

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN ELECTRONIC EXAMINATION OF THE	)	
APPLICATION OF THE FUEL ADJUSTMENT	)	CASE NO.
CLAUSE OF KENTUCKY POWER COMPANY	)	2023-00008
FROM NOVEMBER 1, 2020 THROUGH	)	
OCTOBER 31, 2022	)	

ORDER

A hearing in the above-styled matter was held on February 13, 2024. On April 8, 2024, Commission Staff issued its Second Post-Hearing Request for Information (Staff's Second Post-Hearing Request) and Kentucky Power Company (Kentucky Power) filed its responses to Staff's Second Post-Hearing Request on May 1, 2024.

Kentucky Power filed objections on various grounds to 10<sup>1</sup> of the 13<sup>2</sup> requests for information within Staff's Second Post-Hearing Request. Kentucky Power also provided incomplete answers to several questions within Staff's Second Post-Hearing Request.

LEGAL STANDARD

KRS 278.030 and KRS 278.040 grant the Commission jurisdiction to regulate the rates and services of utilities in the state, ensure utilities collect fair, just and reasonable rates, and to adopt reasonable regulations to implement the provisions of KRS Chapter 278 and investigate the methods and practices of utilities to require them to conform to the laws of this state. Commission regulation 807 KAR 5:056 establishes the

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<sup>1</sup> Kentucky Power's responses to Staff's Second Post-Hearing Request, Items 1–7, Items 10–11, and Item 13. (filed May 1, 2024).

<sup>2</sup> Only items objected to in the responses will be addressed in this Order.

requirements for electric utilities to implement automatic fuel adjustment clauses, which includes authorizing the Commission to investigate *any* aspect of the fuel purchasing activities of an electric utility. In addition, 807 KAR 5:001, Section 4(12)(b), authorizes Commission Staff, through the Commission's executive director, to request information from any party to a case on the Commission's behalf. While 807 KAR 5:001 Section 4(12)(d)(5) states that "[i]f a party served with a request for information fails or refuses to furnish all or part of the requested information, the party shall provide a written explanation of the specific grounds for the failure to completely and precisely respond." KRS 278.230(2), in relevant part, mandates that any "books, accounts, papers and records of the utility shall be available to the commission for inspection and examination." This statute applies to the information requested by Commission Staff in this matter.

The Commission included language in ordering paragraph 11 of the opening order in this proceeding issued on September 6, 2023,

Kentucky Power shall provide its response to request for information issued by Commission Staff in full. In providing its responses, Kentucky Power shall refrain from referring back to a similar question asked in a prior six-month period FAC review case. Kentucky Power may refer to a response filed in a prior FAC review case but shall still furnish all of the requested information and make note if the response merits no change.

Should a utility willfully fail to comply with a Commission Order, the Commission, after the appropriate proceedings, may issue an Order with penalties pursuant to KRS 278.990. Those penalties include but are not limited to a civil penalty to be assessed

by the commission not to exceed \$2,500 for each offense or a criminal penalty of imprisonment for not more than six months, or both.<sup>3</sup>

### DISCUSSION AND FINDINGS

Kentucky Power failed to respond completely and accurately to Staff's Second Post-Hearing Request. The Commission finds that the requested information is necessary for the Commission to complete its two-year review of Kentucky Power's fuel adjustment clause (FAC). Following review, the Commission overrules each objection raised by Kentucky Power in its response to Staff's Second Post-Hearing Request. The Commission, on its own motion, finds that Kentucky Power shall provide full and complete substantive responses to Staff's Second Post-Hearing Request, Item 3, and Staff's Second Post-Hearing Request, Item 4. As to the remaining objections, the Commission finds that, although Kentucky Power stated an objection to the request, Kentucky Power did respond sufficiently to each item.

#### Kentucky Power's Response to Staff's Second Request, Item 3

Staff's Second Post-Hearing Request, Item 3, requested that Kentucky Power provide the following, "[s]tarting from the date Kentucky Power acquired its share of the Mitchell station through the end of the current review period, for each calendar year, provide the number of hours Mitchell Unit 1 was in forced outage, maintenance outage, planned outage, reserve shutdown, and actual operation transmitting energy."

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<sup>3</sup> KRS 278.990(1) states, "Any officer, agent, or employee of a utility, as defined in KRS 278.010, and any other person who willfully violates any of the provisions of this chapter or any regulation promulgated pursuant to this chapter, or fails to obey any order of the commission from which all rights of appeal have been exhausted, or who procures, aids, or abets a violation by any utility, shall be subject to either a civil penalty to be assessed by the commission not to exceed two thousand five hundred dollars (\$2,500) for each offense or a criminal penalty of imprisonment for not more than six (6) months, or both."

