

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC INVESTIGATION OF KENTUCKY)	CASE NO.
POWER COMPANY ROCKPORT DEFERRAL)	2022-00283
MECHANISM)	

ORDER

On September 14, 2022, Kentucky Power Company (Kentucky Power) filed a motion requesting that Chairman Chandler recuse himself from participating in this proceeding. The Commission finds that Kentucky Power’s motion should be denied as moot because Chairman Chandler declined to recuse himself from this proceeding and for the reasons discussed herein.

By letter dated November 23, 2022, Chairman Chandler responded to Kentucky Power’s motion and explained the basis for his decision not to recuse himself from this proceeding. The issuance of the November 23, 2022 letter renders Kentucky Power’s motion moot.

The Commission, further, does not have the authority or jurisdiction to order the recusal of a Commissioner in a proceeding. That decision lies within the discretion of each commissioner, not the Commission. There is no statutory or regulatory authority for the Commission to issue such an Order and, therefore, Kentucky Power’s motion is moot.

Finally, notwithstanding Chairman Chandler’s reasons for not recusing, the “rule of necessity” requires his participation in this matter. At this moment there are only two commissioners on the Commission, the post of Vice Chairman is vacant. KRS 278.080,

titled “Quorum; performance of functions by less than a majority of commissioners or by hearing examiners” establishes what constitutes a quorum of the Commission and the duties that may be exercised in the event of a vacancy on the Commission. KRS 278.080 provides, in relevant part, that:

A majority of the commissioners shall constitute a quorum for the transaction of any business, for the performance of any duty, or for the exercise of any power of the commission. No vacancy in the commission shall impair the right of the remaining commissioners to exercise all of the powers of the commission.

KRS 278.080 requires a "majority of the commissioners" as a quorum for conducting any business. Unlike when a lack of a quorum is caused by vacancies, and a sole commissioner may act on behalf of the Commission, if Chairman Chandler were to recuse, his recusal would deprive the Commission of a quorum to render a final decision on a rate case. Accordingly, unless two commissioners can participate, no action could be taken on the Rockport Deferral Mechanism and the Commission would be unable to rule on the proposed rates by the December 9, 2022 effective date. As a result, the rates proposed by Kentucky Power would go into effect without Commission review or determination that the proposed rates are fair, just and reasonable.

To prevent this inequitable result, the “rule of necessity” allows an otherwise disqualified officer to act when no alternative is available.¹ The Kentucky General Assembly has given sole authority to the Commission through KRS Chapter 278 to have exclusive jurisdiction over the rates and services of utilities. If members of the Commission were disqualified as having prejudged the case, and that disqualification results in lack of a quorum, there would be no other forum or tribunal to review or suspend

¹ See 2 Am. Jur. 2d Administrative Law § 37

a utility's proposed rates, which would become effective as a matter of law. It would be irrational if a utility were immune from review of its proposed rates because of disqualification of a commissioner or commissioners resulting lack of a quorum.²

Application of the "rule of necessity" is consistent with Commission precedent. The Commission invoked the "rule of necessity" in similar circumstances in which a lack of a quorum resulted from Commissioners' participation in a decision because both Commissioners had worked on the same matter while at the Attorney General's office. No action would be taken on a refund plan proposed by a utility because of lack of a quorum.³ The "rule of necessity" allowed the Commissioners to participate and provide quorum to rule on the refund plan.

Based upon the foregoing, IT IS THEREFORE ORDERED that Kentucky Power's motion is denied as moot.

² See *Carter v. Craig*, 574 S.W.2d 352 (Ky. App. 1978) for a discussion of application of the "rule of necessity" to proceedings before boards of education.

³ Case No. 5915, *General Adjustment of Electric Rates of Kentucky Utilities Company* (June 7, 1983).

PUBLIC SERVICE COMMISSION


Chairman

Vice Chairman


Commissioner

ENTERED
NOV 23 2022 bsb
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

*Angela M Goad
Assistant Attorney General
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Kentucky Power Company
Kentucky Power Company
1645 Winchester Avenue
Ashland, KY 41101

*Christen M Blend
American Electric Power Service Corporation
1 Riverside Plaza, 29th Floor
Post Office Box 16631
Columbus, OHIO 43216

*Katie M Glass
Stites & Harbison
421 West Main Street
P. O. Box 634
Frankfort, KENTUCKY 40602-0634

*Hector Garcia
Kentucky Power Company
1645 Winchester Avenue
Ashland, KY 41101

*Larry Cook
Assistant Attorney General
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Jody Kyler Cohn
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OHIO 45202

*Michael West
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*John Horne
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Honorable Michael L Kurtz
Attorney at Law
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OHIO 45202

*Honorable Kurt J Boehm
Attorney at Law
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OHIO 45202

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

*Kentucky Power Company
1645 Winchester Avenue
Ashland, KY 41101

*Vanna R. Milligan
Stites & Harbison
421 West Main Street
P. O. Box 634
Frankfort, KENTUCKY 40602-0634