

**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 REQUEST FOR NOTICE AND
MOTION TO AMEND PROCEDURAL SCHEDULE**

Kentucky Power Company (“Kentucky Power” or the “Company”) respectfully moves the Public Service Commission of Kentucky (“Commission”) for notice from the Commission in accordance with due process of the issues that the Commission is considering in this matter and/or upon which the Commission will take evidence at the hearing in this matter, and for modifications to the September 14, 2023 Order establishing a procedural schedule in this case that permit the Company to respond to any evidence and arguments that the Company is not providing adequate service as alleged by the Commission’s June 23, 2023 Show Cause Order.

A. Request for Notice.

Due process at a minimum requires that the Company be provided the opportunity to know and test the evidence upon which the Commission will make its determination, and if appropriate, the ability to make a contrary presentation. Therefore, the Company respectfully requests that the Commission provide the Company with notice of all issues the Commission will consider at the evidentiary hearing in this matter and all evidence upon which the Commission will rely to issue any order in this matter.

The Commission’s Show Cause Order directs Kentucky Power to provide a response to allegations in the Order that “it is failing to comply with its statutory obligations”¹ under KRS 278.030(2), and specifically:

why [Kentucky Power] should not be subject to the remedy for failure to provide adequate service in its service territory under KRS 278.018(3) and why it should not be subject to an assessment of civil penalties under KRS 278.990 for Kentucky Power’s alleged violation of KRS 278.030, which requires a utility to provide adequate, efficient and reasonable service to the utility’s customers.²

More specifically, the Show Cause Order alleges that the Company failed to properly plan to have sufficient capacity to serve customer’s energy needs following the expiration of the Rockport Unit Power Agreement (“UPA”) in December 2022.³ The Show Cause Order directs the Company to file a response to *those allegations* and states that it will establish a procedural schedule including a hearing date after the Company files its response, implicitly for the Commission to take evidence on those same allegations.⁴ However, Commission Staff has since propounded data requests to the Company that are beyond the scope of those generation and energy related allegations in the Show Cause Order.⁵ In particular, those data requests involve requests for information about distribution planning (KPSC 1-6), transmission planning (KPSC 1-7), and distribution reliability (KPSC 1-11). These inquiries are beyond the scope of the Show Cause Order, yet by virtue of the Commission’s September 14, 2023 Scheduling Order, those data requests also expand the scope of the hearing: ordering Paragraph 10 of the September 14, 2023 Scheduling Order states,

¹ Show Cause Order at 7.

² *Id.* at 1.

³ *Id.* at 7.

⁴ *Id.*

⁵ See Commission Staff’s First Show Cause Request for Information to Kentucky Power Company (October 12, 2023).

“Witnesses who sponsor schedules, testimony, or responses to requests for information shall participate in person at any hearing scheduled in this matter.”⁶

As stated previously, due process at a minimum requires that the Company be provided the opportunity to know and test the evidence upon which the Commission will make its determination, and if appropriate, the ability to make a contrary presentation.⁷ This includes sufficient notice and the opportunity to know all evidence the Commission is considering and upon which it will rely in connection with this show cause proceeding, sufficient opportunity to test or refute the evidence upon which the Commission will rely, and sufficient opportunity to present its own evidence, including any necessary context or additional information that would inform the evidence relied upon by the Commission. Due process also requires that the Commission provide Kentucky Power with notice of its intention to rely on evidence from past proceedings and for an opportunity for the Company to test that evidence in the new context of these show cause proceedings and offer evidence of its own in response.

Accordingly, the Company respectfully requests that the Commission provide the Company with notice of all issues the Commission will consider at the evidentiary hearing in this matter and all evidence upon which the Commission will rely to issue any order in this matter.

B. Motion to Amend September 14, 2023 Procedural Schedule.

The Commission further must give Kentucky Power an opportunity to provide evidence to sufficiently support its positions and to test, explain, and/or refute any evidence to the contrary in the context in which that evidence will be considered. The current procedural schedule denies these rights and the Company’s opportunity to sufficiently address the issues that are the subject

⁶ September 14, 2023 Scheduling Order at 4 (emphasis added).

⁷ *Utility Regulatory Comm’n v. Kentucky Water Serv. Co.*, 642 S.W.2d 591, 593 (Ky. App. 1982).

of the Commission's Show Cause Order. It limits the Company to make filings and to introduce evidence only in response to discovery propounded to it prior to the scheduled hearing, without ever providing the Company an opportunity to know the scope of the allegations against it, nor the evidence to test and rebut. The procedural schedule does not provide the Company any opportunity to file written testimony in response to the Show Cause order and Intervenors, and in support of its positions while knowing the full case against it.