Kentucky Power's response to Staff's Second Post-Hearing Request, Item 3, objected to this request "on the grounds it is overbroad, unduly burdensome, and is not reasonably calculated to lead to the discovery of admissible evidence in connection with the two-year period under review as it seeks information concerning the operation of the Mitchell Plant Unit 1 for a prior period outside of the review period in the present case and for which the application of the Company's fuel adjustment clause has already been adjudicated by the Commission." Kentucky Power further objected to this request "to the extent the term 'actual operation transmitting energy' is undefined, vague, susceptible to be misinterpreted or given multiple meanings, and therefore ambiguous and unintelligible."

After considering the objection, the Commission finds that Kentucky Power should be compelled to provide a complete and thorough answer to the request. The Commission is the finder of fact and, as such, is the sole judge of what it deems is relevant and required.<sup>4</sup> Here, at a minimum, the requested evidence serves to provide the Commission a full picture of one of the generating facilities relevant to the FAC under review. The Commission must provide a reasonable and lawful basis for its findings of fact and, in order to do so, the Commission must be able to look at information in prior periods to determine how both Kentucky Power and the market have behaved in the past. A finding of a willful failure to comply with this Order may result in penalties as outlined in KRS 278.990.

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<sup>4</sup> See *Energy Regulatory Commission v. Kentucky Power Co.*, 605 S.W.2d 46, 50 (Ky. App. 1980) ("The administrative trier of fact has the exclusive province to pass on the credibility of the witnesses and the weight of the evidence.")

As to the objection related to vague and ambiguous terms, the Commission notes, based on Kentucky Power's response, Kentucky Power appeared to understand the meaning of "actual operation transmitting energy." Accordingly, said objection appears to be moot.

#### Kentucky Power's Response to Staff's Second Request, Item 4

Commission Staff's Second Post-Hearing Request, Item 4, requested that Kentucky Power, "[s]tarting from the date Kentucky Power acquired its share of the Mitchell station through the end of the current review period, for each calendar year, provide the number of hours Mitchell Unit 2 was in forced outage, maintenance outage, planned outage, reserve shutdown, and actual operation transmitting energy."

Kentucky Power's response to Commission Staff's Second Post-Hearing Request, Item 4, objected to this request "on the grounds it is overbroad, unduly burdensome, and is not reasonably calculated to lead to the discovery of admissible evidence in connection with the two-year period under review as it seeks information concerning the operation of the Mitchell Plant Unit 2 for a prior period outside of the review period in the present case and for which the application of the Company's fuel adjustment clause has already been adjudicated by the Commission." Kentucky Power further objected to this request "to the extent the term 'actual operation transmitting energy' is undefined, vague, susceptible to be misinterpreted or given multiple meanings, and therefore ambiguous and unintelligible."

The Commission finds that Kentucky Power should be compelled to provide a complete and thorough answer to the request. The Commission has determined that the period beginning when Kentucky Power acquired its share of the Mitchell station is

relevant and necessary to complete the record in this proceeding. The Commission is the finder of fact and, as such, is the sole judge of what it deems relevant and required. The Commission must provide a reasonable and lawful basis for its findings of fact and, in order to do so, the Commission must be able to look at information in prior periods to determine how both Kentucky Power and the market have behaved in the past.

As to the objection related to vague and ambiguous terms, the Commission notes, based on Kentucky Power's response, Kentucky Power understood what "actual operation transmitting energy" meant. Kentucky Power understood the question as evidenced by its response.

Kentucky Power's Response to Staff's Second Request, Item 1

Commission Staff's Second Post-Hearing Request, Item 1 requested that Kentucky Power "[r]efer to Kentucky Power's response to Commission Staff's First Post-Hearing Request for Information, Item 2b. Identify all personnel involved in the review and analysis of PJM's Manual 13 for the purpose of implementing Kentucky Power's coal conservation strategy."

Kentucky Power's response to Commission Staff's Second Post-Hearing Request, Item 1 objected to this request "on the ground that the term 'implementing Kentucky Power's coal conservation strategy' is overly broad, vague, and undefined."

Without waiving this objection, Kentucky Power provided a full and complete response to the question presented. Based on its response, Kentucky Power clearly understood the request. Therefore, the Commission finds that the term "implementing Kentucky Power's coal conservation strategy" is not overly broad, vague, and undefined.

