

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 AND)
REGULATORY ASSETS AND LIABILITIES AND (5) AN)
ORDER GRANTING ALL OTHER REQUIRED APPROVALS)
AND RELIEF)

**KENTUCKY COMMERCIAL UTILITY CUSTOMERS, INC.’S
POST-HEARING BRIEF**

Kentucky Commercial Utility Customers, Inc., (“KCUC”) by counsel, provides the following post-hearing brief.

I. Introduction

Kentucky Power Company seeks to increase rates on its customers. As an association of commercial utility customers serving to represent the interests of commercial customers on utility-related issues in Kentucky, KCUC intervened in this matter. KCUC’s representative members, Appalachian Regional Healthcare, Inc., (“ARH”) and BPM Lumber, LLC (“BPM Lumber”) will be directly and negatively impacted by Kentucky Power’s proposed increase.

ARH operates six hospitals in Kentucky Power’s service territory and is the largest healthcare provider in eastern Kentucky, providing jobs to thousands of Kentuckians. Similarly, BPM Lumber is the largest producer of Appalachian hardwood in Kentucky. It receives electricity from Kentucky Power at its Whitesburg and Hyden mills, as well as other satellite log yards. BPM Lumber directly employs 280 individuals.

Kentucky Power and five intervenors proposed a non-unanimous settlement of the case to the Commission. KCUC could not agree to the settlement as the proposal did not treat the Large General Service (“LGS”) class fairly. The proposed settlement provided for substantially different treatment of LGS customers as compared to industrial customers, even though both are vital to economic development. In addition, the proposed settlement isolated the LGS class and required it alone to subsidize the Public School rates. These examples demonstrate why the LGS class is treated unfairly by the proposed settlement.

II. Procedural History

Kentucky Power filed an application, seeking a general adjustment of rates and other approvals. The application was deemed by the Commission to be filed on July 20, 2017. The Commission granted intervention to KCUC, by Order dated August 3, 2017.

Following discovery, all parties including KCUC, engaged in settlement discussions. KCUC participated in all three “announced” settlement meetings. Not all the parties could agree on resolution of all the issues in the case, however. Kentucky Power and five intervenors entered into a settlement agreement; KCUC was one of two parties that could not agree to the settlement agreement’s terms. KCUC’s witness Kevin Higgins specifically mentioned that the proposed settlement was not fair, just, and reasonable because it did not provide fair or reasonable treatment for the Large General Service (“LGS”) class.¹

III. Standard of Review

Rates charged by a utility must be fair, just, and reasonable.² The “fair, just, and reasonable” standard includes the allocation of expenses and revenues to classes of customers.³

¹ Direct Settlement Testimony of Kevin C. Higgins at 1-2 (Dec. 4, 2017).

² KRS 278.030(1).

³ *Cf. Kentucky Utilities Co.*, Case No. 2016-00370 (Ky. PSC Aug. 3, 2017)(denying a motion for reconsideration for change in allocation that was already based on a methodology that was determined to be fair, just, and reasonable);

Upon presentment of a non-unanimous proposed settlement by the applicant utility, the Commission has previously determined the new terms of the settlement to merely be an amendment to the utility's originally filed position.⁴ Accordingly, the Commission must determine whether the terms contained in the proposed settlement, including the overall allocation, is fair, just, and reasonable.

Extra scrutiny must be applied when some parties cannot agree to a settlement. When faced with a non-unanimous settlement, the Commission should closely inspect the proposal to determine whether it produces an appropriate result.⁵ The Franklin Circuit Court has interpreted United States Supreme Court's decision in *Mobile Oil* and stated that the law

requires in the face of a non-unanimous agreement that the administrative agency consider the proposed settlement on the merits in an independent fact-finding hearing supported by substantial evidence in the record. Only then can the Commission's finding of just and reasonable rates in a settlement order conform to the requirements of due process for all the parties involved.⁶

In the present case, an examination of the proposed settlement reveals that it unfairly treats the LGS class.

Western Kentucky Gas Co., Case No. 99-070 (Ky. PSC Dec. 6, 1999)(demanding that settling parties justify why the specific allocation of revenue increases to rate classes was fair, just, and reasonable).

⁴ See *Kentucky Power Co.*, Case No. 2012-00578 at 35 (Ky. PSC Oct. 7, 2013)(“Having reviewed the non-unanimous Stipulation and being otherwise sufficiently advised, the Commission finds that it is in effect an offer by Kentucky Power to amend its application by requesting authority to acquire a 50 percent interest in the Mitchell Station on terms more favorable than those originally proposed.”)

