

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF KENTUCKY	)	
POWER COMPANY FOR (1) A GENERAL	)	
ADJUSTMENT OF ITS RATES FOR ELECTRIC	)	
SERVICE; (2) APPROVAL OF TARIFFS AND	)	
RIDERS; (3) APPROVAL OF ACCOUNTING	)	CASE NO.
PRACTICES TO ESTABLISH REGULATORY	)	2023-00159
ASSETS AND LIABILITIES; (4) A	)	
SECURITIZATION FINANCING ORDER; AND (5)	)	
ALL OTHER REQUIRED APPROVALS AND	)	
RELIEF	)	

ORDER

On January 30, 2024, Kentucky Power Company (Kentucky Power) filed a motion, pursuant to KRS 278.400, requesting reconsideration or clarification on several aspects of the Commission’s January 10, 2024 Order (Financing Order) entered in this proceeding. No party filed a response to Kentucky Power’s motion for a rehearing. Kentucky Power’s motion is now before the Commission for a decision on the merits.

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.”<sup>1</sup>

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

An order can only be unlawful if it violates a state or federal statute or constitutional provision.<sup>2</sup>

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.

### DISCUSSION AND FINDINGS

Kentucky Power's motion for rehearing raised several issues and requested clarification or reconsideration on each. Having considered the motion and the record, the Commission finds that the motion for rehearing should be denied pursuant to the discussion below.

#### Directing Placement of the Bonds

Kentucky Power first argued that the Financing Order unlawfully granted authority to the Commission's Designated Representative and the Financial Advisor in excess of that permitted by KRS 278.670 through KRS 278.696 and KRS 65.114 (collectively, the Securitization Act). Kentucky Power noted that KRS 278.674(5)(a) states that "the designated commission staff and any financial advisor providing advice to commission staff shall: (a) Have no authority to direct how the electric utility places the bonds to market . . . ."<sup>3</sup> Further, Kentucky Power noted that KRS 278.674(4)(a) states that the

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<sup>2</sup> *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).

<sup>3</sup> Motion of Kentucky Power Company for Rehearing of January 10, 2024 Financing Order (filed Jan. 31, 2023) (Kentucky Power's Motion for Hearing) at 4.

Commission's Designated Representative and the Financial Advisor are to provide "input to and collaboration with [Kentucky Power] during the process undertaken to place the securitized bonds to market."<sup>4</sup>

Kentucky Power argued that the Financing Order unlawfully grants Commission Staff and the Financial Advisor authority in excess of that authorized by KRS 278.674(4) and (5) by requiring that Commission Staff and Financial Advisor be permitted to directly participate in and approve of the process for selecting significant transaction participants; participate in and have decision-making authority over the structuring, marketing, and pricing of the bonds; and approve all drafts of the primary transaction documents.<sup>5</sup> Kentucky Power argued that those authorities would unlawfully empower Commission Staff and the Financial Advisor to "direct" how Kentucky Power places the bonds because Kentucky Power would be required to accept the direction of the Commission Staff and the Financial Advisor or the transactions could not move forward.<sup>6</sup> Kentucky Power requested that the Commission grant rehearing and modify the Financing Order provisions described to eliminate Commission Staff's and the Financial Advisor's joint decision-making authority and instead grant rights only of input and collaboration, as provided in KRS 278.674(4)(a).

The Commission does not agree that the conditions in Ordering Paragraphs 32 and 33 and elsewhere in the Financing Order are contrary to the Securitization Act. These conditions only allow the Commission's Designated Representative to participate

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<sup>4</sup> Kentucky Power's Motion for Rehearing at 4.

<sup>5</sup> Kentucky Power's Motion for Rehearing at 4.

<sup>6</sup> Kentucky Power's Motion for Rehearing at 5.

together with Kentucky Power in making decisions regarding structuring, marketing, and pricing of the securitized bonds as those terms are developed with information that can only be known after the Financing Order was issued. Kentucky Power asked for “flexibility” on all these matters in the post-Financing Order and pre-bond issuance process. It wanted the Commission to delegate decision-making authority regarding the final terms and conditions in this complex financing solely to Kentucky Power with only limited transparency concerning the process. In Kentucky Power’s view, the Commission is only allowed to accept or reject the entire transaction after the securitized bonds have been priced. The Commission would have only limited real time information and would not have any ability to modify any component of Kentucky Power’s decisions.

