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Via Overnight Mail

June 19, 2012

Mr. Jeff Derouen, Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40602

RECEIVED
JUN 20 2012
PUBLIC SERVICE COMMISSION

Re: Case No. 2012-00226

Dear Mr. Derouen:

Please find enclosed the original and twelve (12) copies of the REPLY OF KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC TO RESPONSE OF KENTUCKY POWER for filing in the above-referenced docket.

By copy of this letter, all parties listed on the Certificate of Service have been served. Please place this document of file.

Very Truly Yours,

Michael L. Kurtz, Esq.
Kurt J. Boehm, Esq.
Jody M. Kyler, Esq.
BOEHM, KURTZ & LOWRY

MLKkew
Attachment
cc: Certificate of Service
Faith Burns, Esq.
Richard Raff, Esq.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by mailing a true and correct copy via electronic mail (when available) and regular U.S. Mail to all parties on this 19TH day of June, 2012.

Michael L. Kurtz, Esq.
Kurt J. Boehm, Esq.
Jody M. Kyler, Esq.

Honorable Mark R Overstreet
Stites & Harbison
421 West Main Street
P. O. Box 634
Frankfort, KENTUCKY 40602-0634

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF: THE APPLICATION OF KENTUCKY POWER COMPANY TO WITHDRAW ITS TARIFF RTP PENDING SUBMISSION BY THE COMPANY AND APPROVAL BY THE COMMISSION OF A NEW REAL-TIME PRICING TARIFF	:	**Case No. 2012-00226**

REPLY OF KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC. TO RESPONSE OF KENTUCKY POWER COMPANY

INTRODUCTION

Kentucky Industrial Utility Customers, Inc. ("KIUC") submits this Reply to the June 15, 2012 Response of Kentucky Power Company ("Kentucky Power" or "Company") to KIUC's Motion to Dismiss ("Response"). In its Response, Kentucky Power claims that KIUC's arguments are based on a "fundamental misunderstanding" of the Company's existing real-time pricing tariff ("Tariff RTP") and that Tariff RTP *"was never intended to permit large industrial customers to switch to market-based rates without a concurrent shift in customers' usage from higher-cost to lower cost periods."*[1] But Kentucky Power's Response fails to adequately rebut KIUC's primary contention – that Kentucky Power has violated the Unanimous Settlement Agreement approved by the Commission in Kentucky Power's last rate case, Case No. 2009-00459 ("Settlement"). Additionally, the Company's focus on the "intent" of Tariff RTP fails to account for the plain language of existing Tariff RTP, which permits customers to experiment in the wholesale electricity market with a portion of their load. Moreover, Kentucky Power's current description of the operation and value of existing Tariff RTP is grossly inconsistent with the Company's own past representations to the Commission and Attorney General ("AG") regarding the market pricing provisions of Tariff RTP.

[1] Response at 1.

KIUC acknowledges that the Commission has authority to modify a utility's rates to ensure that the rates continue to be just and reasonable, pursuant to multiple provisions of KRS 278.[2] Additionally, the Commission could modify a previously approved settlement if the Commission later found the settlement to seriously harm the public interest.[3] But Kentucky Power has failed to provide any legitimate reason why existing Tariff RTP causes rates to be unjust or unreasonable or how Tariff RTP seriously harms the public interest. Kentucky Power merely appears to be asking the Commission to bail it out of a deal that will result in a one-year revenue loss to its shareholders. The Commission should not facilitate Kentucky Power's bad faith attempt to harm customers by altering a carefully negotiated Settlement immediately before customers can receive a benefit under a particular provision of that Settlement. There is no valid reason to condone what amounts to AEP's attempted breach of contract. If Kentucky Power wishes to change its existing Tariff RTP, then the Company can propose a different real-time pricing mechanism to be effective after June 29, 2013, when existing Tariff RTP expires, without violating the carefully negotiated Settlement.

If the Commission does not dismiss or deny Kentucky Power's Application and instead opens an investigation in this matter, then the Commission should continue the operation of existing Tariff RTP and allow the multiple KIUC customers who are in the process of switching load to existing Tariff RTP to do so during the investigation. Failing to continue the operation of the lawfully filed Tariff RTP rate during the pendency of any Commission investigation would allow Kentucky Power to violate its obligations under Settlement.

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[2] See KRS 278.030; KRS 278.040(2); KRS 278.260(1); 278.390; 278.270.

[3] *NRG Power Mktg., LLC v. Maine Pub. Utilities Comm'n*, 130 S. Ct. 693, 696, 175 L. Ed. 2d 642 (2010) (Under this Court's *Mobile–Sierra* doctrine, FERC must presume that a rate set by 'a freely negotiated wholesale-energy contract' meets the statutory 'just and reasonable' requirement...'The presumption may be overcome only if FERC concludes that the contract seriously harms the public interest'").

ARGUMENT

I. Kentucky Power Failed to Adequately Rebut KIUC's Contention That Withdrawal of Existing Tariff RTP Directly Violates The Unanimous Settlement Agreement Approved by the Commission In Kentucky Power's Last Rate Case.

Kentucky Power's Response fails to provide any valid reason why the Commission should not dismiss the Company's June 1, 2012 Application in this case ("Application"), which directly violates the Settlement. Rather, Kentucky Power selectively points to one sentence within existing Tariff RTP in hopes of distracting the Commission from the plain language of the Settlement, the Commission's June 28, 2010 Order approving the Settlement, the existing Tariff RTP itself, and the Company's Responses to Data Requests in the original Tariff RTP approval docket, Case No. 2007-00166, which completely contradict the Company's current position.

