COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF COLUMBIA	)	
GAS OF KENTUCKY, INC. FOR ANNUAL	)	CASE NO. 2022-00342
ADJUSTMENTS TO THE SAFETY	)	
MODIFICATION AND REPLACEMENT	)	
PROGRAM	)	

COLUMBIA GAS OF KENTUCKY, INC.'S
MOTION FOR REHEARING

Comes now Columbia Gas of Kentucky, Inc. ("Columbia"), by counsel, pursuant to KRS 278.400 and other applicable law, and does hereby request the Commission to grant rehearing to correct a finding in the Commission's December 28, 2022 Order in the above-styled case ("the Order"), specifically that the Commission's decision not to take Columbia's ending balance of 2022 expenditures into account when calculating the rate is made based upon a material omission, is unreasonable, and is inconsistent with KRS 278.509 and Commission precedent, respectfully stating as follows:

I. BACKGROUND

In 2005, the General Assembly enacted Ky. HB 440, which provided the Commission with the authority to permit a utility to recover the costs of natural gas pipeline replacement programs "which are not recovered in the existing rates of a regulated utility."[1] On October 26, 2009, the Commission approved, as part of an application for an adjustment in rates, the creation of Columbia's recovery mechanism, Rider AMRP set out on Columbia's Tariff Sheet No. 58 tied to its Accelerated Mainline Replacement Program ("AMRP").[2] Columbia made annual filings to adjust Rider AMRP effective with its June Unit 1 billing cycle and calculate the revenue requirement based on the most recent twelve months ended December, in Case No. 2010-00143, Case No. 2011-00086, Case No. 2012-00073 and Case No. 2013-00087.

On December 13, 2013, the Commission authorized an adjustment in base rates for Columbia and approved a revision to Rider AMRP, Columbia's Tariff Sheet No. 58.[3] The revision to Rider AMRP converted the annual calculation of the company's revenue requirement to forecasted net plant additions rather than historic net plant additions and established a subsequent annual adjustment to true up the actual costs with the projected costs. Thus began two annual adjustments to Rider AMRP. The first, filed in October to update the projected costs for the upcoming calendar year and to be effective with Columbia's Unit 1 January billing cycle. The second, a balancing adjustment filed in March to true-up the actual project costs, during the most recent twelve months ended December with the projected program costs for the same period. The balancing

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[1] KRS 278.509

[2] *Application of Columbia Gas of Kentucky, Inc. for an Adjustment in Rates*, Case No. 2009-00141, Order (Ky. PSC Oct. 26, 2009).

[3] *Application of Columbia Gas of Kentucky, Inc. for an Adjustment of Rates for Gas Service*, Case No. 2013-00167, Order (Ky. PSC Dec. 13, 2013).

adjustment true-up to be effective with Columbia's Unit 1 June billing cycle. Columbia made filings to adjust Rider AMRP utilizing a forecasted revenue requirement and subsequent adjustment to true up the actual costs with the projected costs in Case Nos. 2014-00366, 2015-00342, 2016-00140, 2017-00413, 2018-00341, and 2019-00097.

The tariff rider, Columbia's Tariff Sheet No. 58, was updated to its current form, Rider SMRP a Safety Modification and Replacement Program ("SMRP") Rider, in Case No. 2019-00257.[4] In that case, Rider AMRP was amended, renamed Rider SMRP and eligibility of projects expanded to include other specifically authorized system safety modifications in addition to the projects associated with Columbia's pipeline replacement program. There were no changes made in the mechanism for the calculation of the revenue requirement or balancing adjustment of the Rider. Columbia continued its filings to adjust Rider SMRP utilizing a forecasted revenue requirement and subsequent adjustment to true up the actual costs with the projected costs in Case Nos.2019-00383, 2020-00099, 2020-00327, and 2021-0051.

As part of the 2013 rate case, the return of and return on AMRP investments including forecasted test year 2014[5] activity was rolled into base rates, and the rider was

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[4] *Electronic Application of Columbia Gas of Kentucky, Inc. for 1: A Declaration that Construction of a Low Pressure System Safety Improvement is an Extension of its System in the Ordinary Course of Business; 2) In the Alternative for the Issuance of a Certificate of Public Convenience and Necessity for such Construction; 3: Approval of an Amendment and Expansion of its Accelerated Main Replacement Tariff to its Safety Modification and Replacement Tariff; and 4) Approval to Modify the 2019 AMRP Construction Plan*, Case No. 2019-00257, Order (Ky. PSC November 7, 2019).

