COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF JACKSON PURCHASE ENERGY CORPORATION FOR A GENERAL ADJUSTMENT OF RATES AND OTHER GENERAL RELIEF	))))	**Case No. 2021-00358**

INITIAL POST-HEARING BRIEF OF THE ATTORNEY GENERAL

The intervenor, the Attorney General of the Commonwealth of Kentucky, through his Office of Rate Intervention ("Attorney General"), provides the following Post-Hearing Brief pursuant to the Commission's Order of February 25, 2022.

On October 15, 2021, Jackson Purchase Energy Corporation (the "Company" or "JPEC") filed an application seeking approval of an increase in annual revenue in the amount of $7.301 million. After various changes accepted in response to requests from the Attorney General and Commission Staff,[1] the requested increase was reduced to approximately $7.157 million. Through the testimony of his expert witness, the Attorney General recommends several additional adjustments to the proposed revenue requirement. Two of those adjustments, reduction of the requested right-of-way management expense and reduction to the requested Times Interest Earned Ratio ("TIER"), have the largest potential impact on the revenue requirement compared to the other proposed adjustments. The Attorney General will provide treatment of those issues below.

The Attorney General requests that the Public Service Commission ("Commission"): (1) adjust the revenue requirement to reflect reasonable right-of-way management expense and require

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[1] See Direct Testimony of Mr. Kollen at 4 for itemized recitation of adjustments which references JPEC Updates in Response to AG 1-26 and Staff 3-7.

a focused management audit on that issue, (2) review the TIER to ensure it is set at the appropriate level, (3) adjust other expenses to correct errors, and (4) deny the Company's request to increase its base customer charge or approve some lesser increase to that value.

I. Right-of-Way Management Expense

The Company's proposed right-of-way management expense is substantially greater than its actual expense in the test year, which was in turn, substantially greater than it incurred in prior years on an absolute dollar basis and on a circuit mile basis. The Company's proposed annual right-of-way maintenance expenses of $3.852 million are based on a per circuit mile cost of $10,760 for times 358 miles.[2] The requested $3.852 million represents a $3.316 million *pro forma* adjustment to the actual test year expense of $0.536 million. Thus, approximately 46% of the Company's $7.157 requested increase is directly attributable to its right-of-way maintenance proposal. The Company's proposed right-of-way expense is excessive and could have been lower but for the Company's actions.

Some limited increase from previously approved right-of-way maintenance revenue should be approved based on market forces which have been experienced by all utilities. However, the magnitude of the increase requested by the Company and the circumstances surrounding the Company's right-of-way maintenance operations in recent years merit further investigation in the way of a focused management audit.

First, the Commission should consider the Company's failure to enforce its contract rights under a previous contract *with its current contractor* that had the effect of *less* circuit miles being trimmed at a *higher* cost in recent years to the detriment of ratepayers. The Company had a contractor, Townsend, who was obligated to trim the entire right-of-way for the Company for the

[2] The proposal is based on 358 miles because that is one-fifth of the Company's entire 1,790 mile system, and the Company plans to trim the entire system over a five-year cycle.

years 2018-2021 for specific pricing for each circuit set forth in the contract.[3] The Company allowed the contractor to default on that contract.[4] The Company did not pursue the legal remedies available to it under the contract. Specifically, based on the Contractor's failure to perform, the Company could have had the right-of-way maintenance performed through 2021 by another contractor at a market rate and sent a bill for the difference between the market rate and the contract rate to the contractor in default as provided in the relevant section of the contract excerpted below.

ARTICLE V - REMEDIES

Section 1. Completion on Contractor's Default. *If default shall be made by the Contractor or by any subcontractor in*

6 JPEC ROW Clearing Contract

AG Request 38 Attachment
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Witnesses: Greg Grissom and Jeff Williams

the performance of any of the terms of this Proposal, the Owner, without in any manner limiting its legal and equitable remedies in the circumstances, may serve upon the Contractor and the Surety, if any, a written notice requiring the Contractor to cause such default to be corrected forthwith. Unless within twenty (20) days after the service of such notice upon the Contractor and the Surety, if any, such default shall be corrected or arrangements for the correction thereof satisfactory to the Owner shall be made, the Owner may take over the work on the Project and prosecute the same to completion by Contract or otherwise for the account and at the expense of the Contractor, and the Contractor shall be liable to the Owner for any cost or expense in excess of the Contract price occasioned thereby. In such event the Owner may take possession of and utilize, in completing the Project, any materials, tools, supplies, equipment, appliances, and plant belonging to the Contractor or any of its subcontractors, which may be situated at the site of the Project. The Owner in such contingency may exercise any rights, claims, or demands which the Contractor may have against third persons in connection with this Proposal and for such purpose the Contractor does hereby assign, transfer, and set over unto the Owner all such rights, claims, and demands.

