

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC INVESTIGATION OF)	
AMENDMENTS TO THE PUBLIC UTILITY)	CASE NO.
REGULATORY POLICIES ACT OF 1978 AND)	2022-00370
DEMAND RESPONSE PRACTICES)	

ORDER

The Infrastructure Investment and Jobs Act (IIJA)¹ was signed into law on November 15, 2021. The IIJA, *inter alia*, amended Section 111(d) of the Public Utility Regulatory Policies Act of 1978² (PURPA). The amendments added the following standard:

(20) Demand-response practices

(A) In general

Each electric utility shall promote the use of demand-response and demand flexibility practices by commercial, residential, and industrial consumers to reduce electricity consumption during periods of unusually high demand.

(B) Rate recovery

(i) In general

Each State regulatory authority shall consider establishing rate mechanisms allowing an electric utility with respect to which the State regulatory authority has ratemaking authority to timely recover the costs of promoting demand-response

¹ H.R. 3684, 117th Cong. (2021).

² 16 U.S.C. § 2621(d).

and demand flexibility practices in accordance with subparagraph (A).³

The Commission, under the PURPA amendments, must, “commence consideration . . . or set a hearing date for consideration, with respect to the standard established by [the PURPA amendments]”⁴ within one year of November 15, 2021. If prior state actions were taken to address the standard, the requirements do not apply.

On November 7, 2022, the Commission issued an order initiating this proceeding. The Order made all jurisdictional utilities parties to the proceeding, established a deadline for requests for intervention, and established a December 16, 2022 deadline for comments to be filed. The jurisdictional utilities were directed to provide comments in response to specific questions.

The jurisdictional utilities timely filed responsive comments. The Commission granted intervention to Kentuckians for the Commonwealth Mountain Association, Metropolitan Housing Coalition, and Earth Tools, Inc., who jointly filed comments. The Commission also granted intervention to the Kentucky Industrial Utility Customers, Inc. (KIUC). KIUC elected to not file comments.

The Commission, as an initial matter, takes notice that Kentucky’s General Assembly has addressed, generally, the considerations to be taken into account when reviewing demand side management (DSM) programs.⁵ The General Assembly has also

³ 16 U.S.C. § 2621(d)(20).

⁴ 16 U.S.C. § 2622(b)(8)(A).

⁵ See KRS 278.285(1).

established factors to be considered when reviewing DSM mechanisms to recover costs of DSM programs.⁶

The Commission has considered the comments filed and has reviewed the record before it. The Commission notes that it addresses DSM, and related energy efficiency (EE) programs, on a case-by-case basis when a utility proposes DSM or EE measures, or proposes changes to existing programs. Each jurisdictional electric utility in Kentucky has needs and challenges that are unique to its customer base, service territory, and load management. These issues are best dealt with on a utility-by-utility basis, and not through universally applicable rules. The Commission, at this moment, will address DSM issues on a case-by-case basis and not be adopting universally applicable DSM and EE standards.

The Commission will, however, keep this docket open to further develop the record regarding DSM issues. While the Commission continues its investigation, utilities must continue to ensure that its proposed DSM programs and cost recovery mechanisms are cost effective. The Commission also notes that if a utility seeks Commission approval to construct generation, prior to filing the application the utility should adequately consider DSM and EE programs and include such consideration of such programs in its application. Consideration and discussion of DSM and EE programs are necessary factors to provide to prove the absence of wasteful duplication and prove that all

⁶ See, KRS 278.285(2).

reasonable alternatives were explored before concluding that proposed new generation is the least cost most reasonable option.⁷

Finally, the Commission anticipates in 2024 promulgating amendments to 807 KAR 5:058, the regulation governing integrated resource planning by electric utilities. The Commission anticipates that these amendments will include, *inter alia*, requiring robust DSM and EE programs be included and considered in utilities' integrated resource plans.

The Commission, being sufficiently advised, finds that it should make no changes to the current rules governing DSM or implement any standards regarding the demand-response practices established by the Infrastructure Investment and Jobs Act, pursuant to Section 111(d) of the Public Utility Regulatory Policies Act of 1978. The Commission, however, will keep this docket open to further develop the record and further consider and address issues concerning DSM and EE issues.


IT IS THEREFORE ORDERED that:

1. The Commission will make no changes to the current rules governing DSM or implement any standards regarding the demand-response practices established by the Infrastructure Investment and Jobs Act, pursuant to Section 111(d) of the Public Utility Regulatory Policies Act of 1978.


2. This case shall remain open to further develop the record.

⁷ For example, in a recent case for seeking approval for construction of new generation and retirement of some generating units, Louisville Gas and Electric Company and Kentucky Utilities Company included proposed modifications to its DSM and EE tariffs calculated to result in up to 377 MW of demand savings. Case No. 2022-00402, *Electronic Joint Application of Kentucky Utilities Company and Louisville Gas and Electric Company for Certificates of Public Convenience and Necessity and Site Compatibility Certificates and Approval of a Demand Side Management Plan and Approval of Fossil Fuel-Fired Generating Unit Retirements* (PSC Ky. Nov. 6, 2023), Order at 144. The Commission ultimately approved the proposed programs. *Id.* at 168-172.

PUBLIC SERVICE COMMISSION



Chairman



Vice Chairman



Commissioner

ENTERED
NOV 15 2023 bsb
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SERVICE COMMISSION

ATTEST:



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