COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

Electronic Tariff Filing Of Kentucky Power Company To Revise Its Industrial General Service Tariff	)))	Case No. 2024-00305

INITIAL BRIEF OF KENTUCKY POWER COMPANY

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I. INTRODUCTION

Kentucky Power Company ("Kentucky Power" or the "Company") requests in this proceeding that the Public Service Commission of Kentucky ("Commission") approve the proposed modifications to Kentucky Power's Tariff Industrial General Service ("I.G.S.") pertaining to new large loads greater than 150 megawatts ("MW") that would take service on or after September 30, 2024.

The proposed Tariff I.G.S. modifications are necessary to memorialize a reciprocal commitment from large-load customers that reasonably recognizes and aligns with the financial commitments that will be required by Kentucky Power to provide these customers with the level of safe, reliable, and adequate service they need to operate energy-intensive business. Commission approval of Kentucky Power's proposed tariff modifications will position the Company to confidently make the financial commitments associated with the substantial system improvements and capacity that would be required to serve such customers. The proposed modifications also will provide new and existing customers and the Company with reasonable financial protections should future conditions arise that impact the operations of a customer's facility and reduce the level of electric demand or consumption or result in the facility ceasing operation. Although the Company does not expect such situations to arise, it is important that it is clear among Kentucky Power, its customers, the Commission, and other stakeholders how these situations will be managed if they were to occur. Ultimately, the proposed Tariff I.G.S. large-load provisions will better position Kentucky Power and its customers going forward, and they should be approved.

II. BACKGROUND AND CASE OVERVIEW

A. Factual Background.

Kentucky Power is obligated to serve any new electric-consuming facilities that locate within its certified territory.[1] When new customers with large loads locate in the Company's territory, it often requires substantial transmission and generation infrastructure investments in order to serve those customers. In order to address these concerns, Kentucky Power submitted on August 30, 2024, proposed revisions to its Tariff I.G.S. applicable to new commercial and industrial customers requesting service on or after September 30, 2024, and who have a contract demand of at least 150 megawatts ("MW").[2] The proposed revisions include new terms and conditions of service applicable to new large-load customers (demand of at least 150 MW) designed to incent those large-load customers to operate in the Company's service territory long-term, and to otherwise protect the Company and its other customers from the up-front infrastructure and other costs necessary to serve those customers. The proposed provisions include the following:

- A required 20-year contract term ending only upon five-years' notice from the customer;
- A requirement of minimum monthly billing demand of the greater of 90% of the customer's on-peak contract capacity, 90% of the customer's highest previously established monthly billing demand during the past 11 months, or the customer's maximum demand created during the billing month;

[1] See KRS 278.018(1); KRS 278.030(2); 807 KAR 5:006, Section 6(2).

[2] *See* proposed P.S.C. KY. No. 13 Original Sheet No. 8-3.

- After the initial five years of the contract term, five-years' notice of the customer's intent to reduce the contract capacity, or otherwise by mutual agreement;
- A requirement to make a one-time payment equal to five-years' minimum billing to the Company in the event of a permanent closure of the customer's facility prior to the end of the 20-year term; and
- A requirement that the customer provide sufficient collateral equal to 24 times the customers' previous maximum monthly non-fuel bill, with the collateral amount to be reviewed and updated as necessary under the terms of the proposed tariff.

By order dated September 26, 2024, the Commission suspended the proposed tariff for five months, up to and including February 28, 2025, and opened this proceeding to investigate the reasonableness of the proposed large-load privisions. The Attorney General ("AG") and Kentucky Industrial Utility Customers, Inc. ("KIUC") were granted full intervention in the proceeding. The Commission and the AG each issued one set of data requests to Kentucky Power. No intervenor filed direct written testimony, and no party requested a hearing. Kentucky Power submitted this matter for a decision on the written record on December 5, 2024. The AG stated that he had no objection to the Company's request to submit the matter for a decision on the written record. The Commission issued an order on December 20, 2024, granting Kentucky Power's request to submit the matter for a decision, and also provided the opportunity for the parties to submit briefs. Kentucky Power files this brief in conformity with the Commission's December 20, 2024 Order.