By failing to enforce its rights under the contract, hundreds of miles that should have been trimmed in 2019, 2020, and 2021 were not trimmed. In those years, the Company enlisted the services of another contractor, Halter, to trim some miles, and even allowed Townshend to trim some miles at a much higher cost than the average $2,286 per circuit mile cost under the 2018-2021 contract. Thus, the Company's failure to enforce its rights under the contract resulted in: (1) higher per mile costs for ratepayers, (2) less miles being trimmed, and (3) a system that now is

[3] See Contract at Company's Response to AG DR 1-38 attachments.
[4] See Company's Response to AD DR 1-17(c).

generally in worse condition from a right-of-way management perspective, and which will require additional expense in future years in order to compensate.

Second, the rates proposed by the Company are not consistent with the rates proposed by other utilities. The Attorney General's Expert, Mr. Kollen, noted in his testimony that South Kentucky Rural Electric Cooperative's per circuit mile costs range from $3,356 to $9,969.[5] In rebuttal, Mr. Wolfram dismissed this as "a single information point."[6] Mr. Wolfram went on to say, "[a] better comparison would be to examine how the Commission treated the ROW maintenance issues facing other electric utilities, including other distribution cooperative members of Big Rivers, in recent rate filings that were subject to full Commission scrutiny, and which have already been decided."[7] Mr. Wolfram's suggestion provides further support for the Attorney General's concerns.

In June of 2021, Kenergy, a neighboring distribution cooperative and member of Big Rivers, had new rates approved that included right of way maintenance expense of $4,910 per circuit mile.[8] The $10,760 per circuit mile cost proposed by the Company here is 119% greater than Kenergy's approved costs on a per-mile basis. Importantly, Kenergy's right-of-way maintenance is performed by *the same contractors that the Company has used – Halter and Townshend*.[9]

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[5] See Case No. 2021-00407, *Electronic Application of South Kentucky Rural Electric Cooperative Corporation for a General Adjustment of Rates, Approval of Depreciation Study, and Other General Relief*, at Direct Testimony of Kenneth Simmons at pages 6-7.

[6] See Rebuttal Testimony of Mr. Wolfram at 14-15.

[7] *Id.*

[8] See Case No. 2021-00066, *Electronic Application of Kenergy Corp. for a General Adjustment of Rates Pursuant to Streamlined Procedure Pilot Program Established in Case No. 2018-00407*, at Vegetation Management Adjustment Detail filed on March 11, 2021.

[9] It appears as though Townshend performs most of the work for Kenergy, with Halter constituting only approximately 25.9% of billings for right-of-way management services during the test year. *Id.*

In his rebuttal testimony, Mr. Wolfram also mentions another Big Rivers member - Meade County RECC.[10] As purported justification for JPEC's costs, Mr. Wolfram notes that, "[t]he costs [of Meade County RECC] reported reflected increases of 63.3%, 43.7%, and 56.4% over the 2020-2022 period. The Commission did not revise the proposed expense and made no mention of it in their final order."[11] The increases cited by Mr. Wolfram for those three years were all relative to 2019.[12] Respectfully, Meade County RECC's cost increases are much smaller that those of JPEC. JPEC's proposed costs of $3.852 million are 519% greater than the expense recorded in the test year. In order to make an apples-to-apples comparison to Mr. Wolfram's Meade County RECC example, under its contract with Townsend in 2019, JPEC should have paid $818,388 for right-of-way maintenance. In comparison to its current proposal of $3.853 million, JPEC's right-of-way maintenance will have increased 271% since 2019. Thus, Meade County RECC's increases of, at most, 63.3% compared to its 2019 costs, pale in comparison to the corresponding 271% increase requested by JPEC.