The current September 14, 2023 procedural schedule provides only for two rounds of data requests to Kentucky Power and a two-day hearing set for January 31, 2024 and February 1, 2024. The record (after the Commission issued its June 23, 2023 Show Cause Order) otherwise currently consists only of Kentucky Power's July 21, 2023 Response to the Commission's Show Cause Order, Kentucky Power's Motion to Dismiss Procedures Initiated Pursuant to KRS 278.018(3) and related briefings, the Commission's Order denying the Motion to Dismiss, and data requests to Kentucky Power from Commission Staff and intervenors, the Attorney General and Kentucky Industrial Utility Customers, Inc. (collectively, "AG-KIUC"). This schedule does not provide for sufficient process to enable Kentucky Power to defend itself against allegations identified in the Show Cause order itself, let alone against allegations that have not been explicitly articulated by any of the intervenors in the case or by the Commission. Neither does this schedule provide sufficient process to enable the Company to respond to any evidence that may be introduced into the record and considered by the Commission in making any factual or legal determinations in connection with those allegations, known and unknown.

The Commission regularly and customarily permits the filing of sworn written direct and rebuttal testimony in investigations or proceedings such as this. For example, in base rate proceedings, the Commission regularly provides, in addition to an evidentiary hearing, for the

Company and intervenors to provide direct testimony, and for the Company to provide rebuttal testimony.⁸ In two recent Commission investigations of proposed special contracts, the Commission also provided, in addition to an evidentiary hearing, that the parties could file the same written testimonies.⁹ The Commission even provided for the intervenors to file direct testimony and the Company to file rebuttal testimony in a far less complex case where the Company simply requests to modify a formula issue in calculating a tariff rate.¹⁰

Due process at a minimum requires that the Company be provided the opportunity to know and test the evidence upon which the Commission will make its determination, and if appropriate, the ability to make a contrary presentation.¹¹ This requires that the Company be able to fully know and seek discovery on the positions of the parties before it is required to respond. Further, KRS 278.260(3) unambiguously grants Kentucky Power the right to introduce evidence. The current procedural schedule denies these rights and the Company's opportunity to sufficiently address the issues that are the subject of the Commission's Show Cause Order.¹² The filing of written testimony at the outset by intervenors also will prevent the Company from having to speculate as to the specifics of the others' positions in responding and drafting discovery requests. As a result,

⁸ See e.g. *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 Practices To Establish Regulatory Assets And Liabilities; (4) A Securitization Financing Order; And (5) All Other Required Approvals And Relief*, Case No. 2023-00159; *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 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*, Case No. 2020-00174.

⁹ *In The Matter Of: Electronic Tariff Filing Of Kentucky Power Company For Approval Of A Special Contract With Ebon International, LLC*, Case No. 2022-00387; *In The Matter Of: Electronic Tariff Filing Of Kentucky Power Company For Approval Of A Special Contract Under Its Economic Development Rider And Demand Response Service Tariffs With Cyber Innovation Group, LLC*, Case No. 2022-00424.

¹⁰ *In The Matter Of: Electronic Tariff Filing Of Kentucky Power Company To Update Its Purchase Power Adjustment Rates*, Case No. 2023-00318.

¹¹ *Utility Regulatory Comm'n v. Kentucky Water Serv. Co.*, 642 S.W.2d 591, 593 (Ky. App. 1982).

¹² *Kentucky Power Co. v. Energy Reg. Com'n*, 623 S.W.2d 904, 908 (Ky. 1981) ("Even a public utility has some rights, one of which is the right to a final determination...in accordance with due process.")

the discovery process will be more focused and efficient. The Company’s proposed procedural schedule will also benefit the Commission by providing it with organized record evidence in support of the parties’ positions, making its task of adjudicating this matter more streamlined.

Kentucky Power proposes the following revised procedural schedule:

Proposed Amended Procedural Schedule	Due Date
Kentucky Power’s Responses to Initial Data Requests	11/09/2023
Simultaneous Direct Testimonies	12/22/2023
Supplemental Data Requests to Kentucky Power and Initial Data Requests to Intervenors	12/29/2023
Responses to Supplemental and Initial Data Requests	01/12/2024
Simultaneous Rebuttal Testimonies	01/19/2024
Public Hearing	01/31/2024 – 02/01/2024

Kentucky Power has confirmed with counsel for AG-KIUC that AG-KIUC have no objection to this proposed revised procedural schedule. AG-KIUC take no position at this time as to any other aspects of this motion.

C. Conclusion and Prayer for Relief

WHEREFORE, Kentucky Power Company respectfully requests the Commission to enter an Order:

1. Providing the Company with notice of all issues the Commission will consider at the evidentiary hearing in this matter and all evidence upon which the Commission will rely to issue any order in this matter, as requested herein;
2. Establishing the proposed, revised procedural schedule in this case; and
3. Granting Kentucky Power all further relief to which it may be entitled.

Respectfully submitted,



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