COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE COMMISSION

In the Matter of:

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| 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 |

**KENTUCKY INDUSTRIAL UTILITY CONSUMERS, INC.'S RESPONSES TO COMMISSION STAFF'S REQUEST FOR INFORMATION**

**REQUEST:**

Refer to the Direct Testimony of Stephen J. Baron ("Baron Testimony"), page 5, lines 12 through 19. It states, "[a]s an initial matter, Kentucky Power's request for withdrawal of Tariff RTP is premature. Customers have only recently begun taking service under Tariff RTP and therefore, the actual impact of Tariff RTP on customer usage has not yet been meaningfully assessed. Further, encouraging customers to shift their load from higher-priced period to lower-priced periods is not the sole objective of Tariff RTP, as reflected by the plain language of the tariff. Another purpose of Tariff RPT is to provide customers the opportunity to experiment in the wholesale electric market."

a. Confirm whether Kentucky Power Company's ("Kentucky Power") Experimental Real-Time Pricing ("RTP") Tariff R. T. P. ("Tariff RTP") was first approved by the Commission in Case No. 2007-00166.[11]

b. Are any KIUC members currently taking service under Kentucky Power's Tariff RTP?

c. If the answer to 1.b. is yes, identify each member and provide:

   1. The date each member first began taking service under this tariff;
   2. The amount of the load and the duration each member shifted the load from a higher-priced period to a lower-priced period;
   3. Whether that member added new load during the lower-price periods since it began taking service under Tariff RTP; and
   4. The member's average annual load factor for the past five calendar years.

d. If the answer to 1.b. is yes, explain why each KIUC member that has taken service under Tariff RTP did not request service under Tariff RTP earlier.

[1] Case No. 2007-00166, Application of Kentucky Power Company for an Order Approving a Large Commercial and Industrial Customers Real-Time Pricing Pilot Program (Ky. PSC Feb. 1, 2008)

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

| | | |
|---|---|---|
| APPLICATION OF KENTUCKY POWER | ) | |
| COMPANY TO WITHDRAW ITS TARIFF RTP | ) | CASE NO. |
| PENDING SUBMISSION BY THE COMPANY | ) | 2012-00226 |
| AND APPROVAL BY THE COMMISSION OF A | ) | |
| NEW REAL-TIME PRICING TARIFF | ) | |

**KENTUCKY INDUSTRIAL UTILITY CONSUMERS, INC.'S RESPONSES TO COMMISSION STAFF'S REQUEST FOR INFORMATION**

e. At page 5, line 14, it states that "the actual impact of Tariff RTP on customer usage has not yet been meaningfully assessed." Explain.

**RESPONSE:**

a. It is KIUC understanding that Tariff RTP was first approved by the Commission in Case No. 2007-00166.

b. Yes.

c. Catlettsburg Refining LLC ("Marathon"), Air Products and Chemicals, Inc. ("Air Products"), AK Steel Corporation, and EQT Gathering LLC are currently taking service under Tariff RTP.

    1. It is KIUC's understanding that each of the four KIUC member companies currently taking service under Tariff RTP began that service on July 1, 2012.

    2. Neither Mr. Baron nor KIUC have the information requested for all KIUC members currently taking service under Tariff RTP. Air Products has not shifted load from a higher-priced period to a lower-priced since July 1, 2012. KIUC notes that such action is not required by the plain language of Tariff RTP. It is KIUC's understanding that Kentucky Power would be able to provide this type of information to the Commission Staff.

    3. Neither Mr. Baron nor KIUC have the information requested for all KIUC members currently taking service under Tariff RTP. Air Products has not added any new load to a lower-priced period since July 1, 2012. KIUC notes that such action is not required by the plain language of Tariff RTP. It is KIUC's understanding that Kentucky Power would be able to provide this type of information to the Commission Staff.

