COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC INVESTIGATION OF THE SERVICE, RATES AND FACILITIES OF KENTUCKY POWER COMPANY	)))	CASE NO. 2021-00370

O R D E R

Consistent with the purpose of this proceeding to investigate, among other things, Kentucky Power Company's (Kentucky Power) ability to meet its legal obligation to provide adequate, efficient and reasonable service, the Commission, on its own motion, finds that Kentucky Power Company (Kentucky Power) should show cause why it should not be subject to the remedy for failure to provide adequate service in its service territory under KRS 278.018(3) and why it should not be subject to an assessment of civil penalties under KRS 278.990 for Kentucky Power's alleged violation of KRS 278.030, which requires a utility to provide adequate, efficient and reasonable service to the utility's customers.

LEGAL STANDARD

This case was initiated on September 15, 2021, under KRS 278.250, which authorizes the Commission to investigate the condition of any jurisdictional utility, and KRS 278.260, which authorizes the Commission to investigate the rates or service of a jurisdictional utility on the Commission's own motion. The purpose of this proceeding is to investigate whether Kentucky Power is "satisfy[ing] its regulatory obligations, including, but not limited to, ensuring adequate, efficient and reasonable service and rates that are fair, just and reasonable."[1] The Commission explained that it "is concerned about the future of Kentucky Power as a utility and about the customers it serves in Eastern Kentucky."[2]

KRS 278.030(2) establishes an obligation for every jurisdictional utility to furnish adequate, efficient and reasonable service to the utility's customers. KRS 278.010(14) defines adequate service as follows:

> "Adequate service" means having sufficient capacity to meet the maximum estimated requirements of the customer to be served during the year following the commencement of permanent service and to meet the maximum estimated requirements of other actual customers to be supplied from the same lines or facilities during such year and to assure such customers of reasonable continuity of service.

KRS 278.010 defines a retail electric supplier, such as Kentucky Power, as an entity engaged in the furnishing of retail electric service. Under KRS 278.016 and KRS 278.017, Kentucky is divided into geographical areas within which each retail supplier provides retail electric service. KRS 278.018(1) states that each retail electric supplier shall have the exclusive right to further retail electric service to all electric-consuming facilities located within the retail electric supplier's certified territory.

KRS 278.018(3) states:

> The [C]ommission may, after a hearing had upon due notice, make such findings as may be supported by proof as to whether any retail electric supplier operating in a certified territory is rendering or proposes to render adequate service to an electric-consuming facility and in the event the [C]ommission finds that such retail electric supplier is not rendering or does not propose to render adequate service, the [C]ommission may enter an order specifying in what

[1] Order (Ky. PSC Sept. 15, 2021) at 6.

[2] Sept. 15, 2021 Order at 6.

> particulars such retail electric supplier has failed to render or propose to render adequate service and order that such failure be corrected within a reasonable time, such time to be fixed in such order. If the retail electric supplier so ordered to correct such failure fails to comply with such order, the [C]ommission may authorize another retail electric supplier to furnish retail electric service to such facility.

KRS 278.990(1) provides that a utility and the utility's officers, agents, and employees may be subject to the assessment of a civil penalty up to $2,500 per occurrence per party, upon a finding by the Commission of a willful violation of a statute or regulation the Commission enforces, or a Commission Order.

DISCUSSION

This Order is necessary in large part due to Kentucky Power's request to defer approximately $11.5 million in non-fuel adjustment clause (non-FAC) eligible purchased power costs that occurred in connection with Winter Storm Elliott in December 2022.[3] Kentucky Power asserted that it incurred extraordinary purchased power costs from PJM Interconnection, LLC (PJM) between December 23 and 25, 2022, because PJM had to dispatch high-cost generators to satisfy load related to the event and the cost of that purchased power exceeded the level of purchased power expense that is eligible for recovery through Kentucky Power's FAC tariff. Kentucky Power explained that due to a weather event that resulted in a 29 degree drop in temperature over a 12-hour span on December 23, 2022, PJM experienced a spike in load and had approximately 43,000 MW of forced, or non-planned, generation outages. Kentucky Power further explained that

