

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

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)	Case No. 2023-00159
Regulatory Assets And Liabilities; (4) A)	
Securitization Financing Order; And (5) All Other)	
Required Approvals And Relief)	

**Kentucky Power Company’s Motion For Expedited Rehearing and for Compliance with
the Franklin Circuit Court’s Order on Appeal**

Kentucky Power Company (“Kentucky Power” or “Company”) moves the Public Service Commission of Kentucky (“Commission”) pursuant to KRS 278.400 for rehearing of the Commission’s February 21, 2025 Order in this case (“Order on Remand”). The Order on Remand purports to set rates in response to the Franklin Circuit Court’s January 22, 2025 Order (“Order Reversing”) reversing the Commission’s January 19, 2024 Order in this case (“Original Order”). The Order on Remand, however, does not allow Kentucky Power to recover the annual Transmission Expense Adjustment and Rate Case Expense as ordered by the Court and, therefore, the Order on Remand violates the Franklin Circuit Court’s Order Reversing.

The Franklin Circuit Court ordered the Commission to “enter an order, within 30 days of the date of entry, consistent with the findings [in the Court’s Order Reversing], including setting rates to allow Kentucky Power to recover the \$14.2 million annual Transmission Expense adjustment.”¹ The Order on Remand does not comply with the Franklin Circuit Court’s Order

¹ Order at 11, Ky. Power Co. v. Pub. Serv. Comm’n, No. 24-CI-00160 (Franklin Cir. Ct. Jan. 22, 2025)(“Order Reversing”).

Reversing because the Order on Remand fails to “set[] rates to allow Kentucky Power to recover the \$14.2 million annual Transmission Expense adjustment.”

Every day that the Company cannot implement the correct prospective rates, the Company fails to collect approximately \$38.9 thousand.

For the reasons stated herein, Kentucky Power respectfully requests that the Commission **issue an order as soon as possible, but no later than 20 days from the date of this filing**, setting the correct prospective rates. The Company further requests that the Commission also promptly issue an order that allows Kentucky Power to recover, in full, the historical amounts that should have been collected from January 16, 2024 through February 21, 2025, as the Order Reversing plainly requires. Finally, the Company further respectfully requests that the Commission grant Kentucky Power authority to defer all amounts that should have been recovered beginning February 21, 2025 if the Order on Remand had complied with the Order Reversing and recover those amounts over six months through a temporary surcharge. Each aspect of Kentucky Power’s requested relief is necessary to comply with the Order Reversing.

A. The Rates Ordered in the January 19, 2024 Order and the Franklin Circuit Court’s Order Reversing.

When the Commission issued the Original Order, it unreasonably and unlawfully denied the recovery of the \$14.2 million annual Transmission Expense Adjustment and \$64.0 thousand of Rate Case Expense. The Commission gave the benefit of the expense denials only to the residential class by reducing the energy charges for all residential customers, which includes customers taking service under Tariff R.S., Tariff R.S.-L.M.-T.O.D., Tariff R.S.-T.O.D., Tariff R.S.-T.O.D.2, and Tariff R.S.D., by a collective \$14.2 million annually. There is no standard rate for these residential tariff rate subclasses, and the rates for each subclass vary slightly. When the

Commission gave the \$14.2 million annual benefit resulting from the expense denial to the residential class, each residential tariff subclass rate was individually reduced by a certain amount.

Kentucky Power appealed the expense denials to the Franklin Circuit Court, and the Court issued its January 22, 2025 Order Reversing, stating specifically that “the Commission acted beyond its statutory authority when it denied Kentucky Power’s \$14.2 million Transmission Expense adjustment as a penalty for the Company’s purported failure to comply with prior orders. The Commission acted unreasonably and unlawfully in denying the known and measurable change to test year expenses proposed by Kentucky Power.”² The Court further held that “[w]holesale transmission costs are FERC-regulated and, because of this, the Commission does not have the jurisdiction to unilaterally reduce the level of Transmission Expense that Kentucky Power may recover from customers.”³ The Court correctly recognized that “Transmission Expense is a FERC-jurisdictional cost and its reasonableness is not subject to the Commission’s jurisdiction. Once approved by FERC, Transmission Expense cannot be reduced or disallowed by the Commission under the Supremacy Clause of the United States Constitution.”⁴

Ultimately, the Court “remand[ed] this matter to the Commission with direction to enter an order consistent with the findings of [the Court’s] Order [...] including setting rates to allow Kentucky Power to recover the \$14.2 million annual Transmission Expense adjustment” within 30 days of the date of entry of the Court’s order.⁵ The Commission has not complied with the Order Reversing.