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

| | | |
|---|---|---|
| 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 |

**KENTUCKY INDUSTRIAL UTILITY CONSUMERS, INC.'S RESPONSES TO COMMISSION STAFF'S REQUEST FOR INFORMATION**

4. Neither Mr. Baron nor KIUC have the information requested. It is KIUC's understanding that Kentucky Power would be able to provide this type of information to Commission Staff.

d. KIUC members taking service under Tariff RTP that have considered taking service under the tariff in the past have concluded that it was not economic to take service under the tariff, considering the risks involved in taking service at market rates.

e. Customers first began taking service under Tariff RTP during the second half of 2012. Until these customers have had a full year of service on the RTP rate, it is premature to form conclusions regarding the impact of the tariff on customer usage. The primary determinant of the "impact" of participating in the Tariff RTP program is the change in demand and energy usage and the change in demand and energy revenues (bill impact). Since Tariff RTP charges customers based on market-based demand and energy charges, and the energy charges will not be known with any level of certainty until the completion of the RTP pilot, the overall impact of Tariff RTP cannot be determined at this point. Customers will respond to market-based rates based on a variety of factors that affect their production decisions. These factors are also not known in advance (for example, the market conditions for their products). It is certainly unknown at this point whether Tariff RTP will generate revenues to Kentucky Power Company in excess of the otherwise applicable standard tariff or below the standard tariff as asserted by Kentucky Power in this case. While the PJM RPM-based demand charges are known for the period ending June 2013, market energy charges are completely unknown in advance. For example, because of high market energy rates in July 2012, some KIUC members paid more under Tariff RTP than they would have paid under the standard tariff for that month.

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

| | | |
|---|---|---|
| APPLICATION OF KENTUCKY POWER | ) | |
| COMPANY TO WITHDRAW ITS TARIFF RTP | ) | CASE NO. |
| PENDING SUBMISSION BY THE COMPANY | ) | 2012-00226 |
| AND APPROVAL BY THE COMMISSION OF A | ) | |
| NEW REAL-TIME PRICING TARIFF | ) | |

**KENTUCKY INDUSTRIAL UTILITY CONSUMERS, INC.'S RESPONSES TO COMMISSION STAFF'S REQUEST FOR INFORMATION**

**REQUEST:**

Refer to the Baron Testimony, page 6, lines 16 through 18. It states, "[t]his is because any revenue loss to Kentucky Power will be limited to a twelve-month period and will therefore be one-time, non-recurring and not recoverable in a general rate case." Explain why any revenue loss to Kentucky Power will be limited to a twelve month period and "will therefore be one-time, non-recurring and not recoverable in a general rate case."

**RESPONSE:**

In accordance with the terms of the Unanimous Settlement Agreement ("Settlement") signed by Kentucky Power in Case No. 2009-00459, relied upon by KIUC members and approved by the Commission, Tariff RTP is to be continued through June 30, 2013. KIUC understands that no customers took service under Tariff RTP until July 1, 2012. If Tariff RTP is continued through June 30, 2013, as is required by the Settlement and Commission Order, and is not continued beyond that period, the operation of Tariff RTP will be limited to a twelve-month period. Accordingly, any revenue losses or revenue gains (the level of which are still unknown) that may result from customers taking service under Tariff RTP would be non-recurring and therefore, could not be charged or credited to customers in a general rate case.

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

| | | |
|---|---|---|
| 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 |

**KENTUCKY INDUSTRIAL UTILITY CONSUMERS, INC.'S RESPONSES TO COMMISSION STAFF'S REQUEST FOR INFORMATION**

**REQUEST:**

Refer to the Baron Testimony page 24, line 9. It states: "No. I believe that Tariff RTP should continue beyond June 30, 2012."

a. Confirm whether the reference to the year 2012 is correct or whether the reference should be to 2013.

b. If the reference to 2013 is correct, explain why KIUC maintains that Tariff RTP should not be allowed to expire on June 30, 2013 and whether it maintains that any revenue loss that will occur should be recoverable in a general rate case.

**RESPONSE:**

a. The reference should be to 2013.

b. KIUC's position is that, at minimum, Tariff RTP should properly remain in place through June 30, 2013, in accordance with the plain language of the Settlement signed by Kentucky Power, relied on by KIUC members as a condition of their agreement to settle the 2010 Kentucky Power rate case, and approved by the Commission. To change a settlement agreement, Kentucky Power would need to show that its financial integrity was so compromised that its ability to provide adequate service was threatened. Without rendering a legal opinion, Mr. Baron is advised by counsel that the *Mobile-Sierra* doctrine establishes a very high public interest standard for changing negotiated agreements that have been approved by the Commission as the filed rate.