In arguing that Kentucky Power's Application does not violate the Settlement, Kentucky Power alleges that the Settlement does not authorize customers to take service under Tariff RTP *"in direct contravention of the express language of Tariff RTP,"* pointing to one sentence of Tariff RTP that provides:

> *"The RTP Tariff will offer customer the opportunity to manage their electric costs by shifting load from higher cost to lower cost pricing periods or by adding new load during lower price periods."*[4]

But nothing in this sentence expressly requires customers taking service under Tariff RTP to engage in load-shifting. It only gives customers the opportunity to do so. Further, Kentucky Power conveniently ignores the next sentence of Tariff RTP, which provides for a wholesale real-time market-pricing option:

> *"The experimental pilot will also offer the customer the ability to experiment in the wholesale electricity market by designating a portion of the customer's load subject to standard tariff rates with the remainder of the load subject to real-time prices."*

Kentucky Power also does not focus on the express language of the Settlement, which states *that "[t]he **existing RTP Tariff** shall be extended for an additional three-year period...."*[5] Nor does Kentucky Power discuss the explicit language in the Commission's June 28, 2010 Order approving the Settlement, which provides

[4] Response at 7.
[5] Paragraph 9(a) of the Settlement (emphasis added).

"*Kentucky Power's* ***existing Real-Time Pricing tariff*** *shall be continued for three years, with customers able to enroll at any point during a year for a minimum period of 12 months.*"[6] Kentucky Power merely asserts its conclusion that the Company acted in good faith in supporting the Settlement and that "*Kentucky Power is not reneging, violating, or in any way acting in contravention of the Settlement Agreement.*"[7]

Kentucky Power failed to adequately rebut KIUC's contention that the filing of the Application is a direct violation of the carefully negotiated Settlement. Both the Settlement and the Commission's Order approving the Settlement make clear that that *existing* Tariff RTP will be extended until June 2013. Kentucky Power's has not explained how withdrawal of existing Tariff RTP and its replacement with the radically different real-time pricing mechanism proposed by the Company in Case No. 2012-00245 is consistent with the explicit language of the Settlement and the Commission's Order. Rather, Kentucky Power merely points to the "intent" of Tariff RTP without addressing the fact that the plain language of Tariff RTP outlines multiple purposes for the Tariff, including allowing customers to experiment in the wholesale electric market with a portion of their load, and that the language of Tariff RTP does not explicitly require customers to shift their load to take service under Tariff RTP.

Kentucky Power's June 1, 2012 Application in this case directly violates the Settlement and amounts to a breach of contract. KIUC specifically bargained for and relied upon the three year extension of the "*existing*" RTP Tariff. Concessions were made to Kentucky Power in exchange for the right to have the existing RTP Tariff extended for three years. The agreement regarding the existing RTP Tariff was part of the delicate balance achieved by the parties in reaching the Commission-approved Settlement. Kentucky Power's attempt to renege on this part of the Settlement constitutes bad faith and should not be formally condoned by this Commission.

This is an important matter of policy and precedent. If other utilities believe that settlement commitments made by them and approved by the Commission can later be changed to the detriment of one of the signatory parties, then the settlement process is compromised and rendered less effective. If settlement

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[6] Order at 6 (emphasis added).
[7] Response at 9.

agreements are allowed to be changed after the fact, then parties are less likely to resolve matters through negotiation. And the Commission's modification of a carefully negotiated settlement deprives parties who relied upon that settlement of the benefits specifically bargained for in exchange for detriments the parties incurred as a result of the settlement. Therefore, the Commission should dismiss Kentucky Power's Application in this proceeding.

Kentucky Power claims that KIUC "overlooks" the provision of the Settlement acknowledging the Commission's jurisdiction under KRS Chapter 278.[8] This is not the case. KIUC acknowledges that the Commission has authority to modify a utility's rates to ensure that the rates continue to be just and reasonable, pursuant to multiple provisions of KRS 278.[9] Additionally, the Commission could modify a settlement if it found the settlement to seriously harm the public interest.[10] But Kentucky Power's Application fails to provide any legitimate reason why existing Tariff RTP causes rates to be unjust and/or unreasonable or how Tariff RTP seriously harms the public interest.

Though Kentucky Power cites "*encouraging customers to manage their energy costs by shifting their load periods*" as the reason for withdrawing existing Tariff RTP,[11] Kentucky Power's true concern appears to be that it "*will incur substantial financial losses if the customers who have expressed interest in taking service under Tariff R.T.P. were to do so.*"[12] Kentucky Power estimates that it will experience a revenue loss of approximately

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[8] Response at 8.

[9] KRS 278.030; *See also* Order, Case No. 2011-00036 (April 12, 2012) at 3 ("It is clear from the Court's March 8, 2012 Order that both KIUC and Big Rivers have disputes over the Rate Order, and that the Commission is the agency with jurisdiction over all of the rate matters in dispute. Pursuant to KRS 278.040(2) and KRS 279.210(1), the Commission has exclusive jurisdiction over the rates of Big Rivers. In addition, KRS 278.260(1) empowers the Commission with original jurisdiction over complaints as to the rates of Big Rivers, and the Commission can make such investigation of those rates as it deems necessary or convenient, either upon a complaint in writing or on its own motion. Further, pursuant to KRS 278.390, the Rate Order continues in force until revoked or modified by the Commission, unless the Order is suspended or vacated in whole or in part by order or decree of a court of competent jurisdiction, while, under KRS 278.270, the Commission is authorized to prescribe a just and reasonable rate to be charged prospectively after conducting an investigation under KRS 278.260(1)").

