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 Practices To Establish Regulatory Assets And Liabilities; (4) Approval Of A Certificate Of Public Convenience And Necessity; And (5) All Other Required Approvals And Relief	)	Case No. 2020-00174

REPLY OF KENTUCKY POWER COMPANY IN SUPPORT OF ITS MOTION FOR REHEARING

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TABLE OF CONTENTS

Kentucky Power Company states for its reply in support of its motion for rehearing:

A. The 13th-Hour Effort By The Attorney General and KIUC To Reserve Yet-to-Be Identified Issues Is Contrary To KRS 278.400 And Commission Precedent.

The Attorney General and KIUC ("AG/KIUC") in their response "request that if the Company is granted rehearing on issues that could potentially increase the revenue requirement that they be presented the opportunity to litigate corresponding reductions."[1] If, as AG/KIUC contend, they believed "the record contains other substantial evidence upon which the Commission could have made additional adjustments and findings to reduce further the revenue requirement" they were free to seek rehearing within the 20 days provided by statute.[2] AG/KIUC having elected not to do so on or before the 20th day following the Commission's January 13, 2021 Order (February 2, 2021), the Commission lacks the authority to extend the 20-day statutory period for seeking rehearing of the Order.[3] Certainly, nothing in KRS 278.400 carves out an exception from the unambiguous 20-day statutory period for seeking rehearing where the purported purpose is to offset revenue increases required by a timely motion for rehearing. Moreover, just as in the case of an appeal, there is no inherent right of rehearing in the absence of a statute.[4] Rehearing, like an

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[1] Attorney General and KIUC's Response to Kentucky Power Company's Motion For Rehearing, *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 Practices To Establish Regulatory Assets And Liabilities; (4) Approval Of A Certificate Of Public Convenience And Necessity, And (5) All Other Required Approvals And Relief*, Case No. 2020-00174 (Ky. P.S.C. Filed February 9, 2021) ("AG/KIUC Response").

[2] KRS 278.400 ("any party to the proceeds may, within twenty (20) days after the service of the order, apply for a hearing with respect to any of the matters determined.").

[3] *Appalachian Racing, LLC v. Family Trust Found. of Ky., Inc.*, 423 S.W.3d 726, 739 (Ky. 2014) ("An administrative agency 'cannot by its rules and regulations amend, amend, alter, or enlarge the terms of legislative enactment.'") quoting *Camera Center, Inc. v. Revenue Cabinet*, 34 S.W.3d 39, 41 (Ky. 2000).

[4] *Hennessy v. Bischoff*, 240 S.W2d 71, 73 (Ky. 1951) ("[I]n the absence of statutory authority an administrative agency cannot set up a rehearing procedure, or at least cannot, by permitting applications for rehearing, extend the time for appeal.").

appeal, is a matter of legislative grace, and statutes granting rehearing, just like statutes providing appeals,[5] must be strictly construed.

AG/KIUC cite to the Commission's February 27, 2018 Order granting rehearing in Case No. 2017-00179 on KIUC's timely motion as support for their belated and contingent request for rehearing. But the Commission's Order in that case never holds that a party who failed to file a timely motion for rehearing may piggyback on another party's timely motion to raise "corresponding but related issues." Nor was such a situation presented in that proceeding, as KIUC's motion for rehearing was timely filed.

AG/KIUC's untimely effort to raise their yet to be identified issues on rehearing fails for two more reasons. First, by making their motion contingent on the Commission's grant of rehearing to Kentucky Power, AG/KIUC in effect are seeking "rehearing on rehearing." As the Commission previously explained on at least two occasions "KRS 278.400 does not authorize the filing of a 'rehearing on a rehearing.'"[6] In addition, the failure of AG/KIUC to identify the issues they might raise on rehearing is contrary to the express requirements of the statute.[7]

AG/KIUC are free to argue contrary to Kentucky Power's request for rehearing. There nevertheless simply is no basis for AG/KIUC's effort in contravention to the express language of KRS 278.400 to bootstrap their untimely motion for rehearing, with respect to grounds yet-to-be-specified, onto the Company's pending motion.