Third, the rate per-circuit-mile for right-of-way maintenance proposed by the Company is likely not representative of actual costs the Company will or should incur in the future. The Company's $10,760 per circuit mile cost is based on the cost for one contractor, Townshend, to trim three circuits totaling 80 miles in 2021. 80 miles is less than 5% of the 1,790 miles for the entire system. In discounting Mr. Kollen's comparison of the per-mile rates that other cooperatives pay for vegetation management, Mr. Wolfram admits that, "the requirements for vegetation management can vary significantly from utility to utility due to differences in geography, topography, weather, tree volume, tree type, and other factors. The AG makes no mention of

[10] See Rebuttal Testimony of Mr. Wolfram at 15.
[11] *Id*.
[12] See Case No. 2020-00131, *Electronic Application of Meade County Rural Electric Cooperative Corporation for and Adjustment of Rates*, at Response to AG DR 1-4.

this."[13] But Mr. Wolfram's concerns cut both ways. The variance in these factors reduces the reliability of the Company's estimated expense for vegetation management, because the Company has failed to meet its burden that 80 miles of a 1,790 system three segments are representative of that entire system and thus, serve as a sufficient barometer for setting a reasonable overall cost per-circuit-mile for that work to be performed.

Fourth, historically, the Company has curtailed right-of-way work as a means to control expenses for the Company. The Company now proposes to establish a program under which the entire system receives right-of-way maintenance over a five-year period. Under that program, 358 miles are to be trimmed each year, for a total of 1,790 miles over the course of five years. However, based on recent history, it is reasonable to have significant doubts that this work will, in fact, be performed. As stated previously, the Company only trimmed 80 miles in 2021. In 2020, it trimmed 220 miles. While the Company had originally planned to trim 358 miles in each of those years, increased costs for right-of-way maintenance in the market, which were altogether avoidable should it have enforced its contract rights, caused the Company to choose to trim less miles than it originally planned. Thus, it is fair to ask whether future budgetary shortfalls will be addressed by neglecting planned right-of-way maintenance.

Finally, Mr. Grissom incorrectly states that, "[t]he AG underestimates the importance of proper clearing of right of way."[14] This assertion is absolutely false. Mr. Grisson also insinuates that the AG supports JPEC skimping on right-of-way management when he states, "[s]kimping on proper ROW clearing can have drastic impacts to outage durations and service interruptions, raise overtime cost and reduce safety to our employees, contractors and our membership." Nowhere in its Expert's testimony does the AG contend JPEC should "skimp" on right-of-way management.

[13] See Rebuttal Testimony of Mr. Wolfram at 16.
[14] Rebuttal Testimony of Mr. Grissom at 5.

To the contrary, Mr. Kollen identified that the Company has an established history of spending less and trimming fewer miles than required, which may cause customers to, "suffer increased reliability issues and [customers] may have to incur the cost of additional maintenance and repairs due to outages from tree damage."[15] The AG's recommendations are calculated at remedying these historical failures. To that end, Mr. Kollen recommends that the Commission adopt, "a specific requirement to alert the Commission regarding any significant deficiencies in annual miles trimmed and increases in the expense per circuit mile and an action plan to address any such problems."[16] Contrary to JPEC's assertions, the AG is focused on ensuring that JPEC actually performs the right-of-way work it has historically failed to complete either by neglect or calculated business decision. The AG's attempt to right-size the costs to be paid for these services in no way diminishes the importance of the work to be performed.

In sum, the best resolution of this issue is not altogether straight-forward. Right-of-way maintenance is a necessary part of keeping a system safe and reliable. It must be done. However, the Company's proposal would result in ratepayers paying more than their neighbors for work that they have no assurance will be accomplished based on the Company's recent performance. Mr. Grissom's rebuttal attempts to cast JPEC's exorbitant cost increases for right-of-way management as simply a result of market forces being experienced equally by all cooperatives and utilities. However, the record developed by Mr. Kollen and others establishes that the Company's proposal is unreasonable as it relates to these costs. If the Company's insufficient performance on right-of-way operations could simply be attributed to market forces beyond its control, cost increases in line with the market could be begrudgingly accepted by the reasonable ratepayer. However, the Company's failure to act in its ratepayers best interest by failing to enforce its contract rights, its

[15] Direct Testimony of Mr. Kollen at 26-27.
[16] *Id.*

proposal of costs that are higher than those costs recently experienced by other similarly situated utilities, and its presentation of a very small and possibly unrepresentative data set as the basis for costs for the entire system – these factors, among others, support Commission-directed study of this issue through a focused management audit.