[10] *NRG Power Mktg., LLC v. Maine Pub. Utilities Comm'n*, 130 S. Ct. 693, 696, 175 L. Ed. 2d 642 (2010) (Under this Court's *Mobile–Sierra* doctrine, FERC must presume that a rate set by 'a freely negotiated wholesale-energy contract' meets the statutory 'just and reasonable' requirement...'The presumption may be overcome only if FERC concludes that the contract seriously harms the public interest'").

[11] Application at 4.

[12] Application at 4.

$10 million to $20 million during the one-year period July 1, 2012 to June 30, 2013.[13] This estimated revenue loss is primarily based on the difference between its retail demand charge for capacity and the PJM RPM Resource Auction price for capacity. As discussed in KIUC's Motion to Dismiss, Kentucky Power knew to the penny the PJM RPM capacity price for the 2012/2013 PJM Planning Year a *full year* before it signed the Settlement.

Kentucky Power states that, though the Company knew about the lower PJM capacity prices in the future, it did not know that KIUC customers would transfer their load to Tariff RTP without load-shifting or that energy prices would decline in the future.[14] But the risks of customers actually taking service under the plain language of existing Tariff RTP and of decreased future energy prices were risks that Kentucky Power agreed to assume by signing the Settlement in 2010. It is unpersuasive for AEP—a company that regularly trades in the wholesale power market—to assert that it did not realize that over a three-year period energy prices could fall. And Kentucky Power's Response provides no proof of serious harm to the Company, merely speculating regarding any impact to its credit ratings or its ability to fund system improvements.[15] This speculative harm is insufficient to justify the Commission's alteration of the carefully negotiated settlement. Kentucky Power appears to merely seek to breach its contractual obligations in order to preserve revenue for its shareholders. Mr. Wohnhas forecasts that Kentucky Power's return on equity ("ROE") would drop from 8.9% to 6.6% if existing Tariff RTP remains in effect.[16] Even if this forecast is accurate, a 6.6% ROE for one year is not serious enough to condone revising a previously approved Settlement. In 2010, Kentucky Power's per books ROE was 8.0%.[17] In 2010 and 2011, AEP subsidiary Appalachian Power's per books ROE was 4.9% and 5.6%, respectively.[18]

As discussed in KIUC's Motion to Dismiss, multiple Kentucky Power industrial customers have seriously relied upon the language of existing Tariff RTP and the integrity of the settlement process. Contrary to Kentucky

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[13] Application at 4.
[14] Response at 9-10.
[15] Response at 11.
[16] Direct Testimony of Ranie K. Wohnhas (June 1, 2012) at 10:3-5 ("A reduction of $17.4 million (3.2%) of retail sales revenue would reduce KPCO's ROE by approximately 2.3% from its April, 2012 level of 8.9%").
[17] Per FERC Form 1 data.
[18] Per FERC Form 1 data.

Power's claim that the KIUC members' reliance on existing Tariff RTP is "short-lived at best,"[19] Marathon Petroleum Company LP ("Marathon") has been in contact with the Company regarding Tariff RTP since 2009.[20] The attached financial analysis comparing tariff pricing to RTP market prices at PJM energy and capacity rates is three years old and was prepared for Marathon by AEP itself. Thus, Kentucky Power's characterization of KIUC member reliance on existing Tariff RTP as being "short lived" is contradicted by the facts.

If Kentucky Power wishes to alter existing Tariff RTP, Kentucky Power can file an Application to institute a new real-time pricing mechanism after June 2013, when existing Tariff RTP expires. Such an action would not be in direct contravention to the Settlement. However, Kentucky Power's present Application does violate express language of the Settlement and the Commission's Order approving the Settlement. Accordingly, the Commission should dismiss Kentucky Power's Application in this proceeding.

II. **Kentucky Power Fails to Account for the Plain Language of Existing Tariff RTP, Which Provides Customers An Opportunity to Experiment In the Wholesale Electricity Market With a Portion of Their Load.**

Kentucky Power premises much of its argument on the assertion that the Tariff RTP is intended only to encourage customers to shift their usage patterns.[21] Kentucky Power's current interpretation of the tariff is inconsistent with the plain language of existing Tariff RTP itself. Tariff RTP describes the program serving a purpose outside of giving customers the opportunity to shift their load to off-peak periods. The Tariff also provides that it will *"offer the customer the ability to experiment in the wholesale electricity market by designating a portion of the customer's load subject to standard tariff rates with the remainder of the load subject to real-time prices."*

> *"PROGRAM DESCRIPTION.*
>
> *The Experimental Real-Time Pricing Tariff is voluntary and will be offered on a pilot basis through June 2013. The RTP Tariff will offer customers the opportunity to manage their electric costs by shifting load from higher cost to lower cost pricing periods or by adding new load during lower price periods. The experimental pilot will also offer the customer the ability to experiment in the wholesale electricity market by designating a portion of the customer's load subject to standard*

[19] Response at 11.
[20] See attached.
[21] Response at 1-6.

