COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In The Matter Of: Electronic Joint Application Of American Electric Power Company, Inc., Kentucky Power Company, And Liberty Utilities Co. For Approval Of The Transfer Of Ownership And Control Of Kentucky Power Company.	: : : :	**Case No 2021-00481**

PETITION FOR REHEARING OF THE ATTORNEY GENERAL AND KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC.

The Attorney General, through his Office of Rate Invention ("AG"), and Kentucky Industrial Utility Customers, Inc. ("KIUC") submit this Petition for Rehearing of the May 4, 2022 Order issued by the Kentucky Public Service Commission ("Commission") in this matter ("Order"). KRS 278.400 allows parties to file requests for rehearing in order to correct any material errors or omissions in a Commission order.[1] As discussed below, AG/KIUC respectfully request that the Commission correct several material omissions in the Order. A Memorandum in Support of AG/KIUC's recommendations follows.

MEMORANDUM IN SUPPORT

I. The Commission Should Require Joint Applicants To File a Written Acceptance Or Rejection Of The Order In The Near Future.

A material omission from the Order is the lack of a deadline by which Joint Applicants must file a written acceptance or rejection of the Commission's conditions. While the Order requires Joint Applicants to make several filings after securing regulatory and judicial approvals and after closing the acquisition,[2] the Commission omits any requirement for Joint Applicants

[1] *In the Matter of Electronic Application of Duke Energy Kentucky, Inc. for: 1) An Adjustment of the Natural Gas Rates; 2) Approval of New Tariffs, and 3) All Other Required Approvals, Waivers, and Relief,* Case No. 2021-00190, Order (January 25, 2022)*("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.").*
[2] Order at 60-61.

to file a written response to the Commission's conditions. Without such written response in the record, both stakeholders and the Commission are left without certainty as to Joint Applicants' acceptance or rejection of the Order's conditions for an unduly prolonged period of time. Moreover, in prior transfer of control proceedings, the Commission required the petitioning parties to tender letters from their respective CEOs in which the parties agree to be bound by the conditions set forth in the Commission's final order.[3]

II. The Commission Should Address The Ratemaking Treatment Of The $30 Million Transmission Regulatory Liability.

The Commission required Kentucky Power to record a $30 million regulatory liability for increased transmission expenses in 2022 and 2023.[4] But the Commission omits any discussion of how that $30 million regulatory liability will be flowed through to customers, e.g., by which rate mechanism and over what period of time. On rehearing, the Commission should correct this omission and provide more detail as to the ratemaking treatment of this regulatory liability.

III. The Commission Should Require AEP To Deposit $45 Million With Liberty In Order To Address The Possibility That A Transmission Solution Is Not Found Within Five Years When AEP Is No Longer Subject To The Commission's Jurisdiction.

The Order provides that "*the Commission…finds that **AEP** should refund an amount reflecting the $15 million annual subsidization over five years but will suspend three years of the refund conditioned on AEP actively seeking the best solution for Kentucky Power and its customers regarding Kentucky Power either establishing its own PJM zone, joining another*

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[3] *See, e.g., In Re*: *The Application of PPL Corp., E.ON AG, E.ON US Investments Corp., E.ON US. LLC, Louisville Gas and Electric Co. and Kentucky Utilities Co. for Approval of an Acquisition of Ownership and Control of Utilities,* Case No. 2010-00204, Letters from James Miller, CEO and Chairman of PPL Corp., and Victor Staffieri, CEO and Chairman of E.ON U.S. LLC, Louisville Gas & Electric Co. and Kentucky Utilities Co., dated Oct. 4, 2020 and Oct. 6, 2010, respectively; and *In Re: The Joint Application of Duke Energy Corp., Cinergy Corp., Duke Energy Ohio, Inc., Duke Energy Kentucky, Inc., Diamond Acquisition Corp. and Progress Energy, Inc., for Approval of the Indirect Transfer of Control of Duke Energy Kentucky, Inc.,* Case No. 2011-00124, Letters from James E. Rogers, CEO of Duke Energy Corp., and William D. Johnson, CEO of Progress Energy, Inc., both dated Nov. 1, 2011.

[4] Order at 60.

PJM zone, or another solution that results in Kentucky Power and its customers receiving benefits commensurate with its cost of participation."[5] The Order further provides that "*[t]hree years of the $15 million annual subsidization of transmission costs is suspended conditioned on the Joint Applicants, including AEP, immediately and actively seeking the best solution for Kentucky Power and its customers regarding Kentucky Power either establishing its own PJM zone, joining another PJM zone, or another solution that results in Kentucky Power and its customers receiving benefits commensurate with its cost of participation.*"[6]

AG/KIUC support the Commission's findings. But the Order omits any requirement that AEP record a $45 million regulatory liability, establish an escrow account for $45 million, or make a similar contribution prior to closing with Liberty. This is an important omission. Because AEP is responsible for the out-of-state transmission subsidization problem, AEP is the entity that the Commission determined should fund the transmission mitigation. However, if the transaction closes, this Commission will arguably lose jurisdiction over AEP as owner of Kentucky Power. Under the AG/KIUC's recommended procedure, if the transmission solution contingency is triggered, then Liberty will have AEP's money to pay all or part of the $45 million to customers. If the transmission solution contingency is not triggered, then Liberty would refund all or part of the $45 million to AEP.

IV. The Commission Should Address The Calculation Of The Rockport Settlement 2023 "*Make Whole*" Provision.

The Order does not address AG/KIUC's recommendation regarding the Rockport Settlement 2023 return on equity "*make whole*" issue. On brief, AG/KIUC explained why using 2023 per books earnings as the starting point for the "*make whole*" calculation is unreasonable if Liberty acquires Kentucky Power since 2023 per books earnings will include transaction and

[5] Order at 51.
[6] Order at 60.

integration expenses.[7] The Commission's Order omits any finding on this recommendation. However, given that this issue directly impacts rates and is directly related to the Liberty acquisition, it is appropriate that the matter be addressed on rehearing.

CONCLUSION

WHEREFORE, AG/KIUC respectfully request that the Commission grant rehearing and adopt their recommendations in this matter.

Respectfully submitted,

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[7] AG/KIUC Initial Brief at 28-31; AG/KIUC Reply Brief at 9-10.

Certificate of Service

Pursuant to the Commission's Order dated July 22, 2021 in Case No. 2020-00085, and in accord with all other applicable law, Counsel certifies that an electronic copy of the forgoing was served and filed by e-mail to the parties of record.

This 26th day of May, 2022

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Assistant Attorney General