The Commission rejected Kentucky Power’s “take it or leave it” approach. Instead, the Financing Order establishes a process by which the Commission can be informed on an ongoing basis prior to deciding whether to disapprove the result of those decisions. If Kentucky Power and the Commission’s Designated Representative are unable to reach agreement on any issue, that issue will be referred to the Commission for resolution before pricing through transparent procedures established in the Financing Order. The Commission retains authority to resolve any disagreements as they arise, as well as the ultimate authority to disapprove the bonds. As such, authority of the Designated Representative, advised by the Financial Advisor, is limited to making recommendations to the Commission for its final determination concerning structuring, marketing or pricing of the authorized securitized bonds. The Financing Order therefore does not empower the Commission’s Designated Representative or the Financial Advisor to direct how the securitized bonds are placed to the market, but rather it provides a process for the

Commission to receive timely information and advice so that the Commission is in a position to exercise its authority either to approve or disapprove all components of the transaction.

For example, Kentucky Power has not yet provided initial drafts of the Intercreditor Agreement or the Underwriting Agreement, and Kentucky Power first provided initial drafts of the other Basic Transaction Documents on November 27, 2023, the day before the Commission's public hearing in this case. Kentucky Power and the Commission's Designated Representative (advised by the Commission's Financial Advisor) are to participate with Kentucky Power in making decisions with respect to terms and conditions to be included in the hundreds of pages of all these Basic Transaction Documents. To facilitate that process, Ordering Paragraph 7 of the Financing Order directs Kentucky Power to provide drafts of the Basic Transaction Documents to the Commission's Designated Representative and the Financial Advisor for review, comment, and approval as those documents are developed. If after providing such review and comments, the Commission's Designated Representative and Kentucky Power do not agree with any proposed terms or conditions in any Basic Transaction Document, the matter will be referred directly to the Commission for resolution. The Commission may either accept or reject recommendations of its Designated Representative. Thus, neither Commission Staff nor the Commission's Financial Advisor will direct what terms, conditions or descriptions are included in the Basic Transaction Documents, and the joint decision-making process set forth in Ordering Paragraph 7 of the Financing Order is not unlawful.

Second, Kentucky Power asserts that narrowly tailoring the requirements of the Financing Order will ultimately benefit Kentucky Power customers and will be more

efficient.<sup>7</sup> However, Kentucky Power has provided no testimony or other evidence in support of this assertion. Limiting rigorous interaction among the parties that is designed to protect the interests of ratepayers does not equate to being efficient and achieving the best result for ratepayers. The Commission has found that procedures specified in the Financing Order are reasonably designed to achieve the Lowest Cost Objective and to protect other interests of ratepayers. The Commission finds that those procedures are reasonable, efficient and should be approved.

#### Rights Regarding Selection of Counsel Unconstitutional

Kentucky Power argued that the requirement to participate in a competitive process and obtain approval for its own counsel is unconstitutional.<sup>8</sup> Kentucky Power stated that the company has a constitutional right to choose its own counsel in matters such as this, absent a compelling reason.<sup>9</sup> Kentucky Power stated that there was no compelling reason in this case to force it to participate in a competitive selection process for its attorney.<sup>10</sup> Kentucky Power asked that that requirement be removed from the Financing Order.<sup>11</sup>

Kentucky Power's argument regarding its choice of counsel fails, because the Financing Order does not prevent Kentucky Power from selecting any counsel of its

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<sup>7</sup> Kentucky Power's Motion for Rehearing at 6.

<sup>8</sup> Kentucky Power's Motion for Rehearing at 14. While not expressly stated in its motion for rehearing, by citing only federal court cases Kentucky Power's argument appears to be that its right to select its own counsel, with costs of that counsel paid indirectly by customers, is guaranteed by the Due Process Clause of the Fifth Amendment to the United States Constitution, as applied to the State of Texas and its instrumentalities by Section 1 of the Fourteenth Amendment to the United States Constitution.

