in the proceedings leading to an original order.”⁶ Nevertheless, KPCo now seeks to use rehearing as a way to modify the Final Order to provide the Company a greater bargain. The Final Order gave no indication that the Commission did not fully understand or consider the parties’ arguments, yet KPCo’s motion for rehearing seeks another bite at the apple. Granting the Company’s motion will serve to unlawfully bind the Commission’s hands in determining whether the utility’s rates *in the future* are fair, just and reasonable. The Commission should deny KPCo’s motion on the subject.

The Final Order makes clear that the Commission’s determination on this issue, “is for accounting purposes only.”⁷ The approved deferral removes the expenses associated with the Rockport UPA from rate base, allowing “the regulatory asset to be funded without a change in rate base.”⁸ Just as the Commission ordinarily has, it stated that it will determine the appropriate ratemaking treatment for the Rockport Deferral regulatory asset in KPCo’s next general rate case.⁹ As KPCo has previously noted, “the deferral of a cost that otherwise would be required to be expensed turns in the first instance on the probability the deferred amount may be recovered through future rates.”¹⁰ KPCo, in that prior proceeding, went on

⁶ Case No. 2017-00179, Motion of Kentucky Power Company for Partial Rehearing, (Ky. PSC Feb. 7, 2018) at 2, citing *In the Matter of: D.P.I. Teleconnection, L.L.C. v. BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky*, Case No. 2009-00127 (Ky. PSC March 2, 2012) at 3.

⁷ Final Order, at 40.

⁸ *Id.*

⁹ *Id.*

¹⁰ Case No. 2016-00180, *In the Matter of Kentucky Power Co. for an Order Approving Accounting Practices to Establish Regulatory Assets and Liabilities Related to the Extraordinary Expenses Incurred by Kentucky Power in Connection with Two 2015 Major Storm Events*, Motion for Partial Rehearing of the Commission’s November 3, 2016 Order, (Ky. PSC Nov. 22, 2016) at 14, citing Robert L. Hahne & Gregory A. Aliff, ACCOUNTING FOR PUBLIC UTILITIES § 12.02[1] (2016).

to state that, “a Commission accounting order does not guarantee future recovery through rates. That determination is, and should be, reserved for a later day, when it can be fully explored in the context of a utility’s next general rate case.”¹¹ FASB Codification 980-340-25-1, when read together with the Final Order, provides a basis for one to conclude that it is *probable* the amount deferred to the regulatory asset will be recovered. What the Commission has not done, and respectfully, should not do, is guarantee recovery of an expense in the manner requested by the Company years into the future, with no reasonable ability to determine if the rates *then* will be fair, just and reasonable. “Because utilities are allowed to charge consumers only ‘fair, just, and reasonable’ rates under KRS 278.030(1), the [Commission] must ensure that utility rates are fair, just, and reasonable to discharge its duty under KRS 278.040 to ensure that utilities comply with state law.”¹² In a few years’ time the Commission may determine that a longer or shorter amortization period, or a different WACC should apply to the regulatory asset. That decision, of course, should be made in the future, and granting KPCo’s motion on the subject now will preclude the Commission’s ability to make any change implicating rates. If the Commission grants KPCo’s motion on this subject, it will have unreasonably and unlawfully abdicated its duty to ensure rates are fair, just, and reasonable *in the future*.

D. Accounts Receivable Financing

The Commission noted that although KPCo sells its account receivables to AEP “. . . for cost savings due to default risks and to improve cash flow,”¹³ nonetheless KPCo retains its

¹¹ *Id.* at 15-16 [emphasis added].

¹² *Kentucky Industrial Utility Customers, Inc. v. Kentucky Public Service Commission*, 504 S.W.3d 695, 705 (Ky. App. 2016), quoting *Kentucky Public Service Commission v. Commonwealth of Kentucky, ex rel. Conway*, 324 S.W.3d 373, 377 (Ky. 2010).

¹³ Final Order, p. 24, citing hearing video transcript at 12:15:22.

uncollectible accounts.¹⁴ The Commission further noted that because the cost of accounts receivable financing is higher than traditional short-term financing, the retention of the company's bad debt “. . . places an undue burden onto Kentucky Power's customers.”¹⁵ In order to mitigate this burden, the Commission adjusted the accounts receivable financing component of KPCo's capital structure, reducing the percent of accounts receivable financing to 1.67% of the total capital structure, and increasing the percentage of short-term debt to 3.20%.

The Attorney General agrees with the Commission that KPCo's retention of its bad debt places an unnecessary burden on its ratepayers, who will already be bearing the burden of increased rates for years to come due the Commission's approval of the Tariff P.P.A. PJM OATT cost tracker,¹⁶ and the additional carrying charges KPCo will earn as a result of the Rockport deferral.¹⁷ The Attorney General urges the Commission to continue to find meaningful ways in which KPCo's rates can be reduced in order to alleviate the cost burden to its customers, who already pay more for utility service than any other utility in the Commonwealth.¹⁸

In the final analysis, the Commission must approve rates that are fair, just, and reasonable: “it is the result reached rather than the method employed which is controlling.”¹⁹ KPCo has not provided any evidence that was not already in the record when the Commission made its decision in this matter, nor has it made a compelling argument to amend the Final

¹⁴ *Id.* at 24.

¹⁵ *Id.*

¹⁶ Final Order at 52-54.

¹⁷ *Id.* at pp. 37-40.

¹⁸ Attorney General's Post-Hearing Brief, pp. 10-16.

¹⁹ *National-Southwire Aluminum Company v. Big Rivers Electric Corp., et al.*, 785 S.W.2d at 510, citing *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 64 S.Ct. 281, 88 L.Ed. 333 (1944).

Order here. The Commission's actions in mitigating the impact to KPCo's customers were well-reasoned, well-balanced, and clearly fall well-within its authority and purview. Thus, the Commission should refrain from taking any actions that would increase instead of decrease average monthly bills set in the Final Order.

WHEREFORE, the Commission should deny the Company's motion, incorporate the record of this matter into Case No. 2018-00035, and further address any lingering tax issues raised by both KIUC and KPCo there.

Respectfully submitted,

ANDY BESHEAR
ATTORNEY GENERAL



LAWRENCE W. COOK
KENT A. CHANDLER
REBECCA W. GOODMAN
JUSTIN M. McNEIL
ASSISTANT ATTORNEYS GENERAL
700 CAPITOL AVE., SUITE 20
FRANKFORT KY 40601
(502) 696-5453
FAX: (502) 573-8315
Rebecca.Goodman@ky.gov
Larry.Cook@ky.gov
Kent.Chandler@ky.gov
Justin.McNeil@ky.gov