

**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;)	Case No. 2025-00257
(3) Approval Of Certain Regulatory And Accounting)	
Treatments; and (4) All Other Required Approvals)	
And Relief)	

Motion for Clarification or Partial Rehearing

Kentucky Power Company (“Kentucky Power” or the “Company”) moves the Public Service Commission of Kentucky (“Commission”) pursuant to 807 KAR 5:001, Section 5 for clarification of its September 11, 2025 order (“Order”) establishing a procedural schedule. In addition to establishing a procedural schedule, the Order also held that suspension of the Company’s proposed rates was “not currently necessary,” and that the Commission “will suspend the proposed rates prior to the effective date and likely will allow them to go into effect subject to refund if such suspension becomes necessary.”¹ The Company requests clarification or rehearing of the Commission’s findings that suspension was not currently necessary and that it may suspend the proposed rates in the future and “likely” allow them to go into effect subject to refund. Kentucky Power states in support of this motion:

I. Brief Procedural History

KRS 278.180(1) mandates that “no change shall be made by any utility in any rate except upon thirty (30) days’ notice to the [C]ommission, stating plainly the changes proposed to be made and the time when the changed rates will go into effect.” KRS 278.190(2) then provides, in full:

Pending the hearing and the decision thereon, and after notice to the utility, the commission may, at any time before the schedule becomes effective, suspend the

¹ Order at 2.

operation of the schedule and defer the use of the rate, charge, classification, or service, but not for a longer period than five (5) months beyond the time when it would otherwise go into effect if an historical test period is used, or longer than six (6) months if a forward-looking test period is used, pursuant to KRS 278.192; and after such hearing, either completed before or after the rate, charge, classification, or service goes into effect, the commission may make those orders with reference thereto as it deems proper in the matter. If the proceeding has not been concluded and an order made at the expiration of five (5) months, or six (6) months, as appropriate, the utility may place the proposed change of rate, charge, classification, or service in effect at the end of that period after notifying the commission, in writing, of its intention so to do. Where increased rates or charges are thus made effective, the commission may, by order, require the interested utility or utilities to maintain their records in a manner as will enable them, or the commission, or any of its customers, to determine the amounts to be refunded and to whom due in the event a refund is ordered, and upon completion of the hearing and decision may, by further order, require such utility or utilities to refund to the persons in whose behalf the amounts were paid that portion of the increased rates or charges as by its decision shall be found unreasonable. Provided, however, if the commission, at any time, during the suspension period, finds that the company's credit or operations will be materially impaired or damaged by the failure to permit the rates to become effective during the period, the commission may, after any hearing or hearings, permit all or a portion of the rates to become effective under terms and conditions as the commission may, by order, prescribe.

The Commission historically and consistently has suspended proposed rates in base rate cases for the maximum time allowed by KRS 278.190(2), and conducts its investigation during the suspension period.² For utilities using a historical test year, the Commission consistently suspends the rates for five months after the thirty-day notice period provided for by KRS 278.180(1), such that the rates may be implemented subject to refund beginning six months after the application was accepted.

² See, e.g., Order at 2, *In the Matter of: Electronic Application Of Louisville Gas And Electric Company For An Adjustment Of Its Electric And Gas Rates And Approval Of Certain Regulatory And Accounting Treatments*, Case No. 2025-00114 (Ky. P.S.C. June 18, 2025); Order at 2, *In the Matter of: Electronic Application of Duke Energy Kentucky, Inc. For 1) An Adjustment Of The Natural Gas Rates; 2) Approval Of New Tariffs; And 3) All Other Required Approvals, Waivers, And Relief*, Case No. 2025-00125 (Ky. P.S.C. June 13, 2025); see also Order at 2, *In the Matter of: Electronic Application Of East Kentucky Power Cooperative, Inc. For A General Adjustment Of Rates, Approval Of Depreciation Study, Amortization Of Certain Regulatory Assets, And Other General Relief*, Case No. 2025-00208 (Ky. P.S.C. Aug. 14, 2025) (suspending rates for five months).

Kentucky Power filed its Application in this case on August 29, 2025 (“Application”). The Company filed as Exhibit 1 to Section I of its Application the statutory notice required by KRS 278.180(1) and 807 KAR 5:011, Section 9 (“Statutory Notice”). To provide clarity to customers, in each of those documents the Company stated that it was proposing rates to be effective for service rendered on March 1, 2026 – six months after the Application was filed. The Company made clear that:

Kentucky Power files this Application and provides this notice with the expectation the Commission subsequently will suspend pursuant to KRS 278.190 the proposed rates for investigation. Kentucky Power requests that the Commission conduct its investigation during this suspension period and enter its Order granting the relief requested in conformity with the statutory requirements of KRS 278.190, and enter an order for rates effective March 1, 2026.³

In its previous two rate cases, Case No. 2020-00174 (“2020 Rate Case”)⁴ and Case No. 2023-00159 (“2023 Rate Case”),⁵ Kentucky Power likewise proposed rates to become effective six months from the date the application in each case was filed, accounting for the 30 days’ statutory notice required by KRS 278.180(1) and the additional five months’ suspension allowed by KRS 278.190(2). Kentucky Power also likewise stated that it set the respective proposed effective dates with the expectation that the Commission would subsequently suspend the rates pursuant to KRS 278.190 until the proposed effective date and conduct its investigation during that suspension period.⁶

³ Application at 1 n.1.

