COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF LOUISVILLE GAS AND ELECTRIC	**)**	**CASE NO.**
COMPANY FOR AN ADJUSTMENT OF ITS	**)**	**2018-00295**
ELECTRIC AND GAS RATES	**)**	

<u>DIRECT TESTIMONY OF CATHY HINKO, EXECUTIVE DIRECTOR, METROPOLITAN HOUSING COALITION</u>

Tom FitzGerald
Kentucky Resources Council, Inc.
P.O. Box 1070
Frankfort, KY 40602
(502) 875-2428
FitzKRC@aol.com

Counsel for Intervenor
Metropolitan Housing Coalition

January 16, 2019

Q. Please state your name, business address, and affiliation.

A. Cathy Hinko**,** P.O. Box 4533, Louisville, KY 40204. I am the Executive Director of the Metropolitan Housing Coalition (MHC).

Q. On whose behalf are you testifying today?

A. My testimony is filed on behalf of the MHC.

Q. What is the Metropolitan Housing Coalition?

A. MHC is a nonprofit, nonpartisan membership organization incorporated under the laws of the Commonwealth of Kentucky in 1989 and comprised of over 300 organizational and individual members. MHC members include representatives of low-income households, private and non-profit housing developers, service providers, financial institutions, faith-based and neighborhood groups, as well as other advocacy groups, advocating in a united voice for fair, safe, and affordable housing in the Metro Louisville area. For three decades, MHC has utilized the public and private resources of the Metro Louisville community to provide equitable, accessible housing choices for all persons through advocacy, public education, and through support for affordable housing providers.

Q. Please briefly describe your qualifications.

A. Since obtaining my law degree in 1979, my career has focused on affordable and fair housing. I left the practice of law to manage the Section 8 Housing Certificate and then Voucher Programs for the city of Louisville and Jefferson County, subsequently becoming Executive Director of the Housing Authority of Jefferson County. During that tenure, I became involved with issues of affordable utilities for low-income people and was on the board of the Affordable Energy Corporation (AEC) as they secured grants to test a modified Percentage of Income Plan. I remain on AEC's board through the present day and AEC's operation of the All Seasons Assurance Program funded through a meter charge approved by the Public Service Commission.

In 2005, I became director of MHC, an education and advocacy organization on issues of fair and affordable housing which also operates a lending pool for use by non-profit developers creating or rehabilitating affordable housing. In 2008, MHC published a paper that focused on utility costs as part of affordable housing. In 2013, MHC published *How to Lower Utility Costs: A Guide to Louisville Programs for Energy Efficient Improvements and Resources to Help Pay a Utility Bill*. This guide to resources also included a comparison of utility costs in Louisville of the years 1998, 2008, and 2013. I worked with LG&E staff to update that resource. I have been the lead MHC staff member in advocating for the recommendations of that report. My work includes analyzing the policies of state and local agencies providing service or financial support for utility costs and serving on committees convened by LG&E on both community input and on energy efficiency.

MHC operates a lending pool of about $800,000 that is for use by non-profit developers in creating and rehabilitating units that are affordable to low-income households, with an emphasis on those below 60% of median income.

All reports in which MHC was a co-author are on the MHC website: www.metropolitanhousing.org.

Q. What is the purpose of your testimony today?

A. I am testifying on behalf of MHC in the case on the proposed change to shift cost recovery into the meter charge and lowering usage charges, specifically on whether the proposal has a disparate negative impact by race or ethnicity or national origin, and whether the impact of lowering the electric usage charge would affect non-profit affordable housing providers. MHC has an interest in maintaining affordability in the cost of utilities. Of equal importance to MHC is that the funds collected from low-income neighborhoods and/or neighborhoods with concentrations of people in protected categories (as defined for fair housing) are returned to those neighborhoods equitably.

Q. How important are energy costs for low-income households?

A. MHC serves on the board of the All Seasons Assurance Plan, which is a year-round program which calculates utility assistance so that a household pays about nine (9) percent of their income every month for utilities by having the program pay more in high energy usage months and less in low energy usage months. The consumers are sent a survey which they are asked to send back, but it is not a requirement. There is an open-ended question of how the program affects them and rather than me tell you. Many talk about improved access to health care or better food or improving their home or being able to budget. Clearly the affordability of utility service has a major impact on low-and fixed-income customer's lives.