<sup>9</sup> Kentucky Power's Motion for Rehearing at 14–15.

<sup>10</sup> Kentucky Power's Motion for Rehearing at 15–16.

<sup>11</sup> Kentucky Power's Motion for Rehearing at 15–16.

choice. Rather, the Financing Order simply sets conditions on Kentucky Power's ability to finance the cost of its counsel with securitized bond proceeds or the securitized surcharge to achieve a lowest cost objective. Specifically, Ordering Paragraph 18 of the Financing Order requires that a competitive process be used if "fees will be paid from securitized bond proceeds or from the securitized surcharge" and then allows the Commission's Designated Representative, advised by the Financial Advisor, to authorize a deviation from the competitive process if the Designated Representative determines that it "should not be used in selecting particular transaction participants to create the best value for customers." A utility is not entitled to pass on unreasonable costs to its customers.<sup>12</sup> Further, the cases cited by Kentucky Power provide no support for the proposal that a party involved in a civil matter is entitled to have its attorney fees paid by another party, which would be the effect of financing the cost of Kentucky Power's counsel with securitized bond proceeds or the securitized surcharge. Thus, Kentucky Power's claim that the Financing Order violates the constitution by improperly preventing it from selecting the counsel of its choice is not supported by the record or the cases cited by Kentucky Power. The Commission therefore finds that this aspect of the Financing Order is neither unreasonable nor unlawful.

#### Bond Classification and Presentation

Citing to KRS 278.670(16), Kentucky Power stated that "securitization" means "a structured process where interests in debt instruments or other receivable income are

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<sup>12</sup> See KRS 278.030; see also KRS 278.674(1)(b) ("The commission shall approve the application for a financing order with or without conditions if the commission finds . . . [t]he resulting estimated securitized surcharge and other rates are fair, just, and reasonable.").

packaged, underwritten, and sold as asset-backed marketable securities . . . .”<sup>13</sup> Kentucky Power argued that the Commission acted unlawfully by ordering that the bonds be marketed as corporate bonds.<sup>14</sup> Kentucky Power also stated that how the bonds are marketed may affect pricing.<sup>15</sup> Kentucky Power argued that it should be able to market the bonds as asset-backed securities or corporate bonds as determined by a qualified underwriter and Kentucky Power.<sup>16</sup>

While Kentucky Power claims that the Commission acted unlawfully by requiring that the bonds be marketed as corporate bonds, Kentucky Power notably makes no claim that KRS 278.670(16) would prohibit the bonds from being marketed as corporate bonds. To the contrary, Kentucky Power argued that it should have the discretion to market the bonds as either asset-backed securities or corporate bonds. Kentucky Power cannot argue that the Commission acted unlawfully in ordering the bonds to be marketed as corporate bonds and then ask that it be allowed to determine whether to market the bonds as asset-backed securities or corporate bonds as Kentucky Power and the underwriters see fit. If such discretion is permitted by the statute, then KRS 278.670(16) could not be read as prohibiting the bonds from being marketed as corporate bonds. Thus, Kentucky Power failed to establish that the requirement that the bonds be marketed as corporate bonds is either unreasonable or unlawful (i.e., inconsistent with KRS 278.670(16)).

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<sup>13</sup> Kentucky Power’s Motion for Rehearing at 7.

<sup>14</sup> Kentucky Power’s Motion for Rehearing at 7.

<sup>15</sup> Kentucky Power’s Motion for Rehearing at 8.

<sup>16</sup> Kentucky Power’s Motion for Rehearing at 8.