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[5] *Hutchins v. General Electric Co.*, 190 S.W.3d 333, 336-337 (Ky. 2006) ("The right to appeal the decision of an administrative agency to a court is a matter of legislative grace; therefore, the statutory conditions for invoking the power of the court to hear such an appeal are strictly construed.").

[6] Order, *In the Matter of: An Investigation Of the Sources Supply And Future Demand Of Kentucky-American Water Company*, Case No. 93-00434 at 5 (Ky. P.S.C. September 29, 1997) citing Order, *In the Matter of: An Adjustment Of The Rates, Inc.*, Case No. 10201 at 2 (Ky. P.S.C. September 26, 1989).

[7] Employing the mandatory "shall," the statute provides that a motion for rehearing "shall specify the matters on which a rehearing is sought." KRS 278.400. *See also*, KRS 278.400(39) ("'Shall' is mandatory."); *Travelers Indem. Co. v. Armstrong*, 565 S.W.3d 550, 561 (Ky. 2018) ("what is important here is the mandatory ***shall***.") (emphasis in original).

B. AG/KIUC Misapprehend Both The Company's Motion For Rehearing And The Record On The Cash Working Capital Adjustment.

AG/KIUC devote the first part of their response concerning the cash working capital issue to demolishing an argument never advanced by the Company. Citing *Hope Natural Gas*,[8] they argue that "[t]he approval of one method of calculation does not lock the Commission into utilizing that method in perpetuity if another method provides a better estimation of the company's forecasted operations."[9] Kentucky Power never argued to the contrary. What the Company argued, and what AG/KIUC leave wholly unaddressed, is that the Commission's retroactive imposition without notice of the requirement that Kentucky Power file a lead/lag study upon pain of cash working capital being reduced to $0.00 is contrary to both due process[10] and general principles of Kentucky administrative law.[11] At no time prior to the Commission's January 13, 2021 Order did the Commission indicate to Kentucky Power that the Company was required to file a lead-lag study when filing a rate application using a historical test year and capitalization approach. Its retroactive imposition of the requirement is both unjust and a denial of due process.[12]

AG/KIUC's factual arguments in opposition to Kentucky Power's motion are untethered from the record. Their statement that "during the discovery process, AG-KIUC asked Kentucky Power to provide a CWC calculation using the lead/lag approach, but the Company would not"[13]

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[8] *Fed. Power Com'n v. Hope Natural Gas Co.*, 320 U.S. 591 (1944).

[9] AG/KIUC Response at 3.

[10] *Util. Regulatory Com'n v. Kentucky Water Serv. Co.*, 642 S.W.2d 591, 592, 593 (Ky. App. 1982) (finding violation of due process where Commission excluded accumulated Job Development Investment Tax Credit from capital structure where it previously had been included "with no objection ha[ving] been raised by the Commission.").

[11] *In re: Appeal of Hughes & Coleman*, 60 S.W.3d 540, 543 (Ky. 2001).

[12] *Kentucky Bar. Assoc. v. Ball*, 501 S.W.2d 253, 255 (Ky. 1971) ("[A]a matter of elemental justice and basic due process, we will not attempt a retroactive application of RCA 3.320."); *Kentucky Power. Co. v. Energy Regulatory Com'n*, 623 S.W.2d 904, 908 (Ky. 1981) ("Even a public utility has some rights ....")