⁵ *Mobil Oil Corp. v. Fed. Power Comm'n*, 417 U.S. 283 (1974)(“ No one seriously doubts the power—indeed, the duty—of FPC to consider the terms of a proposed settlement which fails to receive unanimous support as a decision on the merits. We agree with the DC Circuit that even assuming under the Commission's rules [a party's] rejection of the settlement rendered the proposal ineffective as a settlement, it could not, and we believe should not, have precluded the Commission from considering the proposal on its merits.”)

⁶ *Com. Ex Rel. Cowan v. Pub. Serv. Comm'n*, 120 P.U.R.4th 168, available at 1991 WL 501791 (Franklin Cir. Ct. Feb. 1, 1991).

IV. The proposed settlement does not produce fair, just, and reasonable rates for the LGS class.

KCUC witness Kevin Higgins described his general objections to the proposed settlement as follows:

The revenue allocation in the Settlement Agreement does not provide a fair or reasonable treatment for the Large General Service (“LGS”) class. In addition to continuing to require LGS to bear a significant subsidy burden as part of KPCo’s overall rate structure, the Settlement Agreement further singles out the LGS class to absorb an additional subsidy to provide a \$500,000 benefit for another customer class, Public and Private School service (“PS,” served under Tariff K-12 School). As a result, the Settlement Agreement produces an unreasonable revenue allocation outcome.⁷

A. Kentucky Power’s LGS customers play a vital role in Kentucky Power’s economic development progress, and LGS rates should be given fair treatment.

In reviewing how the LGS class was treated unfairly, the Commission can look to the testimony of Kentucky Power’s President Matthew Satterwhite. The settlement removes the subsidy provided to residential customers by industrial customers receiving service under the Industrial General Service (IGS) tariff.⁸ In contrast, the subsidy reduction to LGS/PS customers was only five percent, which is the same as the originally filed position of Kentucky Power for LGS and all other non-residential classes.⁹

The proposed settlement’s significant reduction in industrial customers’ subsidy provided to residential customers was justified as a mechanism to improve economic development in eastern Kentucky.¹⁰ In fact, KIUC’s witness Stephen Baron recommended this reduction based on economic development.

⁷ Direct Settlement Testimony of Kevin C. Higgins at 1-2 (Dec. 4, 2017).

⁸ Settlement Testimony of Matthew J. Satterwhite S9:2-3 (filed Nov. 30, 2017); VR:12/6/17; 17:32:30.

⁹ VR:12/8/17; 15:13:50.

¹⁰ VR:12/6/17; 17:33:20-42.

Eastern Kentucky's economic development, however, is not exclusively connected to development of potential industrial customers of Kentucky Power, as demonstrated in several places in the record of this case. Kentucky Power President Satterwhite testified that wood products are important economic-development targets for his company.¹¹ One of KCUC's representative members, BPM Lumber, is a wood-producing company in Kentucky Power's territory. It has approximately 280 direct employees.¹² BPM Lumber takes nearly all its electric load from Kentucky Power on an LGS schedule.¹³ Likewise, ARH is the largest employer in eastern Kentucky and takes approximately half of its service on an LGS tariff.¹⁴ These are precisely the type of employers that Kentucky Power seeks to recruit and cultivate in its territory.¹⁵

Kentucky Power's economic-development interests related to LGS customers go well beyond KCUC representative members. Kentucky Power witness Brad Hall identified Wrightway Concrete Mix Solutions as one of Kentucky Power's economic-development success stories. It employs 130 people and is an LGS customer of Kentucky Power.¹⁶ In addition, Kentucky Power listed more than twenty-five businesses that located or expanded in Kentucky Power's territory that would receive service on an LGS tariff.¹⁷ Of the businesses listed, the LGS customers accounted for more than half of the total list of new projects.¹⁸

Kentucky Power's economic development efforts are not exclusively tied to industrial customers, nor are eastern Kentucky jobs. Thus, it makes no sense to unfairly discriminate

¹¹ VR: 12/6/17; 10:31:27.

¹² VR: 7/24/17; 3:02:45.

¹³ VR: 12/7/17; 12:50:30-12:50:53.

¹⁴ *Id.*

¹⁵ See KCUC Hearing Exhibit 3 at 7 (referring to Wood Products); Direct Testimony of Brad N. Hall, Exhibit BNH-1 at 9.

¹⁶ VR: 12/08/17; 10:40:30-10:41:20.

¹⁷ Kentucky Power's Response to Commission Staff's Post-Hearing Data Requests, Item 8.