In fact, the requirement that Kentucky Power market the bonds as corporate bonds was based on how Kentucky Power indicated it would market the bonds. In a Commission Staff Request for Information, Kentucky Power was asked how it intended to market the bonds, including specifically whether it would describe the bonds as “‘corporate securities’ and ‘not asset-backed securities’ as the term is defined by the United States Securities and Exchange Commission (SEC) in governing regulations Item 1101 of Regulation AB.”<sup>17</sup> Kentucky Power responded:

Kentucky Power intends to structure [the transaction] as a series trust, such that the securitized bonds would not be considered asset-backed securities as defined by Regulation AB. In addition, Kentucky Power intends to request corporate tickers and CUSIP numbers for the bonds.<sup>18</sup>

The Commission agreed that Kentucky Power’s proposed method of marketing the bonds would result in the lowest costs to customers and therefore included a condition in the Financing Order that Kentucky Power market the bonds, which will be backed by the securitized property regardless of how they are marketed, as corporate bonds. While Kentucky Power now makes an assertion that requiring that the bonds be marketed as corporate bonds may increase costs, Kentucky Power provides no support for the assertion, much less new evidence that would justify allowing Kentucky Power to change its position regarding how the bonds would be marketed. Thus, the Commission finds

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<sup>17</sup> Commission Staff’s Fourth Request for Information (filed on Sept. 11, 2023) (Staff’s Fourth Request), Item 6 (“Refer to Niehaus Direct Testimony pages 15, 16, and 45. Also refer to Niehaus Exhibit 3. Explain whether Kentucky Power will describe the structure of the bonds investors to structure the securitized bonds as ‘corporate securities’ and ‘not asset-backed securities’ as the term is defined by the United States Securities and Exchange Commission (SEC) in governing regulations Item 1101 of Regulation AB.”).

<sup>18</sup> Kentucky Power’s response to Staff’s Fourth Request, Item 6.

that Kentucky Power’s request for rehearing regarding the requirement in the Financing Order that the bonds be marketed as corporate bonds should be denied.

#### Securitized Bond Deferral Account

Kentucky Power argued that the Financing Order does not provide direction on the method for funding the Securitized Bond Deferral Account, including the source of funds to grow the balance at the pre-tax WACC and whether a segregated account would be needed to hold the amounts allocated to such account.<sup>19</sup> Page 37 of the Financing Order states: “The Commission is not authorized to make adjustments to the securitized surcharge for any such excess [incremental up-front financing costs credited to the Securitized Bond Deferral Account].” Nevertheless, according to Kentucky Power, without this clarification, the Commission’s findings are inconsistent with the provisions of KRS 278.678(8).<sup>20</sup>

The Securitized Bond Deferral Account is simply intended to track any regulatory liability associated with the items listed to be amortized in future rate cases as determined in those cases. The amounts deferred in the Securitized Bond Deferral Account, if any, will only affect the amount of other rates and charges that Kentucky Power imposes for electric service. Amounts deferred in the Securitized Bond Deferral Account will have no effect on the amounts recovered through the securitized surcharge. Thus, the deferral required and authorized by Ordering Paragraph 3 is consistent with KRS 278.678(8) and should not create any uncertainty regarding amounts to be collected pursuant to the securitized surcharge.

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<sup>19</sup> Kentucky Power’s Motion for Rehearing at 10.

<sup>20</sup> Kentucky Power’s Motion for Rehearing at 10–11.

The deferrals are reasonable because they ensure that costs are properly accounted for when financed by securitized bonds, that revenue received by Kentucky Power for servicing and administering the bonds is appropriately reflected, and that any excess collected upon payment of all securitized bonds and associated financing costs is returned to customers. For instance, Ordering Paragraph 3.c. of the Financing Order requires that Kentucky Power record and defer “any amount by which the up-front financing costs included in the principal amount securitized exceeds the actual up-front financing costs.” In that instance, Kentucky Power would receive funds from the sale of the bonds for costs and Kentucky Power’s customers, pursuant to the Securitization Act, would be required to pay those costs through to the securitized surcharge. While there should be no difference between the actual costs and the costs securitized, assuming Kentucky Power properly accounted for costs, it would be unreasonable to require customers to pay through the securitized surcharge estimated costs that ultimately are not incurred while permitting Kentucky Power to receive the full benefit of the proceeds from the bond sale for those same costs that were not incurred.