[13] AG/KIUC Response at 4.

evidences an unfamiliarity with the language of their own data request. The request, which AG/KIUC neglect to quote, directed the Company to:

> provide a copy of all cash working capital ('CWC') studies using the lead/lag approach performed by or on behalf of the Company since 2017, including all supporting calculations of lead/lag days for each revenue and expense line in the study.[14]

Kentucky Power responded in full that no such studies existed, and that the Company had not performed a lead/lag since at least 2005.[15] The Company cannot provide, and cannot be penalized for failing to provide, what does not exist and what has never before been requested nor required.[16]

AG/KIUC's unfamiliarity with the record is further evidenced by their argument that "the Company's claim that the accounts receivable financing was double-counted was not an issue in the case and therefore should not be an issue on rehearing."[17] Mr. Vaughan addressed the issue in his rebuttal testimony and explained that if cash working capital were reduced to $0.00 as advocated by Mr. Kollen:

> the accounts receivable financing amount should be removed from the Company's capital structure, resulting in a roughly 12 basis point increase in the WACC. To not to do so wrongfully cause a reduction in the Company's capitalization (rate base) while still giving a benefit to customers through the capital structure for the same item and thus would be double counting it.[18]

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[14] AG_KIUC_2_001.

[15] Kentucky Power Response to AG_KIUC_2_001; Kentucky Power Response to AG_KIUC_2_002.

[16] Even if AG/KIUC had requested the Company perform a lead/lag study in its September 16, 2020 data request, the study could have been completed after the hearing at the earliest. Kentucky Power Response to AG_KIUC_2_002.

[17] AG/KIUC Response at 5.

[18] Vaughan Rebuttal Test. at R6.

Further, the Vice Chairman questioned Mr. Vaughan on the issue during the hearing.[19] Contrary to the understanding of AG/KIUC, the issue was squarely presented by the Company in testimony and addressed by the Commission itself during the hearing. As such, it can hardly be described as "not an issue in the case" as AG/KIUC contend.

C. AG/KIUC's Arguments Regarding The Commission's Adjustments To Operating Income Lack Specificity And Evidentiary Support.

AG/KIUC are the only intervenors to oppose the Company's request for rehearing regarding the Commission's adjustments to operating income.

Without identifying the particular rate case expense reduction they support, AG/KIUC first argue generally that the Commission acted within its discretion in disallowing certain of the Company's rate case expenses. Although the Commission has discretion to allow or disallow rate case expenses, any reduction that departs from prior Commission precedent must be accompanied by "reasoned analysis indicating that prior policies are being deliberately changed."[20] Here, as explained in the Company's Motion for Rehearing, the Company met its evidentiary burden to show that its rate case expenses were reasonable, and the Commission failed to provide the required analysis supporting the disallowance.[21]

AG/KIUC next argue that "[i]f 100% of the benefits of the financial performance inures to shareholders, then 100% of the burden should be allocated to shareholders as well."[22] Their argument has no applicability to the Company's short-term incentive ("STI") plan or the record of this case. The record is uncontroverted that 90 percent of the STI amounts paid in 2019, and

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[19] Tr. Vol. V at 1396-1397.

[20] *In re: Appeal of Hughes & Coleman,* 60 S.W.3d 540, 544 (Ky. 2001).

[21] *See* Motion for Rehearing at 9-11.

[22] *Id.*

eighty percent of the STI amounts paid in 2020 were tied to non-financial customer-focused metrics.[23] Stated otherwise, the STI expense to be borne by customers, and which was disallowed by the Commission, was overwhelmingly tied to customer benefit. AG/KIUC's assertion that "[t]hese expenses are incurred for the benefit of the utility or the parent company's shareholders, not for the benefit of the utility's customers" is made without citation to the record or fact. Nor do AG/KIUC even purport to defend the Commission's unexplained departure from precedent or the authority cited by Kentucky Power requiring that it do so.

Also left unaddressed is the fact that the Company's long-term incentive ("LTI") and STI plans are part of, and not in addition to, the Company's market-competitive total compensation plan. AG/KIUC's argument, like the Commission's Order itself, would have the Company abandon a market-competitive total compensation package that includes the benefits accruing to customers from incentive compensation, in favor of a salary-only compensation package in the same amount.

In sum, AG/KIUC offer no basis for denying the Company's motion for rehearing with respect to the Commission's disallowance of the nearly $5.7 million of test year STI and LTI expense.