   Notwithstanding this point, close to the completion of the RTP pilot period agreed to in the Settlement (June 30, 2013), KIUC believes that the Commission should evaluate the results of the RTP pilot and make a determination as to whether Tariff RTP should be terminated, extended as is, or modified and extended. At such time, it would be appropriate to

In the Matter of:

| | | |
|---|---|---|
| APPLICATION OF KENTUCKY POWER | ) | |
| COMPANY TO WITHDRAW ITS TARIFF RTP | ) | CASE NO. |
| PENDING SUBMISSION BY THE COMPANY | ) | 2012-00226 |
| AND APPROVAL BY THE COMMISSION OF A | ) | |
| NEW REAL-TIME PRICING TARIFF | ) | |

**KENTUCKY INDUSTRIAL UTILITY CONSUMERS, INC.'S RESPONSES TO COMMISSION STAFF'S REQUEST FOR INFORMATION**

consider revenue impacts, including whether customers saved or lost money under Tariff RTP. Since the RTP pilot stipulated to by the parties will not be completed until June 2013, it is unknown whether there will be a revenue loss or a revenue gain as a result of customers taking service under Tariff RTP.

With regard to any possible revenue increases or losses that may occur during the pilot, which Kentucky Power accepted in signing the Settlement, such revenue impacts would be considered non-recurring, even if there was a base rate case that included the time period during which the RTP pilot was in effect. As a result, any such revenue impacts (loss or gain) would not be factored into any revenue requirement calculation.

Mr. Baron notes that the following statement at page 23, line 9 of this testimony should be stricken: "No. I believe that Tariff RTP should continue beyond June 30, 2012." The remaining two sentences in the answer correctly represent KIUC's position in this case. As revised, that portion of Mr. Baron's testimony should now read as follows:

**Q. Do you believe that Tariff RTP should be allowed to expire on June 30, 2013?**

A. After the Commission has had the opportunity to review actual financial and operating results associated with Tariff RTP modifications to its structure may be appropriate. But at this point it would be premature to rule that Tariff RTP should expire on June 30, 2013.

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

| | | |
|---|---|---|
| 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 |

**KENTUCKY INDUSTRIAL UTILITY CONSUMERS, INC.'S RESPONSES TO COMMISSION STAFF'S REQUEST FOR INFORMATION**

**REQUEST:**

Refer to the Baron Testimony, page 9, lines 19 through 21. It states, "Kentucky Power's claim that Tariff RTP has not encouraged customers to shift energy usage from higher-priced to lower-priced periods is therefore premature."

a. Explain KIUC's statement.

b. From February 1, 2008, the date of the final Order in Case No. 2007-00166,[2] up to and including June 30, 2012, how many of KIUC members took service under Tariff RTP and have shifted any of their load from higher-priced periods to lower-priced periods?

**RESPONSE:**

a. Customers first began taking service under Tariff RTP during the second half of 2012. Until these customers have developed a full year of experience on the RTP rate, it is premature to form conclusions regarding the amount of load shift (if any) that will occur. Customers respond to real-time price signals on a continuous basis. Numerous factors, in addition to the price of electricity on any day may influence the customer's decision to shift load. Finally, the purpose of a pilot program is to gain experience (by the Company and its participating customers) with real-time pricing arrangements and load-shifting is not a requirement of the pilot program.

b. It is KIUC's understanding that no KIUC members took service under Tariff RTP from February 1, 2008 to June 30, 2012.

[2] *Id.*

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

| | | |
|---|---|---|
| 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 |

**KENTUCKY INDUSTRIAL UTILITY CONSUMERS, INC.'S RESPONSES TO COMMISSION STAFF'S REQUEST FOR INFORMATION**

**REQUEST:**

Refer to Baron Testimony, page 10, lines 16 through 20. It states, "[i]n fact, the 'Program Description' portion of Tariff RTP also states that the pilot program 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.'" Tariff R.T.P., with an effective date of July 29, 2011, at 1st Revised Sheet No. 30-1, under "Program Description", states as follows:

> 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 tariff rates with the remainder of the load subject to real-time prices. 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. 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.

a. With regards to Tariff RTP, does KIUC maintain that Tariff RTP offers 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 and additionally requires any such customer taking service under the Tariff to designate a portion of the customer's load subject to standard tariff rates with the remainder of the load subject to real-time prices?

b. Or, with regards to Tariff RTP, does KIUC maintain that Tariff RTP offers customers the opportunity to manage their electric costs by shifting load from higher-cost to lower-cost pricing periods or by adding new load

In the Matter of:

| | | |
|---|---|---|
| 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 |

**KENTUCKY INDUSTRIAL UTILITY CONSUMERS, INC.'S RESPONSES TO COMMISSION STAFF'S REQUEST FOR INFORMATION**

during lower-price periods and that the ability (opportunity) to experiment in the wholesale electricity market is an option but not mandatory under Tariff RTP?