III. LEGAL STANDARDS

KRS 278.030 provides that a utility may demand, collect and receive fair, just, and reasonable rates and that the service it provides must be adequate, efficient, and reasonable.[3] KRS 278.170(1) prohibits a utility from giving unreasonable preference or advantage to any person as to rates or subjecting any person to any unreasonable prejudice or disadvantage.[4] KRS 278.190 permits the Commission to investigate any schedule of new rates to determine its reasonableness.[5]

IV. ARGUMENT

A. The Proposed Tariff I.G.S. Large-Load Provisions Are Needed And Are Fair, Just, And Reasonable And Should Be Approved.

1. There Is A Current Need For The Proposed Large-Load Provisions.

The electric utility industry is in the midst of a transformation, both in terms of customer makeup and in regard to the changes occurring within the generation resources serving customers. Over the past few years, the electric industry has seen increased activity and interest among large-load customers, which is occuring at the same time that many utilities, including Kentucky Power, are making long-term generation capacity planning decisions. Kentucky Power proposes to add the new large-load provisions to Tariff I.G.S. to address this issue as such loads, like data centers, increasingly seek to begin operations throughout the country.

While at this time there are no specific potential new large-load customers seeking to locate in the Company's service territory, Kentucky Power has at least been contacted by potential new customers with load requirements that would be significantly larger than its current

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[3] *See* Order at 2, *In The Matter Of: Electronic Tariff Filing Of Kentucky Utilities Company For Approval Of An Economic Development Rider Special Contract With Bitiki-KY, LLC*, Case No. 2022-00371 (Ky. P.S.C. August 7, 2023).

[4] *Id.*

[5] *Id.*

largest customer.[6] The magnitude of demand for electricity associated with these customers is unprecedented and would be unlike previous load additions the Company has experienced. Now is the right time to address the changing landscape these customers bring to an electric utility like Kentucky Power and establish a consistent set of reasonable terms and conditions for such large-load customers that would take service under Tariff I.G.S.

The proposed modifications to Tariff I.G.S. ensure that Kentucky Power has reasonable terms and conditions of service in place that recognize and address the different needs and unique risks that large-load customers present from other Tariff I.G.S. customers. In order to serve those large loads, the Company would likely be required to make significant transmission and generation investments.[7] Indeed, the Company is unaware of any circumstance where a new customer of such a size locating in its service territory would not require additional and/or expanded transmission or generation infrastructure investment to serve that customer.[8] By revising Tariff I.G.S. now to include the proposed large-load provisions, the Company will be more prepared to serve large-load customers and ensure, before those customers take service, that the Company and its other customers are reasonably protected from potential increased costs to serve those customers, and from potential liabilities if those customers close operations in the future.

Other than the notice provisions and the requirement to provide sufficient collateral before taking service, the proposed large-load provisions would only need to be enforced in the event of a contract default or other change in the customer's demand or operation. Moreover, because the proposed provisions are applicable only to new large-load customers taking service

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[6] Company's response to AG 1-1.

[7] *Id.*

[8] Company's response to KPSC 1-3(a).

after the proposed date of September 30, 2024, none of the proposed provisions would be applicable to any existing Tariff I.G.S. customers.

There is no current need to implement similar large-load provisions for any of Kentucky Power's *existing* customers, and the Company's intent is not to impact current customers.[9] The proposed revisions would only be applicable to new customers taking service on or after September 30, 2024.[10] In any event, the Company also is unaware of any current customers that intend to increase their loads to the 150 MW threshold.[11] Finally, the proposed large-load provisions would not modify or otherwise affect any of the rates paid by current customers taking service under Tariff I.G.S. or any other rate schedule.[12]

2. The 150 MW Threshold And The Minimum Billing Demand Provisions Are Appropriate.

Kentucky Power proposes that the new large-load provisions be applicable only to new customers applying for service on or after September 30, 2024, whose contract demand is at least 150 MW. Setting a 150 MW minimum ensures that only large loads above this threshold will be subject to the provisions in recognition of the larger needs and risks that serving customers of this size will create. This threshold also is greater than the demand of any of Kentucky Power's current customers, and it therefore ensures the proposed provisions would only apply to new customers, who have not already provided significant contributions to the Company's existing infrastructure.[13] Ultimately, the 150 MW threshold is intended to protect Kentucky Power's existing customers from the significant financial commitment required to serve new loads of that

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[9] Company's response to KPSC 1-1(b).