² *Id.* at 7.

³ *Id.* at 8 (emphasis supplied).

⁴ *Id.* (emphasis supplied).

⁵ *Id.* at 11.

B. The Rates Provided with Kentucky Power’s Notice of Filing of Rates to be Implemented After Appeal.

After the Court issued its Order Reversing, Commission Staff held an informal conference on February 10, 2025. Representatives of Kentucky Power, Commission Staff, and the other parties discussed the Franklin Circuit Court’s Order Reversing and the implementation of the same, including the prospective recovery of the denied amounts and the recovery of the historical, or “catch-up,” amounts that Kentucky Power was prevented from recovering from January 16, 2024 (the date rates under the unlawful Original Order were effective) to present.

After the informal conference, Kentucky Power provided on February 11, 2025 its Notice of Filing of Rates to be Implemented After Appeal (“Rate Implementation Notice”). As part of the Rate Implementation Notice, Kentucky Power provided an Excel spreadsheet that described in detail the annual rates necessary to recover the prospective portion of the Transmission Expense Adjustment and Rate Case Expense from the entire residential class. Specifically, Kentucky Power provided the Commission with the below rates (in red) to be implemented for each residential tariff rate subclass to effectuate recovery of the denied expenses, in the same manner that they were originally reduced by the Commission in the unlawful Original Order. In other words, Kentucky Power “undid” what the Commission “did” in the Original Order:⁶

**Appendix C - Remand Rates
Rates Impacted by the Appeal Are Shown in Red**

All other rates remain the same except for the base fuel change approved in Case No. 2023-00008

	<u>Tariff R.S.</u>	
	<u>Residential Service</u>	
Service Charge per month		\$ 20.00
Energy Charge per kWh		\$ 0.12785

⁶ Rate Implementation Notice, “Appendix C.”

Storage Water Heating Provision per kWh	\$	0.09317
Load Management Water Heating Provision per kWh	\$	0.09317

Tariff R.S. - L.M. - T.O.D.

Residential Service Load Management Time of Day

Service Charge per month	\$	23.00
Separate Meter Provision per month	\$	4.30
Energy Charge per kWh:		
All kWh used during on-peak billing period	\$	0.17335
All kWh used during off-peak billing period	\$	0.09317

Tariff R.S. - T.O.D.

Residential Service Time of Day

Service Charge per month	\$	23.00
Energy Charge per kWh:		
All kWh used during on-peak billing period	\$	0.17335
All kWh used during off-peak billing period	\$	0.09317

Tariff R.S. - T.O.D.2

Experimental Residential Service Time of Day 2

Service Charge per month	\$	23.00
Energy Charge per kWh:		
All kWh used during summer on-peak billing period	\$	0.18291
All kWh used during winter on-peak billing period	\$	0.13426
All kWh used during off-peak billing period	\$	0.12167

Tariff R.S.D.

Residential Demand-Metered Electric Service

Service Charge per month	\$	23.00
Energy Charge per kWh:		
All kWh used during on-peak billing period	\$	0.09861
All kWh used during off-peak billing period	\$	0.09317
Demand Charge per kW	\$	5.90

In the Rate Implementation Notice, Kentucky Power provided rates that increased the respective energy charges (and demand charge where applicable) for each residential tariff rate

subclass (Tariff R.S., Tariff R.S.-L.M.-T.O.D., Tariff R.S.-T.O.D., Tariff R.S.-T.O.D.2, and Tariff R.S.D.) that originally received a reduction in the Original Order. Kentucky Power did not provide for an increase in any residential tariff subclass's service charge because the Commission did not reduce the service charge in its Original Order. Importantly, the rates provided by Kentucky Power also took into account and utilized the updated base fuel rate approved on December 13, 2024 by the Commission in Case No. 2023-00008, as the Company explained in its Rate Implementation Notice.⁷

