

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN EXAMINATION BY THE PUBLIC SERVICE)	
COMMISSION OF THE ENVIRONMENTAL)	
SURCHARGE MECHANISM OF KENTUCKY)	CASE NO.
POWER COMPANY FOR THE SIX-MONTH)	2016-00109
BILLING PERIOD ENDING DECEMBER 31, 2015)	

ORDER

On March 11, 2016, the Commission initiated a six-month review of Kentucky Power Company's ("Kentucky Power") environmental surcharge as billed to customers for the six-month period July 1, 2015, to December 31, 2015.¹ On September 28, 2016, the Commission rendered a final Order in this matter wherein it found, *inter alia*, that Kentucky Power's request for an under-recovery of \$3,556,085 for the expense months of May to July 2015 to be unreasonable. The Commission based its decision upon the commitments Kentucky Power voluntarily made in paragraph 5 of the Stipulation and Settlement Agreement ("Settlement Agreement") in Case No. 2012-00578.² This paragraph stipulated that Kentucky Power's environmental surcharge factor would be fixed and maintained at zero percent beginning on January 1, 2014, until the

¹ Kentucky Power's surcharge is billed on a two-month lag. Thus, surcharge billings from July 2015 through December 2015 are based on costs incurred from May 2015 through October 2015.

² Case No. 2012-00578, *Application of Kentucky Power Company for (1) A Certificate of Public Convenience and Necessity Authorizing the Transfer to the Company of an Undivided Fifty Percent Interest in the Mitchell Generating Station and Associated Assets; (2) Approval of the Assumption by Kentucky Power Company of Certain Liabilities in Connection with the Transfer of the Mitchell Generating Station; (3) Declaratory Rulings; (4) Deferral of Costs Incurred in Connection with the Company's Efforts to Meet Federal Clean Air Act and Related Requirements; and (5) all Other Required Approvals and Relief* (Ky. PSC Nov. 22, 2013).

Commission established new base rates. The Commission established new base rates for Kentucky Power for service rendered after June 30, 2015, and approved Kentucky Power's revised environmental surcharge tariff ("Tariff E.S.") for service rendered on and after June 22, 2015.³

Kentucky Power, on October 18, 2016, filed a motion for partial rehearing ("Motion for Rehearing") of the Commission's September 28, 2016 Order requesting that the Commission reverse its decision denying Kentucky Power's request for an under-recovery for the expense months of May to July 2015. Kentucky Power states that it initially misinterpreted the Order in Case No. 2014-00396 to require it to cease applying the zero percent surcharge factor coincident with the effective date of the new base rates, and this resulted in a credit to its customers in the amount of \$3,556,085.⁴ Kentucky Power now believes that failing to apply the zero percent factor to the July and August billing months is inconsistent with Commission precedent and directive regarding implementation of its Tariff E.S.

Kentucky Power argues that the Commission's interpretation of the Settlement Agreement as set forth in the September 28, 2016 Order is inconsistent with its prior treatment of revisions to Kentucky Power's Tariff E.S.⁵ Kentucky Power points to the Commission's prior treatment of Kentucky Power's Tariff E.S. to argue that by not

³ Case No. 2014-00396, *Application of Kentucky Power Company for: (1) A General Adjustment of Its Rates for Electric Service; (2) An Order Approving Its 2014 Environmental Compliance Plan; (3) An Order Approving Its Tariffs and Riders; and (4) An Order Granting All Other Required Approvals and Relief* (Ky. PSC June 22, 2015).

⁴ Motion for Rehearing at 6.

⁵ Motion for Rehearing at 1.

allowing it to apply the zero percent factor, the Commission violates the prohibition against retroactive ratemaking.⁶ Kentucky Power argues that although the Commission's Order in Case No. 2006-00307 referred to increases, the prohibition against retroactive ratemaking would also apply to any change in the rate.⁷ Kentucky Power states that the Commission created a "bright line" rule where costs incurred prior to the date the Commission approves a revised Tariff E.S. are recovered under the prior version of the tariff, and those incurred after that date are recovered via the revised tariff. Kentucky Power argues that when the Commission approved the revised Tariff E.S., it established a "bright line" date of June 22, 2015, before which the zero percent factor should apply to incurred costs, and after which the revised Tariff E.S. should apply.

Kentucky Power blames its initial mistake on "the complexities associated with coordinating the proration based on the date service was rendered and implementing the two-month lag"⁸ However, it now claims that its error is irrelevant due to its new understanding of the Settlement Agreement and the prohibition against retroactive ratemaking.

Based on Kentucky Power's Motion for Rehearing, and being otherwise sufficiently advised, the Commission finds that the Settlement Agreement in Case No.

