

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC TARIFF FILING OF KENTUCKY	)	CASE NO.
POWER COMPANY TO UPDATE ITS PURCHASE	)	2023-00318
POWER ADJUSTMENT RATES	)	

ORDER

On July 5, 2024, Kentucky Power Company (Kentucky Power) filed a motion, pursuant to KRS 278.400, requesting reconsideration and clarification of portions of the Order entered June 14, 2024 (Final Order or June 14, 2024 Order), as described below. The Attorney General of the Commonwealth of Kentucky, through the Office of Rate Intervention, and Kentucky Industrial Utility Customers, Inc., the only intervenors in the matter, filed a response to the motion that they are not opposed to Kentucky Power's request.

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.

### MOTION

Kentucky Power seeks the rehearing to clarify three main points:

1. Characterization of Case No. 2023-00159<sup>3</sup> – Kentucky Power argued that the Commission's statements about the recovery of the Tariff P.P.A. Under-Recovery Regulatory Asset through securitization are inconsistent with previous findings.<sup>4</sup> Specifically, the first full paragraph on page 4 in the Background section of the Final Order in this case stated:

In Case No. 2023-00159, Kentucky Power requested that its cumulative under-recover regulatory asset for Tariff P.P.A., through May 2023, be part of the regulatory assets for which it sought securitization. Approval to seek securitization was granted.<sup>5</sup>

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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> Case No. 2023-00159, *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 Practices to Establish Regulatory Assets and Liabilities; (4) a Securitization Financing Order; and (5) All Other Required Approvals and Relief.*

<sup>4</sup> Kentucky Power's Motion for Rehearing at 9.

<sup>5</sup> Final Order (Ky. PSC June 14, 2024) Order at 4.

Kentucky Power argued that its request in Case No. 2023-00159 was actually to securitize the Tariff P.P.A. Under-Recovery Regulatory Asset balance as of the date of securitization.<sup>6</sup> The balance of the regulatory asset has continued to grow since May 2023.<sup>7</sup> For those reasons, Kentucky Power argued that the statement in the “Background” section of the Final Order in this case was inaccurate and inconsistent with the January 10, 2024 Order in Case No. 2023-00159 (Financing Order). Thus, Kentucky Power requested that the first full paragraph on page 4 of the Final Order in this matter be modified as follows:

In Case No. 2023-00159, Kentucky Power requested that its cumulative under-recovery regulatory asset for Tariff P.P.A., through May 2023 as of the date of issuance of the securitized bonds, be part of the regulatory assets for which it sought securitization. Approval to seek securitization was granted.<sup>8</sup>

As discussed in more detail below, Kentucky Power also interpreted the Commission’s Final Order in this matter as eliminating the true-up mechanism in Tariff P.P.A. and requested rehearing on that apparent elimination. Moreover, Kentucky Power requested that ordering paragraph 4 be modified as follows if the Commission does not grant Kentucky Power’s request to modify the Order with respect to the apparent elimination of the true-up mechanism in Tariff P.P.A.:

From the date of its next effective Tariff P.P.A. rates, Kentucky Power shall write off any remaining Tariff P.P.A. under/over recovery that will not be recovered through the Tariff P.P.A. rates or securitization.<sup>9</sup>

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<sup>6</sup> Kentucky Power’s Motion for Rehearing at 9.

<sup>7</sup> Kentucky Power’s Motion for Rehearing at 8.

<sup>8</sup> Kentucky Power’s Motion for Rehearing at 9.

<sup>9</sup> Kentucky Power’s Motion for Rehearing at 10.

2. Historical calculation of Tariff P.P.A. – Kentucky Power asserted that the factual findings regarding the calculation of the Tariff P.P.A. rate and the true-up mechanism are incorrect and not supported by record evidence.<sup>10</sup> Kentucky Power requested the Commission correct these inaccuracies to reflect the proper calculation method and the inclusion of all incurred costs. Kentucky Power argued that the Tariff P.P.A. annual filing “essentially establishes reasonable proxy rates for the period the rate is to be in effect” and that the current true-up mechanism “does not result in collection of actual costs authorized for recovery.”<sup>11</sup> Kentucky Power also argued that it “used estimated revenues *and* expenses” to calculate the Tariff P.P.A. rates.<sup>12</sup>

3. Elimination of the True-Up Mechanism – Kentucky Power argued that the Final Order effectively eliminates the true-up mechanism for Tariff P.P.A. by requiring Kentucky Power to write off the portion of the over- or under-recovery from the previous year that will not be recovered through Tariff P.P.A. when Kentucky Power makes its annual filing.<sup>13</sup> Kentucky Power argued that it understands the write off to mean the over- or under-recovery regulatory liability/asset from the previous year, thus eliminating the true-up mechanism.<sup>14</sup>

4. Miscellaneous Issues – In addition, Kentucky Power also argued that the Final Order was flawed because of alleged legal inconsistencies and violation of federal law.

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

<sup>11</sup> Kentucky Power’s Motion for Rehearing at 4.

<sup>12</sup> Kentucky Power’s Motion for Rehearing at 10.

<sup>13</sup> Kentucky Power’s Motion for Rehearing at 1.

<sup>14</sup> Kentucky Power’s Motion for Rehearing at 12.