Similarly, if Kentucky Power moves forward with the securitized bonds, it will receive revenue from periodic servicing and administrative fees that will offset the revenue that must be recovered from base rates in future rate cases. Kentucky Power actually recognized in its application that revenues from such fees would offset future rates.<sup>21</sup> The only difference between that recognition and the requirement of Ordering

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<sup>21</sup> Application, Exhibit 5, Proposed Financing Order at 54 (“The servicing and administrative fees collected by Kentucky Power, or any affiliate of Kentucky Power, acting as either the servicer or the administrator under the servicing agreement or administration agreement, shall be included as a revenue credit and reduce revenue requirements in each Kentucky Power base rate case. The expenses incurred by Kentucky Power or such affiliate to perform obligations under the servicing agreement and the

Paragraph 3.b. is that Ordering Paragraph 3.b. requires Kentucky Power to begin deferring the extent to which the fees collected exceed the cost to Kentucky Power, along with a reasonable carrying cost associated with any delay in reflecting those amounts in rates, when it begins performing those functions.<sup>22</sup>

The Commission often requires utilities to record regulatory liabilities, or allows utilities to record regulatory assets in such circumstances, with carrying costs at the utility's approved weighted average cost of capital, to be amortized in future rate cases. The Commission continues to believe that it is reasonable to require such deferrals in circumstances identified in Ordering Paragraph 3. Further, to the extent there was any ambiguity in the Financing Order regarding how the deferrals will function and be used to offset rates, the explanation provided herein should provide any necessary clarity. Thus, the Commission finds that Kentucky Power's request for rehearing as to the functioning of the Securitized Bond Deferral Account should be denied except to the extent that clarification was provided herein.

#### Post Issuance Review

Kentucky Power noted that the Financing Order provides the Commission with a 120-day period after the issuance of any series of securitized bonds to disallow up-front financing costs at its discretion based on whether the "lowest cost standard" was

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administration agreement shall likewise be included as a cost of service in each Kentucky Power base rate case.").

<sup>22</sup> The Commission acknowledges that it may be reasonable in future rate cases to simply allow Kentucky Power to include the cost of servicing the bonds in the revenue requirement for base rates and simply offset the revenue requirement by the revenue from the fees for such servicing, while amortizing any deferral accrued to date. However, the Commission will address the specifics of future rate treatment in those future cases.

satisfied.<sup>23</sup> Kentucky Power argued that this grant of authority to disallow costs post-closing contradicts the plain language of KRS 278.678(8), which mandates that the Commission cannot “reduce, impair, postpone, terminate, or otherwise adjust securitized surcharges.”<sup>24</sup> Kentucky Power also argued that the risk the securitized surcharge may be challenged may result in a higher risk profile of the bonds, possibly resulting in a higher risk premium.<sup>25</sup> As a result, Kentucky Power argued its customers might be disadvantaged as to the overall financial benefit of the transaction.<sup>26</sup> Kentucky Power noted that the Commission will be involved in the process and can monitor the budget throughout the process so the 120-day provision is unnecessary.<sup>27</sup> Kentucky Power requested that this provision be removed, specifically removal of all potential disallowance of costs post-closing.<sup>28</sup>

The Commission notes that the Financing Order does not allow for the Commission to make adjustments to the securitized surcharge for any such excess.<sup>29</sup> Ordering Paragraph 4 directs that any excess financing costs are to be “credit[ed] back to customers through the Securitized Bond Deferral Account” and expressly forbids any such excess to be used to adjust the securitized surcharge. Rather, as discussed above, the amounts deferred, if any, will only affect the amounts that Kentucky Power charges

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<sup>23</sup> Kentucky Power’s Motion for Rehearing at 9.

<sup>24</sup> Kentucky Power’s Motion for Rehearing at 8.

<sup>25</sup> Kentucky Power’s Motion for Rehearing at 9.

<sup>26</sup> Kentucky Power’s Motion for Rehearing at 9.

<sup>27</sup> Kentucky Power’s Motion for Rehearing at 9.

<sup>28</sup> Kentucky Power’s Motion for Rehearing at 10.

<sup>29</sup> Financing Order at 100.

for electric service, and will not affect the amounts recovered through the securitized surcharge. Thus, the requirement is not inconsistent with the requirements in KRS 278.678(8) that the Commission not “reduce, impair, postpone, terminate, or otherwise adjust securitized surcharges.”