<u>tariff rates with the remainder of the load subject to real-time prices</u>. The designated portion of the customer's load is billed under the Company's standard Q.P. or C.I.P.-T.O.D. tariff. <u>The remainder of the customer's capacity and energy load is billed at prices established in the PJM Interconnection, L.L.C. (PJM) RTO market.</u>"[22]

Marathon, AK Steel Corporation, EQT Corporation, Air Liquide Large Industries U.S. LP, and Air Products and Chemicals, Inc. intend to use existing Tariff RTP exactly as written by buying part of their power at cost-based tariff rates and the remainder at PJM market rates. Thus, those customers intend to take advantage of another explicit purpose of existing Tariff RTP – allowing them the opportunity to experiment in the wholesale electric market. And cost savings compared to tariff are not guaranteed because PJM real-time energy prices could easily increase over the next year.

At no point during the negotiations and discussions—which began in 2009 for Marathon-- did Kentucky Power ever assert or imply that the existing Tariff RTP was intended only to encourage customers to shift their load. As demonstrated in KIUC's Motion to Dismiss and in the attached 2009 financial analysis prepared by AEP, Marathon was repeatedly assured that nominating load for Tariff RTP was an option while having the customer maintain its same production schedule. The notion that Tariff RTP was only intended to benefit a customer that changes its production schedule is contrary to the plain language of the Tariff and is a new theory presented by Kentucky Power in this case as an after-the-fact justification for changing the existing program.[23]

It is certainly true that Tariff RTP *could have* been written to require customer load shifts. During the negotiation and review of the Settlement, either Kentucky Power or the Commission itself could have revised the language of Tariff RTP to expressly require such load-shifting if that was the only intended purposes of Tariff RTP. But that is not how the plain language of existing Tariff RTP is actually written. A mandatory load-shifting Tariff RTP was not the rate agreed to in the Settlement. There are many components in the Settlement (i.e., $63.66 million rate increase, 10.5% ROE in the environmental surcharge, 60/40 sharing of off-system sales profits) that *could have* been negotiated and written differently. It would be inherently unreasonable and

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[22] Emphasis added.

[23] Contrary to Kentucky Power's assertions, it is very likely that some KIUC members would in fact respond to PJM marginal energy cost price signals and reduce usage during high priced hours. This would certainly be the case for Air Products and AK Steel.

unlawful to give Kentucky Power the benefit of its bargain, but deny the members of KIUC the benefit of theirs merely to maintain avoid a one year, non-recurring revenue loss for Kentucky Power's shareholders.

III. Kentucky Power's Current Description of the Operation and Value of Existing Tariff RTP Is Inconsistent with Its Past Representations To the Commission and Attorney General Regarding Tariff RTP.

Kentucky Power claims that *"any ambiguity in the language of Tariff R.T.P....may be resolved by the Commission's Order in Case No. 2007-00166 approving Tariff R.T.P."*[24] Kentucky Power relies on that Order in arguing that Tariff RTP was designed only to encourage load-shifting and that KIUC did not object to Tariff RTP or seek rehearing of that Order.[25]

Importantly, that Order recounts how Kentucky Power defended the implementation of Tariff RTP, particularly in response to the Attorney General's ("AG") concern that Kentucky Power did not choose to use a Customer Baseline Load ("CBL") approach in its real-time pricing mechanism.[26] The AG was concerned that "as proposed, the load designated by participants as subject to the tariff is fixed so that reductions in overall usage would only reduce the charges applicable under the standard tariff rates and the designated load would still be subject to the significantly higher PJM rates."[27] Kentucky Power rebutted the AG's concerns. Specifically, the Order states:

> *"By allowing the companies flexibility in designing programs the Commission freed the companies to use their company-specific experience to develop programs that provide their customers with appropriate pricing signals while avoiding the allocation of additional costs to other customers (as might happen if customers were able to 'game' the system under the customer base line approach.) Kentucky Power responds to the AG's concern regarding its decision not to use a CBL approach by acknowledging that the Commission did not direct the companies to implement a particular type of program. Kentucky Power argues that by allowing flexibility in designing programs, the Commission freed the companies to use their company-specific experience to develop programs that provide their customers with appropriate price signals while avoiding the allocation of additional costs to other customers. In addition, Kentucky Power argues the deployment of both CBL programs and Kentucky Power's model will provide the Commission with additional information it would otherwise lack."*

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[24] Response at 3-4.
[25] Response at 5.
[26] Order, Case No. 2007-00166 (Feb. 1, 2008) at 10-12.
[27] Id. at 5 (citing Attorney General's Comments at 7).

The Commission approved Kentucky Power's approach under Tariff RTP, noting that *"Kentucky Power's model will provide information that may not be available if Kentucky Power was required to utilize a CBL."*[28] But now, when customers have actually expressed interest in taking service under Rider RTP and the additional information both Kentucky Power and the Commission noted were valuable can be compiled, Kentucky Power quickly seeks to withdraw its program and implement a CBL approach.[29] This undermines the value of implementing diverse experimental real-time pricing pilot programs.