**RESPONSE:**

a. KIUC maintains that Tariff RTP offers 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. But the plain language of Tariff RTP does not *require* customers to engage in such load-shifting. KIUC also states that Tariff RTP requires any customer taking service under the Tariff to designate a portion of the customer's load subject to standard tariff rates with the remainder of the load subject to real-time prices, but maintains that a customer can opt to have all of its load placed on Tariff RTP while designating none of its load to take service under standard tariff rates.

b. Tariff RTP offers customers the *opportunity* to shift loads in response to real-time price signals, but it does not *require* such load-shifting. The RTP pilot is designed for both Kentucky Power and participating customers to gain experience with market-based rates and for the Commission to gain information that would permit the development of regulatory policies associated with real-time, market-based rate offerings by regulated Kentucky utilities. Moreover, the opportunity for customers to experiment in the wholesale electricity market by taking service under Tariff RTP was an opportunity that Kentucky Power agreed to provide and that KIUC members relied upon in signing the Settlement.

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

| | | |
|---|---|---|
| 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 |

**KENTUCKY INDUSTRIAL UTILITY CONSUMERS, INC.'S RESPONSES TO COMMISSION STAFF'S REQUEST FOR INFORMATION**

**REQUEST:**

Refer to Baron Testimony, page 11, lines 18 through 20. The question on line 18 and 19 from the Baron Testimony is, "[s]hould there be a requirement that customers must engage in load-shifting under Tariff RTP?" The first word of the response on line 20 is "No."

a. Is KIUC aware that the Commission, in Administrative Case No. 2006-00045,[3] at page 13, stated, "[a]t this time, however, only Duke Kentucky offers a real-time pricing tariff. The Commission believes that some of the large commercial and industrial customers of the other jurisdictional utilities may benefit from real-time pricing tariffs because such customers have greater operating flexibility and, therefore, greater ability to modify their consumption patterns."

b. Is KIUC aware that the Commission, in Case No. 2007-00166[4], at page 3, it stated, "[t]he proposed program will be a market-based, hourly RTP program in which the customer will have the opportunity to manage their electric costs by shifting load periods"?

c. Is KIUC is aware that, in Case No. 2007-00166,[55] at pages 10 and 11, the Commission stated:

> For high load factor customers, it may not be beneficial to participate. They are using power evenly throughout the time period and thus are less likely to be able to shift their usage pattern to put more usage off-peak. Lower load factor customers, on the other hand, may benefit if they can modify their usage pattern to reduce their peak load or move load to off-peak time periods which is the intent of the program. They also would generally have more of an opportunity to change their usage patterns.

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[3] Case No. 2006-00045, Consideration of the Requirements of the Federal Energy Policy Act of 2005 Regarding Time-Based Metering, Demand Response, and Interconnection Service (Ky. PSC Dec. 21,2006)
[4] Case No. 2007-00166, Kentucky Power Company (Ky. PSC Feb. 1, 2008).
[5] *Id.*

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

| | | |
|---|---|---|
| APPLICATION OF KENTUCKY POWER | ) | |
| COMPANY TO WITHDRAW ITS TARIFF RTP | ) | CASE NO. |
| PENDING SUBMISSION BY THE COMPANY | ) | 2012-00226 |
| AND APPROVAL BY THE COMMISSION OF A | ) | |
| NEW REAL-TIME PRICING TARIFF | ) | |

**KENTUCKY INDUSTRIAL UTILITY CONSUMERS, INC.'S RESPONSES TO COMMISSION STAFF'S REQUEST FOR INFORMATION**

**RESPONSE:**

a. Yes.

b. Yes.

c. Yes.