Q. What disparate impact by race, and disability will be caused by increasing the meter charge instead of increasing cost recovery through usage charges?

A. Since forty-five (45) percent of Kentucky's blacks/African Americans live in Louisville, any changes in the structure and rate design of utilities affecting Louisville must be viewed through a lens of racial impact when compared to the rest of the state. Since the poverty rate for black/African American households is 30.2 percent while the poverty rate for whites is 11.6 percent, any change that affects Metro Louisville's residential customers is, perforce, required to be viewed as how it impacts black/African Americans as well as Latino population. Data cited is from the American Communities Survey of the United States Census Bureau, the 2012-2016 5-year estimates.

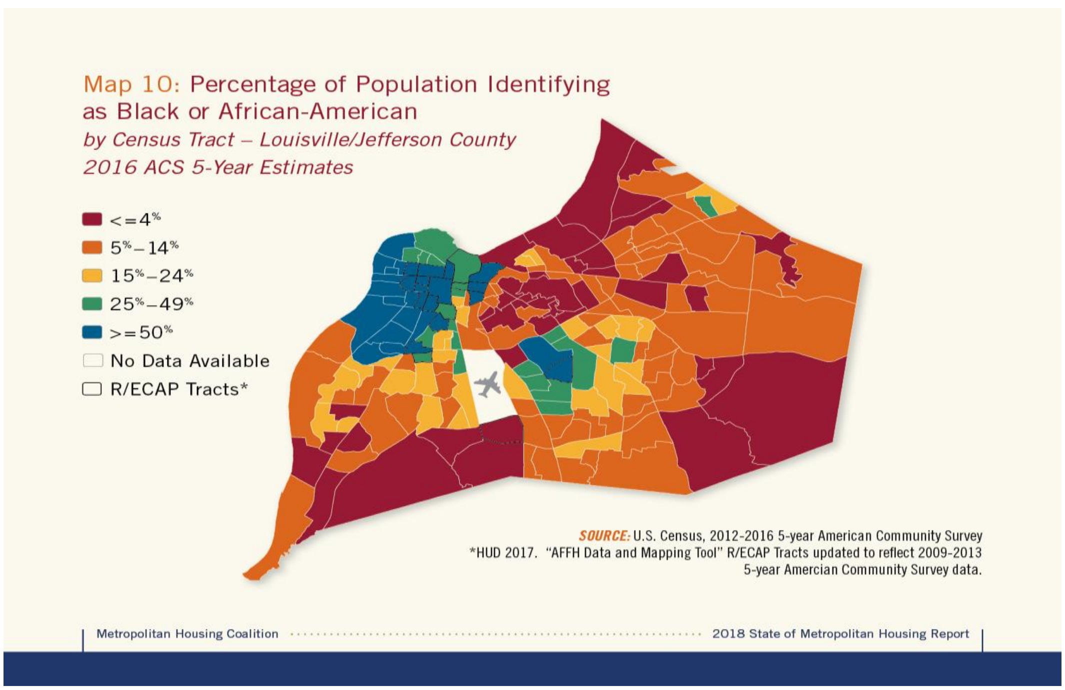
Due to higher poverty levels in several classes protected under the United States Fair Housing Act, combined with segregation by poverty, by being in a protected class and by living in high density areas, these classes of ratepayers pay for work in areas that do not proportionately include people in these classes, and have a disparate and deleterious impact on these classes. An increase in inelastic meter charges impacts these individuals in protected classes more than those who are not in these classes.