[10] *Id*.

[11] *Id.*

[12] Company's response to AG 1-8.

[13] Company's response to KPSC 1-1(a).

magnitude or greater in the future (such as securing new generation resources to serve the load).[14]

The Company also proposed minimum billing demand charges that differ from those already applicable to customers taking service under Tariff I.G.S. Specifically, the intent of this proposed provision is to ensure the demand ratchet charge is identical to the existing demand ratchet charge provision in Tariff I.G.S., except the charge is 90% instead of 60%.[15] As such, in practice, this provision would ensure the customer's monthly billing demand would be the greater of 90% of their on-peak contract capacity, 90% of the customer's highest previously established monthly billing demand during the past 11 months, or the customer's maximum demand created during the billing month.[16]

The proposed minimum billing demand for large-load customers is primarily based on the magnitude and size of these customers, which results in the Company having to make long-term investments and other financial commitments for years into the future in order to ensure adequate power supply to meet all customers' needs.[17] Such commitments are based on the total contract capacity requested by the prospective large-load customer. Without the proposed minimum demand billing terms, a drop in billing demand by just one of these large-load customers could have significant negative financial consequences for both the Company and its other customers.[18] Attachment 1 to the Company's response to KPSC 1-4 (reproduced below) provides an illustration of this by providing a hypothetical 1 GW customer at expected billing

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[14] *Id.*

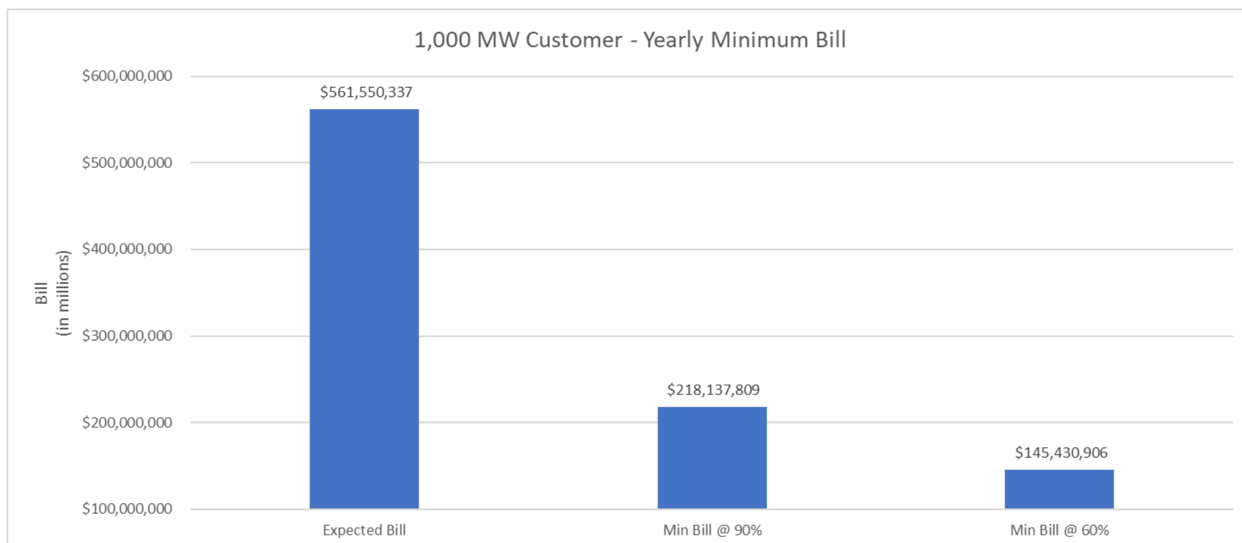
[15] Company's response to KPSC 1-4(a).

[16] *Id*.

[17] Company's response to KPSC 1-4(b).