⁶ Case No. 2006-00307, *The Application of Kentucky Power Company for Approval of an Amended Compliance Plan for Purposes of Recovering Additional Costs of Pollution Control Facilities and to Amend Its Environmental Cost Recovery Surcharge Tariff* (Ky. PSC Jan. 24, 2007), Order at 16. "The Commission will not make the revised E.S. tariff effective for bills rendered on and after the date of this Order because doing so would result in retroactive rate-making by requiring customers to pay for increases in environmental costs prior to the approval of those increases."

⁷ Motion for Rehearing at 7.

⁸ *Id.* at 9.

2012-00578, an agreement into which Kentucky Power voluntarily entered, governs the determination of the proper factor to apply. The Settlement Agreement set Kentucky Power's environmental surcharge billing factor at zero percent effective January 1, 2014, until new base rates were set by the Commission ("Stipulation period"). The Settlement Agreement does not expressly dictate whether the Stipulation period should begin or end on either a billing or expense month basis; however, the Commission, in Case No. 2013-00325,⁹ ordered the zero factor be applied to January 2014 bills, which effectively required that it would start on a billing month basis. Kentucky Power agreed with this approach in its responses to information requests and implicitly in that it billed the surcharge consistent with the understanding that the zero factor would be applied to the January billing month.¹⁰ Additionally, Kentucky Power asserted, "[t]o be consistent, when the Stipulation period has ended and assuming new base rates are to be effective July 2015, the expense month of May 2015 will be used for the ES calculation."¹¹ The end of the Stipulation period was not specifically addressed elsewhere in Case Nos. 2012-00578 or 2013-00325. However, nothing in these two cases suggests that the Stipulation period would end on an expense-month basis.

With the issuance of the Final Order in Case No. 2014-00396, Kentucky Power's base rates were established for service rendered on and after June 30, 2015, and the

⁹ Case No. 2013-00325, *An Examination by the Public Service Commission of the Environmental Surcharge Mechanism of Kentucky Power Company for the Two-Year Billing Period Ending June 30, 2013* (Ky. PSC Apr. 29, 2014).

¹⁰ See Case No. 2013-00325, Kentucky Power's Response to Commission Staff's Second Request for Information (Ky. PSC filed Dec. 11, 2013), Item 2., and Kentucky Power's Monthly Environmental Surcharge Report for the month of November 2013 (filed Dec. 20, 2013).

¹¹ Case No. 2013-00325, Kentucky Power's Response to Commission Staff's Second Request for Information (Ky. PSC filed Dec. 11, 2013), Item 2.

environmental surcharge billing factor, in accordance with the terms of the Settlement Agreement, was no longer set at zero percent effective with the July billing month. The revised Tariff E.S. approved in Case No. 2014-00396 was approved for service on and after June 22, 2015, and accordingly could not be billed to customers until August 21, 2015, because of the two-month lag in Kentucky Power's environmental surcharge mechanism. Therefore, the environmental surcharge billing factor should not have been zero percent or calculated under the revised Tariff E.S. approved in Case No. 2014-00396 for environmental expenses billed to customers from June 30, 2015 through August 20, 2015. For that time period, the Settlement Agreement required the environmental surcharge billing factor to be determined under the terms of the then existing version of Tariff E.S.

Before new base rates were set in Case No. 2014-00396, Kentucky Power calculated the environmental surcharge billing factor in accordance with the version of Tariff E.S. approved in Case No. 2012-00578, but billed the factor at zero percent in accordance with the Settlement Agreement in Case No. 2012-00578. For the expense months of May through July 2015, Kentucky Power calculated and billed the environmental surcharge billing factor in accordance with the version of Tariff E.S. approved in Case No. 2012-00578.

As discussed above, Case No. 2013-00325 effectively required that the Stipulation period would begin on a billing-month basis. The under-recovery for September and October 2013 was disallowed because the Stipulation period began

with the January 2014 billing month, and as such, the environmental surcharge factor was to be zero percent on January bills, which reflected the November 2013 expense month. Additionally, Kentucky Power stated that the May 2015 expense month would be used to calculate the environmental surcharge billing factor if new rates were set in July 2015.

The Stipulation period in fact ended with the billing period in which new rates were set by the Commission, and therefore, the expense months of May to July 2015 were outside the Stipulation period and were properly billed at a non-zero factor. Although Kentucky Power's calculation led it to credit its customers approximately \$3.5 million, we note that had Kentucky Power incurred costs during the May to July 2015 expense period, as calculated pursuant to its then-existing Tariff E.S., it would have been entitled to recover those costs from its customers under the applicable surcharge billing factor in the July and August 2015 billing months.

Kentucky Power properly billed the environmental surcharge at zero percent until the end of the Stipulation period. Kentucky Power has neither introduced new evidence in its Motion for Rehearing nor raised any arguments that the Commission had not previously entertained—and dismissed. Accordingly, Kentucky Power's motion should be denied.

IT IS THEREFORE ORDERED that Kentucky Power's motion for rehearing is denied.

By the Commission

ENTERED
NOV 04 2016
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



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