[5] *Supra* Note 3, Prepared Direct Testimony of Judy M. Cooper at 5-7.

reset to $0.[6] In the subsequent AMRP filing, the difference between the return on and return of the test year 2014 AMRP investments included in base rates and the actual 2014 AMRP investments were included and approved for recovery.[7] This adjustment provided Columbia the opportunity to maintain current cost recovery on these safety investments. This was the intent expressed by the General Assembly when it enacted KRS 278.509 to provide for a timely and cost-efficient procedure to recover the costs of gas main replacement projects as explained by Senator Ernie Harris who spoke to its purpose.[8] Similarly, as part of Columbia's next rate case, Columbia rolled the return on and return of test year SMRP investments (in calendar year 2017) into base rates, and reset the rider to $0.[9] In subsequent SMRP filings, the difference between the return on and return of the test year SMRP investments in base rates and the actual test year investments were requested and approved for recovery in the rider.[10] Because a forecasted test year does not fully include costs of the planned investment for the forecasted period, a subsequent adjustment has been required to recognize the full amount of the investment. Since Columbia moved to the use of a forecasted test year in calculating a rider rate, the Company has requested, and the Commission has approved,

[6] *Supra* Note 3 at 4.
[7] *In the Matter of Columbia Gas of Kentucky, Inc.'s 2014 Accelerated Main Replacement Program Filing*, Case No. 2014-00366, Order (Ky. PSC Dec. 14, 2014).
[8] *Ky. PSC v. Commonwealth ex rel. Stumbo*, 2008 Ky. App. LEXIS 348 at 16.
[9] *Application of Columbia Gas of Kentucky, Inc. for an Increase in Base Rates*, Case No. 2016-00162, Order (Ky. PSC Dec. 22, 2016).
[10] *In the Matter of Columbia Gas of Kentucky, Inc. 2017 Accelerated Main Replacement Program Filing*, Case No. 2017-00413, Order (Ky. PSC Dec. 22, 2017).

a subsequent update to this mechanism that includes unrecovered investments from the rate case forecasted test year.

On October 6, 2020, Columbia filed its 2021 SMRP application in Case No. 2020-00327.[11] Columbia presented its 2021 planned AMRP projects and a proposed In-Line Inspection Project in its forecasted data using the ending net plant balance to calculate rate base as it had done in all previous filings. The Commission Staff's First Request for Information asked Columbia to provide a revised SMRP rate calculation using a 13-month average rate base during the forecasted period and Columbia provided the requested information. In its April 30, 2021 Order setting the SMRP rates in that case, the Commission denied Columbia's proposed inclusion of the In-Line Inspection project as part of the SMRP and denied Columbia's proposed rates. The rates approved for the Rider were calculated using a thirteen-month average balance rather than an end of period balance when calculating net plant in order to prevent Columbia from collecting "a return on investments it has not yet made."[12] Columbia did not seek rehearing or appeal of this unanticipated change in the calculation of the rider. Based on its past precedent, Columbia read the Order relying on the Commission's statement quoted above and fully expecting that a subsequent adjustment would allow for full recovery once the projects were completed and part of actual plant in service.

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[11] *In the Matter of Electronic 2021 Safety Modification and Replacement Program Filing of Columbia Gas of Kentucky, Inc.*, Case No. 2020-00327.
[12] *Id.*, Order (Ky. PSC April 30, 2021) at 3.

The expected subsequent adjustment was not submitted because Columbia filed a base rate case application in Case No. 2021-00183. As in its two prior rate cases subsequent to the establishment of Rider AMRP, now Rider SMRP, Columbia proposed and the Commission approved inclusion of rider eligible test year investments (calendar year 2022) into base rates and reset the rider to $0. The Commission further ordered that Columbia establish a volumetric charge for its SMRP Rider instead of a fixed charge and that in its next base rate case, Columbia shall file testimony demonstrating why the SMRP Rider should be rolled into base rates.

