

**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)	
Plan; (3) An Order Approving Its Tariffs And)	Case No. 2017-00179
Riders; (4) An Order Approving Accounting)	
Practices To Establish Regulatory Assets Or)	
Liabilities; And (5) An Order Granting All Other)	
Required Approvals And Relief)	

**KENTUCKY POWER COMPANY’S REPLY TO THE ATTORNEY GENERAL’S
RESPONSE TO THE COMPANY’S MOTION FOR PARTIAL REHEARING**

Kentucky Power Company provides the following reply to the Attorney General’s February 14, 2018 “Response to KPCO’s and KIUC’s Motions for Rehearing” (“Attorney General’s Response”). The Attorney General ignores the plain language of the Rate Case Order and conflates the true nature of the Company’s argument regarding its Forced Outage Expense, the Rockport Deferral, and the Commission’s treatment of accounts receivable financing. The Commission should grant the Company’s Motion for Partial Rehearing and decide in this proceeding these issues.

A. The Attorney General Misconstrues the Company’s Request for Rehearing on the Rockport Deferral Recovery Mechanism.

The Attorney’s General’s response to Kentucky Power’s request for rehearing to clarify the Commission’s treatment of the Rockport Deferral Recovery Mechanism ignores both the nature of the Rockport UPA expenses being deferred, as well as the inextricable link between the current rate benefits enjoyed by customers as a result of the deferral and the need for full, certain, and timely recovery of the deferred expenses.

Kentucky Power has the unambiguous right under the Supremacy Clause of the United States Constitution to recover its Rockport UPA expenses.¹ As the United States Supreme Court explained in *Mississippi Power & Light*: “[w]e hold that our decision in *Nantahala* rests on a foundation that is broad enough to support the order entered by FERC in this case and to require the MPSC to treat MP&L's FERC-mandated payments for Grand Gulf costs as reasonably incurred operating expenses for the purpose of setting MP&L's retail rates.”² The Rockport UPA expenses Kentucky Power agreed to defer are no different legally from those at issue in *Mississippi Power & Light*. Respectfully, there is nothing about their reasonableness, nor the Company's right to full, certain, and timely recovery in the manner described in the Settlement Agreement, that remains to be decided in the Company's next general rate case.³ As the Commission itself recognized with respect to a different Federal Energy Regulatory Commission-approved tariff, because the Rockport UPA is a:

FERC-approved rate, the judicial doctrine of federal preemption forecloses any inquiry here into the reasonableness of that rate or the costs recovered through that rate.... Kentucky Power's costs under the AEP Interconnection Agreement must be accepted as reasonable for rate-making purposes a FERC-approved rate cannot be disallowed as unreasonable.⁴

Absent the Company's agreement to defer these costs, its customers would have been required under both federal law and the Commission's own precedent to pay an additional \$50 million in rates over the next five years. Through the settlement negotiations, Kentucky Power and the other parties to the Settlement Agreement were able to fashion a creative solution that provided immediate rate relief to the Company's customers by allowing the Company to defer

¹ *Nantahala Power & Light Co. v. Thornburg*, 476 U.S. 953 (1986); see also *Wohnhas* Rebuttal 8.

² *Mississippi Power & Light Co. v. Mississippi*, 487 U.S. 487 U.S. 354, 369-370 (1988).

³ *Cf.* Rate Case Order at 40.

\$50 million of these contractual expenses until 2022 when they may be offset as a result of the expiration of the Rockport UPA. But by agreeing to defer these costs to provide current rate relief to the Company's customers, Kentucky Power was not abandoning its right to full, certain, and timely recovery of these expenses. Any illusion the Attorney General harbors that Kentucky Power also agreed to put the full, certain, and timely recovery of the Rockport Deferral amounts at risk is unreasonable and the Commission should disabuse him of that misconception by granting the Company the requested clarification.

Having attacked the Settlement Agreement, the Attorney General now wishes to harvest those benefits available only through the agreement while tossing aside the complementary provisions of the agreement that make the benefits possible. The Rockport Deferral, and the Settlement Agreement's mechanism for the full, certain, and timely recovery of the deferred costs, have a real world financial impact on Kentucky Power, and ultimately its customers, that are inextricably linked.⁵ Neither part of the bargain can nor should be treated as a potential afterthought to be disposed of at some indeterminate future date as the Attorney General's argument implies. The entirety of the deal must be respected as provided in the Settlement Agreement or the Company's ability to agree to the benefits provided by deferral is placed in jeopardy.

In light of this unambiguous legal precedent, and the inextricable link between the current rate relief provided by the Rockport Deferral and the necessity for full, certain, and timely recovery of the deferred costs, Kentucky Power sought rehearing to clarify the Commission's

⁴ Order, *In the Matter of: The Application Of Kentucky Power Company For Approval Of An Amended Compliance Plan For Purposes Of Recovering Additional Costs Of Pollution Control Facilities And To Amend Its Environmental Cost Recovery Surcharge Tariff*, Case No, 2006-00307 at 11 (Ky. P.S.C. January 24, 2007).

treatment of the Rockport Deferral Recovery Mechanism. The importance of the Rockport Deferral Regulatory Asset Recovery Mechanism is underscored by its specific incorporation as a condition precedent to the rate case stay out provision in the Settlement Agreement. Regrettably, without assurance that the Rockport Deferral Regulatory Asset will be recovered as specifically set forth in the Settlement Agreement, the Company must reevaluate all aspects of the Settlement Agreement.

B. The Necessary Changes to the Company's Revenue Requirement Must be Addressed in this Proceeding And the Tax Complaint Case.