AG/KIUC's single-sentence argument that "[t]he Commission has the authority to disallow excessive employee benefits expense, including, specifically, contributions to both defined benefit and defined contribution pension plans where groups of employees or certain employees are participants and beneficiaries in both types of plans"[24] again substitutes a truism

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[23] Kaiser Rebuttal at R6.

[24] AG/KIUC Response at 6-7.

for analysis. Nothing in the Commission's Order in *Cumberland Valley Electric*[25] suggests that the allocation of an otherwise reasonable, market competitive amount of retirement plan expense between two plans, instead of combining it into a single plan, renders the savings plan portion of the expense unreasonable. Nor do AG/KIUC address why the savings plan expense in this case, in an amount only 1.3 percent greater than that previously approved by the Commission in the Company's previous base rate case, is now unreasonable or excessive.[26]

The Commission should reject AG/KIUC's arguments in opposition to the Company's request for rehearing on the three operating income adjustments.

D. AG/KIUC's Arguments Concerning The Commission's Requirement That The Company Use The Newly-Established Return On Equity For Tariff E.S. Filings Relating To The Period Prior To The Date Of the Order Are Premised Upon A Misunderstanding Of The Operation Of The Company's Environmental Surcharge And KRS 278.160(2).

The environmental costs recovered by Kentucky Power through Tariff E.S. are billed on a two-month lag.[27] Thus, environmental costs incurred in the December 2020 "expense month" – including the December 2020 tariffed 9.70 percent return on equity component of those costs – are filed with the Commission in January 2021, and recovered through billings during the February 2021 "billing month." This treatment is required by KRS 278.160(2), and the filed rate doctrine it embodies; both mandate that Kentucky Power charge no more nor no less – and its customers to pay no more nor no less – than the rates set forth in its filed tariffs.

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[25] Order, *In the Matter of: Application Of Cumberland Valley Electric, Inc. For A General Adjustment of Rates*, Case No. 2016-00169 at 10 (Ky. P.S.C. February 6, 2017).

[26] *See* Company's Motion for Rehearing at 14-16.

[27] *In the Matter of: An Examination By The Public Service Commission Of The Environmental Surcharge Mechanism Of Kentucky Power Company D/B/A American Electric Power For the Six Month Billing Periods Ending December 31, 1998 and December 31, 1999 And The Two-Year Billing Period Ended June 30, 1999*, Case No. 2000-00107 1 at n.1 (Ky. P.S.C. February 8, 2001) ("Since Kentucky Power's surcharge is billed on a 2-month lag, the amounts billed from July 1998 through December 1998 are based on costs incurred from May 1998 through October 1998....").

The Commission's Order requires the Company to reflect "an ROE of 9.10 percent for Tariff E.S. filings after the date of this Order."[28] But if the Company were to do so, it would be charging rates less than, and customers would pay rates less than, those reflected in Tariff E.S. throughout the entire month of December 2020, and part of January 2021, because those costs are not recovered until the February or March 2021 "billing months."

AG/KIUC's response to the Company's motion for rehearing with respect to the Commission's Order concerning Tariff E.S. simply ignores KRS 278.160(2). Indeed, neither the statute nor the filed rate doctrine are anywhere mentioned. Instead, they characterize the Company's argument, and the filed rate doctrine upon which it is premised, as a "red herring" because "all costs ultimately are trued-up to ***actual costs***."[29] AG/KIUC's argument misses the point. KRS 278.160(2) mandates that the "actual costs" to which the Company's billings are trued-up include, for the period December 1-2020 through January 12, 2021, the 9.70 percent return on equity included in Kentucky Power's tariffs on file with the Commission during that period. KRS 278.160(2) no more permits the Commission to retroactively lower that filed return on equity than it would allow the Company to apply retroactively a subsequently ordered increase in the return on equity component of its filed Tariff E.S. rate.[30]

AG/KIUC fail to address the Company's arguments concerning the Commission's erroneous characterization of the Mitchell non-FGD rate base as a component of the Company's Tariff E.S. rate base that is subject under the Commission's Order to the reduced 9.10 percent

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[28] Order at 27.