The AG has provided thoughtful and constructive recommendations to the Commission to address JPEC's management failures and its excessive request. First, there are serious problems with JPEC's management of its ROW maintenance as documented in Mr. Kollen's testimony and in the hearing transcript, not only in the past, but also right now. The Company is unwilling or unable to address these problems. Second, the AG recommends a focused management audit that would not only address the Company's problems in this area, but also provide recommendations to improve the Company's performance, including, potentially reductions in its expense. Third, the AG recommends reporting requirements and the use of reserve accounting to ensure that the Company is accountable to the Commission for the funds it is allowed to collect for the ROW maintenance expense. Yet, the Company is unwilling to accept either of these recommendations. In short, simply granting the Company's requested *pro forma* will not resolve the evident problems with JPEC's management of this activity and the expense that it incurs.

Finally, the AG's recommendation to use the actual 2020 ROW maintenance expense per circuit mile times the 358 miles cleared annually is a reasonable level of expense until the Commission is able to retain a consultant to conduct the focused management audit and determine the best approach going forward.

II. TIER

The Company proposed setting TIER at 2.0. The Commission should evaluate current circumstances to ensure that JPEC's TIER is set at a level that allows the cooperative to operate efficiently while not unnecessarily burdening ratepayers. A TIER of 1.5 would achieve these ends.

As stated in Mr. Kollen's testimony, (1) the Company has provided no analytical support for the requested 2.0 TIER despite having the burden in this case, (2) the requested TIER is excessive compared to credit and financial metrics required by its lenders, (3) the Company has more than sufficient member equity, (4) the requested TIER will incentivize additional discretionary spending, and (5) the requested TIER ensures excessive revenues will be collected without an equivalent mechanism to fully and timely return them to customers through capital credits.[17]

The Company, and its witness Mr. Wolfram, provided no analysis in support of the requested TIER in its direct testimony. In its rebuttal testimony, Mr. Wolfram's only analysis was to compare JPEC's 2019 TIER to other TIERs through the CFC Key Trend Analysis.[18] Comparing industry-wide achieved TIERs to authorized TIERs of rate-regulated utilities is problematic. For starters, achieved and authorized TIERs have obvious distinctions. Further, regulation complicates the comparison because some companies in the proxy group are unregulated. But more importantly, authorization of a TIER of a certain value should not devolve into an exercise of only comparing what one utility earned compared to other, distinguishable companies. Instead, at least from time to time, the Commission should consider the fundamentals that underpin its authorized TIERs.

[17] For a more robust discussion of each of these points, see Direct Testimony of Mr. Kollen at 35, *et seq.*
[18] See Rebuttal Testimony of Mr. Wolfram at 19-20.

Mr. Wolfram admits that, "[a]s explained in the response to the AG's Initial Request for Information, Request 22, Jackson Purchase did not elect to provide extensive, quantitative direct testimony in support of a 2.00 TIER because the Commission has accepted a TIER of 2.00 for numerous distribution cooperative traditional rate cases without such testimony in several recent filings."[19]

The Commission should require substantive analytical support for why a TIER should be established at a certain level beyond only a simple comparison to other companies. Mr. Kollen has provided the only analytical basis in the record in support of a specific TIER. He demonstrated that a TIER of 1.5 is reasonable and that a TIER of 2.0 is excessive and unreasonable.

Inasmuch as this issue is centrally premised around the testimony of experts, it is important to address Mr. Wolfram's general attempts to diminish Mr. Kollen's experience and credibility on cooperative issues. Mr. Wolfram is dismissive of Mr. Kollen's experience with distribution cooperative rate filings.[20] However, Mr. Wolfram relied solely on Mr. Kollen's list of expert testimonies for his claims and failed to consider Mr. Kollen's extensive experience in Louisiana with distribution cooperative rate filings, which Mr. Kollen described in response to cross-examination at hearing in this matter. Mr. Kollen and his firm have represented the Louisiana Public Service Commission Staff in dozens of distribution cooperative ratemaking proceedings. In those proceedings, Mr. Kollen and his firm developed formula rate plans with annual filing requirements, all of which have been developed through settlements with the cooperatives, subsequently approved by the Louisiana Public Service Commission. Pursuant to the Louisiana formula rate plans, Mr. Kollen's firm prepares an expert report in response to the cooperative utility's filing, not testimony, and then negotiates the resolution of the formula rate plan increase,

[19] See Rebuttal Testimony of Mr. Wolfram at 21.
[20] See Rebuttal Testimony of Mr. Wolfram at 4-5, 8.

subject to review and approval by the Louisiana Public Service Commission. Mr. Kollen and his firm have been involved in dozens of such cooperative rate filings. Mr. Kollen also explained that in his experience in Louisiana, the TIERs for cooperatives generally were set between 1.5 and 1.75.

