

**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	)	

**First Amendment to April 25, 2018 Settlement Agreement**

Kentucky Power Company (“Kentucky Power” or the “Company”) and Kentucky Industrial Utility Customers, Inc. (“KIUC”) (each individually a “Settling Party” and, collectively, the “Settling Parties”), in consideration of the recitals and agreements set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree to amend the April 25, 2018 Settlement Agreement (“2018 Settlement Agreement”) between the Settling Parties in Case No. 2018-00035<sup>1</sup> as follows:

**Recitals**

1. The Settling Parties entered into the Settlement Agreement to resolve the claims in Case No. 2018-00035 asserted by KIUC against Kentucky Power following the reduction of the federal corporate income tax rate from 35 percent to 21 percent through the enactment of the Tax Cuts and Jobs Act, H.R. 1, Public Law 115-97, 131 Stat. 2054 (Dec. 22, 2017). The Attorney

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<sup>1</sup> *In the Matter of: Kentucky Industrial Utility Customers, Inc. v. Kentucky Power Company*, Case No. 2018-00035 (Ky. P.S.C. Filed April 25, 2018).

General was not a party to the Settlement Agreement but did not take a position in opposition to the Settlement Agreement.

2. Paragraph 2(b) of the Settlement Agreement provided that a reasonable period for Kentucky Power to amortize its unprotected retail generation and distribution excess accumulated deferred federal income taxes (“ADFIT”) was 18 years.

3. Paragraph 3 of the Settlement Agreement provided that the excess retail generation and distribution unprotected ADFIT (along with the protected excess ADFIT) would be credited through at least November 2020 to customers through Tariff Federal Tax Cut (“Tariff F.T.C.”) using the per-kWh rate specified in Tariff F.T.C. Thereafter, the Settlement Agreement provided that the unprotected retail generation and distribution excess ADFIT would be credited to customers at the rate determined in Kentucky Power’s next base rate proceeding.

4. The Public Service Commission of Kentucky (“Commission”) approved the Settlement Agreement by Order dated June 28, 2018.

5. Kentucky Power’s customers and the Company have faced unprecedented economic challenges in recent years. The decline in the coal industry, once a mainstay of the Company’s service territory, has resulted in significant job loss over the period. Other major employers have shuttered their doors since the Commission approved the Settlement Agreement. These closures, along with others, have led to a significant decline in related economic activity.

6. The COVID-19 pandemic struck the nation in late February and early March 2020. The pandemic’s impacts and the resulting limitations on economic and other activity have challenged the ability of many Kentucky Power customers to meet their financial obligations, including their ability to pay for electric service provided by Kentucky Power.

7. Governor Andy Beshear on March 6, 2020 issued Executive Order 2020-215, declaring a state of emergency in the Commonwealth because of the COVID-19 pandemic. On March 13, 2020, Kentucky Power suspended disconnections of service for nonpayment. The Commission on March 16, 2020 entered an order in Case No. 2020-00085<sup>2</sup> suspending late payment fees and disconnections for nonpayment by utilities statewide until further order of the Commission. The Commission's March 16, 2020 Order in Case No. 2020-00085 suspending disconnections for nonpayment remains in effect as of the date of this Settlement Agreement.

8. The economic and financial challenges facing Kentucky Power's customers in May 2020 and thereafter could not have been anticipated by either Kentucky Power or KIUC at the time they entered into the Settlement Agreement, or by the Commission when it subsequently approved the Settlement Agreement.

9. Kentucky Power filed its Application in this case in an effort to provide meaningful financial relief to the many customers who were and continue to be most significantly affected by the economic and other impacts associated with the spread of the COVID-19 virus, without affecting current rates, and while retaining in large part the ongoing benefits of Tariff F.T.C.

10. On May 28, 2020, the day before the Application in Case No. 2020-00176 was filed, 22,284 of 165,238 total customer accounts were 30 or more days delinquent. This included approximately 15 percent of residential customer accounts (19,965 of 133,894 ), 7.2 percent of commercial customer accounts (2,188 of 30,214 ), and approximately 11.6 percent of industrial customer accounts (131 of 1,130 ).