#### Conditions Regarding Selection of Participants Will Increase Costs

Kentucky Power argued that certain conditions of the Financing Order increase costs to Kentucky Power customers.<sup>30</sup> Kentucky Power stated that, not only was the grant of equal rights to the Commission’s Designated Representative, advised by the Financial Advisor, in the selection of underwriters and underwriters’ counsel an example of how the Financing Order is contrary to Securitization Act, selection of underwriters and underwriters’ counsel could impact the overall costs of structuring, marketing, and pricing the securitized bonds. Specifically, Kentucky Power argued that it is critical to select underwriters that have experience working with Kentucky Power and its affiliates in prior securitization efforts and counsel that are compatible with Kentucky Power’s counsel to minimize delays, increase speed, and decrease overall cost.<sup>31</sup> Kentucky Power also argued that of great concern was the selection of its own securitization counsel; Kentucky Power has negotiated a fixed fee arrangement with its existing counsel, though unexpected additional costs resulting from Financial Advisor comments and changes to the proposed Financing Order are not covered by the fixed fee.<sup>32</sup> As to this issue, Kentucky Power requested that the Commission (1) eliminate the Commission’s, its

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<sup>30</sup> Kentucky Power’s Motion for Rehearing at 11.

<sup>31</sup> Kentucky Power’s Motion for Rehearing at 11–12.

<sup>32</sup> Kentucky Power’s Motion for Rehearing at 12.

Designated Representative's, and its Financial Advisor's control over the competitive selection process set forth in the Financing Order; (2) remove the competitive selection process for Kentucky Power's counsel; and (3) clarify the specific parameters that the process should include and consider.<sup>33</sup>

The Commission acknowledges that under certain circumstances transaction participants with a relationship with Kentucky Power may be more efficient in providing the services required to complete the transaction, but the opposite could also be true. Further, efficiencies identified by Kentucky Power should be reflected in those vendors' responses to the competitive selection process. As a result, the "more efficient" vendors should prevail in a competitive selection process if Kentucky Power's assertions regarding the savings they can achieve are accurate. If the savings are not reflected in responses to the competitive selection process, then the use of vendors familiar with Kentucky Power and its affiliates or that have worked with them in the past would not likely result in the savings alleged by Kentucky Power. Moreover, the Financing Order allows the Commission's Designated Representative, advised by the Financial Advisor, or the Commission itself, to authorize Kentucky Power to deviate from the competitive selection process if doing so will create the best value for customers.<sup>34</sup>

The process in the Financing Order should result in the lowest cost for Kentucky Power customers, which is the Commission's goal, because it generally requires a

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<sup>33</sup> Kentucky Power's Motion for Rehearing at 13.

<sup>34</sup> Financing Order at 108–110 ("A competitive process shall be used for selecting underwriters, underwriters' counsel, Kentucky Power's counsel, and other significant transaction participants whose fees will be paid from securitized bond proceeds or from the securitized surcharge unless the Commission's Designated Representative, advised by the Financial Advisor, determines that a competitive process should not be used in selecting particular transaction participants to create the best value for customers in implementing financing of the Project.").

competitive process, which generally should result in the lowest costs, but allows for deviations from the competitive process in situations, potentially like those alleged by Kentucky Power, in which the competitive process will not result in savings to customers. The alternative that appears to be proposed by Kentucky Power is that Kentucky Power have complete discretion over the selection and cost of transaction participants while Kentucky Power's customers ultimately bear those costs, which the Commission finds to be unreasonable. Thus, the Commission finds that Kentucky Power's request for rehearing regarding the conditions imposed on the selection of transaction participants should be denied.

#### Conditions Regarding Basic Transaction Documents Will Increase Costs

Kentucky Power speculated that the Commission's consent to basic transaction documents and amendments thereof could increase costs.<sup>35</sup> Kentucky Power stated that these rights go beyond what is normally granted to a state regulatory commission. Kentucky Power stated that unnecessary Commission involvement in non-substantive amendments may result in unnecessary costs.<sup>36</sup> Kentucky Power requested rehearing on the Consent and Default rights granted to the Commission in the Financing Order as the rights granted are outside of standard securitization practice, based on their perspective, and potentially have the effect of increasing costs to be borne by Kentucky Power's customers.<sup>37</sup>

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<sup>35</sup> Kentucky Power's Motion for Rehearing at 13–14.

