COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

RIVERSIDE GENERATING COMPANY, L.L.C.	)	
	)	
COMPLAINANT	)	CASE NO.
V.	)	2017-00472
	)	
KENTUCKY POWER COMPANY	)	
	)	
DEFENDANT	)	

ORDER

On December 13, 2017, Complainant, Riverside Generating Company, L.L.C. (Riverside), filed a Complaint alleging that Kentucky Power Company (Kentucky Power) has unreasonably denied Riverside's request to remotely self-supply its station power and take service under PJM Interconnection, LLC's (PJM) Open Access Transmission Tariff (OATT). Riverside maintains that its desire to remotely self-supply its station power is provided under Kentucky Power's Non-Utility Generator Tariff (Tariff NUG). Kentucky Power filed an Answer to the Complaint on January 19, 2018. By Order dated February 27, 2018, a procedural schedule was established for this matter, which provided for the filing of direct testimony by Riverside; discovery upon Riverside; the filing of testimony by Kentucky Power; discovery upon Kentucky Power; and the filing of rebuttal testimony by Riverside. At the request of Riverside, a formal evidentiary hearing was conducted on September 18, 2018. Kentucky Power and Riverside filed responses to post-hearing data requests on October 4, 2018, and October 5, 2018, respectively. Riverside and Kentucky

Power each filed their respective post-hearing brief on November 5, 2018. Riverside and Kentucky Power each filed their respective reply brief on November 20, 2018. The matter now stands submitted for a decision.

RIVERSIDE COMPLAINT

According to its Complaint, Riverside is a merchant power generator with its principal office in East Brunswick, New Jersey.[1] Riverside states that it owns and operates two generation sites in Lawrence County, Kentucky.[2] The first generation site is identified and classified by PJM as the Zelda site, which consists of three natural gas-fired generating units.[3] Each of the three Zelda natural gas units has a nameplate generation capacity of 195.5 megawatts (MW).[4] Riverside states that it acquired the land for the Zelda site in 2000.[5]

Riverside avers that the second site is identified and classified by PJM as the Foothills site and the real estate, upon which the Foothills site is located, was acquired by Riverside in 2001.[6] The Foothills site, consisting of two natural gas-fired generating units, is adjacent to the Zelda site and each site has its own interconnection with Kentucky Power at its nearby Baker Switchyard.[7] Each of the two Foothills natural gas units has a nameplate generation capacity of 195.5 MW.[8] Riverside notes that it sells the entire

[1] Complaint at paragraph 1.

[2] *Id.* at paragraph 3.

[3] *Id.*

[4] Riverside Post-Hearing Brief at 6.

[5] Complaint at paragraph 3.

[6] *Id.*

[7] *Id.*

output of the two generating sites, or approximately 836 megawatts (MW), at wholesale into the marketplace of PJM consistent with PJM's OATT.[9]

Riverside asserts that it receives from Kentucky Power the electrical energy and capacity necessary to power the auxiliary loads, or station power, at its two generating sites under Kentucky Power's Tariff NUG.[10] Riverside notes that Kentucky Power has historically charged Riverside the rates prescribed in its Industrial General Service Tariff (Tariff IGS) for station power in accordance with the terms of Tariff NUG.[11] However, Riverside informs that several months prior to the filing of its complaint, Riverside and Kentucky Power were engaged in a dispute regarding the appropriate interpretation of Tariff NUG as it applies to the Zelda and Foothills facilities.[12] Riverside states that the discussions centered on Riverside's claimed ability to remotely self-supply its station power and take service under PJM's OATT.[13] Riverside asserts that pursuant to the Special Terms and Condition language of Tariff NUG, a generator in Kentucky Power's service territory may satisfy its station power needs utilizing PJM's wholesale transmission framework so long as there exists commonly owned generation facilities that are not located on the site of the customer's generator sufficient to supply the power.[14]

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[8] Riverside Post-Hearing Brief at 7.

[9] Application at paragraph 3.

[10] *Id.* at paragraph 4. *See also* Tariff NUG, P.S.C. KY. NO. 11 ORIGINAL SHEET NO. 26-1, which defines "Station Power" as "[t]he electrical energy and capacity supplied to the customer to serve the auxiliary loads at the customer's generation facilities, usually when the customer's generator is not operating. Station power does not include Startup Power."