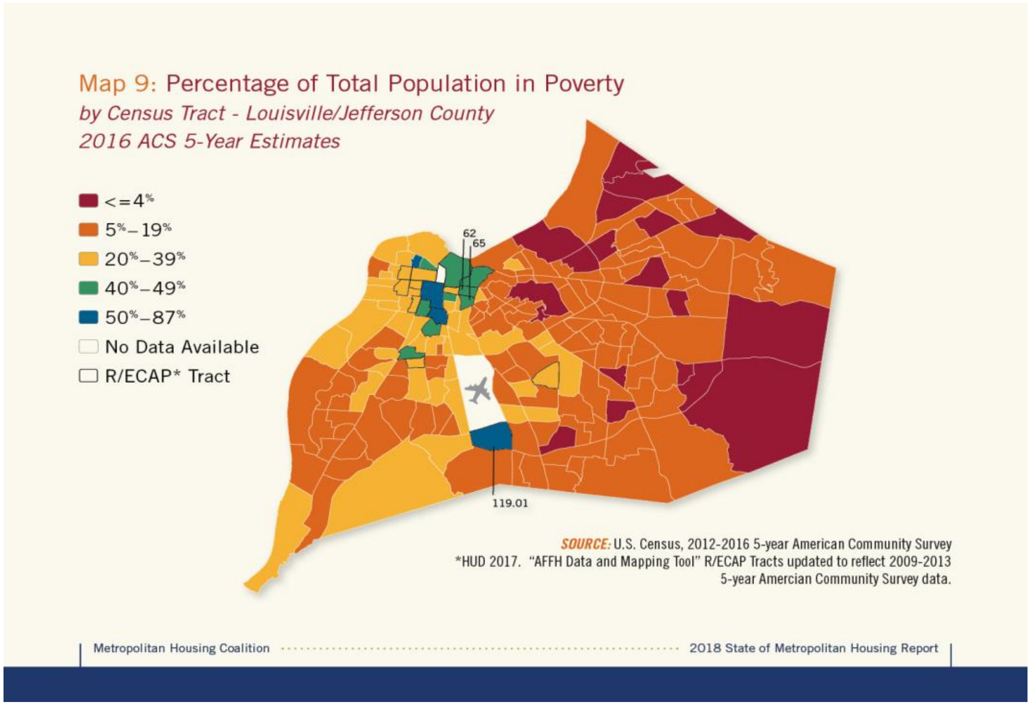
A 1998 national study showed that the average household spends only about two (2) percent of their income on electricity whereas low-income households spend about eight (8) percent of their total income on electricity. Very low-income households (those living at less than half of the federal poverty level) spend twenty-three (23) percent. Oppenheim, J.(1998). *Access to Utility Service*, National Consumer Law Center, 1998 Supplement, pp.30-31.

Census tracts with the highest levels of poverty, (those where one half to nearly ninety percent of the population live in poverty), are all in West Louisville. This is important in determining the impact on the populations when an inelastic meter fee increase is proposed. Louisville also has, as defined by the United States Department of Housing and Urban Development, census tracts that are identified as racially/ethnically concentrated areas of poverty ("R/ECAPSs").