Legal Inconsistencies: Kentucky Power contended that the Commission's modifications to the Tariff P.P.A. rate calculation are inconsistent with Kentucky law. Kentucky Power argued that the Final Order disallows utility expenses without a reasoned explanation, fundamentally alters the Tariff P.P.A. by eliminating the true-up mechanism without notice, violates the filed rate doctrine and the rule against retroactive ratemaking.<sup>15</sup>

Federal Law Violations: Kentucky Power claimed that the Final Order violates federal law by trapping the Federal Energy Regulatory Commission (FERC) jurisdictional costs, which are required to be passed through to retail consumers. Kentucky Power argued that under the Federal Power Act, the Commission cannot second-guess the reasonableness of the FERC-approved costs and must allow their recovery.<sup>16</sup> Kentucky Power argued that the directive to write off under-recovered costs conflicts with federal preemption principles and the Supremacy Clause.<sup>17</sup> Kentucky Power asserted that the modifications in the Final Order unlawfully prevent the recovery of over \$10 million in prudently incurred, FERC-approved costs.<sup>18</sup>

Kentucky Power requested an expedited rehearing to address these issues, correct material errors, and ensure the recovery of all authorized costs through the Tariff P.P.A. rates.<sup>19</sup> Kentucky Power did not request an order on rehearing by a certain date, however it will file the 2024 Tariff P.P.A. update by August 15, 2024.

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<sup>15</sup> Kentucky Power's Motion for Rehearing at 14-16.

<sup>16</sup> Kentucky Power's Motion for Rehearing at 17.

<sup>17</sup> Kentucky Power's Motion for Rehearing at 16.

<sup>18</sup> Kentucky Power's Motion for Rehearing at 16.

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

## DISCUSSION AND FINDINGS

1. Characterization of Case No. 2023-00159 – The Commission notes that the Final Order in this matter was not intended to and should not be construed as modifying the Financing Order in Case No. 2023-00159. Nonetheless, the first full paragraph on page 4 of the Final Order about which Kentucky Power complains could be construed as interpreting the Financing Order in a manner that is inconsistent with the language of the Financing Order, and therefore, the Commission finds that it should be modified, in part, as proposed by Kentucky Power. However, to avoid creating additional confusion between the orders in this case and the Financing Order, the Commission finds that statements describing the amounts to be securitized should be limited to the extent possible and that the language of the Financing Order should control to the extent there is a conflict regarding the amounts to be securitized. Thus, the Commission finds that first full paragraph on page 4 of the Final Order should be modified as follows:<sup>20</sup>

In Case No. 2023-00159, Kentucky Power requested that its ~~cumulative~~under-recovery regulatory asset for Tariff P.P.A., ~~through May 2023~~, be part of the regulatory assets for which it sought securitization. Approval to seek securitization was granted.

Further, while the Commission is granting Kentucky Power's rehearing request with respect to the true-up mechanism to take additional evidence as discussed in more detail below, the Commission is implementing the Final Order during the pendency of the review. To avoid the possibility that either the Final Order in this case or this rehearing order be interpreted as modifying the Financing Order in Case No. 2023-00159, which is

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<sup>20</sup> Underlines reflect additions and strikethroughs reflect deletions.

not the Commission's intent, the Commission finds that the ordering paragraph 4 should be modified as proposed by Kentucky Power.

2. Historical calculation of Tariff P.P.A. – The Commission finds that rehearing should be granted on this issue to further develop the record and request clarification from Kentucky Power on its understanding of the issue. The Commission notes that Kentucky Power's explanation of the Tariff P.P.A. rate calculation, true-up mechanism, and under-/over-recovery regulatory asset/liability are inconsistent with past administration of historical period rate riders, such as Tariff P.P.A. Granting rehearing will allow the Commission to address this issue more fully and gain a better understanding of Kentucky Power's interpretation of Tariff P.P.A., namely the statement that expenses are estimated for a historical period rider filed after the costs are known.

3. Elimination of the True-Up Mechanism – The Commission finds that rehearing should be granted on this issue to further develop the record and request clarification from Kentucky Power on its understanding of the issue. The Commission notes that the purpose of the Final Order was not to eliminate the true-up mechanism, but rather to align the balance of the regulatory asset/liability with the true-up used in the rider calculation.

While the rehearing in this case is pending, Kentucky Power shall calculate the Tariff P.P.A. rates as ordered in the Final Order, including using forecasted billing determinants, which Kentucky Power did not contest.

IT IS THEREFORE ORDERED that:

1. Kentucky Power's motion for rehearing is granted in part and denied in part with respect to the issues discussed in the section regarding the Characterization of Case No. 2023-00159 as discussed above.

2. Kentucky Power's motion for rehearing is granted with respect to all other issues to further develop the record.

3. The first full paragraph on page 4 of the June 14, 2024 Order is vacated and replaced with the following:

In Case No. 2023-00159, Kentucky Power requested that its under-recovery regulatory asset for Tariff P.P.A., be part of the regulatory assets for which it sought securitization. Approval to seek securitization was granted.

4. Ordering paragraph 4 of the June 14, 2024 Order is vacated and replaced with the following:

From the date of its next effective Tariff P.P.A. rates, Kentucky Power shall write off any remaining Tariff P.P.A. under/over recovery that will not be recovered through the Tariff P.P.A. rates or securitization.

5. A procedural schedule Order to be issued at a later date shall be followed for the processing of this matter on rehearing.

6. The remainder of the June 14, 2024 Order not in conflict with this Order remains in effect.

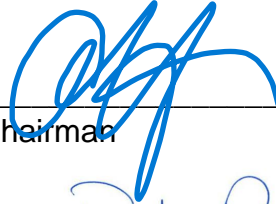


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JUL 25 2024  
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KENTUCKY PUBLIC  
SERVICE COMMISSION

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