### Kentucky Power's Response to Staff's Second Request, Item 2

Commission Staff's Second Post-Hearing Request, Item 2 requested that Kentucky Power "[p]rovide the minutes of the meetings where Kentucky Power's coal conservation strategy [sic] devised and [sic] any subsequent implementation meetings were held."

Kentucky Power's response to Commission Staff's Second Post-Hearing Request, Item 2 objected to this request "to the extent it is unintelligible", and Kentucky Power further objected "on the ground that the term 'Kentucky Power's coal conservation strategy' is overly broad, vague, and undefined."

Without waiving these objections, Kentucky Power referred the Commission to Kentucky Power's response in Commission Staff's First Post-Hearing Request, Item 1. This response substantively answered Commission Staff's Second Post-Hearing Request, Item 2. The Commission finds that although the request presented in Commission Staff's Second Post-Hearing Request, Item 2, likely contained grammatical errors, one can reasonably infer from the request what was being sought, and it is therefore not unintelligible. Furthermore, the Commission finds that the request is not overly broad, vague, and undefined as evidenced by Kentucky Power's answer to the request.

### Kentucky Power's Response to Staff's Second Request, Item 5

Commission Staff's Second Post-Hearing Request, Item 5, requested that Kentucky Power "[s]tarting from the date Kentucky Power acquired its share of the Mitchell station the end of the current review period, for each calendar year, the total

dollar cost of purchased power and the average total cost of purchased power as a direct result of forced outages and separately of maintenance outages.”

Kentucky Power’s response to Commission Staff’s Second Post-Hearing Request, Item 5, objected to this request “on the grounds that it is overbroad, unduly burdensome, and is not reasonably calculated to lead to the discovery of admissible evidence in connection with the two-year period under review as it seeks information concerning the operation of the Mitchell Plant for a prior period outside of the review period in the present case and for which the application of the Company’s fuel adjustment clause has already been adjudicated by the Commission.” Kentucky Power further objected “to the extent the terms ‘purchased power as a direct result of forced outages and separately of maintenance outages’ are undefined, vague, susceptible to be misinterpreted or given multiple meanings, and therefore, ambiguous, and unintelligible.”

Without waiving these objections, Kentucky Power provided a substantive response, thus the Commission finds Commission Staff’s Second Post-Hearing Request, Item 5, to not be overbroad or unduly burdensome. Furthermore, the Commission finds that although the request sought information outside the two-year review period currently under review, the request sought relevant information regarding the cost of Kentucky Power’s fuel. The Commission has broad discretion to conduct its investigations and the information requested, although outside of the two-year review period currently under review, is relevant and could be useful in completing the record in this proceeding.

The Commission also finds the terms “purchased power as a direct result of forced outages and separately of maintenance outages” to not be undefined, vague, susceptible to be misinterpreted or given multiple meanings, and therefore ambiguous and



unintelligible. A reasonable person could infer from the wording of the question what the question was asking, and Kentucky Power substantively answered the question. Kentucky Power clearly understood the question as evidenced by its response after its objection that “Kentucky Power does not purchase power as a direct result of generator operation status.”

Kentucky Power’s Response to Staff’s Second Request, Item 6

Commission Staff’s Second Post-Hearing Request, Item 6, requested that Kentucky Power “[s]tarting from the date Kentucky Power acquired its share of the Rockport station through the end of the current review period, for each calendar year, provide the number of hours Rockport was in a forced outage, maintenance outage, planned outage, reserve shutdown, and actual operation transmitting energy.”

Kentucky Power’s response to Commission Staff’s Second Post-Hearing Request, Item 6 objected to this request “on the grounds it is overbroad, unduly burdensome, and is not reasonably calculated to lead to the discovery of admissible evidence in connection with the two-year period under review as it seeks information concerning the operation of the Rockport Plant for a prior period outside of the review period in the present case and for which the application of the Company’s fuel adjustment clause has already been adjudicated by the Commission.” Kentucky Power further objected “to the extent the term ‘actual operation transmitting energy’ is undefined, vague, susceptible to be misinterpreted or given multiple meanings, and therefore ambiguous and unintelligible.”

Without waiving these objections, Kentucky Power provided a substantive response to the question presented, thus the Commission finds Commission Staff’s Second Post-Hearing Request, Item 6, to not be overbroad or unduly burdensome.

