

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) APPROVAL OF TARIFFS AND)
RIDERS; (3) APPROVAL OF ACCOUNTING) Case No. 2020-00174
PRACTICES TO ESTABLISH REGULATORY)
ASSETS AND LIABILITIES; (4) APPROVAL OF)
A CERTIFICATE OF PUBLIC CONVENIENCE)
AND NECESSITY; AND (5) ALL OTHER)
REQUIRED APPROVALS AND RELIEF)

**ATTORNEY GENERAL AND KIUC’S RESPONSE TO KENTUCKY POWER
COMPANY’S MOTION FOR REHEARING**

The Attorney General of the Commonwealth of Kentucky, through his Office of Rate Intervention, and the Kentucky Industrial Utility Companies (“KIUC”), respectfully request that the Commission deny the Motion of Kentucky Power Company (the “Company”) for Rehearing filed on February 2, 2021 for the reasons stated below.

KRS 278.400 states:

After a determination has been made by the commission in any hearing, any party to the proceedings may, within twenty (20) days after the service of the order, apply for a hearing with respect to any of the matters determined. Service of a commission order is complete three (3) days after the date the order is mailed. The application shall specify the matters on which a rehearing is sought. The commission shall either grant or deny the application for rehearing within twenty (20) days after it is filed, and failure of the commission to act upon the application within that period shall be deemed a denial of the application. Notice of the hearing shall be given in the same manner as notice of an original hearing. Upon the rehearing any party may offer additional evidence that could not with reasonable diligence have been offered on the former hearing. Upon the rehearing, the commission may change, modify,

vacate or affirm its former orders, and make and enter such order as it deems necessary.

The Commission should deny the Motion for Rehearing because the Final Order reflects the Commission's consideration and evaluation of the entire evidentiary record, and is properly based upon substantial evidence. Moreover, the Commission's determinations and findings regarding the Company's revenue requirement were not only reasonable and fully compliant with all applicable law, but in fact, the record contains other substantial evidence upon which the Commission could have made additional adjustments and findings to reduce further the revenue requirement. If the Commission grants rehearing on any item set forth in the Company's Motion, the Attorney General and KIUC expressly reserve the right to wholly participate and object to any or all items or issues in this proceeding. Finally, the Attorney General and KIUC request that if the Company is granted rehearing on issues that could potentially increase the revenue requirement, that they be presented the opportunity to litigate corresponding reductions.¹ Finally, silence in this Response as to any particular subject raised fails to constitute acquiescence, approval or agreement to that premise.

The Commission should reject the Company's Motion for Rehearing because (1) the Commission's adjustment of Cash Working Capital to \$0 is reasonable and is thoroughly supported by the record, (2) the Commission's operating income

¹ See Case No. 2017-00179, *Electronic Application of Kentucky Power Company for a General Adjustment of its Rates for Electric Service, etc.*, Order 01 dated Feb. 27, 2018, p. 3, holding that a corresponding, but related, issue raised in a Response to a Petition for Rehearing may be properly addressed on rehearing.

adjustments are reasonable and supported by the record, (3) the Commission's determination with regard to the appropriate Return on Equity for Tariff E.S is reasonable, (4) the Commission's finding of the appropriate rate for long-term debt expense is reasonable and supported by the record, (5) the Commission should not amend its finding related to Advanced Metering Infrastructure and the Grid Modernization Rider, (6) the Commission should not unduly restrict the scope of the forthcoming Rockport UPA review, and (7) while the Attorney General and KIUC are supportive of the proposed Tariff NMS II, rehearing on this issue is unnecessary given that the Commission has already set a hearing for the taking of further evidence on this issue.

I. The Commission's adjustment of Cash Working Capital to \$0 is reasonable and is thoroughly supported by the record.

The Attorney General and KIUC recommended that Cash Working Capital be set to \$0 through the direct testimony of expert Lane Kollen filed on October 7, 2020.² The Company had multiple opportunities to rebut that testimony. As such, the assertion that the reduction of Cash Working Capital to \$0 is arbitrary, a violation of due process, or suffers from Constitutional infirmity is without merit. The assertion that the Commission's Order impermissibly deviates from prior precedent also misses the mark. The approval of one method of calculation does not lock the Commission into utilizing that method in perpetuity if another method provides a better estimation of the company's forecasted operations.³

² Kollen Direct Testimony at 7, *et seq.*

³ In *Federal Power Comm'n v. Hope Nat. Gas Co.*, 320 U.S. 591, 64 S.Ct. 281 (1944), the Court noted that in prior rulings, it has found that a rate setting Commission is ". . . not bound to the use of any

Further, during the discovery process, AG-KIUC asked Kentucky Power to provide a CWC calculation using the lead/lag approach, but the Company would not.⁴ The Company is the only party to this case that has the data to perform a lead-lag study.⁵ The Company regularly performs lead-lag studies in rate cases in other jurisdictions.⁶ AG-KIUC's questioning on this issue in its Supplemental Data Requests and the Company's answers thereto speak for themselves. The Company was certainly on notice that its failure to perform a lead-lag study deprived the parties and decision-makers of useful information that was sought in this proceeding. To allow the Company to benefit from its control of information and failure to conduct the analysis at issue would be fundamentally unfair to the other litigants and to the Commission.