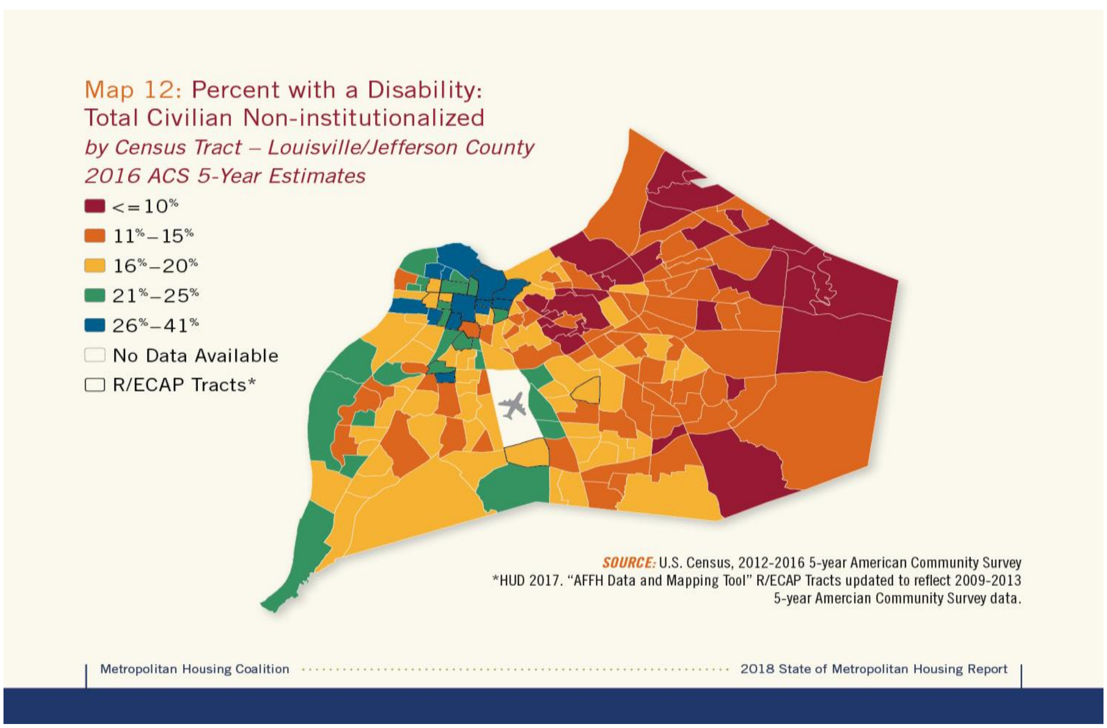
When one looks at wages, as opposed to median income from all sources, 39.34 percent of workers, full and part-time, in the Louisville Metro Statistical Area did not earn a wage that would allow them to rent a two-bedroom unit with utilities in the lower 40 percent of cost. (Rent level is from the U.S. Department of Housing and Urban Development, workforce data is from the U.S. Bureau of Labor Statistics, Occupational Statistics (OES) Survey as reported in the *2018 State of Metropolitan Housing Report*, Metropolitan Housing Coalition). Persons with disabilities are also over-represented in these areas as well, and experience poverty especially if they are over 65 and disabled, which makes the chance of increasing income very difficult. Also concentrated in these areas are female headed households with minor children

The following maps are from the *2018 State of Metropolitan Housing Report*, Metropolitan Housing Coalition.