Further, Kentucky Power's Responses to the Attorney General in Case No. 2007-00166 reflect a much different description of the operation and value of Tariff RTP than Kentucky Power now presents. For example, Kentucky Power reflected that the real-time pricing program under Tariff RTP: 1) subjects the customer to pricing as if it were purchasing its requirements directly from the market; 2) cannot result in under recovery by Kentucky Power because the designated tariff portion of the bill is cost-based and the designated market portion will be a direct flow through of PJM prices; 3) is not designed to be bill neutral to customers who elect RTP pricing and whose consumption pattern (load profile) do not change because market pricing can be higher or lower than tariff pricing; and 4) would only be chosen by the customer if it projected cost savings to itself, which would naturally mean less revenue for the Company:

> ***"Q:*** *Please provide a detail explanation of exactly what costs the company will incur by utilizing the PJM RTO rates rather than its own costs of generation?*
>
> ***A:*** *AEP/Kentucky Power treats the portion of the load designated by the customer as subject to real-time pricing as if the customer is purchasing its requirements directly from the market. AEP will separately identify the real-time load and will be purchasing from the market the requirements for that load. The costs AEP incurs to do that will be passed on to the customer. Those costs are detailed in the RTP tariff and include demand, energy, ancillary and transmission charges...*[30]
>
> ***
>
> ***Q:*** *Given the company's statement that PJM RTO prices are 'much higher' than Kentucky's tariff prices over 90% of the time, does the company expect to over-recover from program participants based upon its actual costs of generation? If so, how does the company propose to allocate such over-recovered funds?*

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[28] Order, Case No. 2007-00166 (Feb. 1, 2008) at 12.
[29] Kentucky Power Application, Case No. 2012-00245.
[30] Kentucky Power Company's Responses to Attorney General's Second Set of Data Requests (June 28, 2007) ("Responses to AG 2nd Set), Response to Item No. 6(b).

A: *No. The Company's generation and its cost will be used to supply the energy it commits to provide to the customer at standard tariff prices. The amount of energy, which the customer purchases at market prices, will be supplied from the energy purchased on the market by Kentucky Power. Therefore the Company will collect its costs.*[31]

***

Q: *As participants are to be charged for a portion of a load they designate at their current tariff rate plus any portion of additional load they designate as subject to real-time pricing, does the possibility exist for over or under recovery from individual participants? If so, how does the company propose to allocate such over or under recovered funds?*

A: *No, the Company believes that individual participants will pay for the costs they cause the Company to incur. The current tariff rates are cost based and the price paid for usage under real-time pricing reflects the costs customer would incur if they purchased the electricity in the competitive market.*[32]

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Q: *Is the proposed program designed to be cost neutral to participants whose consumption patterns (load profile) do not change but designate a portion of load subject to the tariff?...*

A: *The program is not bill neutral to participants who designate a portion of their current load subject to real time pricing. It may be beneficial or detrimental to them depending on the load and usage characteristics since market capacity charges are currently less than the Company's demand charge and market energy prices are typically greater than the Company's energy charge. Once on the program, it will be more beneficial for customers to move usage to less costly hours since the market energy rates are typically higher than the Company's. In addition customers may be able to gain from added operational flexibility.*[33]

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Q: *Does the company believe that allowing participants to choose the amount of load they are willing to have subject to real-time pricing will result in revenue erosion? If not, why?*

A: *It is anticipated that customers that participate in any program would do so only if they benefit from participation in that program, thereby providing less revenues to the Company..."*[34]

Kentucky Power also expressed concern that a CBL approach to real-time pricing would be subject to manipulation:

"Q: ... [P]*rovide* [t]*he determinants or decision making reasons for determining this pilot to be appropriate"*

A: *The two main factors which shaped the design of the Company's program were the fact that market-based energy prices were much higher than Kentucky's tariff energy prices and the determination of customer baselines used in many programs is subject to manipulation....determination of customer*

[31] Responses to AG 2nd Set, Response to Item No. 2(d).
[32] Kentucky Power Company's Responses to Attorney General's First Set of Data Requests (June 5, 2007) ("Responses to AG 1st Set"), Response to Item No. 6(E).
[33] Responses to AG 2nd Set, Response to Item No. 9.
[34] Responses to AG 1st Set, Response to Item No. 1(B).

baselines is subject to discussion and manipulation. The Company's proposal therefore does not utilize customer baselines and only uses real time LMPS for customer designated usage."[35]

Thus, in implementing its real-time pricing program under Tariff RTP, the Company designed the program to be the equivalent of the customer purchasing market power directly, which would not be bill neutral even if the customer's usage pattern (load profile) did not change. Further, the Company disparaged the use of CBL approach compared to the market-based approach under Tariff RTP. These data responses demonstrate that the claimed intent of the RTP Tariff now is radically different than Kentucky power's claimed intent when the program was being approved.[36]

REQUEST FOR RELIEF

Kentucky Power's June 1, 2012 Application should be dismissed as a matter of law because the Application violates the Commission-approved Settlement. The Commission should also dismiss Kentucky Power June 11, 2012 Application for Approval of a new Experimental Real-Time Pricing Rider that radically differs from existing Tariff RTP in Case No. 2012-00245 since that request is contingent upon the outcome of this case. Kentucky Power failed to present any legitimate reasons why existing Tariff RTP results in unjust and unreasonable rates or seriously harms the public interest. Accordingly, the Commission should not condone what amounts to Kentucky Power's breach of contract by allowing Kentucky Power to withdraw existing Tariff RTP.

If the Commission decides to open an investigation into the Company's Application, then the KIUC customers who are in the process of switching load to real-time pricing should be allowed to do so under the existing Tariff RTP, including capacity pricing at the current PJM RPM capacity rate of $16.46/MW-day. Updating

[35] Responses to AG 1st Set, Response to Item No. 3(C)
[36] Kentucky Power Application, Case No. 2012-00245.

the capacity charge to reflect the current PJM RPM rate is required under the existing RTP Tariff.[37] To do otherwise, would allow Kentucky Power to proceed in violation of the Commission-approved Settlement.

CONCLUSION

WHEREFORE, this Commission should enforce the Settlement consistent with this Motion to Dismiss.

Respectfully submitted,

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COUNSEL FOR KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC.

