

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	)	CASE No.
TARIFFS AND RIDERS; (3) APPROVAL OF ACCOUNTING	)	2023-00159
PRACTICES TO ESTABLISH REGULATORY ASSETS AND	)	
LIABILITIES; (4) A SECURITIZATION FINANCING ORDER;	)	
AND (5) ALL OTHER REQUIRED APPROVALS AND RELIEF	)	

**JOINT MOTIONS OF THE ATTORNEY GENERAL AND KIUC TO: (1) COMPEL  
RESPONSES TO DISCOVERY AND PRODUCTION OF DOCUMENTS; AND (2)  
ALTERNATIVE MOTION TO SCHEDULE A FORMAL HEARING ON THE  
RECORD TO TAKE WITNESS TESTIMONY**

The intervenors, the Attorney General of the Commonwealth of Kentucky, through his Office of Rate Intervention [“OAG”], and the Kentucky Industrial Utility Customers, Inc. [“KIUC”][jointly, “OAG-KIUC”], each by counsel, hereby respectfully request that the Commission issue an order compelling Kentucky Power Company [“KPCo” or “the Company”] to provide complete written responses to OAG-KIUC discovery requests and produce requested documents. Alternatively, OAG-KIUC request that the Commission schedule a formal hearing on the record for the purpose of taking witness testimony regarding the subject discovery dispute. In support of this motion, OAG-KIUC state as follows.

**a. Joint Initial Data Requests**

On August 14, 2023, OAG-KIUC filed their joint initial data requests in this matter, to which KPCo filed responses on August 28, 2023. Counsel for OAG-KIUC identified eleven (11) such responses in which the Company failed to provide adequate initial responses. Pursuant to Commission practice, counsel for OAG-KIUC requested KPCo counsel to work with their client to provide adequate responses. As a result, KPCo on Sept. 8, 2023, and again on Sept. 19, 2023 filed supplemental responses into the record which the OAG-KIUC believe

helped to resolve most issues, with the exception of the response to OAG-KIUC-DR-1-26.<sup>1</sup> Both the original and supplemental responses were signed by AEP Service Corporation (“AEPSC”) employee Linda M. Schlessman.

Although KPCo, in its Sept. 19, 2023 supplemental response finally *appeared* to relent and provide copies of the AEP requests for Private Letter Ruling (“PLR”) sought in OAG-KIUC-DR-1-26, KPCo counsel on Sept. 20, 2023 nonetheless informed counsel for OAG-KIUC, via email, that remote access to these documents cannot be provided except through some unspecified type of technology that will take AEP as long as two (2) weeks to develop and install. The Company has offered to make the documents available for in-person inspection in KPCo counsel’s Frankfort office, but that means OAG-KIUC’s out-of-state consultants will not have access to these documents until the purportedly secretive technology is up and running, which will likely not occur until after the due date for intervenor testimony has expired. No explanation has been given as to why these documents cannot be made available via the established means for providing confidential information, which the Commission has apparently already received in .pdf format via its established procedures for the filing of confidential information. Clearly, AEP is going out of its way to obfuscate and delay production of the items sought in discovery. OAG-KIUC requests that the Commission issue an order compelling immediate production of the requested documents.

#### **b. Joint Supplemental Data Requests**

On Sept. 11, 2023, OAG-KIUC filed their joint supplemental data requests in this matter,<sup>2</sup> to which the Company filed its responses on Sept. 25, 2023. Pursuant to Commission practice, counsel for OAG-KIUC once again requested KPCo counsel to work with their

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<sup>1</sup> For purposes of convenience, OAG-KIUC have pasted-in screenshots of KPCo’s responses to the cited OAG-KIUC data requests, as an exhibit to this Joint Motion.

<sup>2</sup> On Sept. 14, 2013 OAG-KIUC filed an errata version of these requests to correct certain typographical errors.

client to provide adequate responses to these supplemental requests; however, given the short period of time remaining before the OAG-KIUC direct testimony is due to be filed, this motion is necessary. The Company has failed to provide adequate responses to the following five (5) items:

1. OAG-KIUC-DR-2-28 (b) asked KPCo to identify each employee involved in the NOL ADIT issues in this proceeding, to which the Company errantly objected that the question sought “communications, documents, and information protected by the attorney-client privilege or the attorney work product doctrine.” Clearly, the question did not seek production of any documents at all; rather, it merely sought the identity of the employees involved with these issues. KPCo is misstating and obfuscating the issue.