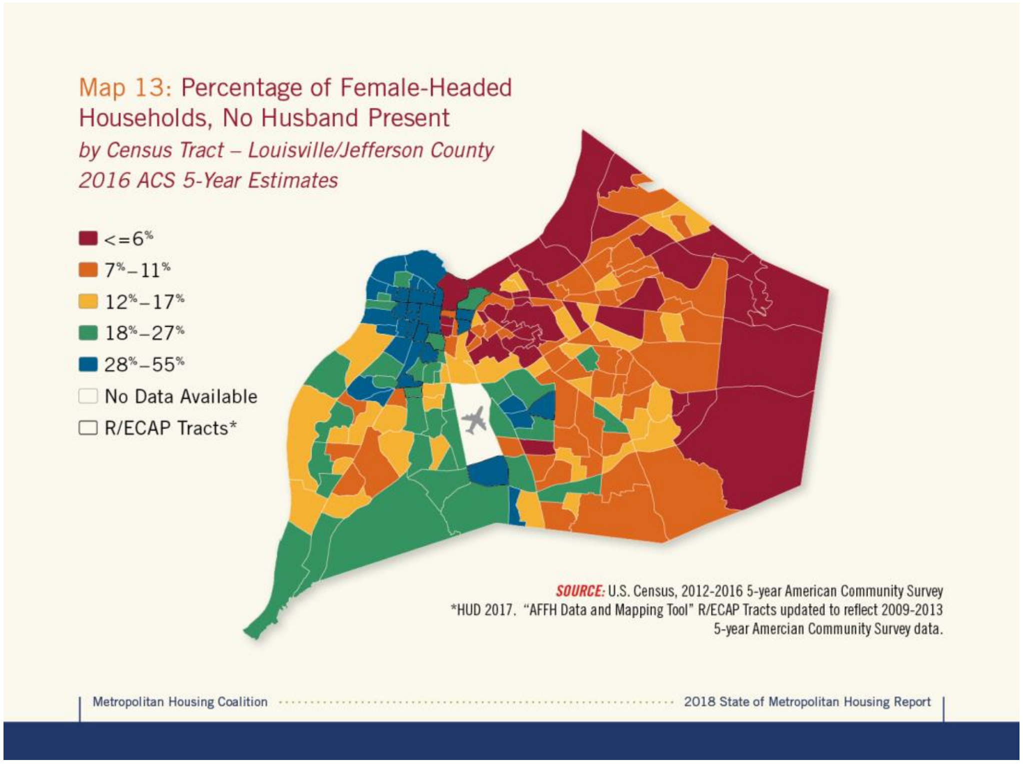




Map 9: Percentage of Total Population in Poverty
by Census Tract - Louisville/Jefferson County
2016 ACS 5-Year Estimates
<=4%
5%–19%
20%–39%
40%–49%
50%–87%
No Data Available
R/ECAP* Tract
62
65
119.01
SOURCE: U.S. Census, 2012-2016 5-year American Community Survey
*HUD 2017. "AFFH Data and Mapping Tool" R/ECAP Tracts updated to reflect 2009-2013
5-year Amercian Community Survey data.
Metropolitan Housing Coalition
2018 State of Metropolitan Housing Report

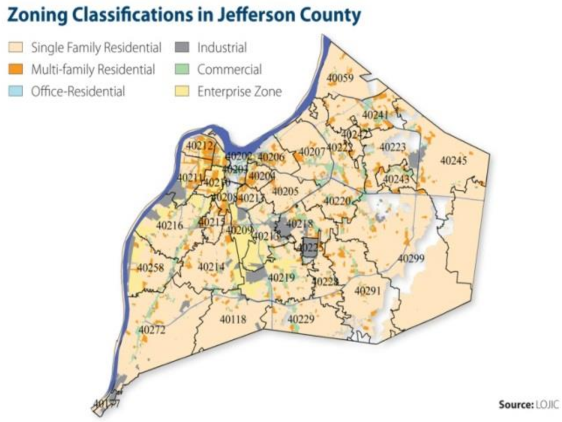


Map 12: Percent with a Disability:
Total Civilian Non-institutionalized
by Census Tract – Louisville/Jefferson County
2016 ACS 5-Year Estimates
<=10%
11%–15%
16%–20%
21%–25%
26%–41%
No Data Available
R/ECAP Tracts*
SOURCE: U.S. Census, 2012-2016 5-year American Community Survey
*HUD 2017. "AFFH Data and Mapping Tool" R/ECAP Tracts updated to reflect 2009-2013
5-year Amercian Community Survey data.
Metropolitan Housing Coalition
2018 State of Metropolitan Housing Report

