

**COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

ELECTRONIC INVESTIGATION OF THE	)	
SERVICE, RATES AND FACILITIES OF	)	Case No. 2021-00370
KENTUCKY POWER COMPANY	)	

**KENTUCKY POWER COMPANY’S REPLY TO KENTUCKY INDUSTRIAL UTILITY  
CUSTOMERS, INC.’S RESPONSE TO MOTION TO DISMISS PROCEDURES  
INITIATED PURSUANT TO KRS 278.018(3)**

Kentucky Power Company (“Kentucky Power” or the “Company”) provides its reply to Kentucky Industrial Utility Customers, Inc.’s (“KIUC”) Response (“Response”) to the Company’s Motion to Dismiss Procedures Initiated Pursuant to KRS 278.018(3) (“Motion to Dismiss”) and states as follows:

KIUC’s Response mischaracterizes Kentucky Power’s Motion to Dismiss as seeking “to evade Commission review in this proceeding.”<sup>1</sup> That is incorrect. The Commission has authority to review a utility’s power supply planning and strategy and to hold a utility accountable for a failure to provide adequate capacity. That authority, however, is not found in the certified territory statute, KRS 278.018(3).<sup>2</sup> As the Company demonstrated in its Motion to Dismiss, KRS 278.018(3) addresses the utility’s failure to provide adequate service to a particular facility and was intended to “encourage the orderly development of retail electric service” and to eliminate

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<sup>1</sup> KIUC Response at 2.

<sup>2</sup> See Motion to Dismiss at 8-12.

frequent Commission and court battles among utilities over service areas.<sup>3</sup> The proceeding should not move forward under an inapplicable statutory process.<sup>4</sup>

Other statutes and regulations enable the Commission to ensure that utilities are procuring sufficient generation capacity.<sup>5</sup> First, the Commission engages in integrated resource planning reviews and conducts certificate of public convenience and necessity proceedings related to new generation resources. These proceedings provide the Commission with an opportunity to identify and address resource planning needs. Second, the Commission can review the prudence of the Company's jurisdictional costs incurred to serve its retail customers in other proceedings, including base rate cases and periodic rider reviews. Third, KRS 278.030(2) generally requires that utilities provide adequate, efficient, and reasonable service. Penalties for violations of that statute may be assessed under KRS 278.990(1). Finally, in the extreme instance in which a utility has failed to provide adequate service on a service territory-wide basis, KRS 278.021 provides procedures for the Commission to find a constructive abandonment by the utility and to appoint a receiver under certain circumstances and under judicial supervision.

Thus, the Commission should reject KIUC's baseless contention that, unless its flawed and atextual interpretation of KRS 278.018(3) is accepted, "retail customers in Kentucky could be stranded in a monopoly service territory without adequate service and without any recourse."<sup>6</sup> As the Company has demonstrated, the Commission has several tools to address such a scenario. KRS 278.018(3) is simply not one of them. For these reasons and the reasons stated in the Motion to

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<sup>3</sup> *See id.* at 8-9.

<sup>4</sup> The Company maintains and has demonstrated that it provides adequate, efficient, and reasonable service to all of its customers, so the proceeding should not move forward at all. *See* Kentucky Power's Response to Show Cause Order at 12-18 (July 21, 2023).

<sup>5</sup> *See e.g.* 807 KAR 5:058, KRS 278.020, KRS 278.030(1), KRS 278.030(2), 807 KAR 5:001, Section 16.

<sup>6</sup> KIUC Response at 2.

Dismiss, the Company respectfully requests that the Commission dismiss the proceedings initiated in the Show Cause Order pursuant to KRS 278.018(3).

Respectfully submitted,



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