[11] *Id.*

[12] *Id.* at paragraph 5.

[13] *Id.*

[14] *Id.* at paragraph 6.

Because both the Zelda and Foothills sites consistently generate more energy than is consumed by the facilities, Riverside maintains that the ability to self-supply its station power under PJM's OATT would result in significant cost savings for Riverside.[15] While Riverside asserts that it is eligible to remote self-supply under Tariff NUG because the Zelda and Foothills sites are distinct and separate, Kentucky Power contends that the two facilities are contained in one large site and Riverside is, therefore, not eligible to remotely self-supply its station power.[16]

RIVERSIDE'S ARGUMENTS

Riverside asserts that it should be allowed to net its generation and consumption each month in accordance with the PJM OATT's station power protocol.[17] Riverside contends that it should be permitted to satisfy its station power needs by netting the output of the Zelda and Foothills facilities because the two facilities are owned by Riverside and each facility is located on its own separate site.[18] Riverside points out that possession and control of each by Riverside, or its predecessor, began at different times, involved distinct parties, and was accompanied by Payment-in-Lieu of Tax (PILOT) agreements with the local taxing authority.[19]

Riverside informs the Zelda and Foothills sites are located on U.S. Route 23 and access to the two sites is via a shared road and railroad crossing that leads to two secured

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[15] *Id.*

[16] *Id.* at paragraph 7.

[17] Riverside Post-Hearing Brief at 1.

[18] *Id.* at 2.

[19] *Id.* at 6.

gates, one for each individually fenced site.[20] Riverside further informs that the Zelda site contains a switchyard with transformers and 345 kV conductors for transmitting the power generated and consumed at the Zelda site, as well as a natural gas yard for receiving and distributing fuel to the Zelda units from Riverside's nine-mile lateral originating at the nearby Tennessee Gas interstate pipeline.[21] The Zelda site also includes an administrative building with a control room, two 300,000-gallon water storage tanks, and associated balance of plant equipment and systems.[22]

According to Riverside, the Foothills site contains its own switchyard, natural gas yard, control room, water storage tank, and associated balance of plant equipment and systems.[23] Riverside states that each site is independently interconnected with the bulk power grid via each site's switchyard to Kentucky Power's Baker Switchyard.[24] Riverside notes that the infrastructure at each site is owned and maintained by Riverside.[25] Riverside also notes that each site has its own interconnection agreement with Kentucky Power and that each site is capable of being operated independently, as well as remotely, or from the control room located on either site.[26]

Riverside contends that it is eligible to satisfy the energy needs of its Zelda and Foothills sites utilizing the station power framework established for generators within

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[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] *Id.* at 7.

[24] *Id.*

[25] *Id.*

[26] *Id.*

PJM's OATT.[27] Riverside states that Kentucky Power's Tariff NUG allows for a generator-customer, such as Riverside, to remotely supply its own station power needs under the relevant provisions of that tariff, which provides:[28]

> Customers desiring to provide Startup and Station Power from commonly owned generation facilities that are not located on the site of the customer's generator (remote self-supply), shall take service under the terms and conditions contained within the applicable Open Access Transmission Tariff as filed with and accepted by the Federal Energy Regulatory Commission.[29]

Riverside contends that the language of Tariff NUG permits remote self-supply when the customer can establish that the generators are owned by the same individual business entity and the generators are not located at the same site.[30] Riverside asserts that its Zelda and Foothills sites are commonly owned by Riverside and that Kentucky Power concedes this fact.[31] Riverside further asserts that the Zelda and Foothills sites are unique sites because: they both are located upon unique parcels of real estate acquired at different times and involving different PILOT agreements; the facilities at each site were developed and built separately by two different contractors; the sites are separated by a fence and secured by separate card-access gates; each site is individually identified by PJM for various purposes and is uniquely reported to PJM; each site is separately metered and has its own infrastructure and connections to Kentucky Power's

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[27] *Id.* at 9.

[28] *Id.*

[29] Tariff NUG, P.S.C. KY. NO. 11 ORIGINAL SHEET NO. 26-1 (effective Jan. 19, 2018).

[30] Riverside Post-Hearing Brief at 25.