On October 14, 2022, in the instant case Columbia filed its first Rider SMRP filing subsequent to its last rate case. The filing included Columbia's 2023 annual forecasted data pursuant to the requirements of the SMRP Rider pipeline replacement projects and no other safety modification projects. Columbia's calculation of the proposed SMRP Rider rates included, as it had in each previous SMRP update, the difference in the return on and of the test year 2022 SMRP investments and the actual 2022 SMRP investments. This true-up adjustment includes the difference in the 13-month average rate base valuation used in determining the base rate recovery from Columbia's most recent rate case[13] and the 2022 calendar year-end rate base valuation used to reflect the beginning point of the 2023 SMRP recovery period. The Commission ordered change in the

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[13] *Electronic Application of Columbia Gas of Kentucky, Inc. for an Adjustment of Rates; Approval of Tariff Revisions; Issuance of a Certificate of Public Convenience and Necessity; and Other Relief*, Case No. 2021-00183, Order (Ky. PSC Dec. 28, 2021).

valuation of the SMRP rate base used to determine the return on and of included in base rates represents the only difference between roll-in approved in the SMRP filings immediately succeeding the forecasted test years from the 2013 and 2016 rate cases and the SMRP filing at issue in this case, which represents the first adjustment following the conclusion from Columbia's most recent rate case. This change is a result of the Commission requirement to use a thirteen-month average balance in the year in which the investment and recovery align.

Commission Staff issued one request for information to which Columbia filed responses on November 18, 2022. On December 28, 2022, the Commission entered an Order denying Columbia's proposed SMRP rates, and setting rates that exclude the recovery of the difference between the return on and of the difference between the rate case forecasted test year SMRP base rate investments and the actual test year SMRP investments.

II. APPLICABLE LAW AND STANDARD OF REVIEW

KRS 278.400 governs motions for rehearing, which provides the Commission with the ability to correct findings based on material errors or omissions, or to correct findings that that are unreasonable or unlawful.[14] The statute states, in its entirety:

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[14] *Electronic Application of Kenergy Corp. for a Certificate of Public Convenience and Necessity for the Construction of a High-Speed Fiber Network and for Approval of the Leasing of the Network's Excess Capacity to an Affiliate to be Engaged in the Provision of Broadband Service to unserved and Underserved Households and Businesses of the Commonwealth*, Case No. 2021-00365, Order (Ky. PSC May 19, 2022) at 1–2.

> After a determination has been made by the commission in any hearing, any party to the proceedings may, within twenty (20) days after the service of the order, apply for a hearing with respect to any of the matters determined. Service of a commission order is complete three (3) days after the date the order is mailed. The application shall specify the matters on which a rehearing is sought. The commission shall either grant or deny the application for rehearing within twenty (20) days after it is filed, and failure of the commission to act upon the application within that period shall be deemed a denial of the application. Notice of the hearing shall be given in the same manner as notice of an original hearing. Upon the rehearing any party may offer additional evidence that could not with reasonable diligence have been offered on the former hearing. Upon the rehearing, the commission may change, modify, vacate or affirm its former orders, and make and enter such order as it deems necessary.

A Commission Order is unreasonable when "the evidence presented leaves no room for difference of opinion among reasonable minds."[15] An Order of the Commission is unlawful when it is deemed to be in violation of a state or federal statute, or a constitutional provision.[16]

Moreover, at issue in this case is KRS 278.509, which states (in its entirety):

> Notwithstanding any other provision of law to the contrary, upon application by a regulated utility, the commission may allow recovery of costs for investment in natural gas pipeline replacement programs which are not recovered in the existing rates of a regulated utility. No recovery shall be

[15] *Energy Regulatory Comm'n v. Kentucky Power Co.*, 605 S.W.2d 46, 50 (Ky. App. 1980).
[16] *Public Service Comm'n v. Conway*, 324 S.W.3d 373, 377 (Ky. 2010); *Public Service Comm'n v. Jackson County Rural Elec. Coop. Corp.*, 50 S.W.3d 764, 766 (Ky. App. 2000); *National Southwire Aluminum Co. v. Big Rivers Elec. Corp.*, 785 S.W.2d 503, 509 (Ky. App. 1990).