¹⁸ *Id.*

against LGS in favor of IGS based on economic development arguments. Customers paying LGS rates are vital to the eastern Kentucky economy now and in the future, and deserve fair and reasonable rates.

B. The settlement's unfair treatment of LGS customers is further demonstrated by the \$500,000 subsidy that LGS customers will pay to benefit Public School customers.

Although the settlement combines the LGS and Public Schools ("PS") classes, it has rates designed such that the PS rates will produce \$500,000 less than if the PS customers received service under the LGS tariffs. That \$500,000 reduction in revenue is assigned to the remaining LGS customers, thereby increasing LGS rates such that LGS customers will pay \$500,000 more than they otherwise would if PS customers did not have a separate rate.

Although this provision in the proposed non-unanimous settlement is similar to the pilot program currently contained in the utility's tariff, Kentucky Power rejected this design in its application. In Kentucky Power witness Alex Vaughan's testimony, he explained that the PS pilot program was established in the last rate case because there was an insufficient amount of load research data.¹⁹ Once the data was accumulated and reviewed, it demonstrated that the separate PS rate was not justified. Vaughan testified: "rather than justifying a discounted rate for the public school tariff customers, the class cost of service study shows that the public school tariff customers actually benefit from the load diversity and higher average load factor of the standard LGS customers when they were on the LGS rate schedules."²⁰ He reiterated this point in his rebuttal testimony, stating "There is nothing about the schools from a cost of service standpoint that they should be separated from and given a discount relative to the other 100kW to 1,000kW general service [LGS] customers."²¹

¹⁹ Direct Testimony of Alex Vaughan at 22.

²⁰ *Id.* at 24.

²¹ Rebuttal Testimony of Alex Vaughan at R15.

Kentucky School Board Association witness Ron Willhite confirmed that schools taking service under the PS class would pay rates that have a lower rate of return for Kentucky Power as compared to the customers in the LGS class.²² This further confirms that the settlement proposes to pile additional burdens onto the already burdened LGS class.

In addition, the proposed settlement is not simply a continuation of the pilot program and Kentucky Power's current tariff. According to the settlement from the last rate case, the PS rates were to be designed such that the \$500,000 reduction to the PS class would be recovered from both the LGS and MGS classes.²³ In the present case, the proposed \$500,000 reduction is only recovered from LGS customers.²⁴

C. KCUC's recommendation

Having reviewed the proposed settlement, KCUC and its witness Kevin Higgins recognized that the proposed settlement provided for unfair treatment of LGS customers, based in part on the reasons discussed above. Also recognizing that the settlement is a product of negotiations between diverse parties, KCUC seeks to propose a reasonable modification²⁵ to bring the settlement within the fair, just, and reasonable standard.

As described in Kevin Higgins's testimony, to the extent that the Commission makes any additional revenue requirement reductions to the stipulated revenue requirement, KCUC recommends that the first \$500,000 of any such reduction be directed first to reduce the revenue requirement of the LGS class. This amount is equal to the discount that the Settlement Agreement requires the LGS class to absorb for the benefit of another customer class. Any

²² VR: 12/8/17; 17:42:30-17:42:15.

²³ KCUC was not a party to Kentucky Power's 2014-00396 rate case.

²⁴ *Compare* Settlement Agreement from Case No. 2014-00396 (KCUC Exhibit 7) *with* Proposed Settlement Agreement in Case No. 2017-00179.

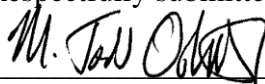
²⁵ KCUC believes that the record would support greater reduction for the LGS class, but proposes this modification to the proposed settlement in order to attempt to balance various interests.

revenue requirement reduction beyond \$500,000 should be apportioned pro rata in proportion to each class's revenue requirement (including LGS).

V. Conclusion

The proposed non-unanimous settlement is not fair, just, or reasonable to LGS customers. Reviewing the settlement agreement and the record of this case legitimately makes one wonder how the LGS class “got stiffed here.”²⁶ Regardless of how it happened, the Commission has the power—indeed, the duty—to consider the terms of the proposed non-unanimous settlement, and set rates for Kentucky Power that are fair, just, and reasonable.

Respectfully submitted



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CERTIFICATE OF SERVICE

In accordance with 807 KAR 5:001, Section 8, I certify that the January 5, 2018, electronic filing of these Responses is a true and accurate copy of the same document being filed in paper medium; that the electronic filing will be transmitted to the Commission on January 5, 2018; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that an original paper medium of the Responses and six copies will be delivered to the Commission within two business days.



Attorney for KCUC

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²⁶ VR:12/08/17; 5:46:25-27.