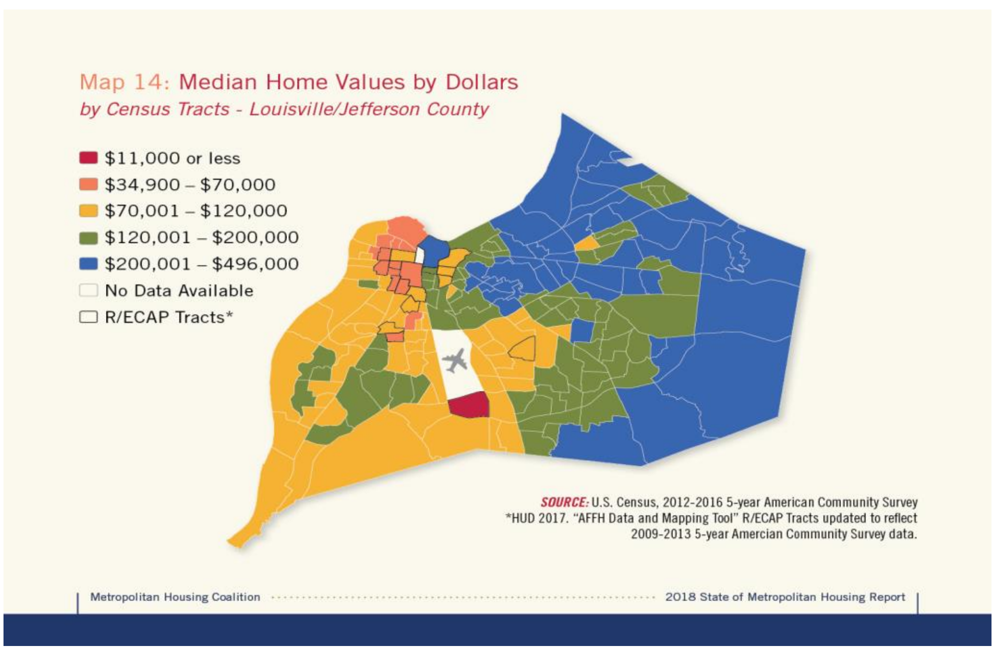


As the maps show, there is severe segregation, and as the lines around the census tracts show, the density of the neighborhoods that are disproportionately populated with households in protected classes is much higher than white neighborhoods. So collection of a meter charges are higher in these neighborhoods, yet LG&E has taken no steps to understand if they are charging people in protected classes to do work in areas that are populated with people who are white and affluent.

However, not knowing does not mean that this discrimination is not taking place. Since all the maps and charts are available to LG&E, it appears that some of the ignorance is deliberate. However, the responsibility to apply a racially-neutral policy should be mandatory.



The zoning map above is from the Louisville Metro Department of Planning and Design, (2013). Neighborhoods that have large numbers of multi-family housing tend to be low-income and are not only racially concentrated, but are also concentrated by people in other protected classes. Since these neighborhoods have smaller lot sizes, they also are higher concentrations of residential users, each paying for utilities.



Areas with large tracts of land with few meters are in areas 98% white and more affluent. The density of meters are in areas that are black and low-income. Increasing meter charges by shifting more cost recovery from volumetric rates disproportionately impacts these classes in a manner that violates fair housing mandates.

Q. **How does the current and proposed changes to electricity rates and ability to use energy credit on another property affect use of solar energy?**

MHC has a loan pool for non-profit housing developers (including rehabilitation work as well as new construction) and MHC has several non-profit developer members as this community is critical to providing affordable housing for those at or below 80% of median income and more particularly, below 60% of median income.

At least one non-profit housing developer was not able to install as many panels for solar energy because there is no ability to transfer any credit from one development to another and the energy produced would have exceeded usage. Although this would be a good source of energy, it became unaffordable to use solar energy to its full potential. Currently this developer has the partial solar energy panels installed, and shifting cost recovery to meter charges while reducing KwH lower cost would negatively impact this developer and others similarly situated by lengthening the amount of time needed to recover the cost of installation and maintenance.

Q. How does a switch to an inelastic meter charge increase and a decrease in usage charge impact behavior for savings?

LG&E has used quite a large amount of Demand Side Management funds collected from residential customers based on the premise that people will change electricity and natural gas usage behavior to save money. Yet now they undercut that premise by lowering the per KwH and the CCF.

Q. The Public Service Commission has recently noted in an Order entered in Case No. 2018-00358, that "affordability is not a factor that the Commission can consider because KRS 278.170(1) prohibits rates that establish an unreasonable preference between classes of service for doing a like service under the same or substantially the same conditions." Do you agree with this statement?

A. No. Affordability of rates within a customer class is a legitimate concern in a rate case, as the Commission has acknowledged in the past. Both the Commission and Kentucky courts have previously recognized affordability as squarely within the range of Commission considerations in reviewing proposed rate adjustments. For example, in Case No. 2010-00036, the Commission noted in response to intervenor Community Action Council's concerns regarding the rate design for Kentucky American Water Company, that "[t]he Commission recognizes that a significant portion of Kentucky-American's customers have annual incomes that are at or below the Federal Poverty Guideline. We further recognize that the approved rate adjustment will more adversely affect these customers than those with higher annual incomes. CAC has presented several proposals to provide some relief to the customers. Having carefully considered each of these proposals, we find that each should be implemented or given further study and consideration." Had the Commission not believed that affordability of rates for those within the residential customer class who were lower-income, it would not have so responded.