> allowed unless the costs shall have been deemed by the commission to be fair, just, and reasonable.

The Commission has utilized the authority provided under this statute to approve CKY's AMRP (and subsequent SMRP) and pipeline replacement programs of other Kentucky local distribution companies.

III. ARGUMENT

The Commission's decision to calculate the SMRP rates without including the difference between the return on and return of the test year SMRP investments in base rates and the actual test year investments meets the threshold for rehearing,[17] and is therefore worthy of reconsideration. In making its determination, the Commission identified two reasons. The first being that "the 2022 capital amounts are included in base rates."[18] However, this is incorrect. The 2022 net SMRP related rate base contained in base rates resulting from Columbia's most recent rate case is $13,657,171. This amount was based on a thirteen-month average of expected SMRP investments. However, in Columbia's initial filing in the instant case, and as explained in Columbia's response to Commission Staff's request for information, this amount represents an unreasonable under-accounting of the recovery of 2022 safety and pipeline costs during the 2023 recovery period as the 2022 investments are fully in-service and functioning to provide

[17] *Supra* Notes 14 and 15.

[18] *Electronic Application of Columbia Gas of Kentucky, Inc. for Annual Adjustments to the Safety Modification and Replacement Program*, Case No. 2022-00342, Order at 2.

service to Columbia's customers. Using the 2022 calendar year ending balances, less the amounts included in base rates, as the starting point to add the 2023 SMRP investments to determine the 2023 rider rates more accurately reflects Columbia's actual safety-related rate base of $39,515,551 eligible for SMRP recovery. In addition to the return on this rate base, the Company will incur higher levels of depreciation expense and property tax in 2023 due to the actual year-end 2022 plant balances not accounted for in base rates. The Commission's change of eliminating the adjustment in the subsequent rider year of the base rate recoveries versus the actual test year recoveries delays the recovery of the return on $24,482,174 of SMRP-project investment costs until Columbia's next rate case. Similarly, this eliminates Columbia's ability to recover the corresponding incremental post-test year costs associated with the test year SMRP investments.

As outlined above, and as indicated in the Commission's Order,[19] the Commission's treatment of the true up from budgeted test year SMRP investments levels to the actual test year calendar year end balances in the SMRP recovery calculation represents a departure from past precedent for Columbia's SMRP. Columbia's decision to enter into a settlement agreement in its most recent rate case, and accept the modifications the Commission made to that settlement agreement, assumed that the Commission would follow a decade of past Columbia SMRP precedent when calculating

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[19] *Id.* at 2 "…Columbia Kentucky is correct that its prior filings included the ending balance after a base rate roll-in… "

the rates at issue in the instant case. Moreover, in Columbia's rate case order, the Commission did not order or indicate that it would make this change going forward. The Commission has previously recognized that utilities are entitled to rely on past precedent when making business decisions.[20] Change in the treatment of similarly situated requests for recovery without being prompted by a change to a statute or rule presents uncertainty risk carrying unintended consequences.

In Columbia's 2021 SMRP Order,[21] the Commission stated that "using the ending balance to reflect the net plant increases arising from SMRP additions and retirements during the forecasted period means that, on average, Columbia Kentucky will collect a return on investments it has not yet made."[22] This, however, is not the case for Columbia's request that is the subject of this Motion. Columbia has already made the 2022 safety investments and they were fully in-place providing service to customers for the 2023 recovery period.

In Columbia's most recent rate case,[23] the Commission approved a joint stipulation that provided for a return on equity of 9.275 percent for natural gas capital riders. After adjusting for capital structure and return on debt, Columbia's approved rate of return for

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[20] *In the Matter of Georgia Johnson v. Peoples Gas KY, LLC*, Case No. 2018-00263, Order (Ky. PSC March 27, 2020) at 17.
[21] *In the Matter of Electronic 2021 Safety Modification and Replacement Program Filing of Columbia Gas of Kentucky, Inc.*, Case No. 2020-00327, Order (Ky. PSC April 30, 2021).
[22] *Id.* at 3. *See also Electronic Application of Atmos Energy Corporation for PRP Rider Rates*, Case No. 2020-00229, Order (Ky. PSC Sept. 30, 2020), which was relied upon in the Commission's Order in the instant case and utilized the same reasoning as the Order in Case No. 2020-00327.
[23] *Supra* Note 13.