Kentucky Power also stated in the Rate Implementation Notice that, in order to fully effectuate the Order Reversing, which requires the Commission not only to set correct rates prospectively but also to allow Kentucky Power to recover the FERC-jurisdictional \$14.2 million annual Transmission Expense adjustment in full,⁸ the Commission should also order that the amount of the Transmission Expense Adjustment and Rate Case Expense Adjustment from January 16, 2024 through present be added to the existing Tariff PPA Under-Recovery Regulatory Asset, to be securitized in the first half 2025, through the Commission's issuance of a revised Financing Order in Case No. 2023-00159 on or before March 15, 2025.⁹

C. The Rates Set and the Insufficient Prospective Recovery Allowed by the Order on Remand.

The Commission issued its Order on Remand on February 21, 2025, setting prospective rates only. In contravention of the Order Reversing, the Order on Remand does not allow for

⁷ Rate Implementation Notice at 2.

⁸ Order Reversing at 8.

⁹ Alternatively, if the Commission does not order the amount to be added to the Tariff PPA Under-Recovery Regulatory Asset to be securitized, the Company stated that the Commission should establish a regulatory asset in that amount and authorize the regulatory asset to be amortized through a temporary surcharge over 12-24 months from the date of its order on remand, and trued-up at the end of the amortization period in order to ensure full recovery. *See* Rate Implementation Notice at 2-3.

recovery of the FERC-jurisdictional Transmission Expense Adjustment and Rate Case Expense from January 16, 2024 through the date of the order.

The Order on Remand states that:

the following rates and charges are prescribed for the customers in the area served by Kentucky Power Company. All other rates and charges not specifically mentioned herein shall remain the same as those in effect under the authority of this Commission prior to the effective date of this Order:

Residential Service - RS

Service Charge \$24.50 per month

Energy Charge 11.652 cents per kWh¹⁰

The prospective rates ordered to be implemented in the Order on Remand differ from those provided with the Company's Rate Implementation Notice. First, the Order on Remand increases the Tariff R.S. service charge from \$20.00 to \$24.50, and decreases the Tariff R.S. energy charge from 12.785 cents per kWh to 11.652 cents per kWh. Second, the Order on Remand does not provide for the recovery of any of the denied expenses from the remaining residential tariff rate subclasses (Tariff R.S.-L.M.-T.O.D., Tariff R.S.-T.O.D., Tariff R.S.-T.O.D.2, and Tariff R.S.D.). Third, the rates in the Order on Remand also do not take into account or utilize the updated base fuel rate approved on December 13, 2024 by the Commission in Case No. 2023-00008.

The effect of the Commission's Order on Remand is that Kentucky Power is not permitted to prospectively collect the Transmission Expense Adjustment or the Rate Case Expense from any residential tariff rate subclass other than Tariff R.S. The energy charge prescribed for Tariff R.S. also does not allow Kentucky Power to collect from that subclass the increased base fuel rate approved by the Commission in Case No. 2023-00008 or the full amount of the Transmission

¹⁰ Order on Remand at Appendix pg. 1.

Expense Adjustment or the Rate Case Expense. Therefore, the rates ordered in the February 21, 2025 Order on Remand enable Kentucky Power to only partially collect the \$14.2 million annual Transmission Expense Adjustment and Rate Case Expense from customers. The Commission’s Order on Remand thus violates the Court’s Order Reversing by failing to set prospective rates sufficient to recover the denied expenses on a going forward basis.

These errors result in the Company being prevented from collecting approximately \$38.9 thousand per day. Until the Commission enters an order correcting the errors in the rates to be collected prospectively, the Company will under-collect approximately \$38.9 thousand per day, or approximately \$1.2 million per month.

D. The Prospective Rates that Should be Ordered to Comply with the Court’s Order Reversing.

In order to comply with the Franklin Circuit Court’s Order Reversing, with respect to the prospective rates only, the Commission should implement the rates provided on February 11, 2025 with Kentucky Power’s Rate Implementation Notice.