[18] *Id.*

(minimum not triggered), minimum bill computed under the Company's current 60% minimum billing demand provision, and the Company's proposed 90% billing demand provision.[19]



As demonstrated above, the difference between a 60 percent and 90 percent minimum billing demand for certain large-load customers could be the revenue requirement associated with the cost of service of an entire power plant. Thus the 90 percent minimum billing requirement is reasonable and necessary.

3. The 20-Year Contract Term Requirement Is Appropriate.

Kentucky Power proposes that contracts with new large-load customers be required for an initial period of at least 20 years. Kentucky Power proposed the 20-year term due to the significant long-term investments and other financial commitments, primarily in generation and transmission assets, that will be required to serve these large load customers as part of Kentucky Power's integrated system serving all Kentucky retail customers. Such transmission and generation costs must necessarily be reflected in the Company's rates for service, and it is important for Kentucky Power to have a reciprocal long-term commitment from large-load

[19] *Id.* Attachment 1 (filed October 31, 2024).

customers to support making the necessary long-term investments and commitments. An initial contract of 20 years provides reasonable assurance that large-load customers will take service over a period that reasonably aligns with the cost of the significant investments and financial commitments the Company will make to provide service to them.[20]

4. The Five-Year Notice Period And Contract Termination Fee Provisions Are Appropriate.

Kentucky Power also proposed a requirement for large-load customers to give, only after the initial five years of the contract term, at least five years' written notice of the customer's intent to discontinue service or reduce the contract capacity ("Notice Period"), unless otherwise agreed to by mutual agreement. Moreover, any such reduction of contract capacity must not exceed 20%, unless otherwise agreed to by mutual agreement. The Company's proposal also would establish a minimum five-year commitment and provide the customer the ability thereafter to exit the contract by providing a one-time payment ("Contract Termination Fee") equal to five years of the customers' minimum bill in the event of a permanent closure.

Given these two requirements (the Notice Period and the Contract Termination Fee), the customer would effectively be contractually obligated to a 10-year financial commitment.[21] These proposals provide reasonable safeguards to all other customers in the event of an unexpected shut down by a large load customer.[22] The Company must make long-term investments and other financial commitments in generation and transmission to meet the needs of new large loads.[23] However, the Company understands that circumstances can change for large load customers. If a significant change in circumstances were to occur, the Company needs

[20] Company's response to KPSC 1-3(b).

[21] Company's response to KPSC 1-3(c).

[22] *Id.*

[23] *Id.*

sufficient time to manage its commitments in an orderly, well-reasoned manner within regulatory and market timelines.[24]

The Company established the Notice Period and Contract Termination Fee requirements by performing a sensitivity analysis related to the potential cost of the generation assets needed to serve the load and the potential market for such assets in the event of a significant change in circumstances.[25] This sensitivity analysis evaluated varying time horizons from 20 years to five years. Attachment 1 to the Company's response to KPSC 1-3 demonstrates the potential net cost or benefit using a range of asset costs and market conditions compared to the proposed Contract Termination Fee equal to five (5) years of the customers' minimum bill requirement.[26]

Figure 1 in that attachment assumes an "average" asset cost of $275 per MW-day and $34.14 per MWh, and tests that asset cost against a range of market conditions. This "average" asset cost value was selected based upon the Company's cogeneration tariff. For capacity, the range of market conditions captured the highest and lowest PJM RPM capacity costs for the five most recently available delivery years. For energy, the range of market conditions captured the annual average LMP for the Kentucky load zone during the eight-year period from 2016 through 2023. Based on the sensitivity analysis performed, Figure 1 demonstrates that, when assuming average resource costs, the Contract Termination Fee generally provides adequate coverage over a range of market risks for periods up to 10 years and becomes more sensitive to market value for periods over 10 years.[27]

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[24] *Id.*

[25] *See* Company's response to KPSC 1-3, Attachment 1 (filed October 31, 2024).

[26] *Id.;* Company's response to KPSC 1-3(c).

[27] Company's response to KPSC 1-3(c).