[3] Case No. 2023-00145, *Electronic Application of Kentucky Power Company for an Order Approving Accounting Practices to Establish a Regulatory Asset Related to the Extraordinary Fuel Charges Incurred by Kentucky Power Company in Connection with Winter Storm Elliott in December 2022* (filed May 3, 2023) ("Application"). *See* Kentucky Power response to Staff DR 1-1, wherein the Company confirmed references in its Application to "non-FAC eligible fuel costs" should be read to mean "non-FAC eligible purchased power costs."

the demand continued through December 24, 2022, and that the low point in demand was greater than any other peak for that date in a decade.[4]

Kentucky Power further explained that PJM requested and received approval from the U.S. Department of Energy to require all electric generating units in the PJM footprint to operate up to their maximum generation output levels.[5] Kentucky Power asserted that the additional dispatch of resources required by PJM resulted in the dispatch of high-cost generators that resulted in extraordinary fuel costs to Kentucky Power. Kentucky Power owns two generating units: Big Sandy Unit 1 (Big Sandy) and Mitchell Generating Station (Mitchell). Kentucky Power stated that the two Mitchell units were operating at capacity factors of 80.3 percent and 74.1 percent, due to operational issues largely unrelated to the extreme weather conditions, and Big Sandy was offline for scheduled maintenance that was unexpectantly extended due to additional repairs.[6]

Kentucky Power asserted that the $11,519,695 of non-FAC purchased power costs it incurred in December 2022 were directly related to Winter Storm Elliott.[7] Kentucky Power further asserted that the non-FAC eligible purchase power costs were prudently incurred.[8] Kentucky Power stated that its long-term capacity planning does not include extreme weather events, such that expenses arising from extreme weather events are reasonably expected to be incurred.[9]

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[4] Case No. 2023-00145, Order (Ky. PSC June 23, 2023) at 4.

[5] Case No. 2023-00145, Application at 4–5

[6] Case No. 2023-00145 June 23, 2023 Order at 4.

[7] Case No. 2023-00145 June 23, 2023 Order at 6.

[8] Case No. 2023-00145 June 23, 2023 Order at 6.

[9] Case No. 2023-00145 June 23, 2023 Order at 5.

In the final Order in Case No. 2023-00145, the Commission denied Kentucky Power's request to defer the $11.5 million into a regulatory asset, finding, among other things, that Kentucky Power did not provide sufficient evidence to meet its burden that the costs were prudently incurred.[10] The Commission notes that, pursuant to hearing testimony provided in Case No. 2022-00283,[11] Kentucky Power was on notice that the December 8, 2022 termination of the Rockport Unit Purchase Agreement (UPA) represented a reduction in generation that resulted in Kentucky Power having an inadequate amount of available generation to produce energy to meet its peak native demands. Sufficient generation capacity that can be used to serve the entirety of native demand acts as a physical hedge to market energy prices, and without adequate generation capacity, Kentucky Power and its customers are subject to higher prices from market purchases for at least the amount the utility is short of its native demand. In that proceeding, Kentucky Power's witness agreed that having a physical hedge against power prices is better than not having a hedge.[12] Regarding the ratemaking implication of the end of Rockport UPA energy as a physical hedge to power prices, Kentucky Power admitted that, in the event of sustained high energy prices, even if all Kentucky Power's generation were operating, Kentucky Power's customers were subject to the sustained high energy prices in a way that customers were not before the end of the Rockport UPA.[13] Kentucky Power also testified that the capacity that it purchases for purpose of

[10] Case No. 2023-00145 June 23, 2023 Order at 10.

[11] Case No.2022-00283, *Electronic Investigation of Kentucky Power Company Rockport Deferral Mechanism*, November 28, 2022 Hearing Video Testimony (Nov. 28, 2022 HVT) at 10:28:33–10:39:49.

