

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

In the Matter of:

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| ELECTRONIC JOINT APPLICATION OF |) | |
| AMERICAN ELECTRIC POWER COMPANY, INC., |) | |
| KENTUCKY POWER COMPANY AND LIBERTY |) | CASE NO. |
| UTILITIES CO. FOR APPROVAL OF THE |) | 2021-00481 |
| TRANSFER OF OWNERSHIP AND CONTROL OF |) | |
| KENTUCKY POWER COMPANY |) | |

**JOINT APPLICANTS' RESPONSE TO
AG/KIUC'S PETITION FOR REHEARING**

Liberty Utilities Co. (“Liberty”), American Electric Power Company, Inc. (“AEP”), and Kentucky Power Company (“Kentucky Power”) (collectively, “Joint Applicants”), by counsel, respectfully submit their Response to the Petition for Rehearing filed by the Attorney General, through his Office of Rate Intervention (“AG”), and Kentucky Industrial Utility Customers, Inc. (“KIUC”) (collectively, “AG/KIUC”).

The Commission should deny the AG/KIUC’s Petition for Rehearing of the Commission’s May 4, 2022 Order in this docket (the “Order”). The AG/KIUC seek to relitigate issues they already addressed or could have addressed in previously filed briefing, which does not meet the legal standard for rehearing. In addition, the AG/KIUC attempt to micromanage the Commission’s decision by raising issues that are unnecessary and premature. The Joint Applicants discuss each of these issues below.

I. Rehearing is Not Intended to Permit Parties to Relitigate Issues

It has been long established that rehearing under KRS 278.400 is limited “...to new evidence not readily discoverable at the time of the original hearings, to correct any material errors

or omissions, or to correct findings that are unreasonable or unlawful.”¹ “By limiting rehearing to correct material errors or omissions, and findings that are unreasonable or unlawful, or to weigh new evidence not readily discoverable at the time of the original hearings, KRS 278.400 is intended to provide closure to Commission proceedings. Rehearing does not present parties with the opportunity to relitigate a matter fully addressed in the original Order.”²

Despite this standard, the AG/KIUC attempt to relitigate issues they previously raised or could have raised. These issues include: 1) the request to impose a written acceptance or rejection of the conditions in the Commission’s order, which was never included in the AG/KIUC’s extensive written conditions they requested the Commission impose; 2) a second attempt to litigate the transmission-expense regulatory liability which was already raised in two post-hearing briefs filed by the AG/KIUC;³ and 3) possible implications of the acquisition on the Rockport-settlement calculations.⁴ As discussed above, a petition for rehearing is not intended to provide an opportunity to relitigate issues, which is precisely what the AG/KIUC seek to do. Finally, the AG/KIUC seek to preempt and micromanage how the Commission administers the ordered conditions, which is not only unnecessary, but an attempt to contravene and disrupt the balance that the Commission sought to achieve through its independent review of the matter.⁵

¹ See *Kentucky Utilities Company*, Case No. 2020-00349 (Ky. P.S.C. Nov. 1, 2021).

² *Id.*

³ See AG/KIUC Post-Hearing Brief at 12-15 (filed Apr. 12, 2022); AG/KIUC Reply Brief at 6 (filed Apr. 18, 2022).

⁴ See AG/KIUC Post-Hearing Brief at 28-31; AG/KIUC Reply Brief at 9-10.

⁵ The Joint Applicants note that the AG/KIUC motion was filed premised on the assumption that the three days for service of process of the May 4, 2022 order provided for in KRS 278.400 applied even though the order was served electronically, and AG and KIUC both expressly waived service by mail of the Commission’s orders in this case. See Attorney General’s Motion to Intervene and Waiver of Service by U.S. Mail (Ky. P.S.C. Filed January 5, 2022); Kentucky Industrial Utility Customers, Inc.’s Written Statement (Ky. P.S.C. Filed January 11, 2022).

A. The Act of Closing the Transaction Demonstrates Acceptance of the Commission's Conditions

The AG/KIUC argue that the Commission should require the Joint Applicants to submit written acceptance of the conditions in the Order. This is an unnecessary step as the Order is binding on the Joint Applicants without any further action and they must implement the commitments adopted by the Order when the transaction is consummated.⁶ The Joint Applicants continue to vigorously pursue and obtain the additional approvals necessary to consummate the transaction so those commitments can be implemented for the benefit of customers at the earliest date feasible.⁷ Further, the act of closing the transaction will demonstrate acceptance of the Commission's conditions, and by the terms of the Order, the Commission and parties will receive notice of the closing within five days of its occurrence. Thus, while the conditions will become effective as set out in the Order at closing, any acknowledgement of the conditions before closing is unnecessary and premature.

Moreover, the requirement to "accept" the conditions is misplaced in this fully-litigated case which is not the result of a settlement agreement presented by the parties to the Commission. As demonstrated by the cases cited by the AG/KIUC in their Petition for Rehearing, acceptance of conditions is more typically and appropriately used in a settlement setting where the Commission makes modifications to the settlement and there is an open question of whether the parties will continue to move forward with the settlement as modified when they could otherwise terminate the settlement in accordance with its terms and walk away. For example, in Case No. 2010-00204,

⁶ KRS 278.390 ("Every order of the commission shall continue in force until the expiration of the time, if any, named by the commission in the order, or until revoked or modified by the commission, unless the order is suspended, or vacated in whole or in part, by order or decree of a court of competent jurisdiction.")

