

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

IN THE MATTER OF:

Electronic Application Of Kentucky Power Company For :
An Order Approving Accounting Practices To Establish A :
Regulatory Asset Related To The Extraordinary Fuel :
Charges Incurred By Kentucky Power Company In :
Connection With Winter Storm Elliott in December 2022 :

Case No. 2023-00145

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

The Attorney General of the Commonwealth of Kentucky, by his Office of Rate Intervention (“AG”), and Kentucky Industrial Utility Customers, Inc. (“KIUC”) file this Joint Reply to the May 16, 2023 Memorandum In Opposition filed by Kentucky Power Company (“Kentucky Power” or “Company”).

When ratepayers legitimately owe a utility money in the form of a regulatory asset, then financing the repayment of that regulatory asset through securitization reduces the cost to consumers. That is why we support securitization. But the threshold evidence allowing for the establishment of a regulatory asset has not been established in either the Company’s Application or Memorandum in Opposition.

For the Commission to approve the establishment of a regulatory asset for deferred costs that will be amortized in base rates, future recovery must be “*probable*.”¹ The legal standard is even higher here. To approve the establishment of a regulatory asset that will be recovered through an “*automatic adjustment clause*” (like a securitization rider), recovery must be “*probable*” and the Commission must clearly state its intent to allow recovery of the previously

¹ FASB ASC 980-340-25-1 (a); Kentucky Power May 3, 2023 Application at 10.

incurred cost. *“If the revenue will be provided through an automatic adjustment clause, this criterion requires that the regulator’s intent clearly be to permit recovery of the previously incurred cost.”*² This means that to authorize the creation of the regulatory asset, the Commission must effectively predetermine in the Company’s favor the appropriateness of securitization recovery of costs that have already been disallowed from the fuel adjustment clause (“FAC”) and written off. And the Commission is being asked to make that predetermination on an expedited basis without testimony or a hearing. Therefore, the Company’s claim that approving the regulatory asset does not bind the Commission in any way and simply allows for future review in the securitization case misconstrues the accounting rules.

\$11,519,695 was the amount of December 2022 non-economy purchased power costs that were disallowed from the FAC under the Company’s peaking unit equivalent (“PUE”) methodology. The Company seeks authorization to improperly reverse that disallowance through the creation of a regulatory asset outside of the normal FAC process. The FAC regulation requires a review of the reasonableness of FAC costs every six months and every two years.³ If the Company believes that its FAC in December 2022 should have been \$11,519,695 higher, then it can pursue recovery in one of those review cases.

The AG and KIUC are challenging the Company’s implementation of its PUE methodology in the six-month FAC review for November 1, 2021 through April 30, 2022. (Case No. 2022-00263). If that challenge is successful and the result is applied prospectively, then the PUE disallowance for December 2022 will be greater than \$11,519,695, not zero as the Company contends here.

² FASB ASC 980-340-25-1 (b); Kentucky Power May 3, 2023 Application at 10.

³ 807 KAR 5:056 Section 3 (3) and (4).

A reasonable, prudent and normalized amount of purchased power costs that are not recoverable in the FAC may be prospectively recovered in base rates. This will be an issue for the upcoming base rate case.⁴ If a historic test year is used, then the determination of that amount will likely include consideration of whether the Mitchell and Rockport units operated at unreasonably low-capacity factors, thus leading to unreasonably large amounts of non-economy purchases. These are the types of issues that cannot be decided on an expedited basis in a securitization case.

Authorizing the creation of a regulatory asset for disallowed FAC costs so that the merits of that disallowance can be litigated in the upcoming securitization case is unreasonable. Litigating the merits of the Company's regulatory asset request in the securitization proceeding would only serve to unduly complicate what will already be a very complicated case of first impression.

The new securitization law does not expand the types of costs for which ratepayers must pay.⁵ The new law does not convert a non-recoverable cost into a recoverable one that can be securitized. On the contrary, the securitization law is intended to save customers money. But Kentucky Power improperly seeks to turn that law upside down by using it to retroactively recover disallowed costs that have already been written off (approximately \$31 for the average residential customer). The Company's concerns can be appropriately and thoroughly addressed in one of the FAC review cases or in the upcoming rate case.

⁴ *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.

⁵ SB 192; 2023 Ky. Acts Ch. 72.

WHEREFORE, AG/KIUC request that Kentucky Power's Application be denied.

Respectfully submitted,
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