June 20, 2012

[37] *"The Capacity Charge, stated in $/KW, will be determined from the auction price set in the Reliability Pricing Model (RPM) auction held by PJM for each PJM planning year."* Tariff RTP at 1.

ATTACHMENTS

RTP RATES:

	Demand	Energy	Rates Used
Loss Factors:			
Secondary	1.09752	1.05938	
Primary	1.06908	1.03361	
Subtransmission	1.04605	1.01667	
Transmission	1.03056	1.01310	
Capacity Charges:			
Reliability Pricing Model (PY 2008/2009)		3.404	
Diversity Factor - CIP-TOD		0.83	
Diversity Factor - QP		0.68	
Demand Loss Factor		1.04605	
Price Reserve Margin		1.175	
RTP Capacity Charge Used			3.473
Transmission Charges:			
NITS $/kW		1.7574	
Diversity Factor - CIP-TOD		0.83	
Diversity Factor - QP		0.67	
Demand Loss Factor		1.04605	
Transmission Charge Used			1.526
Other Market Services Charge:			
Secondary - $/KWH		0.002915	
Primary - $/KWH		0.002842	
Subtransmission - $/KWH		0.002800	0.002800
Transmission - $/KWH		0.002765	
Distribution Charge:			
Secondary		4.46	
Primary		2.77	
Program Charge: $/Month			150

STANDARD RATES:

	TARIFF QP RATES	TARIFF CIP-TOD RATES
Service Charge:		
Secondary	$276	
Primary	$276	$276
Subtransmission	$662	$662
Transmission	$1,353	$1,353
Demand Charges:		
Peak		
Secondary	13.28	
Primary	11.53	13.79
Subtransmission	8.81	10.83
Transmission	7.47	9.35
Off-Peak		
Primary		3.68
Subtransmission		0.98
Transmission		0.84
Off-Peak Excess		
Secondary	4.79	
Primary	3.31	
Subtransmission	0.88	
Transmission	0.77	
Energy Charges:		
Secondary	0.02569	
Primary	0.02517	0.02158
Subtransmission	0.02485	0.02133
Transmission	0.0246	0.02113
Reactive Demand Charge:	0.67	0.67

Riders:

	Net Merger Savings	Other Riders* QP	Other Riders* CIP-TOD	Total Net Merger + Other QP	Total Net Merger + Other CIP-TOD	Environ. Surcharge
Jan.	-0.000625	(0.0024656)	(0.0027816)	-0.0030906	-0.0034066	(0.005349)
Feb	-0.000625	(0.0001247)	(0.0004407)	-0.0007497	-0.0010657	(0.003657)
Mar	-0.000625	0.0003218	0.0000058	-0.0003032	-0.0006192	0.013377
Apr	-0.000625	(0.0000676)	(0.0003836)	-0.0006926	-0.0010086	0.011384
May	-0.000625	(0.0011522)	(0.0014682)	-0.0017772	-0.0020932	0.004783
Jun	-0.000625	0.0072433	0.0069273	0.0066183	0.0063023	0.026355
Jul	-0.000625	0.0121362	0.0118202	0.0115112	0.0111952	0.047119
Aug	-0.000660	0.0048707	0.0045547	0.0042107	0.0038947	0.037438
Sep	-0.000660	(0.0003610)	(0.0006770)	-0.0010210	-0.0013370	0.004040
Oct	-0.000730	0.0152612	0.0149452	0.0145312	0.0142152	0.024550
Nov	-0.000730	0.0141826	0.0138666	0.0134526	0.0131366	0.021642
Dec	-0.000730	0.0176906	0.0173746	0.0169606	0.0166446	0.018636

***Includes Fuel, System Sales, State Issues Settlement, Capacity Charge and Balancing Adjustment Factor.**

Kentucky Power Company
Crossover CIP-TOD & RTP (Transmission Voltage)

