

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

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

**ATTORNEY GENERAL AND KIUC RESPONSE
TO MOTION TO STRIKE**

Come now the intervenors, the Attorney General of the Commonwealth of Kentucky, by his Office of Rate Intervention (“Attorney General”) and Kentucky Industrial Utility Customers (“KIUC”), and respond to the Motion to Strike the Direct and Rebuttal Testimony of Lane Kollen filed by Kentucky Power Company (hereinafter “Kentucky Power” or “company”) on February 21, 2024.

On June 23, 2023, the Commission ordered Kentucky Power to show cause why it 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.

On December 22, 2023 and February 21, 2024, the Attorney General and KIUC filed the testimony of Lane Kollen, an expert witness they jointly sponsored. On February 21, 2024, Kentucky Power filed a Motion to Strike that testimony, arguing that it “raises

issues that are “outside the scope of this proceeding,” “is largely unreasoned,” “unsupported,” “provides no evidentiary value,” and is “not relevant.”

Kollen’s testimony argues that (1) Kentucky Power’s baseload units performed poorly and imposed excessive costs on customers, (2) the disposition of the Mitchell plant has the potential to negatively impact customers if not properly treated, (3) the current transmission arrangement is unreasonable, and (4) the Company’s failure to properly invest in its distributions system has negatively impacted customers.¹

Contrary to Kentucky Power’s assertions, all of these issues are squarely within the scope of this proceeding. The irrational nature of this claim is easily demonstrated by considering Kollen’s first argument – Kentucky Power’s units performed poorly. Nothing is more relevant to whether a utility offered adequate, efficient and reasonable service than the performance of its generating units. Kollen’s other arguments are equally relevant to the issues here. The disposition of the Mitchell unit has great potential to impact the ability of Kentucky Power to reliably serve its customers and whether such service is offered at reasonable rates. The Company’s transmission agreement has great impact on ratepayers; whether customers have reliable access to the electricity market and whether that access is at a reasonable rate is probative of the adequacy, efficiency, and reasonableness of the Company’s service and rates. And the failure of Kentucky Power to invest in its distribution system impacts whether, when, and if customers

¹ See Direct Testimony of Lane Kollen.

receive service; this is directly probative of whether service is adequate, efficient, and reasonable.

The Commission has discretion to determine the weight it attaches to testimonial evidence when engaging in decision-making. For testimony that is allegedly irrelevant, Kentucky Power went to considerable effort to rebut it, offering rebuttal testimony of seven witnesses. Consideration of the associated rebuttal is more than sufficient to allow the Commission to determine the weight to be afforded such testimony.

Additionally, certain sections of the rebuttal testimony offered by Kentucky Power offer non-evidentiary, legal arguments about the scope of this proceeding. The Attorney General and KIUC make no Motion to Strike such testimony. The Commission can correctly adjudge the value of that testimony, which is none.

Kentucky Power has had the opportunity through data requests to seek additional information from Mr. Kollen, has filed the aforementioned rebuttal testimony, and will be able to cross examine him at the hearing. To take the drastic step of striking relevant testimony sponsored in part by the Commonwealth's advocate for ratepayers would be extreme and is not appropriate here. It is understandable that the Company would like to silence reasonable views critical of its performance. This Motion to Strike is simply an extension of Kentucky Power's efforts to end this inquiry. As demonstrated by its Response to the Show Cause Order, its Motion to Dismiss, and its testimony offered in this case, the Company feels that the Commission's investigation is without merit, unfounded, unnecessary, and should be discontinued. The Commission has disagreed

with Kentucky Power. The Attorney General and KIUC urge the Commission to deny the Motion to Strike, and continue with this reasonable and important investigation.

Respectfully submitted,

RUSSELL COLEMAN
ATTORNEY GENERAL



J. MICHAEL WEST
LAWRENCE W. COOK
ANGELA M. GOAD
JOHN G. HORNE II
ASSISTANT ATTORNEYS GENERAL
1024 CAPITAL CENTER DRIVE, SUITE 200
FRANKFORT, KY40601-8204
PHONE: (502) 696-5433
FAX: (502) 564-2698
Michael.West@ky.gov
Larry.Cook@ky.gov
Angela.Goad@ky.gov
John.Horne@ky.gov

/s/ Michael L. Kurtz
Michael L. Kurtz, Esq.
Kurt J. Boehm, Esq.
Jody Kyler Cohn, Esq.
BOEHM, KURTZ & LOWRY
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202
Ph: 513.421.2255 fax: 513.421.2764
mkurtz@bkllawfirm.com
kboehm@BKLLawfirm.com
jkylercohn@BKLLawfirm.com

Certificate of Service and Filing

Pursuant to the Commission's Orders and in accord with all other applicable law, Counsel certifies that, on February 26, 2024, an electronic copy of the foregoing was served via the Commission's electronic filing system.

this 26th day of February, 2024.

A handwritten signature in blue ink, appearing to read "J. Michael New". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Assistant Attorney General