2. OAG-KIUC-DR-2-28 (c) and (d) asked for confirmation that all work on the requests for PLR on the 2 NOL ADIT issues in this proceeding was performed by AEPSC, not the operating utilities, and that all AEP strategy was developed and coordinated by AEPSC, not the operating utilities. The Company did not object, but responded that AEPSC provides tax service to KPCo and other AEP subsidiaries – however, the response did not answer the questions posed.

3. OAG-KIUC-DR-2-29 (a) asked KPCo to confirm that the decision to object to OAG-KIUC-DR-1-26 (a) and not provide copies of requests for PLR was AEPSC's decision, and was not due to any prohibition or limitation imposed by the IRS and/or Treasury. However, KPCo’s response only referred to the Sept. 19, 2023 supplemental response to AG-KIUC 1-26, which does not respond to this question. OAG-KIUC are entitled to a response to the question posed.

4. OAG-KIUC-DR-2-29 (b) asked KPCo to identify AEPSC's tax counsel and tax accountants retained to advise AEPSC and assist in the requests for PLR on 2 NOL ADIT issues. The identity of these people is discoverable, admissible, and not protected by any

privilege. Further, KPCo's objection errantly concluded that the question sought ". . . communications, documents, and information protected by the attorney-client privilege or the attorney work product doctrine." OAG-KIUC are entitled to a response to the question posed.

5. OAG-KIUC-DR-2-29 (c) asked for all communications to the AEP Board of Directors and/or Audit Committee from AEP's outside auditor and/or AEP's internal audit organization that address the two NOL ADIT issues in this case. KPCo objected. The information requested is discoverable, relevant, and not privileged or otherwise protected. KPCo cannot simply refuse to provide these documents by merely asserting objections.

WHEREFORE, Counsel for OAG-KIUC respectfully request that the Commission issue an order compelling the immediate production of the requested data, and the right for OAG-KIUC to file supplemental direct testimony limited to the issues involved in the cited discovery items, including the requests for PLRs. Alternatively, OAG-KIUC move that the Commission set a formal video hearing on the record for the taking of evidence from OAG-KIUC witness Lane Kollen, and from Company witness Ms. Schlessman. Counsel further request that both Mr. Kollen and Ms. Schlessman be allowed to testify from their remote locations for purposes of this limited hearing.

Respectfully submitted,  
**DANIEL CAMERON**  
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KPCo RESPONSE AND SUPPLEMENTAL RESPONSES TO OAG-KIUC-DR-1-26 (p. 1 of 3):

Kentucky Power Company  
KPSC Case No. 2023-00159  
AG-KIUC's First Set of Data Requests  
Dated August 14, 2023  
Page 1 of 2

**DATA REQUEST**

- AG-KIUC  
1\_26** Identify each AEP utility and jurisdiction for which AEP and/or the utility has/have requested a private letter ruling from the IRS regarding whether the subtraction of the AEP reimbursement of the tax effects of net operating losses from rate base constitutes a normalization violation.
- a. Provide a copy of each request, supporting documents, and comments from the regulatory commission staff in that jurisdiction and/or other parties, if any.
  - b. Provide a status report on all activities with respect to each request, including any conversations with the IRS by the Company and/or tax counsel.
  - c. Indicate if AEP/Company expects the IRS to consolidate the requests and issue a single letter ruling or whether it will consider facts and circumstances unique to the utility and/or jurisdiction.
  - d. Indicate if AEP/Company expects the IRS to offer a conference of right prior to issuing the ruling and provide the date at which such conference has taken place or is expected to take place.

**RESPONSE**

The Company objects to this request to the extent it seeks legal analysis and a legal opinion, which are not the appropriate subject of discovery. The Company further objects to this request to the extent it seeks information not under the custody and control of the Company, and also to the extent it purports to require providing information about affiliates of the Company that are not subject to the jurisdiction of the Kentucky Public Service Commission and are subject to the jurisdiction of regulatory commission in other state jurisdictions and regulated by the Federal Energy Regulatory Commission ("FERC"). The Company further objects to the extent the request is not reasonably calculated to lead to the discovery of admissible evidence. The Company further objects to the extent the request seeks communications, documents, and information protected by the attorney-client privilege or the attorney work product doctrine. The Company further objects on the grounds that the request is ambiguous, overly broad, speculative, and argumentative. Without waiving these objections, the Company states as follows:

KPCo RESPONSE AND SUPPLEMENTAL RESPONSES TO OAG-KIUC-DR-1-26 (p. 2 of 3):

Kentucky Power Company  
KPSC Case No. 2023-00159  
AG-KIUC's First Set of Data Requests  
Dated August 14, 2023  
Page 2 of 2

- a. The United States Internal Revenue Service (“IRS”) has not published the requested private letter rulings.
- b. Please refer to the Company’s response to subpart a.
- c. The IRS has not made a determination about the consolidation of the referenced requests.
- d. The IRS has not made a determination about a conference related to the referenced requests.