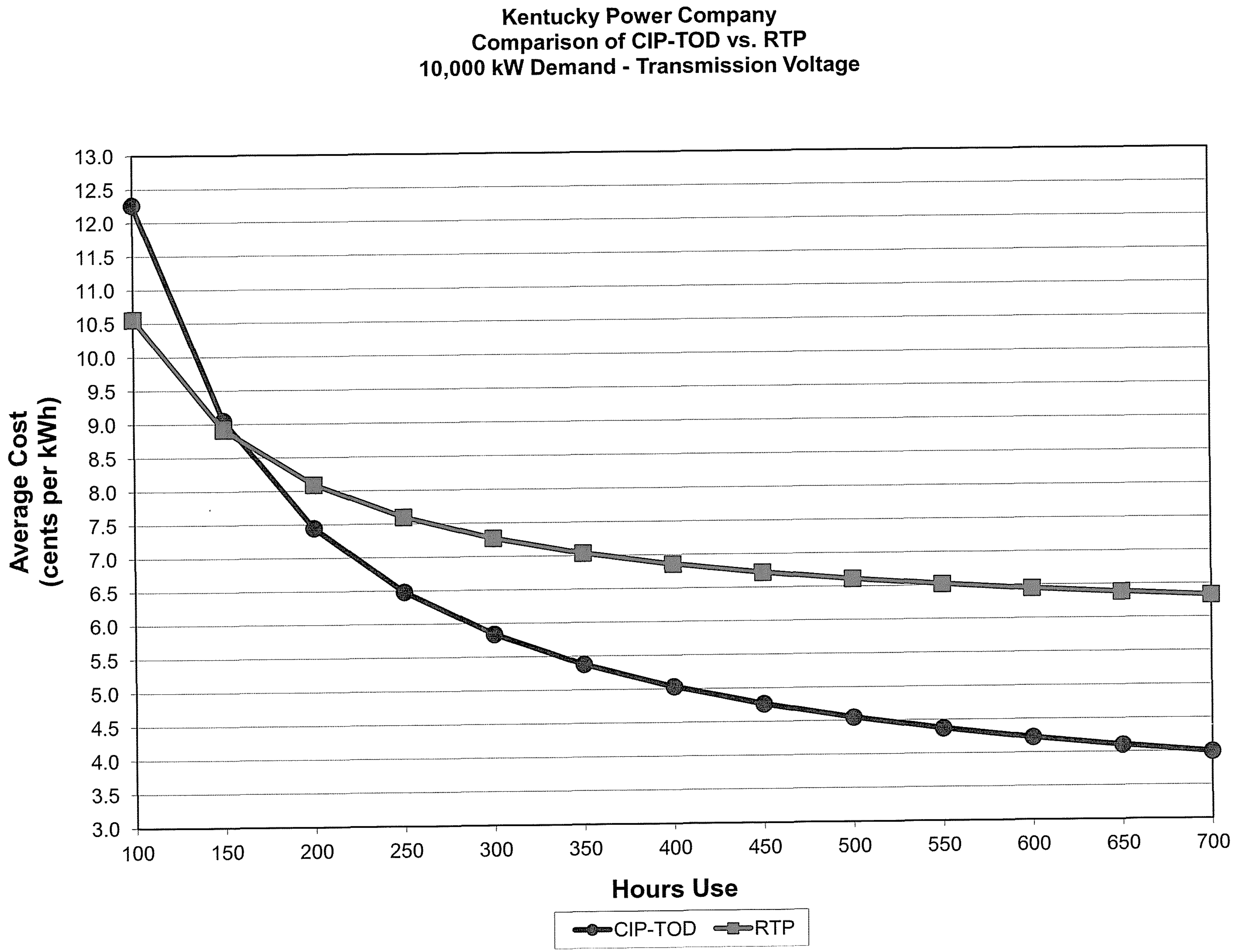
Billing Determinants				CIP-TOD									RTP								
Hours Use	Demand kW	Billing Energy	Lower of QP/IP	Demand $9.350	Energy $0.02113	Customer Charge $1,353	Riders* (Avg. 2008) $0.005312	Net Merger Savings (Avg. 2008) ($0.000657)	Subtotal	Environ. Surcharge (Avg. 2008) 0.016693	Total	Avg. Realiz. ¢ per kWh	Capacity Charge $3.421	Energy $0.054110	Transm. Charge $1.50322	Other Mrk. Serv. Charge $0.002765	Customer Charge $150	Net Merger Savings (Avg. 2008) ($0.000657)	Total	Avg. Realiz. ¢ per kWh
100	10,000	1,000,000	RTP	$93,500	$21,130	$1,353	$5,312	($657)	$120,638	$2,014	$122,652	12.27	$34,212	$54,110	$15,032	$2,765	$150	($657.00)	$105,612	10.56
150	10,000	1,500,000	CIP-TOD	$93,500	$31,695	$1,353	$7,968	($986)	$133,531	$2,229	$135,760	9.05	$34,212	$81,165	$15,032	$4,148	$150	($985.50)	$133,721	8.91
200	10,000	2,000,000	CIP-TOD	$93,500	$42,260	$1,353	$10,624	($1,314)	$146,423	$2,444	$148,867	7.44	$34,212	$108,219	$15,032	$5,530	$150	($1,314.00)	$161,830	8.09
250	10,000	2,500,000	CIP-TOD	$93,500	$52,825	$1,353	$13,280	($1,643)	$159,316	$2,659	$161,975	6.48	$34,212	$135,274	$15,032	$6,913	$150	($1,642.50)	$189,938	7.60
300	10,000	3,000,000	CIP-TOD	$93,500	$63,390	$1,353	$15,936	($1,971)	$172,208	$2,875	$175,083	5.84	$34,212	$162,329	$15,032	$8,295	$150	($1,971.00)	$218,047	7.27
350	10,000	3,500,000	CIP-TOD	$93,500	$73,955	$1,353	$18,592	($2,300)	$185,101	$3,090	$188,190	5.38	$34,212	$189,384	$15,032	$9,678	$150	($2,299.50)	$246,156	7.03
400	10,000	4,000,000	CIP-TOD	$93,500	$84,520	$1,353	$21,248	($2,628)	$197,993	$3,305	$201,298	5.03	$34,212	$216,439	$15,032	$11,060	$150	($2,628.00)	$274,265	6.86
450	10,000	4,500,000	CIP-TOD	$93,500	$95,085	$1,353	$23,904	($2,957)	$210,886	$3,520	$214,406	4.76	$34,212	$243,494	$15,032	$12,443	$150	($2,956.50)	$302,374	6.72
500	10,000	5,000,000	CIP-TOD	$93,500	$105,650	$1,353	$26,560	($3,285)	$223,778	$3,736	$227,514	4.55	$34,212	$270,548	$15,032	$13,825	$150	($3,285.00)	$330,483	6.61
550	10,000	5,500,000	CIP-TOD	$93,500	$116,215	$1,353	$29,216	($3,614)	$236,671	$3,951	$240,621	4.37	$34,212	$297,603	$15,032	$15,208	$150	($3,613.50)	$358,591	6.52
600	10,000	6,000,000	CIP-TOD	$93,500	$126,780	$1,353	$31,872	($3,942)	$249,563	$4,166	$253,729	4.23	$34,212	$324,658	$15,032	$16,590	$150	($3,942.00)	$386,700	6.45
650	10,000	6,500,000	CIP-TOD	$93,500	$137,345	$1,353	$34,528	($4,271)	$262,456	$4,381	$266,837	4.11	$34,212	$351,713	$15,032	$17,973	$150	($4,270.50)	$414,809	6.38
700	10,000	7,000,000	CIP-TOD	$93,500	$147,910	$1,353	$37,184	($4,599)	$275,348	$4,596	$279,944	4.00	$34,212	$378,768	$15,032	$19,355	$150	($4,599.00)	$442,918	6.33