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

| | | |
|---|---|---|
| APPLICATION OF KENTUCKY POWER | ) | |
| COMPANY TO WITHDRAW ITS TARIFF RTP | ) | CASE NO. |
| PENDING SUBMISSION BY THE COMPANY | ) | 2012-00226 |
| AND APPROVAL BY THE COMMISSION OF A | ) | |
| NEW REAL-TIME PRICING TARIFF | ) | |

**KENTUCKY INDUSTRIAL UTILITY CONSUMERS, INC.'S RESPONSES TO COMMISSION STAFF'S REQUEST FOR INFORMATION**

**REQUEST:**

Refer to Baron Testimony, page 18, lines 17 through 19. It states, "[u]nder the terms of Tariff RTP, customers can freely elect to move load from the Company's regular tariffs to Tariff RTP." Where does Tariff RTP state that "customers can freely elect to move load from the Company's regular tariffs to Tariff RTP"?

**RESPONSE:**

Tariff RTP does not explicitly state that customers can freely elect to move load from Kentucky Power's standard tariffs to Tariff RTP. Mr. Baron interprets the language of Tariff RTP as permitting customers to elect to move their load to Tariff RTP at their request, subject to those customers meeting the eligibility requirements under Tariff RTP.

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

| | | |
|---|---|---|
| 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 |

**KENTUCKY INDUSTRIAL UTILITY CONSUMERS, INC.'S RESPONSES TO COMMISSION STAFF'S REQUEST FOR INFORMATION**

**REQUEST:**

Refer to Baron Testimony, page 23, lines 7 through 8, where is states, "[f]or example, Marathon has been in contact with the Company regarding Tariff RTP since 2009."

a. A letter dated June 1, 2012 and filed on June 4, 2012, from Jennifer Steiner-Bumer, Marathon Petroleum Company LP, to the Commission's Executive Director, stated that "Marathon Petroleum Company LP and the Catlettsburg Refinery have been analyzing the Kentucky Power Tariff R.T.P. and been in negotiations with Kentucky Power for many months with the intent to move the majority of the Catlettsburg Refinery load to Tariff R.T.P. effective July 1, 2012." Explain why Marathon did not elect to take service under Tariff RTP earlier.

b. Is Marathon considered a high load factor customer?

c. Since taking service under Tariff RTP, has Marathon shifted any load from a high-price period to a lower-price period?

d. Since taking service under Tariff RTP, has Marathon added any new load during low price time periods?

**RESPONSE:**

a. It is KIUC's understanding that KIUC members taking service under Tariff RTP, including Marathon, have considered Tariff RTP in the past and have concluded that it was not economic to shift load to Tariff RTP based on those evaluations, considering the risks involved in taking service at market rates.

b. Yes.

c. Neither Mr. Baron nor KIUC have the information requested. It is KIUC's understanding that Kentucky Power would be able to provide this type of information to Commission Staff.

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

| | | |
|---|---|---|
| APPLICATION OF KENTUCKY POWER | ) | |
| COMPANY TO WITHDRAW ITS TARIFF RTP | ) | CASE NO. |
| PENDING SUBMISSION BY THE COMPANY | ) | 2012-00226 |
| AND APPROVAL BY THE COMMISSION OF A | ) | |
| NEW REAL-TIME PRICING TARIFF | ) | |

**KENTUCKY INDUSTRIAL UTILITY CONSUMERS, INC.'S RESPONSES TO COMMISSION STAFF'S REQUEST FOR INFORMATION**

d. Neither Mr. Baron nor KIUC have the information requested. It is KIUC's understanding that Kentucky Power would be able to provide this type of information to Commission Staff.

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

| | | |
|---|---|---|
| APPLICATION OF KENTUCKY POWER | ) | |
| COMPANY TO WITHDRAW ITS TARIFF RTP | ) | CASE NO. |
| PENDING SUBMISSION BY THE COMPANY | ) | 2012-00226 |
| AND APPROVAL BY THE COMMISSION OF A | ) | |
| NEW REAL-TIME PRICING TARIFF | ) | |

**KENTUCKY INDUSTRIAL UTILITY CONSUMERS, INC.'S RESPONSES TO COMMISSION STAFF'S REQUEST FOR INFORMATION**

**REQUEST:**

a. Is KIUC aware that, in Case No. 2011-00428[6] the Commission authorized Duke Energy Kentucky, Inc.'s Rate RTP tariff to continue until otherwise ordered by the Commission?

b. Is KIUC aware that, in Case No. 2012-00010,[7] the Commission authorized Kentucky Utilities Company and Louisville Gas and Electric Company to continue their Real-Time Pricing Riders on a permanent basis?

**RESPONSE:**

a. Yes.

b. Yes.