Witness: Linda M. Schlessman

**September 8, 2023 Supplemental Response**

The Company objects to this request to the extent it seek legal analysis and a legal opinion, which are not the appropriate subject of discovery. The Company further objects to this request to the extent it seeks information not under the custody and control of the Company, and also to the extent it purports to require providing information about affiliates of the Company that are not subject to the jurisdiction of the Kentucky Public Service Commission and are subject to the jurisdiction of regulatory commission in other state jurisdictions and regulated by the Federal Energy Regulatory Commission (“FERC”). The Company further objects to the extent the request is not reasonably calculated to lead to the discovery of admissible evidence. The Company further objects to the extent the request seeks communications, documents, and information protected by the attorney-client privilege or the attorney work product doctrine. The Company further objects on the grounds that the request is ambiguous, overly broad, speculative, and argumentative. Without waiving these objections, the Company states as follows:

- b. The private letter ruling requests were filed in March 2022. Shortly after the IRS requested additional information, which was provided in August 2022. Since then no further additional information requests have been received.
- c. The Company does know and cannot speculate whether the IRS will consolidate the requests. The IRS has not made a determination about the consolidation of the referenced requests.
- d. The Company does not know and cannot speculate whether the IRS will offer a conference of right prior to issuing the ruling. The IRS has not made a determination about a conference related to the referenced requests.

Witness: Linda M. Schlessman

# KPCo RESPONSE AND SUPPLEMENTAL RESPONSES TO OAG-KIUC-DR-1-26 (p. 3 of 3):

## September 19, 2023 Supplemental Response

The Company objects to this request to the extent it seeks legal analysis and a legal opinion, which are not the appropriate subject of discovery. The Company further objects to this request to the extent it seeks information not under the custody and control of the Company, and also to the extent it purports to require providing information about affiliates of the Company that are not subject to the jurisdiction of the Kentucky Public Service Commission and are subject to the jurisdiction of regulatory commission in other state jurisdictions and regulated by the Federal Energy Regulatory Commission (“FERC”). The Company further objects to the extent the request is not reasonably calculated to lead to the discovery of admissible evidence. The Company further objects to the extent the request seeks communications, documents, and information protected by the attorney-client privilege or the attorney work product doctrine. The Company further objects on the grounds that the request is ambiguous, overly broad, speculative, and argumentative. Without waiving these objections, the Company states as follows:

- a. The requested confidential private letter ruling requests are confidential, highly sensitive, and non-public. Please see KPCO\_SR\_AG-KIUC\_1\_26\_ConfidentialAttachment1 through KPCO\_SR\_AG-KIUC\_1\_26\_ConfidentialAttachment3 for the requested information. The Company is filing the attachments confidentially with the Commission via email, and the Company will make the attachment available for viewing by appointment at the offices of counsel for the Company to intervenors and their representatives that have signed a non-disclosure agreement with the Company. If separately arranged with counsel for the Company and on terms agreeable to the Company, the Company will also make the attachments available electronically on a read-only (non-downloadable) basis to intervenors and their representatives that have signed a non-disclosure agreement with the Company. Counsel for Kentucky Power will work with counsel for those intervenors to arrange for viewing at counsel for Kentucky Power’s offices in Frankfort, KY or Lexington, KY, or electronically as described. The remaining documents requested in this subpart are equally and publicly available to AG-KIUC on the relevant state regulatory commission dockets. The Company, therefore, has no obligation to produce them.
- c. It is the Company’s understanding that the respective taxpayers that have submitted private letter ruling requests have not requested that the requests be consolidated. The Company does know and cannot speculate whether the IRS will consolidate the requests. The IRS has not made a determination about the consolidation of the referenced requests.
- d. It is the Company’s understanding that the respective taxpayers that have submitted private letter ruling requests have requested a conference of right, but the IRS has not indicated whether such a conference is needed or whether such a request would be granted. The Company does not know and cannot speculate whether the IRS will offer a conference of right prior to issuing the ruling. The IRS has not made a determination about a conference related to the referenced requests.