That affordability of proposed rates is a matter that is squarely within the ambit of Commission considerations has been acknowledged by Kentucky courts. In *National–Southwire Aluminum Co. v. Big Rivers Elec. Corp.*, 785 S.W.2d 503 (Ky.App.1990), the Court of Appeals upheld the Commission's consideration of affordability when it approved variable rates. In *Kentucky Industrial Utility Customers, Inc. v. Kentucky Pub. Serv. Comm'n*, 504 S.W.3d 695 (Ky. App. 2016), the Court of Appeals found the Commission's approval of a renewable energy production agreement to be unreasonable because it **failed** to consider ". . . the reasonableness and fairness of the substantial rate increase Kentucky Power's customers are being asked to bear over two decades for an additional 3% increased energy reserve." *Id.* at 708. While the [agreement] may have met the goals of KRS 154.27-020(2), nonetheless ". . . [f]airness, justness and reasonableness remain the determinative considerations." *Id.* at 707. In overruling the Commission's approval, the Court of Appeals further noted that "Kentucky Power, a retail electric supplier, has the 'exclusive right to furnish retail electric service to all electric-consuming facilities located within its certified territory[.]' KRS 278.018. This right strips consumers of the right to price shop for the most affordable electric rates. Consumers of public utilities must rely on the Commission to protect them from unreasonable and unfair rates. Because utilities are allowed to charge consumers only 'fair, just, and reasonable rates' under KRS 278.030(1), the [Commission] must ensure that utility rates are fair, just, and reasonable to discharge its duty under KRS 278.040 to ensure that utilities comply with state law." *Id.* at 705.

The Court of Appeals made clear that the reasonableness of costs as it relates to the consumer -- *affordability* – is a key factor the Commission *must* take into consideration when ruling upon whether rates are fair, just and reasonable. In fact, in coming to its conclusion, the Court took notice that customers residing in the twenty counties comprising KPCo's service territory live either at or below the poverty line, and that the costs at issue in that case would cause economic harm to the service territory. The Court thus concluded that, "[i]n no way, shape or form can we accept that the General Assembly intended the citizens of this Commonwealth to shoulder this type of burden. Given the facts, we must conclude that it was unreasonable for the Commission to approve Kentucky Power's application." The Court of Appeals explained further that the Commission is charged with insuring that the "conflicting interests of all parties concerned with utility rates are fairly balanced" by the Commission, and that the failure to have done so represented a "complete abdication of its statutory responsibility[.]"

Finally, the U.S. Supreme Court has also addressed the need to consider affordability in setting rates in *Federal Power Comm'n v. Hope Nat. Gas Co*., 320 U.S. 591, 603 (1944), where the Court noted that in the ratemaking process, "the fixing of 'just and reasonable' rates, involves a balancing of the investor and the consumer interests." It is appropriate and indeed crucial that the Commission consider "affordability" from the perspective of vulnerable ratepayers in determining whether the rate design and cost allocations are fair, just, and reasonable. Neither KRS 278.030(3) and KRS 278.170(1) bar the Commission from considering the disproportionate impacts of rate adjustments and rate design changes within a class of customers. Affordability is a key consideration in determining whether rates are fair, just, and reasonable, and as Kentucky courts have noted in approving adjustments to industrial rates intended to attract new economic development, only "unreasonable" preferences run afoul of KRS 278.170(1), so that reasonable distinctions intended to address affordability for our most vulnerable ratepayers are not prohibited *per se*, nor is the Commission prohibited from considering affordability when reviewing proposed changes in rates and design of rates. See: *Public Service Commission of Kentucky v. Commonwealth,* 320 S.W.3d 660 (Ky. 2010) approving EDR rates allowing reduced rates within a customer class.

Q. Does that conclude your testimony?

A. Yes.

Respectfully submitted,

Tom FitzGerald
Kentucky Resources Council, Inc.
P.O. Box 1070
Frankfort, KY 40602
(502) 875-2428
FitzKRC@aol.com

Counsel for Intervenor Metropolitan Housing Coalition

CERTIFICATE OF SERVICE

This is to certify that electronic version of the Direct Testimony of Cathy Hinko, is a true and accurate copy of the same document being filed in paper medium; that the electronic filing has been transmitted to the Commission on January 16, 2019; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that an original and one copy in paper medium of the Direct Testimony of Cathy Hinko, Executive Director, Metropolitan Housing Coalition will be filed with the Commission within two days of January 16, 2019.

Tom FitzGerald