The Attorney General also argues that the resolution of issues raised in the Company's and KIUC's motions for rehearing relating to the impact of the Tax Cuts and Jobs Act on the Company's revenue requirement should be delayed until resolution of Case No. 2018-00035. Kentucky Power's revenue requirement, including the effect of the Tax Cut and Jobs Act on the Company's federal corporate income tax expense, were determined by the Rate Case Order. By law and logic the Commission's calculations in the Rate Case Order must be addressed and modified in this case.

The Attorney General cites no authority for recasting KRS 278.400 to delay final adjudication of pending motions for rehearing of an issue already decided by the Commission in a rate case by transferring it to another proceeding to be decided sometime in the future.⁶ Both KRS 278.400, with its statutory time limits for Commission action for responding to a motion for rehearing, and KRS 278.190(2), with its statutory deadlines for Commission action in rate cases, underscore the need for a timely decision on the pending motions in this case. Further, the

⁵ See Wohnhas Rebuttal Testimony at 10, 8 (noting the importance of timely and sufficient cost recovery to maintaining the Company's investment grade credit rating and thereby avoiding higher financing costs ultimately borne by Kentucky Power's customers).

⁶ See e.g. *Johnson v. Correll*, 332 S.W.2d 843, 845 (Ky. 1960) (agency must administer the law as written); *Robertson v. Schein*, 204 S.W.2d 954, 957-958 (Ky. 1947) (agency may not add to or pare from the terms of a statute).

parties to this case are entitled to know now the Commission's final word on *all* issues already decided in this case so that they may evaluate fully their appellate and other options in a timely fashion.

Although invoking "administrative economy," the Attorney General is silent as to what is economical about importing wholesale the entire rate case record – as he asks – into the tax complaint case. Nor does he explain how the Commission can or should decide a rate case issue in a proceeding to which many of the rate case intervenors are not parties.

Further, the Commission set clear boundaries on how it will address the effect of the Tax Cuts and Jobs Act on Kentucky Power's revenue requirement.⁷ Changes arising from the reduction of the Company's own federal income tax expense and the modification of the gross revenue conversion factor are to be addressed in this case. The effects of the tax rate change on ADIT are to be addressed in the tax complaint case.

The revenue requirement and issues related to the rate case must be addressed in this case and not the tax complaint case. The Commission chose previously to pull some of the tax relief proceeds at issue in Case No. 2018-00035 into this proceeding to provide balance in the Rate Case Order. After addressing in this case the issues raised on rehearing, and increasing the Company's revenue requirement by \$2,315,017, the Commission can again pull some of the tax relief proceeds at issue in Case No. 2018-00035 into this case to maintain the initial balance ordered in finalizing this case. Or it can modify the rates established in the Rate Case Order to provide the Company the opportunity to recover its increased revenue requirement. But the final

⁷ Rate Case Order at 41 (emphasis added).

determination of what that revenue requirement is with respect to the issues already decided in this case, and how it is to be funded, must be decided here.⁸

C. The Attorney General's Response Conflates the Issues Relating to Tariff P.P.A.

Kentucky Power's Motion for Partial Rehearing should be decided on the evidence of record and what the Commission actually did in the Rate Case Order. The Company's motion is not to be decided, as the Attorney General's Response would have it, based on attacks on the Company's motives and arguments that are divorced both from the facts of the case and the findings of the Rate Case Order. First, Kentucky Power did not use "estimates" of future Forced Outage and Peaking Unit Equivalent Expense to determine the amount to be included in base rates. Instead, the Company adjusted test year values to reflect the three-year average of those expenses. Second, the Attorney General's Response ignores the fact that while the Commission's order clearly states that it "will allow recovery of the test year amount of purchased power reasonably incurred, but excluded from the FAC,"⁹ the denial of Adjustment W27 removed all test year Forced Outage Expense from the Company's revenue requirement and thus base rates.

Similarly, the Attorney General ignores that in rejecting a portion of the Company's proposed change to the peaking unit equivalent cost calculation based on its conclusion that peaking units would not have firm gas supplies, the Commission disallowed costs that are incurred regardless of whether the gas supply is firm or not. These costs include certain costs the Commission had previously approved for recovery. The issues raised in the Company's Motion

⁸ Similarly, if the Commission grants KIUC's Petition for Rehearing, *which it should not*, it must also address the impact of the tax rate change on the embedded Transmission Owner Revenue credit as set forth in the Company's response to KIUC's petition. If it does so, the net effect of the change is to increase the Company's revenue requirement by an additional \$3,360,907.

⁹ Rate Case Order at 55.

for Partial Rehearing are not “naked efforts to boost its profits, at ratepayers’ expense” as the Attorney General claims.¹⁰ Instead, the Company is merely requesting that the Commission address the inconsistencies in its Rate Case Order and provide the Company the relief the Rate Case Order unambiguously indicated the Company is entitled to receive.

D. The Attorney General’s Motion Does Nothing to Change the Necessary Conclusion that the Commission’s Departure from Precedent and Fact on Accounts Receivable Financing Is Unwarranted.

Kentucky Power sought rehearing to correct the Commission’s findings regarding its use of accounts receivable financing. Kentucky Power’s use of accounts receivable financing comports with past Commission-approved practice and the practice of other utilities and businesses. Bearing the expense associated with its bad debt does not prejudice Kentucky Power, or its customers, or impose costs different from what it would otherwise bear if it did not use accounts receivable financing.

The Attorney General’s response fails to refute the Company’s arguments. Rehearing is appropriate to allow the Commission to correct the Rate Case Order’s treatment of accounts receivable financing.

Respectfully submitted,



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¹⁰ Attorney General’s Response at 3.

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