COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

AN ELECTRONIC EXAMINATION OF THE APPLICATION OF THE FUEL ADJUSTMENT CLAUSE OF KENTUCKY POWER COMPANY FROM NOVEMBER 1, 2020 THROUGH OCTOBER 31, 2022	: : :	**Case No 2023-00008**

JOINT REPLY BRIEF OF ATTORNEY GENERAL AND KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC.

The Attorney General ("AG") and Kentucky Industrial Utility Customers, Inc. ("KIUC") submit this Joint Reply Brief in support of their recommendations to the Kentucky Public Service Commission ("Commission").

1. Kentucky Power Did Not Attempt To Substantively Justify Its PUE Assumptions That The Hypothetical Peaking Unit Would Stop And Start 8,760 Times Per Year And Could Grow To An Unlimited Size

Kentucky Power Company ("Kentucky Power" or "Company") completely failed to address the merits of the two issues raised by AG-KIUC witnesses Kollen and Futral: 1) the PUE unreasonably assumed that the hypothetical peaking plant would start and stop every hour of the year; and 2) the PUE unreasonably assumed that the hypothetical peaking plant could grow to an unlimited size. Not one word in its Post-Hearing Brief substantively addressed either of these issues.

Instead of addressing the merits of our case, the Company sets up a straw man prudence defense, incorrectly asserts that all purchases from PJM are *per se* reasonable, incorrectly hides behind the retroactive ratemaking doctrine, and attempts to walk back its prior positions on the purpose of the PUE.

2. The AG-KIUC Recommendation Does Not Rely On A Finding That Kentucky Power Was Imprudent

Kentucky Power uses the word prudent 18 times in its Post-Hearing Brief. From pages 12-23, Kentucky Power argues that because AG-KIUC presented no evidence that the Company's fuel procurement practices or plant operations were imprudent, then all of its purchase power costs were reasonable and recoverable in the FAC. This is a straw man.

The AG-KIUC recommendation does not rely on a finding that the Company was imprudent. Our case has nothing to do with prudence. Instead, our case rests on the proper application of the PUE calculation.

3. Energy Purchases From PJM Are Not Automatically Recoverable In The FAC

Kentucky Power argues that because PJM employs economic dispatch principles, all of its energy purchases are economic and recoverable in the FAC.[1]

AG-KIUC preemptively addressed this argument at pages 19-21 of our Joint Brief. As we explained, Kentucky Power's argument would erase the distinction between "*economy*" and "*non-economy*" purchases within 807 KAR 5:056. We explained that Kentucky Power's position would eliminate any incentive for the Company to properly maintain and operate its own units to serve native load. The Company's proposal is also directly contrary to the Legislature's move toward increased scrutiny of FAC costs as expressed by Senate Resolution 316.

Kentucky Power's "*carte blanche*" argument is contrary to its own administration of the FAC. During the two-year review period, the Company's application of its PUE resulted in the unilateral disallowance of $4,518,435 million of uneconomic purchase power costs.[2] The Company also unilaterally disallowed $9,413,663 of purchases made due to forced outages at its own plants.[3]

[1] Kentucky Power Post-Hearing Brief at 13.
[2] AG-KIUC Joint Brief at 9-19.
[3] Company Responses to Staff 1-16 Case Nos. 2021-00292, 2022-00036, 2022-00263 and 2023-00008.

The request for the Commission to abandon its regulation of PJM purchase power costs would increase FAC rates and should be denied.

4. AG-KIUC's Recommendation Does Not Constitute Impermissible Retroactive Ratemaking

Kentucky Power argues that Commission-mandated changes to the PUE formula that are different from its own assumptions would violate the filed rate doctrine and constitute impermissible retroactive ratemaking.[4]

AG-KIUC also preemptively addressed this argument at pages 15-16 of our Joint Brief. There we pointed out that the Commission has expressly held that "*all FACs are retroactive in nature*" and that *"[a]ll charges collected under a FAC are subject to review and possible disallowance."*[5] This refund authority is explicitly authorized in the six-month and two-year FAC review cases.[6] Because FAC charges are put into effect without prior Commission review, refund authority is inherently necessary to ensure that rates are just and reasonable.

Kentucky Power experienced such a disallowance as recently as 2015 when the Commission required it to refund approximately $54 million in FAC costs resulting from Kentucky Power's unreasonable allocation of *"no load"* fuel costs between native load customers and off-system sales.[7] As it does here, Kentucky Power claimed that the practice at issue was long-standing and that any change to its methodology could only be made prospectively when base rates were modified.[8] The Commission rejected those arguments, citing Kentucky Power's failure to disclose the impacts of its *"no load cost"* allocation methodology in the Mitchell transfer case (2012-00578) as well as the unreasonable result produced by Kentucky Power's methodology.[9]

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[4] Id. at 29-34.
[5] Order, Case Nos. 94-461-A *et al.* (August 30, 1999).
[6] 807 KAR 5:056 Section 3 ("*Fuel charges that are unreasonable shall be disallowed*…")
[7] Order, Case No. 2014-00225 (January 22, 2015).
[8] Id.
[9] Order, Case No. 2014-00225 (January 22, 2015) at 10-11.