***Includes Fuel, System Sales, State Issues Settlement, Capacity Charge and Balancing Adjustment Factor.**

Kentucky Power Company
Crossover QP & RTP (Primary Voltage)

Billing Determinants				QP										RTP								
Hours Use	Demand kW	Billing Energy	Lower of QP/IP	Demand $11.530	Energy $0.02517	Customer Charge $276	Riders* (Avg. 2008) $0.005628	Net Merger Savings (Avg. 2008) ($0.000657)	Subtotal	Environ. Surcharge (Avg. 2008) 0.016693	Total	Avg. Realiz. ¢ per kWh	Capacity Charge $2.908	Energy $0.055205	Transm. Charge $1.25880	Other Mrk. Serv. Charge $0.002842	Customer Charge $150	Distrib. Charge $2.77	Net Merger Savings (Avg. 2008) ($0.000657)	Total	Avg. Realiz. ¢ per kWh
100	1,000	100,000	RTP	$11,530	$2,517	$276	$563	($66)	$14,820	$247	$15,067	15.07	$2,908	$5,521	$1,259	$284	$150	$2,770	($65.70)	$12,825	12.83
150	1,000	150,000	RTP	$11,530	$3,776	$276	$844	($99)	$16,327	$273	$16,600	11.07	$2,908	$8,281	$1,259	$426	$150	$2,770	($98.55)	$15,695	10.46
200	1,000	200,000	QP	$11,530	$5,034	$276	$1,126	($131)	$17,834	$298	$18,132	9.07	$2,908	$11,041	$1,259	$568	$150	$2,770	($131.40)	$18,564	9.28
250	1,000	250,000	QP	$11,530	$6,293	$276	$1,407	($164)	$19,341	$323	$19,664	7.87	$2,908	$13,801	$1,259	$711	$150	$2,770	($164.25)	$21,434	8.57
300	1,000	300,000	QP	$11,530	$7,551	$276	$1,688	($197)	$20,848	$348	$21,196	7.07	$2,908	$16,562	$1,259	$853	$150	$2,770	($197.10)	$24,304	8.10
350	1,000	350,000	QP	$11,530	$8,810	$276	$1,970	($230)	$22,355	$373	$22,729	6.49	$2,908	$19,322	$1,259	$995	$150	$2,770	($229.95)	$27,173	7.76
400	1,000	400,000	QP	$11,530	$10,068	$276	$2,251	($263)	$23,862	$398	$24,261	6.07	$2,908	$22,082	$1,259	$1,137	$150	$2,770	($262.80)	$30,043	7.51
450	1,000	450,000	QP	$11,530	$11,327	$276	$2,533	($296)	$25,369	$423	$25,793	5.73	$2,908	$24,842	$1,259	$1,279	$150	$2,770	($295.65)	$32,912	7.31
500	1,000	500,000	QP	$11,530	$12,585	$276	$2,814	($329)	$26,877	$449	$27,325	5.47	$2,908	$27,603	$1,259	$1,421	$150	$2,770	($328.50)	$35,782	7.16
550	1,000	550,000	QP	$11,530	$13,844	$276	$3,095	($361)	$28,384	$474	$28,857	5.25	$2,908	$30,363	$1,259	$1,563	$150	$2,770	($361.35)	$38,651	7.03
600	1,000	600,000	QP	$11,530	$15,102	$276	$3,377	($394)	$29,891	$499	$30,390	5.06	$2,908	$33,123	$1,259	$1,705	$150	$2,770	($394.20)	$41,521	6.92
650	1,000	650,000	QP	$11,530	$16,361	$276	$3,658	($427)	$31,398	$524	$31,922	4.91	$2,908	$35,883	$1,259	$1,847	$150	$2,770	($427.05)	$44,390	6.83
700	1,000	700,000	QP	$11,530	$17,619	$276	$3,940	($460)	$32,905	$549	$33,454	4.78	$2,908	$38,644	$1,259	$1,989	$150	$2,770	($459.90)	$47,260	6.75

***Includes Fuel, System Sales, State Issues Settlement, Capacity Charge and Balancing Adjustment Factor.**


Kentucky Power Company
Comparison of CIP-TOD vs. RTP
10,000 kW Demand - Transmission Voltage
Average Cost (cents per kWh)
13.0
12.5
12.0
11.5
11.0
10.5
10.0
9.5
9.0
8.5
8.0
7.5
7.0
6.5
6.0
5.5
5.0
4.5
4.0
3.5
3.0
100
150
200
250
300
350
400
450
500
550
600
650
700
Hours Use
CIP-TOD
RTP

Kentucky Power Company
Comparison of QP vs. RTP
1,000 kW Demand - Primary Voltage