⁴ *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 Regulatory Assets And Liabilities; (4) Approval Of A Certificate Of Public Necessity; And (5) All Other Required Approvals And Relief*, Case No. 2020-00174 (Ky. P.S.C. June 29, 2020).

⁵ *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 Regulatory Assets And Liabilities; (4) A Securitization Financing Order; And (5) All Other Required Approvals And Relief*, Case No. 2023-00159 (Ky. P.S.C. June 29, 2023).

⁶ Application at 8–9 n.5, *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 Regulatory Assets And Liabilities; (4) Approval Of A Certificate Of Public Necessity; And (5)*

In the 2020 Rate Case and the 2023 Rate Case, the Commission did, in fact, suspend the proposed rates until six months after the date of acceptance of the respective applications, and it conducted its investigation during that suspension period, consistent with Kentucky Power's stated expectation.⁷

However, unlike in the 2020 Rate Case and the 2023 Rate Case, the Commission instead stated in the Order in this case, without prior notice to Kentucky Power, that:

Kentucky Power's application established a date of March 1, 2026, that the requested rate proposal would go into effect. Given that the effective date of the proposed rates is March 1, 2026, the Commission finds that a rate suspension is not currently necessary. The Commission anticipates completing this matter prior to the proposed effective date but will suspend the proposed rates prior to the effective date and likely allow them to go into effect subject to refund if such a suspension becomes necessary.

Kentucky Power interprets the Commission's Order to mean that the Commission is not suspending the proposed rates while it conducts its investigation into those rates, as it consistently and historically has done in the past. Instead, the Commission appears to hold for the first time that it does not need to suspend the rates during its investigation because Kentucky Power proposed March 1, 2026, as the effective date for the rates, and that it may suspend the proposed rates at any time prior to March 1, 2026. While Kentucky Power appreciates that the Commission anticipates completing its review of this matter prior to March 1, 2026 (such that this issue resolves itself),

All Other Required Approvals And Relief, Case No. 2020-00174 (Ky. P.S.C. June 29, 2020); Application at 9 n.6, *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 Regulatory Assets And Liabilities; (4) A Securitization Financing Order; And (5) All Other Required Approvals And Relief*, Case No. 2023-00159 (Ky. P.S.C. June 29, 2023).

⁷ Order at 2, *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 Regulatory Assets And Liabilities; (4) Approval Of A Certificate Of Public Necessity; And (5) All Other Required Approvals And Relief*, Case No. 2020-00174 (Ky. P.S.C. July 14, 2020); Order at 2, *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 Regulatory Assets And Liabilities; (4) A Securitization Financing Order; And (5) All Other Required Approvals And Relief*, Case No. 2023-00159 (Ky. P.S.C. July 20, 2023).

the Order appears to leave open the possibility of the Commission subsequently-ordering a suspension that may extend past March 1, 2026, presumably for as long as five months from the date of suspension or until June 29, 2026,⁸ whichever is earlier. Finally, while the Commission's Order also indicates that the Commission "likely" would allow the proposed rates to go into effect subject to refund during the suspension period, it provides no guarantee of the same.

II. Rehearing or Clarification is Necessary.

Kentucky Power respectfully requests that the Commission grant rehearing and confirm or clarify that, consistent with its past practice, it is suspending Kentucky Power's proposed rates for five months, up to March 1, 2026, and that if the Commission issues its final order on or after March 1, 2026, that Kentucky Power may implement the proposed rates subject to refund in conformity with KRS 278.190(2). Such amendment and clarification is necessary to be consistent with the Commission's prior precedent, Kentucky case law, and the Commission's statutory authority.

A. The Commission's Order departs from its past practice, without notice to Kentucky Power.

It has long been established that "radical departure from (past) administrative interpretation consistently followed cannot be made except for the most cogent reasons."⁹

Kentucky Power had no notice of the Commission's intended departure from its long-standing historical interpretation of KRS 278.190(2) in numerous past rate cases, generally,¹⁰ and in Kentucky Power's two most recent rate cases, specifically. In each of Kentucky Power's two most recent rate cases, the Commission interpreted and applied KRS 278.190(2) in a manner that

⁸ The date by which the Commission must issue an order on the Company's Application pursuant to KRS 278.190(3).

⁹ *S. Cent. Bell Tel. Co. v. Pub. Serv. Comm'n*, 702 S.W.2d 447, 451 (Ky. App. 1985).