[12] Case No. 2022-00283, Nov. 28, 2022 HVT at 10:29.54.

[13] Case No. 2022-00283, Nov. 28, 2022 HVT at 10:36:16.

meeting PJM's Fixed Resource Requirement (FRR) does not provide Kentucky Power with the right to the energy from those capacity purchases.[14]

Kentucky Power further stated that it would address the lack of a physical hedge against higher power prices in its integrated resource plan (IRP) that was due to be filed in December 2022, but was not filed until March 2023.[15] Kentucky Power admitted that it was unlikely to have a physical hedge between December 2022 and at least December 2023 with the end of the Rockport UPA, but asserted that it would be "easy and quick" to resolve by entering into a power purchase agreement for energy.[16] As noted in the final Order in Case No. 2023-00145, there is no evidence presented to the Commission that Kentucky Power took any steps to address the energy shortfall following the end of the Rockport UPA.

Additionally, Kentucky Power failed to provide sufficient evidence regarding the reasonableness of the generation unavailability at Mitchell and Big Sandy 1. In hearing testimony in Case No. 2022-00283, Kentucky Power stated that Mitchell and Big Sandy were down for maintenance in November 2022 "so that when those [energy] prices spike, which we expect to happen in January and February, the plants will be in good working order and they would be running" to serve Kentucky Power customers and act as a hedge against higher energy prices.[17] However, in Case No. 2023-00145, Kentucky Power stated that the two Mitchell units "output was reduced (or derated) due to operational

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[14] Case No. 2022-00283, Nov. 28, 2022 HVT at 10:32:13.

[15] Case No. 2022-00283, Nov. 28, 2022 HVT at 10:36:27.

[16] Case No. 2022-00283, Nov. 28, 2022 HVT at 10:37:10.

[17] Case No. 2022-00283, Nov. 28, 2022 HVT at 10:38:36.

issues" and that the Mitchell operational issues were "largely unrelated to the extreme weather conditions."[18] Kentucky Power further stated that Big Sandy was offline for scheduled maintenance that was unexpectantly extended due to additional repairs, and that the unit's outage was extended well into January, during the time Kentucky Power previously stated it expected "price[] spike[s]".[19]

Kentucky law requires retail electric suppliers, such as Kentucky Power, to have sufficient capacity to meet maximum estimated customer demand, including sufficient generation capacity. It is clear to the Commission from the records of Case Nos. 2022-00283 and 2023-00145 that Kentucky Power does not have sufficient capacity available to serve customers' energy needs, has been aware of that shortcoming for a significant amount of time, understands the detriment that insufficiency can cause customers, has described the speed and ease by which it could fix that shortcoming, and yet has chosen not to address its inadequacy of service.

The Commission directs Kentucky Power to file a response to the allegations contained in this Order within 30 days of service of this Order. Kentucky Power's response should address the allegation that it is failing to comply with its statutory obligations under KRS 278.030(2). Separately, but relatedly, Kentucky Power should address, pursuant to KRS 278.018(3), how it proposes to render adequate service and the reasonable time frame it intends to correct its failures. The Commission will establish a procedural schedule, which will include a hearing date, by separate Order issued after Kentucky Power files its written response to the allegations contained in this Order.

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[18] Case No. 2022-00283, Kentucky Power's Response to Commission Staff's First Request for Information (Staff's First Request) (filed Oct. 5, 2022), Item 6.

[19] Case No. 2022-00283, Kentucky Power's Response to Staff's First Request, Item 6.

IT IS THEREFORE ORDERED that:

1. Kentucky Power shall submit to the Commission, within 30 days of service of this Order, a written response to the allegations contained in this Order.

2. The record of Case No. 2023-00145 is incorporated by reference into this proceeding.

3. The record of Case No. 2022-00283 is incorporated by reference into this proceeding.

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PUBLIC SERVICE COMMISSION

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Chairman

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Vice Chairman

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Commissioner

ENTERED

JUN 23 2023

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SERVICE COMMISSION

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