[29] AG/KIUC Response at 7 (emphasis supplied).

[30] A further fallacy with AG/KIUC's argument, and the language of the Commission's Order it seeks to support, is that the Company would have been entitled to use the tariffed 9.70 percent return on equity if it had made its January 2021 Tariff ES filing a week earlier on January 12, 2021. KRS 278.160(2) and the filed rate doctrine have never been understood to turn on a triviality such as when a compliance filing is made.

return on equity. Although they preface their response with the attempted caveat that "silence in this Response as to any particular subject raised fails to constitute acquiescence, approval, or agreement to that premise," the fact remains that the assignment by the Commission of a 9.10 percent return on equity to the Mitchell non-FGD rate base was an error to which no response in support is possible.

E. AG/KIUC's Arguments Concerning The Commission's Imputation Of A Conjectural Interest Rate To $40 Million Of Long-Term Debt Is Contrary To Law And Is Premised Upon Their Conflation Of Historical And Forecasted Test Years.

Kentucky Power filed its application to adjust its rates using, as expressly permitted by the Commission's regulations,[31] a historical test year. Under those same regulations, the historical test year may adjusted on a pro forma basis "for known and measureable changes to ensure fair, just, and reasonable rates."[32] Any such adjustment must be supported by extensive documentation concerning the basis for, and reasonableness of, the proposed adjustment.[33] The Commission abandoned the requirements of its own regulation, and its authority holding that estimates do not satisfy the requirement that an adjustment be "known and measurable,"[34] and imputed an estimated interest rate of 3.54 percent by calculating the arithmetic mean of the December 2, 2020 seven-year and 30-year bond rates.

In response to the Company's motion for rehearing, and in support of the Commission's Order, AG/KIUC argue that the Commission's estimate of long-term interest rates in June 2021 – five months after the rates established by the Commission in its Order first became effective

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[31] 807 KAR 5:001, Section 16(4).

[32] 807 KAR 5:001, Section 16(5).

[33] *Id.*

[34] *Id.*

and 15 months after the end of the March 31, 2020 test year – was a reasonable forecast. AG/KIUC's argument side steps the actual issue raised by the Company: estimates and forecasts under the Commission's own precedent do not constitute a known and measurable, and hence legally permissible, adjustment to the Company's historical test year. AG/KIUC nowhere address the authority cited by the Company in its motion for rehearing, nor explain why the Company's reliance upon it is misplaced. Nor do AG/KIUC explain why the Commission is not bound by its own regulations[35] clearly differentiating between historical and forecasted test years. Indeed, AG/KIUC go so far as to conflate historical and forecasted test years by arguing "[t]he use of a forecasted interest rate is no more 'conjectural' than *any other forecast revenue, expense, or other cost* reflected in the Company's [historical] test year …." Of course, the "revenue, expense, or other cost reflected in" Kentucky Power's historical test year are by definition, and Commission regulation, actual historical amounts and not forecasts.

AG/KIUC's response similarly overlooks the inherent unfairness in the Commission adjusting a single aspect of the Company's historical test year, the interest rate applicable to the $40 million long-term bond issue, while not adjusting other equally forecastable post-test year declines in revenue and increases in expenses.[36] Also unaddressed by AG/KIUC is the Company's alternative request on rehearing that the regulatory asset established by the Commission's Order in the amount of the difference between the 3.54 percent forecasted debt expense and Kentucky Power's actual interest rate on the $40 million debt issue be subject to a carrying charge at the Company's weighted average cost of capital.[37] Kentucky Power will continue to pay the interest expense until the debt issue matures, and the Company will be

[35] *Hagan v. Farris*, 807 S.W.2d 488, 490 (Ky. 1991).

[36] *See* Kentucky Power Company's Motion for Rehearing at 28.

[37] *Id.* at 29.

required to finance that regulatory asset. Its weighted average cost of capital is a reasonable proxy for the financing costs associated with the Commission-established regulatory asset.