The Commission has plenary authority over the rates charged by the Company.⁷ The burden is on the Company to prove the propriety of its costs; the burden is not on the Attorney General or KIUC to disprove costs, the details of which are only available to the Company. Kentucky Power provided no empirical support that the one-eighth O&M expense formula approach is more accurate, likely because

single formula or combination of formulae in determining rates. Its rate-making function, moreover, involves the making of 'pragmatic adjustments.' . . . Under the statutory standard of 'just and reasonable' it is the result reached not the method employed which is controlling. Moreover, in the ratemaking process, "the fixing of 'just and reasonable' rates, involves a balancing of the investor and the consumer interests." 64 S. Ct. 281, 288. See also Case No. 2018-00281, *Electronic Application of Atmos Energy Corporation for an Adjustment of Rates* (Ky. PSC May 7, 2019); Case No. 2020-00160, *Electronic Application of Water Service Corporation of Kentucky for a General Adjustment in Rates* (Ky. PSC December 8, 2020).

⁴ Exhibit LK-4; Kentucky Power Response to AG-KIUC Item No. 2-1.

⁵ Kollen Testimony at 14:16-18; Exhibit LK-6; Kentucky Power Response to AG-KIUC Item No. 2-3.

⁶ Kollen Testimony at 14:10-16; Exhibit LK-5; Kentucky Power Responses to AG-KIUC Item Nos. 2-2 and AG-KIUC 2-7.

⁷ See, e.g. *Kentucky Pub. Serv. Comm'n v. Conway*, 324 S.W.3d 373, 383 (Ky. 2010).

there is none. Moreover, the Commission has previously required investor-owned utilities to perform a lead-lag study, and reset their cash working capital in rate base to \$0, where, as the Company does, the utility sells its receivables to a specialty affiliate created to accelerate the conversion of receivables into cash and to reduce the cost of financing customer receivables.⁸

Further, the Company's claim that the accounts receivable financing was double-counted was not an issue in the case and therefore should not be an issue on rehearing. Neither the Company nor any other party addressed this issue in their post-hearing briefs and this is not an appropriate forum to raise a new issue. Furthermore, the Commission's remedy to set the CWC to zero in lieu of a properly performed cash working capital using the lead/lag approach was the bare minimum necessary to address this issue. The CWC should have been negative.

Therefore, the Company's request for rehearing regarding Cash Working Capital should be denied.

II. The Commission's operating income adjustments are reasonable and supported by the record.

a. The disallowance of certain rate case expenses is reasonable.

The Company has the burden of proof to demonstrate that rate case expenses are reasonable. The Company incurred the rate case expenses at its discretion to prosecute and justify its rate requests in this proceeding; it now seeks to recover those expenses in addition to the rate increase. The Commission should critically examine

⁸ See, e.g., *In Re: Application Of Duke Energy Kentucky, Inc. For An Adjustment of the Electric Rates, etc.*, Case No. 2019-00271, Final Order dated April 27, 2020, pp. 6-7; see also direct testimony of Lane Kollen, Case No. 2020-00174, at p. 15.

those expenses and did so in this proceeding. The Commission has broad discretion in the determination of reasonableness and cited its reasons for disallowing certain of the expenses.⁹ It should be noted that both the Attorney General and KIUC incurred costs to intervene in this proceeding, none of which they are able to recover from the Company's shareholders.

b. The disallowance of certain incentive compensation is reasonable.

The Commission has a long history of disallowing incentive compensation expense tied to the financial performance of the utility and/or its parent company.¹⁰ These expenses are incurred for the benefit of the utility or parent company's shareholders, not for the benefit of the utility's customers. If 100% of the benefits of the financial performance inures to shareholders, then 100% of the burden should be allocated to shareholders as well.

c. The disallowance of savings plan expenses is reasonable.

The Commission has the authority to disallow excessive employee benefits expense, including, specifically, contributions to both defined benefit and defined contribution pension plans where groups of employees or certain employees are

⁹ Case No. 2011-00036, *In the Matter of: Application of Big Rivers Electric Corporation for a General Adjustment in Rates* (Ky. PSC January 29, 2013). Order on rehearing finding certain legal fees unreasonable and disallowing recovery of a portion of such fees.

