

service and order that such failure be corrected within a reasonable time, such time to be fixed in such order.” If the retail electric supplier does not comply with the Commission’s order, then the Commission “*may authorize another retail electric supplier to furnish retail electric service to such facility.*” Kentucky Power seeks to restrict the potential application of this statutory language to a highly specific set of circumstances in order to evade Commission review in this proceeding. The Commission should reject that overly restrictive interpretation.

A. KRS 278.018(3) Serves As A Fundamental Customer Protection Against Monopoly Abuse And Its Potential Application Should Not Be Unduly Narrowed In This Proceeding.

Kentucky Power argues that the type of adequate service investigation contemplated in the Show Cause Order is beyond the scope of Kentucky’s certified territory laws.² But this argument undermines the fundamental importance of KRS 278.018(3) as a statutory protection for Kentucky’s retail electric customers. Kentucky’s electric utilities are monopoly service providers. If one of those monopoly providers fails to provide adequate service to its customers, KRS 278.018(3) grants the Commission authority to step in to cure the issue(s). Without this statutory protection embedded in that statute, retail customers in Kentucky could be stranded in a monopoly service territory without adequate service and without any recourse. Given the importance of KRS 278.018(3) as a fundamental customer protection within Kentucky law, the Commission should not unduly narrow that statute’s application in this proceeding.

B. The Term “*Electric Consuming Facility*” Within KRS 278.018(3) Does Not Limit The Commission’s Authority To Address Inadequate Service Throughout Kentucky Power’s Retail Service Territory.

A central tenet of Kentucky Power’s argument for dismissal is that the term “*electric consuming facility*” within KRS 278.018(3) applies only to a single facility and should not be expanded to apply to all facilities within the Company’s entire retail service territory. In making

² Motion at 8-10.

this argument, Kentucky Power tries to grapple with the broad definition of “*electric consuming facilities*” set forth under KRS 278.010(8) under which “*electric-consuming facilities*” are defined as “**everything** that utilizes electric energy from a central station source.”³ The Company also attempts to write around a Kentucky Court of Appeals decision where the Court applied KRS 278.018(3) to an entire industrial park rather than a single facility.⁴ But these discussions only emphasize the fact that Kentucky Power’s desired narrowing of the statute to a single facility is inconsistent with applicable law. Moreover, even if the Commission were to adopt the Company’s narrow interpretation of the term “*electric consuming facility*”, the Commission could simply apply the statute again and again to each individual facility within the utility’s service territory until the entire service territory was covered by the adequate service inquiry.

C. The Term “Adequate Service” As Defined Under KRS 278.010(14) Has A Far Broader Application Than Kentucky Power Claims.

Kentucky Power cobbles together phrases from the definition of “*adequate service*” as set forth in KRS 278.010(14) to try and support a claim that the term “*adequate service*” under KRS 278.018(3) cannot be meant to apply to systemwide generation capacity for all customers on an ongoing basis.⁵ The Company’s interpretation is in direct contrast with the plain language of KRS 278.010(14), which defines “*adequate service*” as “having *sufficient capacity to meet the maximum estimated requirements of the customer to be served during the year following the commencement of permanent service and to meet the maximum estimated requirements of other actual customers to be supplied from the same lines or facilities during such year and to assure such customers of reasonable continuity of service.*” Contrary to the Company’s claims,

³ Motion at 12. (Emphasis added).

⁴ Motion at 10 (citing *Owen Cnty. Rural Elec. Co-op Corp. v. Public Service Com’n of Kentucky*, 689 S.W.2d 599 (Ky. App 1985)).

⁵ Motion at 12-14.

the plain language of “adequate service” includes a requirement for sufficient generation to meet the maximum requirements of both new and existing customers. Nor is the term “facilities” as used in KRS 278.018(3) restricted to transmission and distribution, as Kentucky Power suggests. KRS 278.010(11) defines a “facility” as “all property, means, and instrumentalities owned, operated, leased, licensed, used, furnished, or supplied for, by, or in connection with the business of any utility.” That definition does not exclude generation resources.

Kentucky Power’s claim that its adequate service obligation is limited to one year is likewise unfounded. The phrase “reasonable continuity of service” within KRS 278.010(14) has no time limitation and instead represents an ongoing obligation of the utility to provide adequate service to its customers. The Commission should therefore reject Kentucky Power’s constrained statutory interpretation.

WHEREFORE, for the reasons set forth herein, the Commission should deny Kentucky Power’s Motion.

Respectfully submitted,

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