

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

This matter arises from Kentucky Power Company’s (Kentucky Power) application for a general rate adjustment based on a historic test period. Kentucky Power’s application was deemed filed as of July 14, 2023.¹ On July 20, 2023, the Commission issued an Order suspending Kentucky Power’s proposed rates for five months up to and including January 14, 2024, and establishing a procedural schedule.² The following parties were granted intervention in the matter: the Attorney General, by and through the Office of Rate Intervention,³ Kentucky Industrial Utilities Customers (KIUC),⁴ Walmart Inc.

¹ A deficiency letter was issued to Kentucky Power on July 5, 2023. Kentucky Power responded to the deficiency letter with a request for an Informal Conference (IC) with Commission Staff. Commission Staff conducted the IC on July 10, 2023, to discuss the deficiencies in the application and the methods to cure the deficiencies. Kentucky Power filed a formal response to the deficiency, specifically noting that the issue of notice would be remedied on July 14, 2023. On July 14, 2023, the application was deemed filed.

² Order (Ky. PSC July 20, 2023).

³ Order (Ky. PSC June 6, 2023).

⁴ Order (Ky. PSC June 20, 2023).

(Walmart);⁵ Mountain Association (MA), Appalachian Citizens Law Center (ACLC), Kentuckians for the Commonwealth (KFTC), and the Kentucky Solar Energy Society (KYSES) (collectively, Joint Intervenors);⁶ and SWVA Kentucky, LLC (SWVA).⁷

A Settlement was reached between all but two parties, SWVA and the Attorney General; however, those parties did not object to the agreement.⁸ The signatory parties agreed that Kentucky Power's electric retail revenues should be increased by \$74,666,028. This amount consisted of a base rate revenue reduction of \$19,269,699 from the \$93,935,727 requested in Kentucky Power's Application.⁹ An evidentiary hearing was held November 28, 2023 through November 30, 2023. Kentucky Power responded to post-hearing requests for information on December 15, 2023.¹⁰ In those responses, Kentucky Power confirmed that it would place rates in effect at the end of the suspension period.¹¹ On January 12, 2024, Kentucky Power filed a notice stating that it intended to place rates proposed in and, as a result of, the Settlement Agreement into effect for service rendered on and after January 15, 2024.¹²

⁵ Order (Ky. PSC Aug. 10, 2023).

⁶ Order (Ky. PSC Aug. 16, 2023).

⁷ Order (Ky. PSC Aug. 16, 2023).

⁸ Testimony of Brian West in Support of the Settlement Agreement, Exhibit BKW-1S (filed Nov. 20, 2023).

⁹ Kentucky Power's Motion to Approve Settlement, Settlement Testimony of Brian West, Exhibit BKW-1S (West Settlement Testimony) (filed Nov. 20, 2023) at 4.

¹⁰ Kentucky Power's Response to Commission Staff's Post-Hearing Request for Information (Staff's Post-Hearing Request) (filed Dec. 15, 2023).

¹¹ Staff's Post-Hearing Request, Item 1.

¹² Kentucky Power's Notice of Intent to Implement Interim Rates (filed Jan. 12, 2024) at 1–2.

KRS 278.190(2) allows the Commission to suspend a utility's proposed rates pending a hearing and decision on the rates for up to 5 months if a historical test period is used. "If the proceeding has not been concluded and an order made at the expiration of five (5) months . . . , the utility may place the proposed change of rate, charge, classification, or service in effect at the end of that period after notifying the commission, in writing, of its intention so to do."¹³ The Commission may require a utility that provides such notice to maintain records that will allow the utility, the Commission, or any customer to determine the amounts to be refunded, and to whom, in the event a refund is ordered upon final resolution of the case. Further, upon final resolution, the Commission may order a refund to the extent the rates approved in the final Order are lower than rates proposed by the utility and placed into effect pursuant to KRS 278.190(2).¹⁴

With its January 12, 2024 filing, Kentucky Power purported to provide the Commission notice pursuant to KRS 278.190(2) of its intent to place proposed rates into effect, subject to refund, on or after January 15, 2024. However, Kentucky Power's notice did not indicate that it intended to place the rates that it proposed in its application into effect. Kentucky Power's notice instead indicated its intent to implement rates consistent with those agreed to in the Settlement.

While the Commission understands why Kentucky Power would seek to place rates consistent with the Settlement into effect pending a final decision, doing so is inconsistent with KRS 278.190(2), which contemplates a utility proposing a schedule adjusting rates; the Commission suspending the proposed rates, if necessary, for a period

¹³ KRS 278.190(2).

¹⁴ KRS 278.190(2).

pending a final decision; and the utility placing the proposed rates into effect, subject to refund, at the end of the suspension period. Further, KRS 278.190(2) only permits a utility to place rates that have been proposed and suspended into effect pending a final decision after providing the Commission written notice of its intention to do so. Written notice to the Commission of Kentucky Power's intent to put rates consistent with those in the Settlement into effect does not satisfy that condition, because the Settlement rates are not the rates proposed pursuant to KRS Chapter 278 and suspended pursuant to KRS 278.190(2). Thus, the Commission finds that Kentucky Power's notice to the Commission is deficient pursuant to KRS 278.190(2) such that Kentucky has not satisfied the condition precedent necessary for it to place its proposed rates into effect subject to refund.

While the Commission intends to issue a final Order in this matter on January 19, 2024,¹⁵ the Commission notes that Kentucky Power may provide additional notice to satisfy KRS 278.190(2) and then place the proposed rates into effect, subject to refund, prior to the entry of the final order. If it provides such notice and places its proposed rates in effect subject to refund, the Commission finds that Kentucky Power should be required to maintain records that will allow it, the Commission, and any customer to determine the amounts to be refunded, and to whom, in the event a refund is ordered upon final resolution of the case.

IT IS THEREFORE ORDERED that,

1. Kentucky Power's has failed to satisfy the condition precedent necessary to place its proposed rates into effect subject to KRS 278.190(2).

¹⁵ See Order (Ky. PSC Jan. 11, 2024) at 4.

2. If Kentucky Power provides notice to the Commission of its intent to place its proposed rates into effect pending the final resolution of this matter pursuant to KRS 278.190(2), Kentucky Power shall maintain its records in such manner as will allow it, the Commission, or any customer to determine the amounts to be refunded, and to whom, in the event a refund is ordered upon final resolution of this matter.

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