

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

PUBLIC SERVICE
COMMISSION

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| THE APPLICATION OF KENTUCKY POWER |) | |
| COMPANY FOR APPROVAL OF AN |) | |
| AMENDED COMPLIANCE PLAN FOR |) | |
| PURPOSES OF RECOVERING ADDITIONAL |) | CASE NO. 2006-00307 |
| COSTS OF POLLUTION CONTROL FACILITIES |) | |
| AND TO AMEND ITS ENVIRONMENTAL |) | |
| COST RECOVERY SURCHARGE TARIFF |) | |

ATTORNEY GENERAL'S POST HEARING BRIEF

Kentucky Power Company d/b/a American Electric Power seeks surcharge recovery under KRS 278.183 of that portion of the costs for environmental compliance actions taken by Ohio Power Company and Indiana & Michigan on their generating plants that are included in the capacity settlement charge assessed to Kentucky Power Company under the AEP Interconnection Agreement. Under KRS 278.183, surcharge recovery by Kentucky Power Company of costs incurred by Ohio Power Company and Indiana & Michigan for environmental compliance actions on their plants is not authorized because the costs are not Kentucky Power's cost of compliance. This issue was argued at length before the Commission in Case No. 2005-00068 and is now pending on appeal before the Court of Appeals¹ with reference to whether KRS 278.183 allows surcharge recovery of that portion of the capacity settlement charge assessed to Kentucky Power Company that can be traced to other like other like compliance costs of Ohio Power Company and Indiana & Michigan. The Attorney General continues to object to

¹ See, *Commonwealth of Kentucky ex rel. Gregory D. Stumbo, Attorney General v. Kentucky Public Service Commission*, Case No 2006-CA-002349 and *Kentucky Industrial Utility Customers, Inc. v. Kentucky Public Service Commission*, Case No. 2006-CA-002350.

the recovery of such costs via surcharge as that recovery is not authorized by KRS 278.183. The costs are subject to recovery in base rates by way of a general rate case, but are not subject to specialized beneficial surcharge recovery under KRS 278.183. Therefore, the Commission is urged to deny surcharge recovery to the costs contained in this application.

Respectfully submitted

GREGORY D. STUMBO
ATTORNEY GENERAL


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NOTICE OF FILING AND CERTIFICATION OF SERVICE

I hereby give notice that I have filed the original and ten true copies of the foregoing with the Executive Director of the Kentucky Public Service Commission at 211 Sower Boulevard, Frankfort, Kentucky, 40601 this the 21st day of December, 2006 and certify that this same day I have served the parties by mailing a true copy, postage prepaid, to the following:

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