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<sup>2</sup> Order, *In the Matter of: Electronic Emergency Docket Related to the Novel Coronavirus COVID-19*, Case No. 2020-00085 at 9 (Ky. P.S.C. Mar. 16, 2020).

11. The total amount 30 or more days delinquent owed by all Kentucky customers as of May 28, 2020 was \$10,798,595.91.

12. The Company proposes in its Application to amend the Settlement Agreement to authorize Kentucky Power to apply approximately \$10.8 million of its current unprotected retail generation and distribution excess ADFIT balance as 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.

13. Catlettsburg Refining LLC, a subsidiary of Marathon Petroleum LP ("Marathon"), and the member of KIUC participating in this case, was not among the delinquent customers as of May 28, 2020 and will not receive any bill credit if the Commission approves the Company's Application or this First Amendment to the Settlement Agreement. Marathon instead will be foregoing approximately \$2.37 million in credits that it otherwise would receive through Tariff F.T.C. in the absence of the Commission's approval of this amendment to the Settlement Agreement.

14. The Settling Parties recognize both the need to take steps to restore the economic health of Kentucky Power's service territory and the importance of the debt relief proposed by the Company in its Application toward doing so.

15. Kentucky Power's unprotected retail generation and distribution excess ADFIT as of April 30, 2020 totaled approximately \$113.5 million.

16. In addition to the \$10.8 million unprotected excess ADFIT balance the Company is proposing to use in this case to eliminate amounts 30 or more days delinquent as of May 28, 2020, Kentucky Power is proposing as part of its application for a general adjustment of its rates and for other relief, Case No. 2020-00174, to retain Tariff F.T.C. The Company also is proposing

in Case No. 2020-00174 to use approximately \$65 million of its unprotected excess ADFIT balance to offset the proposed first year increase in rates.

***NOW, THEREFORE***, the Settling Parties agree to amend the Settlement Agreement as follows (“First Amendment”):

1. Paragraph 2 of the Settlement Agreement shall be amended to authorize Kentucky Power to apply an amount not to exceed \$10,798,595.91 of the Company’s current unprotected retail generation and distribution excess ADFIT balance as 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. As a result, the amount of the Company’s current unprotected retail generation and distribution excess ADFIT balance applied as a one-time bill credit if the Commission approves this agreement will not be flowed through to customers in accordance with Tariff F.T.C.

2. KIUC supports Kentucky Power’s proposal in Case No. 2020-00174 to maintain Tariff F.T.C. as a mechanism to return excess ADFIT to customers.

3. Kentucky Power agrees to request, and KIUC agrees to support, in Case No. 2020-00174 that the current per kWh rates specified in the Company’s Tariff FTC should be maintained at their current levels. KIUC and Kentucky Power recognize that doing so, in conjunction with the Company’s proposal to use a portion of the excess unprotected ADFIT to offset the first year increase, will have the effect of accelerating the 18 year amortization rate. KIUC reserves the right in Case No. 2020-00174 to propose that the unprotected excess ADIT balance be used to offset more than one year of increase in rates.

## General Provisions

### 4. Filing Of The First Amendment With The Commission And Request For Approval

Following the execution of this First Amendment, the Settling Parties shall file this First Amendment with the Commission along with a request to the Commission for consideration and approval of this First Amendment so that Kentucky Power may provide the one-time bill credit to the affected customers as soon as practicable.

### 5. Good Faith And Best Efforts To Seek Approval

(a) This First Amendment is subject to approval by the Commission.

(b) The Settling Parties shall act in good faith and use their best efforts to recommend to the Commission that this First Amendment be approved in its entirety and without modification and that the rates and charges set forth herein be implemented.

(c) For purposes of any hearing, the Settling Parties waive all cross-examination of the other Settling Party's witnesses except for purposes of supporting this First Amendment unless the Commission disapproves this First Amendment. Each of the Settling Parties further stipulates that the filings made in this case be admitted into the record.

(d) The Settling Parties further agree to support the reasonableness of this First Amendment before the Commission, and to cause their counsel to do the same, including in connection with any appeal from the Commission's adoption or enforcement of this First Amendment.