The Commission has issued FAC refunds in several other cases as well, including $6.7 million in charges stemming from improper off-system sales line loss assumptions by Kentucky Utilities Company.[10] In that KU FAC case, refunding fuel costs associated with off-system sales line losses resulted from the Commission's change to KU's long-standing implementation of the FAC. Other FAC refunds were $8.54 million in purchased power costs collected by East Kentucky Power Cooperative,[11] $766,500 (plus interest) in improper charges by Louisville Gas & Electric, and $10.8 million in fuel contract costs recovered by Big Rivers Electric Corporation.[12]

5. The Company's Claim That The PUE Was Never Intended To Simulate The Operation Of A Real-World Generating Unit Is An Attempt to Rewrite History

The Company argues that the PUE calculation was never intended to simulate the real-world operation of an actual generating unit.[13] Instead, it argues that the PUE is a "*formula-driven approximation*."[14] The distinction that the Company is attempting to make is not readily evident. Nevertheless, this is merely a transparent attempt to rewrite history.

In 2002, because Kentucky Power was unique in that it did not own a high fuel cost CT peaking plant, the Commission approved Kentucky Power's use of the hypothetical PUE ratemaking methodology to determine whether its energy purchases are economic and therefore fully recoverable through its FAC.[15]

[10] Order, Case Nos. 94-461-A *et al.* (August 30, 1999).
[11] Order, Case No. 2014-00226 (July 10, 2015).
[12] Order, Case No. 90-360C-C (July 21, 1994).
[13] Kentucky Power Post-Hearing Brief at 26-27
[14] Id. at 26.
[15] Order, Case No. 2000-00495-B (October 3, 2002).

As initially approved, the PUE methodology was based upon the operating characteristics of a General Electric simple cycle gas turbine.[16] The cost of gas used in the calculation was the sum of the daily midpoint price for Columbia Gas Transmission (delivered Citygate) as published in that day's edition of *Platt's Gas Daily* and the current tariff rate for Columbia's Park and Lend Rate.

In 2017, Kentucky Power sought to include three new cost categories in the PUE calculation: 1) startup costs; 2) variable O&M; and 3) firm gas service.[17] In support of its proposals, Company witness Vaughan explained that *"[t]he peaking unit equivalent cost calculation seeks to mimic the costs of operating an actual CT because the Company does not own a real CT for the purposes of calculating the FAC Purchased Power Limitation."*[18] Regarding startup costs, witness Vaughan testified that the expenses to be included *"are real costs that the hypothetical CT would incur in order to generate electricity and should be included in the peaking unit equivalent cost calculation."*[19]

The Commission ultimately approved the inclusion of startup costs and variable O&M costs in the PUE calculation but rejected the proposal to include firm gas service.[20] In doing so, the Commission explained it was *"unaware of any jurisdictional utility utilizing firm gas service for a CT. Because CTs typically operate at low capacity factors and are primarily utilized during the summer peaking months, when pipeline capacity would not be constrained, the Commission finds the inclusion of firm gas service in the calculation of the PUE to be unreasonable…"*[21]

[16] Id.
[17] Order, Case No. 2017-00179 (January 18, 2018) at 55-56.
[18] Vaughan Testimony, Case No. 2017-00179 at 34:4-7.
[19] Id. at 34:8-12.
[20] Order, Case No. 2017-00179 (January 18, 2018).
[21] Order, Case No. 2017-00179 (January 18, 2018) at 55-56.

For the PUE to set the lawful line of demarcation between economy and non-economy purchases, the PUE must be grounded on facts and reality. Otherwise, the process would be arbitrary.

CONCLUSION

During the FAC review period, the people and businesses of Eastern Kentucky paid $173 million per year for the fixed costs of Kentucky Power's base-load power plants that failed to operate properly, thus necessitating uneconomic high-cost purchases. 807 KAR 5:056 protects consumers under these circumstances.

Respectfully submitted,

RUSSELL COLEMAN
ATTORNEY GENERAL

/s/ J. Michael West
J. MICHAEL WEST
LAWRENCE W. COOK
ANGELA M. GOAD
JOHN G. HORNE II
ASSISTANT ATTORNEYS GENERAL
1024 CAPITAL CENTER DRIVE, SUITE 200
FRANKFORT, KY 40601-8204
PH: 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.
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
JKYLERCOHN@BKLLAWFIRM.COM

COUNSEL FOR KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC.

May 22, 2024