An additional reason for questioning appropriate TIER in the current environment was correctly identified by the Chairman during the Hearing. Rising interest rates increase the nominal dollars that a utility with an authorized TIER has available to it, all else being equal. Simply put, a 2.0 TIER may no longer be necessary if the interest earned is a larger number. As an additional observation, the TIER revenue requirement also is affected by the growing amount of long-term debt outstanding and the margin from the TIER naturally will grow even if interest rates remain unchanged.

The Attorney General requests that the Commission provide consideration of the above in setting an appropriate TIER for JPEC.

III. Miscellaneous Adjustments

The Attorney General suggests that adjustments are necessary to correct errors related to the following revenue requirement items.

a. Payroll Expense

The Company's proposed revenue requirement is overstated as it relates to payroll expense for the reasons set forth in the AG's pre-filed testimony.[21] The annual revenue requirement should be reduced by $0.283 million to account for this overstatement. Despite basing its filing on a historical test year, JPEC has selectively included alleged "appropriate known and measurable changes" that increase its revenue requirement, while ignoring others that would have decreased

[21] See Direct Testimony of Mr. Kollen at 11-16.

its proposed revenue requirement. The Company's proposed adjustment to payroll expense is not known and measurable. It is a hypothetical calculation of payroll expense based on a series of assumptions that are not actually borne out in actual experience.

While Mr. Wolfram discusses Mr. Kollen's direct testimony on payroll costs in his rebuttal, his discussion fails to address any of the primary critiques offered by Mr. Kollen – those include that (1) the Company relied on payroll costs that extended 28 months beyond the end of the identified test year, (2) despite allegedly using a historical test year, the Company created a hypothetical payroll cost as opposed to annualizing an actual payroll cost, (3) the Company erred by applying the expense ratio for the calendar year 2020 to its otherwise hypothetical payroll expense, and (4) the Company selectively ignored specific staffing reductions and elimination of certain positions in its calculations.[22]

Based on Mr. Kollen's recommendations, the Company's annual revenue requirement should be reduced by $0.283 related to personnel expenses.

b. Removal of Utility Expense for Old Headquarters from Test Year

The annual revenue requirement should be reduced by $0.124 million to remove utility expense associated with the old headquarters building.[23] The Company incurred this amount for electric service for the old building during the test year, but the Company failed to remove those amounts from the revenue requirement. Mr. Wolfram counters that this recommendation fails to consider the cost at the new headquarters.[24] Mr. Wolfram states that, "[a]t the time of the filing, and even today, there is not enough data to make a known and measurable change to electric use at the new headquarters, since June 2021 is the first month of actual usage recorded."[25] But in

[22] Compare Rebuttal Testimony of Mr. Wolfram at 9-11 to Direct Testimony of Mr. Kollen at 13-16.
[23] See Direct Testimony of Mr. Kollen at 17-19.
[24] See Rebuttal Testimony of Mr. Wolfram at 17.
[25] *Id.*

Case No. 2019-000326, the CPCN case for the new headquarters, the Company represented that the new building would represent a savings to customers.[26] The Company's protestations against reducing electric expense in the revenue requirement here are at odds with its representations in that case.

c. Removal of Additional Depreciation Expense for Old Headquarters incurred in Test Year

The annual revenue requirement should be reduced by $.018 million to revise the depreciation expense on the new headquarters.[27] Mr. Wolfram agrees with this correction.[28]

d. Correct Clerical Errors in Test Year Net Margin Before Adjustments

The annual revenue requirement should be reduced by $0.021 million to address various discrepancies between Exhibit JW-2 and the Company's Form 7 filing.[29] Mr. Wolfram agrees that these errors should be corrected.[30]

e. Remove LTD Interest Expense on November 2021 Issuance Not Associated with Headquarters Building

The annual revenue requirement should be reduced by $.086 million to remove certain interest expense.[31] This interest expense is on long-term debt that was issued in November 2021 for capital expenditures made after the end of the test year. The Company is not entitled to continuously update its test year costs while the rate case is pending for costs that it forecasts that it will incur until nearly three years after the historic test year that it chose for its filing.