[31] *Id.*

Baker Switchyard; there is no cross feed/tie-breaker between the sites; and each site is electrically isolated and can be separately controlled and separately sold.[32]

Riverside further contends that if it is determined that its Zelda and Foothills sites are not located on the same site, Tariff NUG should still be interpreted to permit the reasonable netting of station power on a monthly basis.[33] Riverside points out that the only reference to netting can be found in the opening sentence of Tariff NUG, which specifically states:

> This tariff is applicable to customers with generation facilities which have a total design capacity of over 1,000 kW that intends to schedule, deliver and sell the net electric output of the facility at wholesale, and who require Commissioning Power, Startup Power and/or Station Power service from [Kentucky Power].[34]

Although Tariff NUG contains a provision entitled "Monthly Billing Energy," which provides that "[t]he monthly billing energy shall be measured by each 15-minute interval of the month as the total KWH registered by an energy meter or meters less the quotient of the Station Contract Capacity and four (4),"[35] Riverside contends that this provision does not mention the netting of generation against consumption and that it calls for a calculation involving Station Contract Capacity that is not applicable to the Zelda and Foothills site.[36] Moreover, Riverside avers that it takes service under Tariff IGS, which contains no reference to netting.[37]

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[32] *Id.* at 7–8.

[33] *Id.* at 30.

[34] *Id.*, Tariff NUG, P.S.C. KY. NO. 11 ORIGINAL SHEET NO. 26-1 (effective Jan. 19, 2018).

[35] Tariff NUG, P.S.C. KY. NO. 11 ORIGINAL SHEET NO. 26-3 (effective Jan. 19, 2018).

[36] Riverside Post-Hearing Brief at 31.

Riverside maintains that netting on a monthly basis is appropriate given the language of Tariff NUG which applies to customers intending to sell its net generation at wholesale and because the Federal Energy Regulatory Commission (FERC) and PJM have approved and adopted monthly netting intervals at the wholesale level.[38] Riverside also maintains that a monthly netting interval would be consistent with the terms of Kentucky Power's Net Metering Tariff, which contemplates a netting interval spanning one billing period.[39]

Lastly, Riverside contends that if its requested relief cannot be granted under the terms of Tariff NUG, then the Commission should make a determination that Tariff NUG should be disregarded or amended to ensure that the provision of service to Riverside is fair, just, and reasonable.[40] Riverside argues that Tariff NUG is not reasonable as applied against Riverside because the tariff treats Riverside's consumption of power as a retail sale similar to that made to a large industrial customer without taking into account the fact that Riverside is offsetting its consumption against greater self-supply and remote generation.[41] Riverside notes that, over the past two years, its Zelda site has typically produced approximately 27,031 MWh more than it consumed on a monthly basis and its Foothills site typically produced approximately 16,236 MWh more than it consumed on a monthly basis.[42]

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[37] *Id.* at 30–31.

[38] *Id.* at 32–33.

[39] *Id.* at 33.

[40] *Id.* at 35.

[41] *Id.* at 35–36.

[42] *Id.* at 19.

KENTUCKY POWER'S ARGUMENTS

Kentucky Power points out that the Commission first accepted Tariff NUG in 2001 and that the tariff was created by Kentucky Power to address its understanding of then-existing FERC requirements following the advent of independent power producers.[43] Kentucky Power informs that Riverside began taking service under Tariff NUG on November 1, 2001, and has been the only customer that has taken service under that tariff.[44] Kentucky Power notes that a customer taking service under Tariff NUG must take station and startup power service under the demand-metered tariff appropriate for that particular customer's operations.[45] Kentucky Power states that Riverside currently consumes station power and startup power under Tariff IGS in accordance with the provisions of Tariff NUG.[46]

Kentucky Power contends that the Riverside facility, consisting of the Zelda and Foothills sections, is a single site both in terms of its physical and operational characteristics.[47] Kentucky Power notes that the Zelda and Foothills sections share the same address, are adjacent to each other, and are separated only by a chain-link fence.[48] Kentucky Power states that the acquisition, development, and construction of the Zelda and Foothills sections occurred roughly contemporaneously within a two-year period

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[43] Kentucky Power Post-Hearing Brief at 2.

[44] *Id.*

[45] *Id.*

[46] *Id.*

[47] *Id.* at 4.