¹⁰ Case No. 2019-00271, *In the Matter of: Electronic Application of Duke Energy Kentucky, Inc. for 1) an Adjustment of the Electric Rates, etc.*, (Ky. PSC April 27, 2020); Case No. 2014-00396, *In Re: Application of Kentucky Power Co. for an Increase in Rates, etc.*, (Ky. PSC June 22, 2015); Case No. 2010-00036, *In re: Application of Kentucky-American Water Company for an adjustment of rates, etc.*, (Ky. PSC Dec. 10, 2010); Case No. 2013-00148, *In re: Application of Atmos Energy Corp. for an Adjustment of Rates and Tariff Modifications*, (Ky. PSC April 22, 2014).

participants and beneficiaries in both types of plans.¹¹

III. With regard to the appropriate Return on Equity for Tariff E.S., the Commission’s determination is reasonable and does not merit rehearing.

The Commission’s finding with respect to ROE on Tariff ES sets a prospective rate for ROE, and contrary to the Company’s position, does not apply to costs accrued in December of 2020.

The Commission determined that a 9.1% ROE should apply, “for all Tariff ES filings after the date of this Order.”¹² The Company’s statement that, the Tariff ES Report, “reflects expenses incurred in the prior expense month,” is a red herring. The costs stated on the January Tariff ES report are just a proxy for setting the February rate; all costs ultimately are trued-up to actual costs. The January Tariff ES report could not have been for service in December, because it is a rate for service in February.

The Commission should deny rehearing on this issue.

IV. The Commission’s finding of the appropriate rate for long-term debt expense is reasonable and supported by the record.

The Commission appropriately determined that the Company’s interest rate on long-term debt should be set at a rate less than what it is currently paying, because that debt will soon be refinanced. Contrary to the assertions of the Company, the Attorney General and KIUC placed substantial evidence in the record supporting the setting of a rate lower than the current rate based on the current market for those

¹¹ See Case No. 2016-00169, *In the Matter of: Application of Cumberland Valley Electric, Inc. for a General Adjustment of Rates*, (Ky. PSC February 6, 2017).

¹² See Case No. 2020-00174 Final Order at 27.

rates.¹³ The awarded interest rate is supported in the record based on actual, certain and known interest rates today, the best evidence of the reasonableness of the forecast adopted by the Commission. That evidence is superior to any forecast by a consulting firm that specializes in such forecasts, but invariably guesses wrongly.

The use of a forecasted interest rate is not any more “conjectural” than any other forecast revenue, expense, or other cost reflected in the Company test year, regardless of whether the costs are historic or forecast. Even adjustments to annualize actual historic test year costs renders them forecast costs and subject to similar characterization as “conjectural.” All of the aforementioned are arguably “conjectural” in the sense that none of them can be objectively measured before they actually are realized after rates are reset and implemented. Further, the Company is protected, via the deferral mechanism authorized by the Commission, for the temporary period when actual interest expense on the maturing debt issue exceeds the interest expense on the new issue.

The Company’s request for a return on the deferred interest is premature and generally is inconsistent with Commission precedent for such regulatory assets.

Finally, the Company’s request to amortize the deferred interest expense through the PPA Rider is unnecessary and should be rejected. An estimated deferral of less than \$1 million is unlikely to be detrimental to the Company’s credit metrics and the amortization of the deferral through the PPA is a misuse of the PPA, which was established for limited purposes, not as a catch-all for any and all deferrals.

¹³ See Kollen Direct Testimony at 41, *et seq.*

Therefore, the Commission should reject the Company's protestations as to this issue.

V. The Commission should not amend its finding related to Advanced Metering Infrastructure and the Grid Modernization Rider.

The Commission's Order rejected the Company's request to deploy AMI. The arguments contained in its Motion with respect to this issue are not new. KRS 278.400 limits rehearing to those cases where a party, "may offer additional evidence that could not with reasonable diligence have been offered on the former hearing." The arguments presented related to AMI and the GMR have all been presented previously in this proceeding, or should have been based on reasonable diligence. As such, the Commission should reject the Company's rehearing request related to these issues.

The Company has not demonstrated that it requires wholesale replacement of its meters or that replacement meters are not readily available for those meters that do fail in the future, especially given the millions of meters effectively in the process of abandonment by other AEP utilities as they replace their AMR meters with AMI meters.

With regard to GMR, there is absolutely no need to authorize a GMR now or in the future, especially given the requested nearly unlimited scope for costs recoverable through the GMR. Meter and other distribution costs incurred in the future are recoverable through the base ratemaking process. A GMR is not necessary. Further, a GMR provides a behavioral incentive to incur costs, and it would result in

excessive cost recovery inasmuch as it fails to capture costs savings as offsets.