(e) No party to this First Amendment shall challenge any Order of the Commission approving the First Amendment in its entirety and without modification.

### 6. Failure Of Commission To Approve First Amendment

If the Commission does not accept and approve this First Amendment in its entirety, then any adversely affected Settling Party may withdraw from this First Amendment within the

statutory periods provided for rehearing and appeal of the Commission's order by: (1) giving notice of withdrawal to the other Settling Party; and (2) timely filing for rehearing or appeal. Upon the latter of (1) the expiration of the statutory periods provided for rehearing and appeal of the Commission's order and (2) the conclusion of all rehearings and appeals, all Settling Parties that have not withdrawn will continue to be bound by the terms of this First Amendment as modified by the Commission's order.

7. Continuing Commission Jurisdiction

This First Amendment shall in no way be deemed to divest the Commission of jurisdiction under Chapter 278 of the Kentucky Revised Statutes.

8. Effect of First Amendment

This First Amendment shall inure to the benefit of, and be binding upon, the Settling Parties to this First Amendment, their successors, and assigns.

8. Complete Agreement

This First Amendment constitutes the complete agreement and understanding among the parties to this First Amendment, and any and all oral statements, representations, or agreements. Any and all such oral statements, representations, or agreements made prior hereto or contained contemporaneously herewith shall be null and void and shall be deemed to have been merged into this First Amendment.

9. Independent Analysis

The terms of this First Amendment are based upon the independent analysis of the parties to this First Amendment, are the product of compromise and negotiation, and reflect a fair, just, and reasonable resolution of the issues herein. Notwithstanding anything contained in this First Amendment, the Settling Parties recognize and agree that the effects, if any, of any future events

upon the income of Kentucky Power are unknown and this First Amendment shall be implemented as written.

10. First Amendment And Negotiations Are Not An Admission

(a) This First Amendment shall not be deemed to constitute an admission by any party to this First Amendment that any computation, formula, allegation, assertion, or contention made by any other party in these proceedings is true or valid. Nothing in this First Amendment shall be used or construed for any purpose to imply, suggest or otherwise indicate that the results produced through the compromise reflected herein represent fully the objectives of the Settling Parties.

(b) Neither the terms of this First Amendment nor any statements made or matters raised during the settlement negotiations shall be admissible in any proceeding, or binding on any of the parties to this First Amendment, or be construed against any of the parties to this First Amendment, *except that* in the event of litigation or proceedings involving the approval, implementation or enforcement of this Agreement, the terms of this First Amendment shall be admissible. This First Amendment shall not have any precedential value in this or any other jurisdiction.

11. Consultation With Counsel

The parties to this First Amendment warrant that they have informed, advised, and consulted with their respective counsel with regard to the contents and significance of this First Amendment and are relying upon such advice in entering into this agreement.

12. Authority To Bind

Each of the signatories to this First Amendment hereby warrant they are authorized to sign this agreement upon behalf of, and bind, their respective parties.



13. Construction Of Agreement

This First Amendment is a product of negotiation among all parties to this First Amendment, and no provision of this First Amendment shall be construed in favor of or against any party hereto. This First Amendment is submitted for purposes of this case only and is not to be deemed binding upon the parties hereto in any other proceeding, nor is it to be offered or relied upon in any other proceeding involving Kentucky Power or any other utility.

14. Counterparts

This First Amendment may be executed in multiple counterparts.

15. Future Rate Proceedings

Nothing in this First Amendment shall preclude, prevent, or prejudice any party to this First Amendment from raising any argument or issue, or challenging any adjustment, in any future rate proceeding of Kentucky Power.

IN WITNESS WHEREOF, this First Amendment to the April 25, 2018 Settlement Agreement between the Settling Parties has been agreed to as of this 5<sup>th</sup> day of August 2020.

KENTUCKY POWER COMPANY

By:

A handwritten signature in blue ink, consisting of stylized initials and a large circular flourish.

COUNSEL

Its:

August 5, 2020

KENTUCKY INDUSTRIAL UTILITY  
CUSTOMERS, INC.

By: W. L. Kunt  
Its: Counsel