Furthermore, the Commission finds that although the request sought information outside the two-year review period currently under review, that information is relevant to the current matter. The Commission has broad discretion to conduct its investigations and the information requested, although outside of the two-year review period currently under review, is relevant and could be useful in completing the record in this proceeding.

The Commission also finds the term “actual operation transmitting energy” to not be undefined, vague, susceptible to be misinterpreted or given multiple meanings, and therefore ambiguous and unintelligible. A reasonable person could infer from the wording of the question what the question was asking, and Kentucky Power substantively answered the question with relevant information. Kentucky Power understood the question as evidenced by the way Kentucky Power construed the term to mean “those periods when the unit was ‘Generating’ as identified in the PJM GADS meaning that it was operating and connected to the PJM transmission system regardless of output,” and as also evidence by Kentucky Power providing a chart of the operational status of Rockport Unit 1 over a two-year period.

Kentucky Power’s Response to Staff’s Second Request, Item 7

Commission Staff’s Second Post-Hearing Request, Item 7, requested that Kentucky Power, “[f]or the period during which the coal conservation strategy was in effect beginning in October 2021 and either Mitchell Unit 1 or Mitchell Unit 2 was in reserve shutdown status; (a) Explain whether PJM approved the unit status on a daily / day ahead basis; (b) Explain whether the decision to place a unit in Reserve Shutdown was wholly or in part based upon the coal conservation adder being included with the unit’s day ahead offer price and, consequently, Kentucky Power determined that a particular unit would not

clear the day ahead market; [and] (c) Provide the monthly cost of purchased power that is a direct result of either Mitchell Unit 1 or Mitchell Unit 2 being placed in reserve shutdown.”

Kentucky Power’s response to Commission Staff’s Second Post-Hearing Request, Item 7, objected to this request “on the ground that the term ‘coal conservation strategy’ is overly broad, vague, and undefined.” Kentucky Power further objected “to the extent the request is based on assumptions that are not supported by evidence in the case, and is speculative.”

Without waiving these objections, Kentucky Power substantively responded to Commission Staff’s Second Post-Hearing Request, Item 7, thus the Commission finds the term “coal conservation strategy” to not be overly broad, vague, and undefined. As noted earlier in the Order, Kentucky Power clearly understood the request and responded as such. Furthermore, the Commission finds the question presented in Commission Staff’s Second Post-Hearing Request, Item 7, is not based on assumptions that are not supported by evidence in the case and is not speculative.

It is unclear from Kentucky Power’s objection what parts of Commission Staff’s Second Post-Hearing Request, Item 7, Kentucky Power believes relies on assumptions that are not supported by evidence in the case or which parts of the request Kentucky Power believes is speculative. Without further explanation from Kentucky Power on these objections, the Commission finds that none of the requests contained within Commission Staff’s Second Post-Hearing Request, Item 7, are speculative or ask Kentucky Power to speculate, and the evidence in the record supports the reasonableness of the request presented.

## Kentucky Power's Response to Staff's Second Request, Item 10

Commission Staff's Second Post-Hearing Request, Item 10, requested that Kentucky Power, "[a]side from the instance when Kentucky Power's coal inventory was in danger of falling below PJM's ten-day full burn inventory level, explain whether Kentucky Power ever makes oral solicitations for coal in addition to the periodic written solicitations and, if so, explain whether the oral solicitations are made to the same suppliers receiving written solicitations."

Kentucky Power's response to Commission Staff's Second Post-Hearing Request, Item 10, objected to this request "to the extent the term 'oral solicitation' is undefined, vague, susceptible to be misinterpreted or given multiple meanings, and therefore ambiguous and unintelligible." Kentucky Power further objected "on the ground that request is based on assumptions that are not supported by evidence in the case in so far as it asserts that Kentucky Power's coal inventory was 'in danger' of falling below PJM's ten-day full burn inventory level."

Without waiving these objections, Kentucky Power substantively responded to Commission Staff's Second Post-Hearing Request, Item 10, thus the Commission finds the term "oral solicitation" to not be overly broad, ambiguous, and undefined. Furthermore, the Commission finds the question presented in Commission Staff's Second Post-Hearing Request, Item 10, is not based on assumptions that are not supported by evidence in the case and is not speculative.

It is unclear from Kentucky Power's objection what part(s) of Commission Staff's Second Post-Hearing Request, Item 10, Kentucky Power believes relies on assumptions that are not supported by evidence in the case or which part(s) of the request Kentucky

Power believes is speculative. Without further explanation from Kentucky Power on these objections, the Commission finds that the request contained within Commission Staff's Second Post-Hearing Request, Item 10, is speculative or asks Kentucky Power to speculate, and the evidence in the record supports the reasonableness of the request presented.