[6] Case No. 2011-00428, Application of Duke Energy Kentucky for Approval to Modify and Extend the Availability of Its Rate RTP, Real Time Pricing Program (Ky. PSC Dec. 28, 2011).

[7] Case No, 2012-00010, Request of Kentucky Utilities Company and Louisville Gas and Electric Company to Continue Their Real-Time Pricing Riders on a Permanent Basis (Ky. PSC Mar. 20, 2012)

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

| | | |
|---|---|---|
| APPLICATION OF KENTUCKY POWER | ) | |
| COMPANY TO WITHDRAW ITS TARIFF RTP | ) | CASE NO. |
| PENDING SUBMISSION BY THE COMPANY | ) | 2012-00226 |
| AND APPROVAL BY THE COMMISSION OF A | ) | |
| NEW REAL-TIME PRICING TARIFF | ) | |

**KENTUCKY INDUSTRIAL UTILITY CONSUMERS, INC.'S RESPONSES TO COMMISSION STAFF'S REQUEST FOR INFORMATION**

**REQUEST:**

In the event that the Commission orders Kentucky Power:

a. To continue its existing RTP Tariff permanently, does KIUC maintain that the $10 million to $20 million revenue short fall, as discussed at page 6 of the Baron Testimony, lines 16 through 18, would still be a one-time, non-recurring revenue loss and not recoverable in a general rate case?

b. To continue its existing RTP Tariff until otherwise ordered by the Commission, does KIUC maintain that the $10 million to $20 million revenue short fall, as discussed at page 6 of the Baron Testimony, lines 16 through 18, would still be a one-time, non-recurring revenue loss and not recoverable in a general rate case?

**RESPONSE:**

a. Please see KIUC's response to Staff Data Request 3(b). It is unknown at this time whether the RTP pilot will result in revenue losses or revenue gains to Kentucky Power, based on a comparison of market capacity and energy rates to standard tariff rates. As such, KIUC does not have a position at this time how such revenue changes that may result from a Commission decision to continue existing Tariff RTP beyond the stipulated period should be treated in a subsequent rate case, assuming that the Commission permitted an adjustment related to such revenue changes. KIUC believes that the Commission should evaluate the results of the RTP pilot at a time close to completion of the pilot in June 2013. Among the issues that would be considered in such a review would be whether the pilot resulted in revenue losses or revenue gains as a result of pricing a portion of customer loads at market rates. At that time, it would be appropriate for the parties (e.g. Kentucky Power, KIUC, the Attorney General, etc.) to submit analyses of the impact of the RTP pilot, whether the pilot should continue, and any treatment of revenue gains or losses going forward.

b. Please see response to subpart (a) of this data request.

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

| | | |
|---|---|---|
| APPLICATION OF KENTUCKY POWER | ) | |
| COMPANY TO WITHDRAW ITS TARIFF RTP | ) | CASE NO. |
| PENDING SUBMISSION BY THE COMPANY | ) | 2012-00226 |
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**KENTUCKY INDUSTRIAL UTILITY CONSUMERS, INC.'S RESPONSES TO COMMISSION STAFF'S REQUEST FOR INFORMATION**

**REQUEST:**

In the event that the Commission orders that Kentucky Power's estimated $10 million to $20 million revenue shortfall is not a one-time non-recurring loss and is therefore recoverable in a general rate case, does KIUC maintain that any revenue shortfall should be recovered from all rate classes or only from/the QP and CIP-TOD classes?

**RESPONSE:**

As discussed in response to prior questions, it is unknown at this time whether the RTP pilot will result in revenue losses or revenue gains, based on a comparison of market capacity and energy rates to standard tariff rates. KIUC's position in this case is that Kentucky Power should be required to abide by the Settlement and continue Tariff RTP until June 30, 2013. To change a settlement agreement, Kentucky Power would need to show that its financial integrity was so compromised that its ability to provide adequate service was threatened. Without rendering a legal opinion, Mr. Baron is advised by counsel that the *Mobile-Sierra* Doctrine establishes a very high public interest standard for changing negotiated agreements that have been approved by the Commission as the filed rate.

Assuming that the Commission upholds the Settlement, KIUC maintains that any revenue losses or revenue gains would be one-time, non-recurring and therefore not properly reflected in a general rate case test year. At this time, KIUC does not have a position how such revenue changes should be treated if the Commission determined that any revenue changes were not one-time, non-recurring.

Respectfully submitted,

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