[48] *Id.*

between late 2000 and 2002.[49] Kentucky Power further states that the southern edge of the Zelda section abuts the northern edge of the Foothills section and that the two sections form a continuous tract with no intervening parcels separating the two sections.[50]

Kentucky Power asserts that not only is the Riverside generation facility one site, the Zelda and Foothills sections also cannot be considered remote from each other as required under Tariff NUG. Kentucky Power notes that the two sections have a common driveway entrance and share a security gate and a road that provides physical access to each section.[51] Kentucky Power further notes that the two sections have uniform signage, and that they share multiple common facilities, including, a nine-mile 20-inch natural gas primary pipeline owned by Riverside and connecting to the same Tennessee Gas Pipeline station; a single six-inch water line; a single water meter; most of the interconnections with utilities serving the Foothills section are located on the Zelda section; a single administrative building that is located on the Zelda section but serves both the Zelda and Foothills sections; a single warehouse that performs common functions for both the Zelda and Foothills sections; one control room at each section but configured so that all five gas units at the Riverside facility may be operated from either control room; a single septic system; a single outfall; and although the Zelda and Foothills sections are separately connected to Kentucky Power's Baker Switchyard, the conductors use common structures for a majority of the distance to the substation.[52]

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[49] *Id.* at 6.

[50] *Id.*

[51] *Id.* at 7–8.

[52] *Id.* 8–10.

Kentucky Power contends that Riverside operates the Zelda and Foothills sections as a single site.[53] Kentucky Power notes that Riverside receives a single bill from Kentucky Power reflecting a single retail account for the energy consumed at the Zelda and Foothills sections; Riverside also staffs the five generating units as a single facility through a third-party without regard to whether the services are being provided to either the Zelda section or the Foothills section; the administrative staff provides services to both Zelda and Foothills sections; and all five generating units are generally operated from the control facility located on the Zelda section.[54]

Kentucky Power argues that the Riverside generation facility consists of peaking units that are always available, kept on standby status, and dispatched only when it is economically advantageous for Riverside to do so.[55] For 2017, Kentucky Power points out that the Riverside facility produced electricity for approximately 10 percent of the 8,760 hours of that year and that the Riverside facility took retail service from Kentucky Power for approximately the other 7,884 hours of 2017.[56] Kentucky Power asserts that the Riverside generating facility consumed on average approximately 814 MWh each month in 2017.[57] Kentucky Power notes that even though the Riverside units are generating electricity approximately only 10 percent of the hours in any month, its generation during that 10 percent far outstrips its consumption during the remaining 90

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[53] *Id.* at 11.

[54] *Id.* at 11–13.

[55] *Id.* at 14–15.

[56] *Id.* at 15.

[57] *Id.* at 16.

percent of the month.[58] Kentucky Power avers that Riverside seeks to leverage to its economic advantage, and to the detriment of all other Kentucky Power industrial and commercial customers, this mismatch between the hours the Riverside generating facility takes retail electric service from Kentucky Power and the amount of electricity the facility generates as well as the difference in the netting periods under the PJM OATT.[59] If permitted to do so, Kentucky Power argues that Riverside will receive more than 800 MWh of retail electric service each month with little or no payment to Kentucky Power.[60] Kentucky Power contends that this would shift onto its other customers the obligation to replace the $1.1 million in lost revenues annually that would result if Riverside is permitted to take and pay for service at wholesale.[61]

RIVERSIDE'S REPLY ARGUMENTS

In its reply brief, Riverside reiterates its claim that the Zelda and Foothills sites are not the same site and, therefore, Riverside should be eligible to remote self-supply its station power needs consistent with the terms of Tariff NUG.[62] Riverside takes issue with Kentucky Power's argument that the Riverside facility takes retail electric service from Kentucky Power 90 percent of the hours each month, arguing that KRS 278.010(7) defines "retail electric service" as "electric service furnished to a consumer for ultimate consumption" and that Riverside, in this matter, seeks to self-supply its own energy needs

[58] *Id.*

[59] *Id.* at 17.

[60] *Id.*

[61] *Id.* at 33–34.