The Commission determines the weight and evidence of information contained within the record. While oral solicitations, may or may not have occurred, the answer to such an inquiry is both relevant and may lead to the discovery of relevant evidence. Based, on Kentucky Power's response, it is evident the utility knew the meaning behind the words and the request.

Kentucky Power's Response to Staff's Second Request, Item 11

Commission Staff's Second Post-Hearing Request, Item 11, requested that Kentucky Power "Explain whether potential coal suppliers ever make or are encouraged to make unsolicited offers to sell coal to Kentucky Power or to any other AEP East affiliate. If so, explain whether Kentucky Power has accepted any of these offers during the review period."

Kentucky Power's response to Commission Staff's Second Post-Hearing Request, Item 11, objected to this request "to the extent it is not reasonably calculated to lead to the discovery of admissible evidence to the extent it pertains to time periods outside of the two-year period under review in this case."

Without waiving these objections, Kentucky Power provided an adequate response to the question presented; thus, the Commission finds Commission Staff's Second Post-Hearing Request, Item 11, to not be overbroad or unduly burdensome.

Furthermore, the Commission finds that although the question sought information outside the two-year review period currently under review, the question sought relevant regarding Kentucky Power's fuel purchasing practices. The Commission has broad discretion to conduct its investigations and the information requested, although outside of the two-year review period currently under review, is relevant and could be useful in completing the record in this proceeding.

Kentucky Power's Response to Staff's Second Request, Item 13

Commission Staff's Second Post-Hearing Request, Item 13, requested Kentucky Power to "[r]efer to Kentucky Power's response to Staff's First Request, Item 2C, Attachment 1; Kentucky Power's response to the Attorney General and the Kentucky Industrial Utility Customers' Second Request for Information, Item 4, Confidential Attachments 3 and 4; and to Kentucky Power's response to Staff's First Request, Item 31, Confidential Attachments 2 and 3 in Case No. 2022-00263. For the period during which the coal conservation strategy was in effect beginning in October 2021. Comparing the unit offer curves, adders, offer prices and the locational marginal prices, it seems clear that the Mitchell units, absent the coal conservation strategy adder price inclusion, would have run more; (a) Provide the hourly purchased power cost and number of hours resulted from the coal conservation strategy adders being included in Mitchell Units' day ahead offer prices; (b) Provide the hourly cost and number of hours the Mitchell units would have been called to run resulting in lower purchased power cost absent the inclusion of the price adder."

Kentucky Power's response to Commission Staff's Second Post-Hearing Request, Item 13, objected to this request "on the ground that the term 'implementing Kentucky

Power's coal strategy' is overly broad, vague, and undefined." Kentucky Power further objected "to the extent the request is based on assumptions that are not supported by evidence in the case and is speculative."

Without waiving these objections, Kentucky Power substantively responded to Commission Staff's Second Post-Hearing Request, Item 13, thus the Commission finds the term "coal conservation strategy" to not be overly broad, vague, and undefined. Furthermore, the Commission finds the question presented in Commission Staff's Second Post-Hearing Request, Item 13, is not based on assumptions that are not supported by evidence in the case and is not speculative.

It is unclear from Kentucky Power's objection what part(s) of Commission Staff's Second Post-Hearing Request, Item 13, Kentucky Power believes relies on assumptions that are not supported by evidence in the case or which part(s) of the request Kentucky Power believes is speculative. Without further explanation from Kentucky Power on these objections, the Commission finds that none of the request contained within Commission Staff's Second Post-Hearing Request, Item 13, is speculative or asks Kentucky Power to speculate, and the evidence in the record supports the reasonableness of the request presented.

IT IS THEREFORE ORDERED that:

1. Kentucky Power's objections to Commission Staff's Second Post-Hearing Request are hereby overruled.
2. Kentucky Power shall provide a full and complete answer to Commission Staff's Second Post-Hearing Request, Item 3.

3. Kentucky Power shall provide a full and complete answer to Commission Staff's Second Post-Hearing Request, Item 4.

4. Kentucky Power shall provide the requested information no later than 14 days after the date of service of this Order.

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PUBLIC SERVICE COMMISSION

  
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Chairman

  
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Vice Chairman

  
\_\_\_\_\_  
Commissioner

ENTERED  
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KENTUCKY PUBLIC  
SERVICE COMMISSION

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