If the Commission instead prefers that collection of the annual Transmission Expense Adjustment and Rate Case Expense be split between service charges and energy charges (as indicated by the Commission’s Order on Remand), then the Commission should implement the below rates, in red, as follows:

**Appendix C - Remand Rates
Rates Impacted by the Appeal Are Shown in Red**

All other rates remain the same except for the base fuel change approved in Case No. 2023-00008

	<u>Tariff R.S.</u>		
	<u>Residential Service</u>		
Service Charge per month		\$	24.50
Energy Charge per kWh		\$	0.12420
Storage Water Heating Provision per kWh		\$	0.09317

Load Management Water Heating Provision per kWh	\$	0.09317
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Tariff R.S. - L.M. - T.O.D.

Residential Service Load Management Time of Day

Service Charge per month	\$	27.00
Separate Meter Provision per month	\$	4.30
Energy Charge per kWh:		
All kWh used during on-peak billing period	\$	0.16491
All kWh used during off-peak billing period	\$	0.09317

Tariff R.S. - T.O.D.

Residential Service Time of Day

Service Charge per month	\$	27.00
Energy Charge per kWh:		
All kWh used during on-peak billing period	\$	0.16491
All kWh used during off-peak billing period	\$	0.09317

Tariff R.S. - T.O.D.2

Experimental Residential Service Time of Day 2

Service Charge per month	\$	27.00
Energy Charge per kWh:		
All kWh used during summer on-peak billing period	\$	0.17926
All kWh used during winter on-peak billing period	\$	0.13060
All kWh used during off-peak billing period	\$	0.11802

Tariff R.S.D.

Residential Demand-Metered Electric Service

Service Charge per month	\$	27.00
Energy Charge per kWh:		
All kWh used during on-peak billing period	\$	0.09827
All kWh used during off-peak billing period	\$	0.09317
Demand Charge per kW	\$	5.30

Kentucky Power also is providing as attachments to this filing, the Excel sheets supporting the rates displayed immediately above. The Excel file titled “Revised Appendix C” contains three

tabs demonstrating the Company's calculation of the rates to be implemented prospectively. Tab "Original 2023-01-19" contains the rates originally ordered in the Commission's Original Order, which the Franklin Circuit Court found to be unlawful and unreasonable on appeal. Tab "Modified for 2023-00008" contains the rates originally ordered, and includes the updated base fuel rates ordered by the Commission in its December 13, 2024 Order in Case No. 2023-00008. Tab "Remanded Rates" contains the rates that should be implemented in order to effectuate the Franklin Circuit Court's order on appeal, as well as the updated base fuel rates approved in Case No. 2023-00008 and the increase to the customer charge. The Commission should utilize Tab "Remanded Rates" and set new rates for bills rendered on and after the date the Commission issued its order on rehearing.

The Company is also providing an Excel file titled "Revised Rate Design" that provides the Company's calculation of rates to effectuate the order on appeal and the Commission's desire to split collection between the service and energy charges. Notably, this file utilized the rate design file provided on December 15, 2023 in this case as its starting point and then factored in the amounts disallowed from the Commission's Original Order and those amounts remanded by the Franklin Circuit Court (please see the "RS" tab, columns K and L, rows 5 through 10).

E. The Historical Recovery that the Court's Order Reversing Requires.

The Commission's Order on Remand also is silent as to, and therefore disallows, recovery of the historical, or "catch-up," amounts that Kentucky Power was prevented from recovering from January 16, 2024 through the date of the Order on Remand. Thus, the Commission's Order on Remand violates the Order Reversing by disallowing recovery of \$14.2 million annually of FERC-approved and FERC-jurisdictional Transmission Expense that otherwise should have been collected beginning January 16, 2024.

As Kentucky Power explained in its Rate Implementation Notice, the Franklin Circuit Court’s Order Reversing requires the Commission not only to set correct rates prospectively but also to allow Kentucky Power to recover the FERC-jurisdictional \$14.2 million annual Transmission Expense adjustment in full.¹¹ Any argument to the contrary relies on the logical fallacy that Kentucky Power must bear the cost of the Commission’s unlawful Original Order until such time as a reviewing court confirms the Original Order’s unlawfulness. The Commission must provide for the recovery of the amount of the Transmission Expense Adjustment and Rate Case Expense Adjustment from January 16, 2024 through present.