capital riders is 8.48 percent.[24] The Commission's rejection of the use of a 2022 ending balance for SMRP-eligible capital costs unreasonably hinders Columbia's opportunity to earn this return. Columbia's calculation of the 2023 SMRP revenue requirement was $4,839,339.[25] The 2023 revenue requirement as approved by the Commission's new calculation is $1,573,300.[26] The under-recovery of $3,266,039 prevents Columbia from recovering prudent incremental 2023 costs related to this investment as well as Columbia's allowed equity return as follows:

- $482,299[27] represents the 1.97% return to cover the incremental debt expense that Columbia will incur in 2023 related to actual 2022 SMRP rate base versus the amount provided in base rates;
- $592,684[28] represents the 2023 property tax expense related to the 2022 SMRP investments. The rate case did not provide for property tax for 2022 investments;

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[24] *Electronic Application of Columbia Gas of Kentucky, Inc. for Annual Adjustments to the Safety Modification and Replacement Program*, Case No. 2022-00342, Testimony of Jeffery Gore, Attachment JTG-1 (Oct. 14, 2022) at Form 2.1, Line No. 4.
[25] *Id.* at Form 2.0, Line No. 13.
[26] *Electronic Application of Columbia Gas of Kentucky, Inc. for Annual Adjustments to the Safety Modification and Replacement Program*, Case No. 2022-00342, Columbia's Response to Staff's First Request for Information, 2022-00342 PSC Set 1 No 1 Attachment B (December 5, 2022) at Form 2.0, Line No. 13.
[27] *See* Columbia's requested 2023 SMRP Net Rate Base (*Supra* Note 24 ("Attachment JTG-1") at Form 2.0, Line No. 4) minus Commission Order 2023 SMRP Net Rate Base (*Supra* Note 26 ("Attachment B") at Form 2.0, Line No. 4) multiplied by Columbia's combined cost of short term and long term debt (*Supra* Note 24 ("Attachment JTG-1") at Form 2.1, Lines 1 and 2), calculated: [(39,515,551-15,033,377)*.0197].
[28] *Supra* Note 24 ("Attachment JTG-1") at Form 7.0, Line No. 2.

- $590,734[29] represents the incremental 2023 depreciation expense that the Company will incur in 2023 related to the difference between actual 2022 SMRP investments and the investments recovered in base rates;
- $6,532[30] represents the gross up on the Commission fees the SMRP revenues;
- $1,593,790[31] represents the portion of the return related to incremental 2023 equity financing provided by the Company to finance the actual 2022 SMRP rate base versus the amount provided in base rates.

In fact, the Commission's calculation of Rider SMRP rates in the Order, after assuming recovery of the incremental 2023 expenses associated with the 2022 SMRP investments valued at calendar year end, as well as the 2023 investments and associated depreciation and taxes, represents an amount of $94,559[32] available for a return. As outlined in the table below, this reduces Columbia's actual effective rate of return to 0.239 percent on the combination of the adjusted 2022 and proposed 2023 SMRP related investments. The impact of the Commission's departure from past precedent represents

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[29] Columbia's requested Subtotal of Depreciation, Property Tax and O&M Savings (*Supra* Note 24 ("Attachment JTG-1") at Form 2.0, Line No. 10) minus Commission Order Subtotal of Depreciation, Property Tax and O&M Savings (*Supra* Note 26 ("Attachment B") at Form 2.0, Line No. 10) minus *Id.*, calculated [(1,478,741-295,323)-592,684].

[30] Columbia's proposed Revenue Requirement (*Supra* Note 25) minus Commission Order Revenue Requirement (*Supra* Note 26 ("Attachment B") at Form 2.0, Line No. 13) multiplied by PSC Fees (*Supra* Note 24 ("Attachment JTG-1") at Form 2.2, Line No. 2), calculated [(4,839,339-1,573,300)*.2%].