VI. The Commission should not unduly restrict the scope of the forthcoming Rockport UPA review.

In its Order, the Commission chose not to immediately determine the appropriate amortization period and recovery mechanism related to the Rockport UPA deferral or to address whether the \$57.4 million in fixed cost savings from the expiration of the Rockport UPA would be used to achieve Kentucky Power's Commission-approved ROE in 2023.¹⁴ The Commission instead decided to address those issues subsequently;¹⁵ a reasonable decision given the substantiality of the Rockport UPA-related issues.

The Attorney General and KIUC support Kentucky Power's request for clarity regarding the timing of the Commission's forthcoming Rockport UPA review.¹⁶ The Attorney General and KIUC likewise continue to support Kentucky Power's recovery of the Rockport UPA deferral with interest. While the Commission-approved Settlement Agreement in Case No. 2017-00179 addressed the treatment of the 2023 ROE make-whole provision and the Attorney General and KIUC continue to support that provision, additional details not set forth in that Settlement Agreement may still need to be resolved. In light of the magnitude and complexity of the Rockport UPA-related issues, including the least-cost replacement of about 100 MW of the 390 MW Rockport UPA, the Commission should not unduly restrict the scope of its Rockport UPA review. The Attorney General and KIUC hope to continue to work

¹⁴ See Case No. 2020-00174 Final Order at 65.

¹⁵ *Id.*

¹⁶ Motion at 38-39.

constructively with the Commission and the Company on Rockport issues, as well as transmission-related issues. Consequently, the Commission should retain its broad authority to consider the appropriate accounting and regulatory treatment of the Rockport UPA costs and \$57.4 million in fixed cost savings in its future review.

VII. With regard to whether the Company met its evidentiary burden with respect to the establishment of Tariff NMS II, while the Attorney General and KIUC are supportive of the proposed tariff, rehearing on this issue is unnecessary given that the Commission has already set a hearing for the taking of further evidence on this issue.

The Attorney General and KIUC agree with the Company that, “the record in this case supports the reasonableness of the proposed NMS II rates...”¹⁷ Nonetheless, the Attorney General and KIUC are willing to participate in the hearing set by the Commission at which further evidence will be presented on this issue.

Conclusion

For the foregoing reasons, the Attorney General and KIUC urge the Commission to reject the Company’s request for rehearing.

¹⁷ Company’s Motion at 42.

Respectfully submitted,

DANIEL J. CAMERON
ATTORNEY GENERAL



J. MICHAEL WEST
LAWRENCE W. COOK
ANGELA M. GOAD
JOHN G. HORNE II
ASSISTANT ATTORNEYS GENERAL
700 CAPITAL AVE, SUITE 20
FRANKFORT, KY 40601-8204
PHONE: (502) 696-5433
FAX: (502) 573-1005
Michael.West@ky.gov
Larry.Cook@ky.gov
Angela.Goad@ky.gov
John.Horne@ky.gov

/s/ Michael L. Kurtz

Michael L. Kurtz, Esq.
Kurt J. Boehm, Esq.
Jody Kyler Cohn, Esq.
BOEHM, KURTZ & LOWRY
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202
Ph: 513.421.2255 Fax: 513.421.2764
mkurtz@BKLawfirm.com
kboehm@BKLawfirm.com
jkylercohn@BKLawfirm.com

Certificate of Service and Filing

Pursuant to the Commission's Order dated March 17, 2020 in Case No. 2020-00085, and in accord with all other applicable law, Counsel certifies that an electronic copy of the forgoing was served and filed by e-mail to the following. A physical copy of the filing will be submitted to the Commission once the State of Emergency has ceased.

Mark R. Overstreet
Katie M. Glass
moverstreet@stites.com
kglass@stites.com

Joe Childers
joe@jchilderslaw.com

Don Parker
Carrie Grundmann
Barry Naum
dparker@spilmanlaw.com
cgrundmann@spilmanlaw.com
bnaum@spilmanlaw.com

Christen M. Blend
Hector Garcia-Santana
Tanner Wolfram
cblend@aep.com
hgarcia1@aep.com
tswolfram@aep.com

Randal A. Strobo
Clay A. Barkley
David E. Spenard
rstrobo@strobobarkley.com
cbarkley@strobobarkley.com
dspenard@strobobarkley.com

Tom Fitzgerald
fitzKRC@aol.com

Michael A. Frye
maf@jenkinsfenstermaker.com

Matthew Miller
matthew.miller@sierraclub.org

this 9th day of February, 2021.



Assistant Attorney General