

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

Electronic Application of Kentucky Power)
Company To Amend The Settlement Agreement)
Approved in Case No 2018-00035 To Provide)
For The One-Time Amortization Of Unprotected) Case No. 2020-00176
Accumulated Deferred Federal Income Tax)
In An Amount Sufficient To Eliminate Customer)
Delinquencies Greater Than 30 Days As Of May)
28, 2020)

ATTORNEY GENERAL'S COMMENTS

The intervenor, the Attorney General of the Commonwealth of Kentucky by and through his Office of Rate Intervention (“Attorney General”), submits the following comments pursuant to the procedural schedule entered by the Public Service Commission’s (“Commission”) in its Order of June 18, 2020, in the above styled matter.

On June 1, 2020, Kentucky Power Company (“Kentucky Power”) filed an application with the Commission whereby it requested authority to, “utilize approximately \$10.8 million of its current unprotected retail generation and distribution excess Accumulated Deferred Federal Income Tax (“ADFIT”) balance to issue a one-time bill credit to all Kentucky Power customers in an amount equal to the balance of each customer’s account that is 30 or more days delinquent as of May 28, 2020.”¹ As of April 30, 2020, Kentucky Power’s unprotected retail generation and distribution excess ADFIT

¹ See Application at 1.

totaled approximately \$113.5 million.² Approval of this Application would require the amendment of the settlement agreement in Case No. 2018-00035, which provides that this balance will be amortized, “over the remaining approximately 15 years and seven months of the 18-year amortization period for the Company’s unprotected retail generation and distribution excess ADFIT.”³ It would be credited to residential customers through Tariff F.T.C.⁴

Kentucky Power and Kentucky Industrial Utilities Customers, Inc. (“KIUC”) entered into an Amended Settlement Agreement, filed in this matter on August 6, 2020, whereby KIUC substantially agreed to Kentucky Power’s proposal to refund \$10.8 million in ADFIT to ratepayers under the terms proposed in the application. The current settlement amends a previous Settlement Agreement (“2018 Settlement Agreement”) entered into by Kentucky Power and KIUC in Case No. 2018-00035. Inasmuch as the Attorney General was not a party to the 2018 Settlement Agreement, the Attorney General elected to refrain from entering the Amended Settlement Agreement. That election should not be viewed as opposition to the terms of the Amended Settlement Agreement.

The Attorney General lauds Kentucky Power for its intent to benefit ratepayers unable to afford to pay their utility bills during this unprecedented time of global

² *Id.* at 9. The amount of the balance in this account is largely due to changes in tax law. On December 22, 2017, the Tax Cuts and Jobs Act, H.R. 1, Public Law 115-97, 131 Stat. 2054 (Dec. 22, 2017) (“Tax Act”) was signed into law by the President. The Tax Act reduced the maximum federal corporate income tax rate from 35 percent to 21 percent effective January 1, 2018.

³ *Id.*

⁴ *Id.* at 5.

pandemic. The Attorney General supports the proposal because (1) it conforms to existing law and (2) it provides much-needed relief to some of the neediest citizens of the Commonwealth.

I. The proposal conforms to the controlling statutes because it does not unreasonably discriminate against ratepayers and it provides rate-relief during a time of epidemic.

The Filed Rate Doctrine generally precludes a utility from accepting less than the filed rate for utility service.

No utility shall charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered than that prescribed in its filed schedules, and no person shall receive any service from any utility for a compensation greater or less than that prescribed in such schedules.⁵

Further, discrimination between and among ratepayers is prohibited.

No utility shall, as to rates or service, give any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage, or establish or maintain any unreasonable difference between localities or between classes of service for doing a like and contemporaneous service under the same or substantially the same conditions.⁶

On its face, the proposal raises a question of fairness regarding whether individuals who have paid their utilities and have not gone into arrears would be required to subsidize those ratepayers who have failed to pay their bills. One could argue that is the case under the terms of the proposal. But for the proposal, the ADFIT balance would remain unreduced by \$10.8 Million. Pursuant to the settlement agreement in Case No.