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[26] Direct Testimony of Greg Grissom at 12 cited in Order in Case No. 2019-00326 at 8-9.
[27] See Direct Testimony of Mr. Kollen at 29-31.
[28] See Rebuttal Testimony of Mr. Wolfram at 17.
[29] See Direct Testimony of Mr. Kollen at 31-32.
[30] See Rebuttal Testimony of Mr. Wolfram at 17.
[31] See Direct Testimony of Mr. Kollen at 33-35.

The Attorney General requests that the adjustments discussed be reflected in the approved revenue requirement.

IV. Customer Charge

JPEC proposes to increase its customer charge from $16.40 per month to $21.25 per month.[32] The Attorney General requests that the Commission fully evaluate this proposed change to ensure that the extent of this shifting of costs from the energy charge to the customer charge minimizes negative impacts to Kentucky families during these difficult times.

The Commission has stated, "for an electric cooperative that is strictly a distribution utility, there is merit in providing a means to guard against revenue erosion that often occurs due to the decrease in sales volumes that accompanies poor regional economics and changes in weather patterns. The Commission consistently has been in favor of raising the customer charge in utility rate cases to reflect the fixed costs inherent in providing utility service."[33] However, a 30% increase to the customer charge is a large increase to unavoidable costs for customers, many of whom are less financially able to absorb the increase at this time when many families are experiencing unprecedented economic hardship. This large increase to the residential customer charge is a change that the Commission should evaluate critically.

The Commission relies on the principal of gradualism in ratemaking, which mitigates the financial impact of rate increases on customers and Kentucky families. Gradualism is prudent, and the customer charge should not immediately be raised to the cost-based rate. In the event that the Commission decides to approve or partially approve the Company's proposal regarding

[32] See Application at 3.
[33] Final Order, Case No. 2018-00272, *Application of Grayson Rural Electric Cooperative Corporation for an Adjustment of Rates*, at 31 (Ky. Commission March 28, 2019), quoting Final Order, Case No. 2017-00374, Application of Big Sandy Rural Electric Cooperative Corporation for a General Adjustment of Existing Rates, at 11– 12 (Ky. Commission April 26, 2018).

increasing the customer charge, the Attorney General requests that the Commission continue to follow the precedent of gradualism, giving appropriate consideration to affordability for ratepayers. In so doing, the arbitrary increase of the customer charge proposed by JPEC could just as easily be some smaller percentage which appropriately takes into account the current hardships facing Kentucky families, which include rates of inflation that are unprecedented in recent times.

The Attorney General requests that the Commission consider all aspects and potential consequences of the proposed increase to the customer charge when reaching a decision on this issue.

V. Conclusion

For the foregoing reasons, the Attorney General requests that the Commission: (1) adjust the revenue requirement to reflect reasonable right-of-way management costs and require a focused management audit on that issue, (2) review TIER to ensure it is set at the appropriate level, (3) adjust miscellaneous revenue requirement elements to correct errors, and (4) deny the Company's request to increase its base customer charge or approve some lesser increase to that value.

Respectfully submitted,

DANIEL J. CAMERON
ATTORNEY GENERAL

____
J. MICHAEL WEST
LAWRENCE W. COOK
ANGELA M. GOAD
JOHN G. HORNE II
ASSISTANT ATTORNEYS GENERAL
1024 CAPITAL CENTER DRIVE SUITE 200
FRANKFORT, KY 40601-8204
PHONE: (502) 696-5433
FAX: (502) 564-2698
Michael.West@ky.gov
Larry.Cook@ky.gov
Angela.Goad@ky.gov
John.Horne@ky.gov

Certificate of Service and Filing

Pursuant to the Commission's Orders and in accord with all other applicable law, Counsel certifies that, on March 15, 2022, an electronic copy of the forgoing was served by e-mail/electronic filing notification to the following.

Mark David Goss
L. Allyson Honaker
mdgoss@gosssamfordlaw.com
allyson@gosssamfordlaw.com

this 15th day of March, 2022

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Assistant Attorney General