⁷ For example, the Joint Applicants recently obtained the necessary approvals from the Federal Communications Commission ("FCC") related to the FCC licenses needed for the ongoing operation of the Company after the closing. The Joint Applicants will continue to advise the Commission of their progress as required by ordering paragraph 8 of the Order in the normal course.

Section 8.6 to the Settlement Agreement allowed the parties to withdraw from the Settlement Agreement if the Commission added “additional conditions or burdens upon the proposed acquisition transaction.”⁸ Because the Commission issued a binding order in the absence of a settlement agreement in the present case, the Commission need not impose an unnecessary requirement that the Joint Applicants accept conditions within a certain time period.

B. It Is Unnecessary for the Commission to Order that the \$45 Million Payment Be Held in Escrow

In the Petition for Rehearing, the AG/KIUC assert that AEP should be required to pay \$45 million into escrow. As discussed above, the Commission has entered an order that is binding on the parties. The Commission did not impose this requested escrow requirement and instead specifically left the matter of funding this commitment to the Joint Applicants. The Joint Applicants recognize that they must comply with all of the terms of the Order, including the terms of the transmission credit upon closing of the transaction. Thus, there is no need to create a further mechanism to ensure compliance with its Order.

C. Many Issues Raised in the Petition for Rehearing Are More Appropriately Addressed in Future Cases

In their Petition for Rehearing, the AG/KIUC maintain that the Commission must immediately address the ratemaking treatment of the \$30 million transmission-expense regulatory liability and the Rockport settlement. These issues are more appropriately addressed in future cases.

As the AG and KIUC are well aware, the Commission required Kentucky Power to file a rate case with new rates effective no later than January 1, 2024. That case provides a vehicle through which the Commission and parties can address these issues. Deferring the issues

⁸ See Settlement Agreement, Stipulation, and Recommendation, Case No. 2010-00204 (filed Sept. 7, 2010), available at https://psc.ky.gov/pscscf/2010%20cases/2010-00204//20100907_Joint_Motion.PDF.

AG/KIUC raise until Kentucky Power’s next general rate case also preserves flexibility and provides the Commission an opportunity to comprehensively review Kentucky Power’s cost of service and rates, rather than addressing the items AG/KIUC raise on a piecemeal basis in this proceeding. Moreover, the AG/KIUC’s concerns about not being able to adjust for items not to be included are unfounded; the calculation is simply about tracking and allocating costs.

As it relates to the \$30 million transmission credit, the Commission did not choose to set forth in its Order its specific ratemaking treatment. Rather, it chose to require the Company to establish a regulatory liability which preserves the ratemaking issue for a later date, which is consistent with appropriate accounting practices and provides the Commission a broader view of the ultimate circumstances when it is applied.⁹ Regulatory assets and regulatory liabilities are booked without ratemaking treatment being predetermined.¹⁰ A utility can have multiple regulatory assets or regulatory liabilities that ultimately have different ratemaking treatment.¹¹

The ratemaking treatment of the Rockport “make whole” provision is also more appropriate in a future case.¹² Intervenor wrongfully present a situation where ratemaking and the tracking of costs seems impossible and the Commission and Company are left with no manner to distinguish costs in the future. This is clearly without merit. The Company will properly account for its costs, and the Commission will be able to review the information provided by the Company

⁹ It is also consistent with the Commission’s creation of the \$43.561 million regulatory liability for deferred distribution restoration expenses, which as the Commission noted in the Order could be addressed in Kentucky Power’s next rate case. *See* Order at 53.

¹⁰ *See, e.g., Kentucky Power Co.*, Case No. 2021-00402 (Ky. P.S.C. Dec. 29, 2021).

¹¹ *See, e.g., East Kentucky Power Coop.*, Case No. 2014-00432 (Ky. P.S.C. July 21, 2015).

¹² In Case No. 2020-00174, the Commission decided to defer the determination of the appropriate amortization period and recovery mechanism to a subsequent matter the Commission stated it could initiate on its own motion. *See Kentucky Power Co.*, Case No. 2021-00174 at 65 (Ky. P.S.C. May 14, 2021). If the Commission does not initiate a case in the interim, the matter could be addressed in Kentucky Power’s next general rate case to be filed no later than January 1, 2024. Indeed, the overarching approach of deferring these ratemaking matters to the Company’s next general rate case creates flexibility by allowing the Commission to consider these ratemaking issues together with fuller knowledge of the circumstances that exist at that future time.

to ensure the information is in line with the commitments of this acquisition. Contrary to AG/KIUC's assertion, the Commission need not make those decisions now to have a valid order.

Both of these issues are better reserved for a future rate case.

II. Conclusion

The AG/KIUC Petition for Rehearing is an attempt to relitigate issues that were or could have been addressed previously, and in other respects seek determinations on issues that do not need to be addressed at this time. Accordingly, the Commission should deny the Petition for Rehearing.

RESPECTFULLY SUBMITTED,

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