[62] Riverside's Reply Brief at 2–4.

each month and not rely upon Kentucky Power to furnish such energy requirements.[63] Riverside also takes issue with Kentucky Power's characterization that Riverside should not be treated any differently than any other large industrial or commercial customer of Kentucky Power.[64] Riverside points out that it is not similar to any other typical industrial or commercial customer of Kentucky Power in that Riverside has the capability of supplying its own station power requirements by the use of netting metered consumption against metered generation over a monthly period pursuant to FERC-approved PJM protocol.[65] Riverside further argues that Kentucky Power's treatment of Riverside is unreasonable, noting that no Kentucky Power distribution facilities are utilized in connection with the transmission of energy to and from the Riverside generating facility and that all of the relevant facilities and facility upgrades necessary for the Zelda and Foothills sites to receive and transmit energy are owned and maintained by Riverside.[66]

KENTUCKY POWER'S REPLY ARGUMENTS

In its reply brief, Kentucky Power argues that the record and Riverside's own statements demonstrate that the Zelda section and the Foothills section of the Riverside generating facility are located on a single site.[67] Kentucky Power contends that adjoining parcels, as Riverside describes the Zelda and Foothills sections, that are enclosed in a single fence, that are woven together by common facilities, and are operated as a unit

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[63] Riverside's Reply Brief at 5.

[64] *Id.* at 7.

[65] *Id.*

[66] *Id.* at 9.

[67] Kentucky Power's Response Brief at 2.

cannot be considered separate, disconnected, or detached sites.[68] Kentucky Power also argues that Riverside's argument that the common infrastructure and operations of the two sites exist as a matter of convenience and efficiency reverses cause and effect.[69] Kentucky Power posits that it is the existence of the common facilities and utilities, as well as the physical layout of the Riverside facility, that give rise to the operational convenience and efficiencies and, contrary to Riverside's argument, the claimed efficiencies from the shared facilities and utilities located at the Riverside facility only underscores the unitary nature of the site.[70]

Kentucky Power maintains that the term "remote," as used in the phrase "remote self-supply" in Tariff NUG, is not vague. Rather, Kentucky Power states that the remote is clearly defined in Black's Law Dictionary as far removed or separated in time, space, or relation.[71] Kentucky Power points out that the phrase "remote self-supply" has been part of the Tariff NUG since it was first approved by the Commission in 2001 and that for nearly 15 years both Riverside and Kentucky Power have had no issues with the meaning or application of that phrase.[72] Moreover, Kentucky Power contends that the phrase as applied to the Riverside's situation does not lead to unreasonable outcomes given the undisputed fact that the Zelda and Foothills sections are adjacent to each other and share common utilities and infrastructure and operate as a single site.[73]

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[68] *Id.* at 4–5.

[69] *Id.* at 5.

[70] *Id.* at 5–6.

[71] *Id.* at 10.

[72] *Id.* at 11.

With respect to the issued raised by Riverside regarding Kentucky Power's purported improper implementation of the 15-minute interval provisions in Tariff IGS, Kentucky Power argues that this issue was not raised by Riverside until the filing of its initial post-hearing brief.[74] Kentucky Power asserts that Riverside's argument overlooks the "Monthly Billing Demand" section of Tariff IGS, which is the relevant rate schedule that Riverside is served under for electric service provided by Kentucky Power.[75] The "Monthly Billing Demand" section of Tariff IGS provides that "[t]he monthly on-peak and off-peak billing demands in KW shall be taken each month as the highest single 15-minute integrated peak in KW as registered by a demand meter during the on-peak and off-peak billing periods, respectively."[76] Kentucky Power avers that demand and energy consumption are measured by and calculated from, respectively, readings taken from the same demand meter and that energy consumed by, and billed to, Riverside are taken using 15-minute intervals.[77]

Kentucky Power contends that Riverside's delay in raising the billing issue has deprived Kentucky Power and the Commission with an opportunity to develop the issue on the record.[78] Kentucky Power also contends that this issue is not relevant to the relief

[73] *Id.* at 11–12.

[74] *Id.* at 12.

[75] *Id.*

[76] *Id.* at 13. *See also* Tariff IGS, P.S.C. KY. NO. 11 1st REVISED SHEET NO. 10-2 (effective June 28, 2018).

[77] Kentucky Power's Response Brief at 13.