Witness: Linda M. Schlessman



# KPCo RESPONSE OAG-KIUC-DR-2-28 (p. 1 of 2):

Kentucky Power Company  
KPSC Case No. 2023-00159  
AG-KIUC's Second Set of Data Requests  
Dated September 11, 2023  
Page 1 of 2

## DATA REQUEST

- AG-KIUC 2-28** Refer to the Direct Testimony of Linda Schlessman at 1 wherein she describes her employment position with AEPSC.
- a. Confirm that AEPSC provides all federal income tax services to the Company. If this is not correct, then identify and described each federal income tax service that is performed directly by the Company and identify the person, position, and describe the role that each employee of the Company performs with respect to federal income tax strategy, analyses, filings, and requests for private letter rulings, among others.
  - b. Identify each employee of the Company who performed research, analyses, calculations, and/or drafted requests for private letter rulings for the Company and/or AEP affiliates regarding the two NOL ADIT issues in this proceeding.
  - c. Confirm that all requests for private letter ruling on the two NOL ADIT issues in this proceeding were drafted exclusively and are managed by or under the direction of employees of AEPSC, including the retention of tax counsel and/or other tax experts. If this is not correct, then identify each employee of the Company and/or other AEP affiliates who have performed these roles and describe the role that each such employee performed.
  - d. Confirm that the AEP strategy regarding the two NOL ADIT issues in this proceeding was developed and coordinated by AEPSC and not by the AEP regulated utilities. If this is not correct, then describe the relative roles of AEPSC and each of the AEP regulated utilities, including the Company, in developing AEP's strategy regarding the two NO ADIT issues in this proceeding.

## RESPONSE

KPCo RESPONSE OAG-KIUC-DR-2-28 (p. 2 of 2):

a. Confirmed.

b. The Company objects to this request because it seeks information that is not relevant to this proceeding, it is not reasonably calculated to lead to the discovery of admissible evidence, is overly broad, and is unduly burdensome. The Company further objects to the extent the request seeks communications, documents, and information protected by the attorney-client privilege or the attorney work product doctrine.

c.-d. AEPSC provides tax services to Kentucky Power and other AEP subsidiaries pursuant to a Service Agreement. These services are provided to AEP subsidiaries for the subsidiaries' benefit. As AG-KIUC Witness Kollen testified in Case No. 2021-00481, concerning the value of the AEPSC shared services model and AEP Service Agreement, "The AEP model uses AEPSC to provide centralized services in a cost effective manner at a lower cost than if the AEP utilities acquired or provided the services themselves locally and on a standalone basis." Case No. 2021-00481, Kollen Direct Testimony at 22.

Witness: Linda M. Schlessman

## KPCo RESPONSE OAG-KIUC-DR-2-29 (p. 1 of 2):

Kentucky Power Company  
KPSC Case No. 2023-00159  
AG-KIUC's Second Set of Data Requests  
Dated September 11, 2023  
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### **DATA REQUEST**

**AG-KIUC 2-29** Refer to the response to AG-KIUC 1-26(a) wherein the Company was requested to provide a copy of each request for PLR filed by AEP on behalf of its regulated utilities/jurisdictions related to the two NOL ADIT issues in this proceeding, but failed to do so.

a. Confirm that the decision to object and not provide a copy of each such request for PLR is AEPSC's decision, and is not due to any prohibition or limitation imposed by the IRS and/or Treasury. If this is not correct, then cite and provide a copy of each such prohibition or limitation and describe how each such prohibition or limitation prevents AEPSC and/or the Company from providing a copy of each such request under confidential seal in this proceeding.

b. Identify AEPSC's tax counsel and tax accountants retained to advise AEPSC and to assist in the requests for PLR. Provide a copy of each engagement letter, proposal, and purchase order for such services.

c. Provide a copy of all communications to the AEP Board of Directors and/or the Audit Committee from the AEP outside auditor and/or AEP's internal audit organization that address the two NOL ADIT issues in this proceeding and the failure of AEP and its regulated utility affiliates to record these NOL ADIT amounts on their accounting books and/or to recover the alleged costs through the ratemaking process.

### **RESPONSE**

a. See the Company's September 19, 2023 Supplemental Response to AG-KIUC 1\_26.

b. - c. The Company objects to this request to the extent it is not reasonably calculated to lead to the discovery of admissible evidence, is overly broad and it seeks to impose an obligation that is unduly burdensome. The Company further objects to the extent the

KPCo RESPONSE OAG-KIUC-DR-2-29 (p. 2 of 2):

request seeks communications, documents, and information protected by the attorney-client privilege or the attorney work product doctrine.

Witness: Linda M. Schlessman