

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC TARIFF FILING OF KENTUCKY)	
POWER COMPANY FOR APPROVAL OF A)	
SPECIAL CONTRACT UNDER ITS ECONOMIC)	CASE NO.
DEVELOPMENT RIDER AND DEMAND)	2022-00424
RESPONSE SERVICE TARIFFS WITH CYBER)	
INNOVATION GROUP, LLC)	

ORDER

On October 5, 2023, Kentucky Power Company (Kentucky Power) filed a motion, pursuant to KRS 278.400, requesting clarification of the Order entered September 15, 2023, regarding implementing a tariff provision requiring the cost of additional capacity purchased for Economic Development Rider (EDR) customers when sufficient generating capacity is not available to be passed on to those customers as a reduction to their demand discounts.

On October 12, 2023, Mountain Association, Kentuckians for the Commonwealth, Appalachian Citizen’s Law Center, Sierra Club, and the Kentucky Resources Council (collectively, Joint Intervenors) filed a response to Kentucky Power’s motion for clarification and requested that the motion be granted and that the Commission instruct Kentucky Power to begin implementing Kentucky Power’s tariff for all of its EDR customers.

LEGAL STANDARD

KRS 278.400, which establishes the standard of review for motions for rehearing, limits rehearing to new evidence not readily discoverable at the time of the original

hearings, to correct any material errors or omissions, or to correct findings that are unreasonable or unlawful. A Commission Order is deemed unreasonable only when “the evidence presented leaves no room for difference of opinion among reasonable minds.”¹ An order can only be unlawful if it violates a state or federal statute or constitutional provision.²

By limiting rehearing to correct material errors or omissions, and findings that are unreasonable or unlawful, or to weigh new evidence not readily discoverable at the time of the original hearings, KRS 278.400 is intended to provide closure to Commission proceedings. Rehearing does not present parties with the opportunity to relitigate a matter fully addressed in the original Order.

KRS 278.160(2) establishes the filed rate doctrine in Kentucky. It requires that a utility must follow its filed tariff and cannot charge more or less for any service rendered than what is provided in its tariff.³

MOTION

Kentucky Power requested rehearing for the limited purpose of clarifying and amending the Commission’s September 15, 2023 Order to reflect whether the Order directs Kentucky Power to implement its Tariff EDR provisions regarding the reduction of EDR credits commensurate with the cost of capacity procured on behalf of the customer

¹ *Energy Regulatory Comm’n v. Kentucky Power Co.*, 605 S.W.2d 46 (Ky. App. 1980).

² *Public Service Comm’n v. Conway*, 324 S.W.3d 373, 377 (Ky. 2010); *Public Service Comm’n v. Jackson County Rural Elec. Coop. Corp.*, 50 S.W.3d 764, 766 (Ky. App. 2000); *National Southwire Aluminum Co. v. Big Rivers Elec. Corp.*, 785 S.W.2d 503, 509 (Ky. App. 1990).

³ KRS 278.160(2): No 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 that prescribed in such schedules.

when sufficient generating capacity is not available. The motion goes on to provide a step-by-step method by which Kentucky Power would implement the obligation in regard to other EDR customers that were not part of this proceeding.

DISCUSSION AND FINDINGS

The Commission finds that Kentucky Power has not alleged any new evidence that was not available at the time of the hearing and has not met its burden of proof that the September 15, 2023 Order either contained a material omission or error, or was unlawful or unreasonable, or requires clarification. The September 15, 2023, Order did not change any obligation of Kentucky Power, but rather highlighted an obligation that already existed within Kentucky Power's EDR tariff provision⁴ which was discussed in Case No. 2018-00378⁵ as well. KRS 278.160(2) clearly states that a utility must follow its filed tariff. Furthermore, the clarification that Kentucky Power seeks would impact customers that are not a party to this proceeding and thus is beyond the scope of this proceeding.

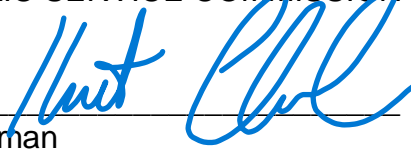
IT IS THEREFORE ORDERED that:

1. Kentucky Power's motion for clarification is denied.
2. This case is closed and removed from the Commission's docket.


⁴ Kentucky Power Company Tariff E.D.R. (Economic Development Rider) P.S.C. KY. NO. 11 ORIGINAL SHEET NO. 37-1 (Effective Jan. 19, 2018). "When sufficient generating capacity is not available, the Company will procure the additional capacity on the customer's behalf. The cost of capacity procured on behalf of the customer shall reduce on a dollar-for-dollar basis the customer's IBDD and SBDD."

⁵ Case No. 2018-00378, *Electronic Application of Kentucky Power Company for Approval of a Contract for Electric Service Under Tariff E.D.R.* (Ky. PSC July 9, 2019), Order at 9.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ENTERED
OCT 25 2023
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KENTUCKY PUBLIC
SERVICE COMMISSION

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