[78] *Id.* at 14.

that Riverside set forth in its complaint, i.e., to be eligible for remote self-supply under the provisions of Tariff NUG.[79]

Kentucky Power asserts that the 15-minute interval is reasonably necessary to prevent Riverside from gaming the system.[80] Kentucky Power notes that the 15-minute interval provision of Tariff IGS is fully compatible with the peaking characteristics of the Riverside generating units.[81] Kentucky Power states that this billing reflects the fact that Kentucky Power supplies energy to Riverside for approximately 90 percent of the hours in any year.[82] Under Riverside's preferred monthly netting interval, Kentucky Power contends that Riverside would be able to operate all five of its peaking units for only one hour each month, receive service from Kentucky Power for the remaining 719 hours of the month, and pay no or minimal retail rates.[83] According to Kentucky Power, to allow Riverside to receive service from Kentucky Power for 90 percent of the hours in any year at little or no cost while shifting those costs to Kentucky Power's remaining industrial and commercial customers is unreasonable and unfair.[84]

Lastly, Kentucky Power asserts that Riverside's argument that it should be allowed to remote self-supply in spite of Tariff NUG should be rejected, noting that this argument is fundamentally at odds with the requirements of Kentucky law.[85] Specifically, Kentucky

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[79] *Id.* at 15.

[80] *Id.* at 17.

[81] *Id.*

[82] *Id.* at 17–18.

[83] *Id.*

[84] *Id.* at 17.

[85] *Id.* at 20.

Power argues that KRS 278.160(2)[86] requires that Kentucky Power and Riverside strictly adhere to the terms and provisions of Commission-approved Tariff NUG and Tariff IGS and not deviate from their plain terms by agreement or in fact.[87] Kentucky Power further asserts that regardless of Riverside's capability and desire to satisfy its station power needs utilizing PJM's OATT, such a claim should be denied because Riverside is seeking to be treated differently than every other retail electric service customer in Kentucky Power's service territory and because Riverside is seeking to take service at wholesale and not retail for the 90 percent of the hours in any year it relies upon Kentucky Power to meet its station power needs.[88] Kentucky Power notes that the Commission has expressly confirmed that retail electric customers in Kentucky are not allowed to participate in any fashion in wholesale electric markets.[89]

DISCUSSION

The Commission states at the outset that the only issue raised in Riverside's complaint involves an interpretation and application of certain language contained in Kentucky Power's Tariff NUG. The Commission notes that Kentucky Power is a utility, as that term is defined under KRS 278.010(3),[90] subject to the jurisdiction of the

[86] KRS 278.160(2) provides that "[n]o utility shall charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered than that prescribed in its filed schedules, and no person shall receive any service from any utility for a compensation greater or less than prescribed in such schedules."

[87] Kentucky Power's Response Brief at 21.

[88] *Id.* at 22–23.

[89] *Id.* at 23.

[90] KRS 278.010(3)(a) defines "Utility" to mean "any person...who owns, controls, operates, or manages any facility used or to be used for or in connection with...[t]he generation, production, transmission, or distribution of electricity to or for the public, for compensation, for lights, heat, power, or other uses..."

Commission. The Commission also notes that KRS 278.040(2) grants the Commission exclusive jurisdiction over the regulation of rates and service of utilities. KRS 278.010(12) defines a "rate" to include "any schedule or tariff or part of a schedule or tariff thereof." Accordingly, the Commission finds that it has jurisdiction to review Riverside's complaint.[91]

The dispute in this matter concerns Riverside's eligibility under Tariff NUG to remotely self-supply its station power needs under the terms and conditions of the PJM OATT. The language of Tariff NUG at issue in this matter states in relevant part as follows:

> **SPECIAL TERMS AND CONDITIONS**
>
> Customers desiring to provide Startup and Station Power from other generation facilities, owned by the same individual business entity that are not located on the site of the customer's generator (remote self-supply), shall take service under the terms and conditions contained within the applicable Open Access Transmission Tariff as filed with and accepted by the Federal Energy Regulatory Commission.[92]

Riverside contends that the Zelda and Foothills sites should be considered as separate sites. Further, because both of these separate sites are owned by the same individual business entity, Riverside is of the opinion that it is eligible to remotely self-supply its station power requirements under the terms and conditions of the PJM OATT. On the other hand, Kentucky Power argues that the Riverside facility, consisting of the

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[91] *See* Case No. 20120-00351, *Air Liquide Industries U.S. LP v. Kentucky Power Company* (Ky. PSC Feb. 11, 2013)(Compliant filed by Air Liquide requesting the Commission to direct Kentucky Power to allow Air Liquide to take service under Tariff RTP based upon interpretation of the term "customer" as used in Tariff RTP).