<sup>36</sup> Kentucky Power's Motion for Rehearing at 13–14.

<sup>37</sup> Kentucky Power's Motion for Rehearing at 13–14.



Kentucky Power's assertions regarding the condition that the Commission provide consent to the Basic Transaction Documents and amendments thereof do not support granting rehearing. The Commission's consent rights are important to protect the interests of ratepayers. In fact, Kentucky Power acknowledges that such consent rights have been included in the transaction documents for securitized ratepayer-backed bond transactions in other states. Further, while Kentucky Power claims that such consent rights have been limited to amendments to transaction documents that affect costs, the Commission has no incentive to withhold consent for changes that will not affect customer costs. Kentucky Power has also not provided any evidence that the consent rights included as a condition in the Financing Order will increase costs. Thus, the Commission finds that Kentucky Power's request for rehearing regarding the conditions imposed on the transaction documents should be denied.

#### Extending Deadlines in the Financing Order

Ordering Paragraph 30 of the Financing Order ordered Kentucky Power within ten days after the issuance of the Financing Order to provide a proposed time and responsibilities schedule specifying key dates and milestones and where meetings may occur. On January 22, 2024, Kentucky Power filed a motion in which it indicated that it would be filing a motion for rehearing shortly and requesting to suspend the deadline for filing a proposed time and responsibilities schedule until a final order was issued regarding rehearing. On January 25, 2024, the Commission entered an Order granting Kentucky Power's motion.

In light of this Order denying Kentucky Power's request for rehearing, the Commission finds that a suspension of that deadline is no longer necessary. Further, in

light of its timely filed Motion for Rehearing of Financing Order, the Commission finds that Kentucky Power should be excused from failing to provide a proposed time and responsibilities schedule to the Commission within ten days after the issuance of the Financing Order. Rather, the Commission finds that Kentucky Power should be required to provide a proposed time and responsibilities schedule to the Commission within ten days after the service of this Order.

#### Meeting Notice

While reviewing Kentucky Power's motion for rehearing, the Commission determined that Ordering Paragraph 7 of the Financing Order and Appendix E to the Financing Order incorrectly in stated that "a meeting will be noticed for four (4) business days after pricing to afford this Commission an opportunity to review the proposed transaction." However, neither the Securitization Act nor other provisions of KRS Chapter 278 require a noticed meeting for the Commission to review the transaction. Further, the Financing Order does not contemplate a meeting of the Commission to review the proposed transaction after the pricing of securitized bonds. Rather, both the Financing Order and KRS 278.680(1) contemplate that the Commission will issue a disapproval order prior to noon on the fourth business day after the pricing of the securitized bonds. Thus, the Commission finds that the language in Ordering Paragraph 7 and Appendix E indicating that a meeting will be noticed should be struck from the Financing Order.

IT IS THEREFORE ORDERED that:

1. Kentucky Power's Motion for Hearing is denied.

2. Kentucky Power is excused from failing to provide a proposed time and responsibilities schedule to the Commission within ten days after the issuance of the Financing Order.

3. Within ten days after the date of this Order is served, Kentucky Power shall provide to the Commission a proposed time and responsibilities schedule specifying key dates and milestones and where meetings may occur.

4. The language of the first sentence of Ordering Paragraph 7 of the Financing Order underlined below shall be struck from the Order:

For each series of securitized bonds issued, Kentucky Power shall provide an Issuance Advice Letter to the Commission following the determination of the final terms of the series of securitized bonds no later than 5:00 pm Eastern Time one (1) business day after the pricing of the securitized bonds, at which time a meeting will be noticed for four (4) business days after pricing to afford this Commission an opportunity to review the proposed transaction.

5. The language struck from Ordering Paragraph 7 of the Financing Order shall be struck from any quote of that language on page 2 of Appendix E.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ENTERED  
FEB 19 2024 rcs  
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SERVICE COMMISSION

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