Conversely, Figure 2 in that attachment assumes an "average" market condition using the average capacity and LMP values from the same PJM market data described in Figure 1, and tests that against a range of asset costs from 25% higher to 25% lower than the average asset assumed in Figure 1. Based on the sensitivity analysis performed, Figure 2 demonstrates that, when assuming average market conditions, the Contract Termination Fee generally provides adequate coverage over a range of risks for periods up to 10 years and becomes more sensitive to asset cost for periods over 10 years.[28]

While it is not possible to precisely predict the average cost of the portfolio of future generation resources or the market conditions that would exist at the time a large load customer would permanently close its operations, these sensitivity analyses demonstrate the proposed Contract Termination Fee covers a range of risks.[29] The Contract Termination fee strikes a reasonable balance by providing a reasonable and predictable amount for all interested parties, the customer, all of the Company's other customers, and the Company.[30]

5. The Required Collateral Amount Is Appropriate.

Finally, the Company proposed that new large-load customers be required to provide collateral in a form acceptable to the Company, based upon the creditworthiness of the customer. The amount of collateral provided must be equal to 24 times the customer's previous maximum monthly non-fuel bill and the amount of collateral would be recomputed and updated annually as necessary. The Company would accept collateral in the form of letters of credit, cash, and, depending on public debt rating and liquidity, a parent guarantee.[31]

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[28] *Id.*

[29] *Id.*

[30] *Id.*

[31] Company's response to AG 1-5.

The collateral requirement is reasonable and necessary because the size and concentration risk of new large-load customers is unlike other customers.[32] If a new large-load customer were to unexpectedly exit Kentucky Power's service territory, there is potential for significant financial harm to Kentucky Power and its other customers.[33] The Company and its other customers must be reasonably protected in the event of an unexpected closure of a large load customer. While no reasonable term can *fully* insulate Kentucky Power and its other customers, the proposed terms reasonably increase the Company's existing collateral requirements in its Terms and Conditions of Service,[34] and provides additional protections in the event a customer does unexpectedly cease taking service from Kentucky Power and is unable to pay its remaining charges.[35]

Finally, it would be unnecessary to update the amount of collateral required of large-load customers if the recomputed value was less than the current amount held by 10 percent or more (as suggested by Commission Staff in KPSC 1-2(c)) because the planning and investments necessary to serve the original contract capacity would have already been made by the Company at that point.[36]

V. CONCLUSION

Without the proposed revisions to Tariff I.G.S. there could be significant exposure to the Company and its existing customers. Specifically, if large-load customers (greater than 150 MW)

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[32] Company's response to KPSC 1-3(d).

[33] *Id.*

[34] *See* P.S.C. KY. No. 13 Original Sheet No. 2-2, Section 4.C.b. ("Deposit amounts paid by commercial and industrial customers shall not exceed a calculated amount based upon actual usage data of the customer at the same or similar premises for the most recent 12-month period, if such information is available. If the actual usage data is not available, the deposit amount shall be based on the typical bills of similar customers and premises in the customer class. The deposit shall not exceed 2/12 of the customer's actual or estimated annual bill.")

[35] Company's response to KPSC 1-3(d).

[36] Company's response to KPSC 1-2(c).

apply to take service at the applicable rates and provisions in the current Tariff I.G.S., and because of the Company's obligation to serve all electric-consuming facilities in its certified territory, the Company would have to invest significant capital to serve those customers. Specifically, the Company would be required to add or expand transmission facilities and secure additional generation resources to serve those customers. Without the addition of the proposed provisions to Tariff I.G.S., after the Company made the necessary investments to serve such a customer, if that customer had to close its operation or decided to reduce its contract capacity, the costs of the aforementioned investments would instead be recovered from the Company's remaining customer base which, holding all else equal, would increase costs for remaining customers. The proposed Tariff I.G.S. large-load provisions would significantly reduce the impacts of a new large-load customer closing its operations or reducing its capacity requirement.

Therefore, for the reasons set forth above, the Company has demonstrated that the proposed modifications to Tariff I.G.S. applicable to new large-load customers with contract demands of at least 150 MW are necessary, fair, just, and reasonable. The Commission should approve the proposed revisions to Tariff I.G.S.

Respectfully submitted,

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