F. Walmart's And AG/KIUC's Arguments Against The Company's Request For Conditional Approval Of The GMR To Implement AMI Once Approved Are Either Directly Contradicted By The Record Or Merely Rehash Previously Disproven Assertions.

Walmart argues that the Company's request for conditional approval of the GMR to recover costs only for AMI was raised for the first time in the Motion for Rehearing, but the record shows otherwise. Counsel for Walmart cross-examined Company Witness Phillips on this very issue at hearing:

> Ms. Grundmann: You have proposed the GMR as an ongoing mechanism for future grid modernization projects, correct?
>
> Company Witness Phillips: That is correct.
> [...]
>
> Q. But other than the AMI, you're not proposing any specific future projects at this time?
>
> A. Not at this time; that's correct.
>
> Q. And so I assume that the Company would not be opposed if all the Commission were to approve would be AMI as the sole project that could be recovered through the GMR; is that correct?
>
> A. The first project that we need approved is the AMI, so if the Commission was wanting to do that, I would refer that to Witness West to verify, but from an operations perspective, we need AMI first [...][38]

Walmart therefore not only acknowledged the Commission's ability and authority to approve the GMR solely to recover costs for the deployment of AMI, but also pressured the Company to

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[38] Tr. Vol. IV at 969-970.

commit to the same at the hearing. Walmart cannot now argue that the Company is prohibited from requesting that very relief in the Motion for Rehearing. Moreover, the Company's GMR proposal always has contemplated the need for the GMR to implement *at least* the Company's AMI proposal.[39] By proposing that the Commission approve the GMR to deploy only AMI, the Company is not "seeking new relief"[40] as Walmart would suggest.

AG/KIUC's arguments against the Company's AMI and GMR proposals are all refuted by the record. AG/KIUC argue that "there is absolutely no need to authorize the GMR now or in the future, especially given the requested nearly unlimited scope for costs recoverable through the GMR."[41] This statement is not only hyperbolic, but also is contradicted directly by the record and the Company's Motion for Rehearing. The Company demonstrated the need for the GMR to implement necessary grid modernization projects; without the GMR the Company does not have the means to front the costs for those necessary projects.[42] Further, the Company's Motion for Rehearing narrowed its request, asking that the Commission approve conditionally the GMR to recover only the costs of AMI, if and when a CPCN is granted. Thus, the scope of the GMR as originally proposed was never "unlimited," and it certainly became much more limited after the Company's Motion for Rehearing.

AG/KIUC further argue that the "GMR provides a behavioral incentive to incur costs."[43] The GMR would not incentivize the Company to incur costs simply because the mechanism would allow for concurrent cost recovery, and AG/KIUC provide no evidence to support this

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[39] *See id.*

[40] *See* Walmart Response at 3.

[41] AG/KIUC Response at 9.

[42] Tr. Vol. IV at 1059.

[43] AG/KIUC Response at 9.

baseless assertion. To the contrary, all GMR project proposals and costs would be subject to Commission review and approval prior to the project start date and at the time of the annual true-up.[44] For projects that do not require a CPCN, the GMR actually would provide more transparency and provide the Commission the opportunity to review the Company's grid modernization projects in between base rate cases.[45]

AG KIUC also assert that the GMR "would result in excessive cost recovery inasmuch as it fails to capture costs savings as offsets."[46] Yet, under the Company's proposal any quantifiable savings that result from the implementation of AMI meters would be credited back to customers through the GMR. Company Witness West clearly confirmed this to counsel for the Attorney General on cross-examination:

> Mr. Cook: Why did Kentucky Power not propose to offset savings against the cost of the new investments and operating expenses that it proposes to recover through the GMR?
>
> Company Witness West: Well, I believe that in my rebuttal testimony I did propose to offset the cost of the -- or the -- what's included in the -- in the test year. I think it was about 188,000 for the reconnect fees. And to the extent -- and I believe we answered some of this in discovery, but I don't know the discovery numbers right now. I believe we answered some things in discovery saying that we would -- ***to the extent that we can quantify the benefits, that we would -- we would flow those back through in the GMR***.
>
> Q. Okay. So that's your testimony today, though, if -- and I don't have your testimony up in front. I don't want to have to require Staff to take the time to pull all that up. But your testimony is that the Company is willing to do that; is that correct?