[31] See Columbia's requested 2023 SMRP Net Rate Base (*Supra* Note 24 ("Attachment JTG-1") at Form 2.0, Line No. 4) minus Commission Order 2023 SMRP Net Rate Base (*Supra* Note 26 ("Attachment B") at Form 2.0, Line No. 4) multiplied by Columbia's combined cost of short term and long term debt (*Supra* Note 24 ("Attachment JTG-1") at Form 2.1, Line No. 3), calculated: [(39,515,551-15,033,377)*.0651].

[32] See table below

an unreasonable outcome for Columbia. Practically speaking, the $94,559 is insufficient to cover the cost of debt component listed above, leaving nothing for the cost of equity.

		Return Calculation
1	Revenue Requirement As Filed	$4,839,339 [33]
2	Revenue Requirement Not Approved	$3,266,039 [34]
3	Revenue Requirement Approved	$1,573,300 [35]
4	2023 Incremental Depreciation and Property Tax Costs Not in Base Rates	$1,478,741 [36]
5	Revenue Less Expenses (Amount Available for Return) (Line 3 minus Line 4)	$94,559
6	As Filed Rate Base	$39,515,551 [37]
7	Effective Rate of Return (Line 5 Divided by Line 6)	0.239%

The Commission's second reason for not including the ending balance of 2022 pipeline replacement program costs is that doing so is consistent with the treatment of the pipeline replacement mechanism of Atmos Energy Corporation ("Atmos").[38] In that case, the Commission rejected Atmos's argument to utilize an ending balance for its pipeline replacement program cost recovery because it would permit Atmos to "collect a

[33] *Supra* Note 25.
[34] *Supra* Note 25 minus Note 26 ("Attachment B") at Form 2.0, Line No. 13.
[35] *Supra* Note 26 ("Attachment B") at Form 2.0, Line No. 13.
[36] *Supra* Note 24 ("Attachment JTG-1") at Form 2.0, Line No. 10.
[37] *Id.* at Form 2.0, Line 4.
[38] *Supra* Note 18 at 2-3.

return on investments it has not yet made."[39] As identified above, this mirrors the Commission's reasoning in Columbia's 2021 SMRP case.[40] However, and as outlined above, Columbia's ending balance for 2022 capital investments have already been made. Thus, the reasoning used for its determination in the Order is distinguishable.

The Commission's interpretation of KRS 278.509 in the Order also meets the threshold for rehearing[41] and is therefore worthy of reconsideration. The statute provides two reasons by which recovery of pipeline safety program costs can be denied: 1) the costs sought for recovery are collected in the existing rates of the utility; or 2) the costs sought for recovery are deemed by the Commission to be unfair, unjust, or unreasonable. As explained above, the ending balance of 2022 SMRP-eligible costs requested for recovery are not recovered in current base rates. The difference between SMRP costs recovered through base rates and what was requested in this Rider SMRP update is $24,482,174. In its Order, the Commission made no finding that any of the costs proposed for recovery are unfair, unjust, or unreasonable. The Commission's decision to disallow the recovery of and on over $24.4 million in investments for pipeline safety is inconsistent with a plain reading and the purpose of the statute. Therefore, the Commission's Order should be revisited in a manner consistent with Kentucky law.

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[39] *In the Matter of Electronic Application of Atmos Energy Corporation for PRP Rider Rates*, Case No. 2020-00229, Order (Ky. PSC Sep. 30, 2020) at 3.
[40] *Supra* note 22.
[41] *Supra* Note 16.

Finally, the Commission's Order can be read to create a disincentive for utilities to make important capital investments outside of rate case test years to improve the safety of natural gas distribution systems. The Order's effective disallowance of the recovery of significant costs to improve the safe operation of Columbia's system sends a signal that recovery for investment in the safety of gas pipelines faces significant risk. This signal from the Commission is inconsistent with the implied purpose of the General Assembly's adoption of KRS 278.509, and should therefore be reconsidered.

III. CONCLUSION

Columbia respectfully requests that the Commission grant this Motion and reconsider its decision to not include the 2022 ending balance of safety-related capital costs proposed to be included for recovery in Rider SMRP for the reasons provided herein. To effectuate this, the Commission should modify its December 28, 2022 Order in this case in a manner that adopts Columbia's originally proposed SMRP rates without modification.

This 17th day of January, 2023.

Respectfully submitted,

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