¹⁰ This practice is not limited to cases filed by Kentucky Power, as set forth in the cases cited in footnote 2, *supra*.

resulted in rates being suspended until six months after the application was accepted, with the suspension period ending on the effective date proposed by the Company. Here, however, the Commission has, without notice or justification, interpreted the same statutory provision materially dissimilar. Instead of the Commission suspending the Company's proposed rates until six months after the application was accepted, the Commission's Order provides that it may suspend the rates for up to five additional months *after* the Company's proposed effective date of March 1, 2026. The Commission does so without any guarantee to Kentucky Power that, if suspended, Kentucky Power would be entitled (as it previously has been pursuant to KRS 278.190(2)) to implement the proposed rates subject to refund while the Commission concludes its investigation in this case.

Had Kentucky Power been provided notice of the Commission's intention to interpret and apply KRS 278.190(2) differently in this case, then Kentucky Power would not have proposed an effective date of March 1, 2026. It instead would have proposed an effective date of September 29, 2025, which is the minimum statutory notice period required by KRS 278.180. This is confirmed by Kentucky Power's statement in its Application and Statutory Notice that,

Kentucky Power files this Application and provides this notice with the expectation the Commission subsequently will suspend pursuant to KRS 278.190 the proposed rates for investigation. Kentucky Power requests that the Commission conduct its investigation during this suspension period and enter its Order granting the relief requested in conformity with the statutory requirements of KRS 278.190, and enter an order for rates effective March 1, 2026.¹¹

The Commission's new interpretation of KRS 278.190(2) has implications outside of just this regulatory proceeding. If Kentucky Power cannot implement the proposed rates subject to refund beginning March 1, 2026, then the Company's financial condition would be affected, which ultimately could lead to higher customer costs and potentially threaten reliability.

¹¹ Application at 1 n.1.

For these reasons, Kentucky Power respectfully requests that the Commission adhere to its past practice and amend the Order to reflect the same.

B. KRS 278.190(2) does not permit the Commission to issue an order suspending proposed rates after a hearing is held.

Even assuming that the Commission provided Kentucky Power notice of its intention to depart from its past practice and that it provided cogent reasons in the Order for doing so, the Commission's new interpretation of KRS 278.190(2) is nonetheless inconsistent with the plain language of the statute. KRS 278.190(2) provides that the Commission may not suspend proposed rates after a hearing is held: "*Pending the hearing and the decision thereon*, and after notice to the utility, the commission may, at any time before the schedule becomes effective, suspend the operation of the schedule" (emphasis added). Under Kentucky law, as an administrative agency, the Commission's authority is limited to that which has been expressly delegated to it by statute.¹² The Commission may not act beyond (or contrary to) what has been set out in statute,¹³ including by employing procedures or remedies not authorized by statute.¹⁴ Based on its plain language, KRS 278.190(2) does not provide the Commission with the authority to suspend rates at any time prior to the effective date, but rather that any suspension must be before a hearing takes place. Accordingly, the Commission's new interpretation of KRS 278.190(2), which allows for an order suspending rates at any time prior to March 1, 2025, is not only inconsistent with its prior application, but it is also inconsistent with the statute itself.

¹² *Id.* ("[T]he Commission is a creature of statute and its powers are purely statutory, having only such powers as conferred expressly, by necessity, or by fair implication.").

¹³ *Appalachian Racing, LLC v. Fam. Tr. Found. of Ky., Inc.*, 423 S.W.3d 726, 736 (Ky. 2014); *Henry v. Parrish*, 211 S.W.2d 418, 422 (Ky. 1948).

¹⁴ *Flying J Travel Plaza v. Commonwealth*, 928 S.W.2d 344, 347 (Ky. 1996) ("[T]he authority of the agency is limited to the direct implementation of the functions assigned to the agency by the statute."); *S. C. Bell Tel. Co. v. Util. Reg. Comm'n*, 637 S.W.2d 649, 653 (Ky. 1982) ("When a statute prescribes a precise procedure, an administrative agency may not add to such provision.").

- C. In the alternative, at a minimum, the Commission should clarify that upon any subsequent suspension, Kentucky Power may implement proposed rates subject to refund.**

If the Commission does not amend the Order and adhere to its past practice as requested, then Kentucky Power respectfully requests, for the reasons stated herein, that the Commission amend the Order to reflect that if the Commission suspends the proposed rates past the proposed effective date of March 1, 2026, then Kentucky Power will be allowed to implement the proposed rates subject to refund in conformity with KRS 278.190(2) on that date.

III. Conclusion.

For the reasons stated herein, Kentucky Power Company respectfully requests that the Commission enter an order:

- (1) Clarifying and amending its September 11, 2025 Order to reflect that, consistent with its past practice, it is suspending Kentucky Power's proposed rates for five months, up to March 1, 2026, and that if the Commission issues its final order on or after March 1, 2026, that Kentucky Power may implement the proposed rates subject to refund in conformity with KRS 278.190(2); and
- (2) Granting the Company all other relief to which it may be entitled.

Respectfully submitted,



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