[92] Tariff NUG, P.S.C. KY. NO. 11 ORIGINAL SHEET NO. 26-3 (effective Jan. 19, 2018).

Zelda and Foothills portions, should be considered as a single site and that Riverside is not eligible to the remote self-supply provision of Tariff NUG.

Having reviewed the record and being otherwise sufficiently advised, the Commission finds that in order to be eligible to remote self-supply for either startup or station power under the terms of the applicable FERC-approved Open Access Transmission Tariff, customer, taking service under Tariff NUG, would need to show that the generation facilities (1) are owned by the same business entity and (2) are not located on the site of the customer's generator. Tariff NUG describes this feature as "remote self-supply." As for the first prong, the Commission finds that the facts of this matter establish that Riverside owns the Zelda and Foothills sites of the Riverside facility. As for the second prong, the Commission finds that Riverside has failed to establish that the Zelda and Foothills sites of the Riverside facility are separate or remote sites. We note that the evidentiary record shows that the Zelda site and the Foothills site are adjacent to each other, share the same address, share a common entrance roadway and access gate, share an administrative building, share a warehouse; share common utilities such as gas, water, wastewater outfall, and septic system; operate from shared control rooms; and employ the same operational and administrative staff. The Commission is of the opinion that the totality of the evidence supports a conclusion that the Riverside facility is one singular site, consisting of the Zelda portion and Foothills portion. In light of our finding that the two sites contained within the Riverside facility constitute as a single site, we find that Riverside has also failed to establish that the Zelda and Foothills sites are "remote" from each as that term is used in Tariff NUG. Accordingly, the Commission finds that

Riverside is not eligible to remote self-supply its startup and station power needs in accordance with the PJM OATT.

The Commission will also deny Riverside's request that Kentucky Power be directed to apply a monthly netting interval rather than a 15-minute netting interval. We note that Kentucky Power's Tariff IGS provides that the monthly on-peak and off-peak billing demands are taken each month based upon the highest single 15-minute integrated peak as registered by a demand meter during the on-peak and off-peak billing periods. KRS 278.160 requires Kentucky Power to provide service, and for Riverside to receive such service, no greater or less than that prescribed in Kentucky Power's Commission-approved tariffs. Accordingly, the current 15-minute netting interval as applied to Riverside is consistent with the provisions of Tariff IGS.

With respect to the billing issue, the Commission notes that this issue was not raised in Riverside's complaint, its pre-filed direct and rebuttal testimonies, or during the hearing of this matter. Rather, Riverside raised this particular issue in its post-hearing brief. The Commission finds that this issue is untimely raised by Riverside and deprives Kentucky Power of a meaningful opportunity to conduct discovery and present argument addressing this particular issue.[93] The Commission further finds that this issue is not relevant to the only claim sought by Riverside in its complaint, i.e., its eligibility to remote self-supply its station power needs. The Commission will, therefore, decline to address this issue. To the extent that Riverside still has concerns with respect to how it is billed

[93] *See* Case No. 2004-00067, *Application of Delta Natural Gas Company, Inc. for an Adjustment of Rates* (Ky. PSC Nov. 10, 2004) Final Order at 39. *See also*, Case No. 2001-00323, *Joint Application of Louisville Gas and Electric Company, Metro Human Needs Alliance, People Organized and Working for Energy Reform, Kentucky Association for Community Action, and Jefferson County Government for the Establishment of a Home Energy Assistance Program* (Ky. PSC Mar. 23, 2001) Final Order at 7.

by Kentucky Power under Tariff IGS, Riverside should contact Kentucky Power directly to resolve this issue.[94]

IT IS HEREBY ORDERED that:

1. Riverside's complaint is dismissed.

2. This case is closed and removed from the Commission's docket.

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[94] We note that Kentucky Power states in its Response Brief that Riverside has been billed correctly for retail service to the best of Kentucky Power's knowledge but the company did identify a minor discrepancy between the 15-minute intervals metered at the Riverside facility and the method by which Riverside's generation output is reported by Kentucky Power to PJM for settlement purposes.

By the Commission

ENTERED

MAY 14 2019

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