Moreover, the Court’s Order Reversing clearly held that “Transmission Expense is a FERC-jurisdictional cost and its reasonableness is not subject to the Commission’s jurisdiction. Once approved by FERC, Transmission Expense cannot be reduced or disallowed by the Commission under the Supremacy Clause of the United States Constitution.”¹² The Court went on to order the Commission to “enter an order consistent with the findings of the Order.”¹³ It further specifically ordered the Commission to “set[] rates to allow Kentucky Power to recover the \$14.2 million annual Transmission Expense adjustment.”¹⁴

The Court’s Order Reversing was clear. The Commission cannot prevent Kentucky Power from recovering FERC-jurisdictional Transmission Expenses.¹⁵ But, the Commission’s Order on Remand, once again, does just that by failing to provide for the recovery of the annual Transmission Expense Adjustment from January 16, 2024 through the date of the order.

¹¹ *Id.* at 8.

¹² *Id.*

¹³ *Id.* at 11.

¹⁴ *Id.*

¹⁵ Federal law is also clear on this point. See *Nantahala Power and Light Co. v. Thornburg*, 476 U.S. 953 (1986); *Mississippi Power & Light Co. v. Mississippi ex rel. Moore*, 487 U.S. 354 (1988).

The Commission has the duty to implement the Court's Order Reversing and to set rates sufficient to effectuate the Court's findings. Just as the Commission had the flexibility to design the rates' implementation to effectuate the prospective recovery (*i.e.*, recovering the amounts from either or both of the residential service and energy charges), the Commission also has the flexibility to design the implementation and recovery of the historical or catch-up amounts from January 16, 2024 through present. The Company suggested in the Rate Implementation Notice that the Commission add the amounts to the existing Tariff P.P.A. Under-Recovery Regulatory Asset, to be securitized in the first half of 2025, in order to minimize the rate impact of the Commission's unlawful Original Order on Kentucky Power's customers.¹⁶ The Commission does not, however, have the right to altogether ignore the Court's directive to set rates sufficient to recover the annual Transmission Expense Adjustment and Rate Case Expense, which includes recovery of the historical amounts. Such action is unlawful and unreasonable and, again, violates the Supremacy Clause of the United States Constitution.

F. Conclusion and Request for Relief.

Kentucky Power respectfully requests that the Commission grant rehearing of its February 21, 2025 Order on Remand on an expedited basis. The Company requests that the Commission issue an order correcting the errors in setting prospective rates as soon as possible, but no later than 20 days from the date of this filing.

The Company requests that the Commission also promptly issue an order that allows Kentucky Power to recover, in full, the FERC-jurisdictional \$14.2 million annual Transmission

¹⁶ Alternatively, if the Commission does not order the amount to be added to the Tariff PPA Under-Recovery Regulatory Asset to be securitized, then the Commission should establish a regulatory asset in that amount and authorize the regulatory asset to be amortized through a temporary surcharge over 12-24 months from the date of its order on remand, and tried-up at the end of the amortization period in order to ensure full recovery.

Expense adjustment that should have been collected from January 16, 2024 through February 21, 2025 in the manner requested by Kentucky Power in its Rate Implementation Notice, or in some other manner that the Commission deems appropriate, as ordered by the Franklin Circuit Court.

Finally, in order to ensure that Kentucky Power is not further harmed by the Commission's Order on Remand, the Company further respectfully requests that the Commission grant Kentucky Power deferral authority to accumulate and defer for later recovery the portion of the \$14.2 million annual Transmission Expense Adjustment that should have been recovered beginning February 21, 2025 through the date so ordered by the Commission, to be amortized and recovered over six months through a temporary surcharge.¹⁷

Respectfully submitted,



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¹⁷ Alternatively, the Commission could also order that this amount be added to the Tariff P.P.A. Under-Recovery Regulatory Asset and recovered through the issuance of securitization bonds in 2025.