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[44] *See* Phillips Direct Test. at 33; Company's Post-Hearing Brief at 50.

[45] Tr. Vol. IV at 968.

[46] AG/KIUC Response at 9-10.

A. *Yes, sir.*

Q. Okay.

A. ***Absolutely.***[47]

The Commission should therefore disregard AG/KIUC's assertions as they are refuted by the record.

Finally, even though AG/KIUC and Walmart may not agree that the Commission should amend its order to provide the Company with guidance on any additional evidence required to further prove the obsolescence of the Company's current AMR meters in its upcoming AMI CPCN application, any clarification nonetheless would benefit all parties as well as the Commission in the upcoming CPCN application.

G. Giving Effect To The Commission's Order in Case No. 2017-00179, And The Commission's Approval Of The Calendar Year 2023 Offset In That Order, Will Not "Unduly Restrict The Forthcoming Rockport UPA Review."[48]

Kentucky Power appreciates AG/KIUC's support for the Company's request for clarity concerning the timing of the proceeding to review the amortization period for the Rockport UPA regulatory asset, as well as their continued support of the Calendar Year 2023 Offset.[49] Nevertheless, their suggestion that amending the Commission's January 13, 2021 Order to reflect the Commission's unambiguous approval in its January 18, 2018 Order in Case No. 2017-00179 of the Calendar Year 2023 Offset will somehow unduly restrict the Commission's future examination of the separate issue of the appropriate amortization period for the Rockport UPA regulatory asset misses the mark. There is nothing ambiguous, or otherwise in need of

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[47] Tr. Vol. IV at 1060-1061 (emphasis added).

[48] AG/KIUC Response at 10.

[49] *Id.*

clarification, regarding the Commission's 2018 approval of the Calendar Year 2023 Offset. The offset was received by Kentucky Power as part of the quid pro quo for its agreement to forego its right under federal law to recover contemporaneously the full amount of its Rockport UPA expense. Any attempt to amend the Calendar Year 2023 Offset would be illegal and improvident for the reasons set forth in the Company's motion for rehearing. Moreover, the Commission need only amend its January 13, 2021 Order in this case to reflect its earlier unambiguous approval of the Calendar Year 2023 Offset. Confirming what it already approved can hardly restrict any further proceedings.

AG/KIUC also state their support for "Kentucky Power's recovery of the Rockport UPA deferral ***with interest***."[50] In light of this support, the Company assumes the term "interest" as used by AG/KIUC, instead of the Company's weighted average cost of capital ("WACC") as provided for by the Commission in its January 18, 2018 Order in Case No. 2017-00179,[51] was intended as shorthand for the Company's WACC. To the extent AG/KIUC are suggesting that a rate other the Company's WAAC be used as the carrying charge for the Rockport Deferral Regulatory Asset, the Company opposes any attempt to recast the Commission-approved 2017 Settlement Agreement.

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[50] *Id.* (emphasis supplied).

[51] Order, *In the Matter of: Electronic Application of Kentucky Power Company for (1) A General Adjustment of its Rates for Electric Service; (2) An Order Approving its 2017 Environmental Compliance Plan; (3) An order Approving its Tariffs and Riders; (4) An Order Approving Accounting Practices to Establish Regulatory Assets and Liabilities; and (5) An Order Granting All Other Required Approvals and Relief*, Case No. 2017-00179 at 38 (Ky. P.S.C. Jan. 18, 2018).

H. Joint Intervenors Continue To Read Non-Existent Requirements Into The Net Metering Statute, Which Should Be Rejected. Should The Commission Move Forward With The April Hearing, The Company Maintains Its Request For Clarification On The Required Evidence At The Hearing, Which Will Benefit All Parties And The Commission.