⁵ KRS 278.160.

⁶ KRS 278.170(1).

2018-00035, that balance would have the practical effect of reducing effective rates of all ratepayers over the amortization period as it is to be redistributed through the Tariff F.T.C. It is at least debatable whether the subsidization to occur here represents a “preference,” “advantage,” or “difference” within the meaning of KRS 278.170(1). However, KRS 278.170(1) does not altogether preclude utility action which causes a preference, advantage, or difference; such action is only precluded if the preference, advantage, or difference provided by the rate is “unreasonable.”

Further KRS 278.170(2) goes on to state that, a utility, “may grant free or reduced rate service for the purpose of providing relief in case of flood, epidemic, pestilence, or other calamity.”⁷ An epidemic is defined as “an outbreak of disease that spreads quickly and affects many individuals at the same time.”⁸

Here, all similarly situated customers, customers within the residential class who have fallen behind on their utility bills, are to be treated equally. If a given ratepayer fell into arrears on your bill, the deficiency is to be eliminated entirely. The difference in the total amounts that individual ratepayers will benefit from the proposal will vary based on the extent to which they find themselves in arrears. However, that difference is merely a function of usage and time; it is not based on any operational distinction found in the proposal itself. Thus, any “difference” created by the proposal is “reasonable” within the meaning of KRS 278.170(1).⁹

⁷ KRS 278.170(2)

⁸ Merriam Webster’s Dictionary, <https://www.merriam-webster.com/dictionary/epidemic> (accessed 7/23/2020).

⁹ It is important to note that the arrearages at issue are likely to be socialized to the ratepayers through base rates if the proposal is not approved.

Further, the validity of the proposal is generally supported by the General Assembly's explicit allowance for free or reduced rate service to be provided during a time of epidemic. The provision is silent on whether such relief may be applied retroactively or whether such relief may only be prospective. Thus, it should be construed to be inclusive of the relief proposed here.

Importantly, the structure of the proposal seeks to avoid the problem of moral hazard. On June 1, 2020, Kentucky Power filed its application which effectively seeks to forgive amounts which were at least thirty days delinquent as of May 28, 2020. By structuring the proposal in that way, the company avoided customers intentionally refusing to pay their bill in order to take advantage of the proposed relief.

Therefore, the proposal is not in conflict with the prohibitions on discriminating between ratepayers.

II. The proposal provides much needed relief to some of the neediest Citizens of the Commonwealth.

Delinquent accounts increased by 44%, by approximately \$3,300,000 during the 56-day period ending on May 28, 2020.¹⁰ This statistic alone, when compared to the timeline of the pandemic,¹¹ demonstrates that much of the relief to be provided under the proposal will reach those financially impacted by COVID-19 and the government response to it.

¹⁰ Application at 7.

¹¹ Executive Order 2020-215 of March 6, 2020 was the first of many addressing the effects COVID-19 pandemic. On March 16, 2020, restaurants were ordered to close to in-person traffic. On March 17, 2020, other businesses were ordered to close. On March 22, 2020, all in-person, retail businesses that were not life-sustaining were ordered to close effective March 23, 2020.

Therefore, the relief provided by the proposal would benefit needy Kentuckians.

CONCLUSION

The Attorney General requests that Kentucky Power's Application be approved in order to provide relief to needy Kentuckians during this difficult time.

Respectfully submitted,

DANIEL J. CAMERON
ATTORNEY GENERAL



J. MICHAEL WEST
LAWRENCE W. COOK
JOHN G. HORNE II
ANGELA M. GOAD
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
John.Horne@ky.gov
Angela.Goad@ky.gov

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 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

Michael Kurtz
Kurt Boehm
Jody Kyler Cohn
MKurtz@BKLawfirm.com
KBoehm@BKLawfirm.com
JKylerCohn@BKLawfirm.com

this 6th day of August, 2020



Assistant Attorney General