Joint Intervenors argue nothing new or that has not already been refuted by the Company. Joint Intervenors again argue that the Company was required to perform some analysis with regard to the "quantifiable benefits derived to the utility or to other customers from the participation in that utility service area of net-metering customers."[52] As explained by the Company, the KRS 278.466(5) contains no requirement that the Company perform some kind of cost-benefit analysis, but rather requires that the rates "recover from its eligible customer generators all costs necessary to serve its eligible customer generators, including but not limited to fixed and demand based costs, without regard to the rate structure for customers who are not eligible customer-generators."[53] Joint Intervenors pull their so-called 'requirement' from the "Smith Letter" described in their Post-Hearing Brief, which is not the law.[54] The term "benefit," quantifiable or otherwise, is nowhere to be found in KRS 278.465 to KRS 278.468, and neither the courts, much less Joint Intervenors, enjoy the ability to read the term into the statute.[55]

Joint Intervenors further argue that the Company was required to perform a separate cost-of-service study specific to net metering customers. But, again, Joint Intervenors read 'requirements' into the statute that simply do not exist. Joint Intervenors reproduce the actual requirements of KRS 278.466(5), and then say that there are "two concepts" "inherent in [the]

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[52] Joint Intervenors Response at 4.

[53] KRS 278.466(5) (emphasis added).

[54] *See* Company's Reply Post-Hearing Brief at 18-19.

[55] *Kentucky Emp. Ret, Sys. v. Seven Ctys. Serv., Inc.*, 580 S.W.3d 530, 539 (Ky. 2019) ("In construing statutes, we are 'not at liberty to add or subtract from the legislative enactment or interpret it at variance from the language used.'").

provision:"[56] 1) that the "burden is on the retail electric supplier to demonstrate that the proposed rates reflect "all costs necessary to serve its eligible customer-generators,"[57] and 2) that "the proposed rate structure must be justified 'without regard for the rate structure for customers who are not eligible customer-generators.'"[58] Joint Intervenors then again stretch these so-called implicit concepts further to suggest that the statute requires the Company to perform a separate cost-of-service study "unique to this subset of residential and commercial generators."[59] Joint Intervenors simply stretch requirements of KRS 278.466(5) too far. The statute contains no requirement that the Company perform a separate cost-of-service study for net metering customers, and again, Joint Intervenors cannot read-in such a requirement.

NMS II is reasonable and complies with the Net Metering Act. AG/KIUC's Response reiterates its agreement that the record in this case supports the reasonableness of the proposed NMS II rates. The Company therefore respectfully urges the Commission to approve the NMS II rates as proposed and revised herein as they are reasonable and appropriately implement the requirements of KRS 278.466. However, to the extent the Commission denies the Company's request for rehearing on this issue and moves forward with the April hearing, the Company reiterates that clarifying in its order on rehearing the Commission's expectations concerning evidence at the April hearing will benefit all parties to as well as the Commission.

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[56] Joint Intervenors Response at 6.

[57] *Id.*

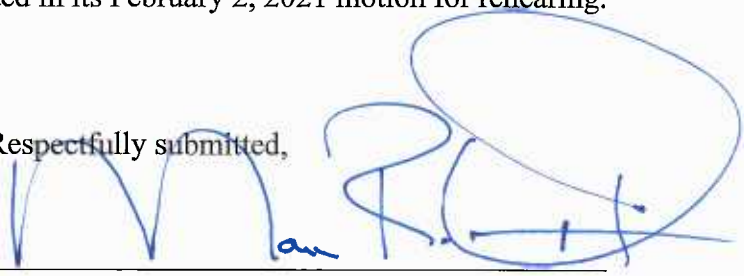
[58] *Id.*

[59] *Id.*

Conclusion

Kentucky Power Company respectfully requests the Commission grant its motion for rehearing and amend the Commission's as indicated in its February 2, 2021 motion for rehearing.

Respectfully submitted,



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