

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

**ELECTRONIC JOINT APPLICATION OF)
KENTUCKY UTILITIES COMPANY AND)
LOUISVILLE GAS AND ELECTRIC COMPANY)
FOR CERTIFICATES OF PUBLIC CONVENIENCE)
AND NECESSITY AND SITE COMPATIBILITY) CASE No. 2022-00402
CERTIFICATES AND APPROVAL OF A DEMAND)
SIDE MANAGEMENT PLAN AND APPROVAL OF)
FOSSIL FUEL-FIRED GENERATING UNIT)
RETIREMENTS)**

**PETITION FOR REHEARING OF JOINT INTERVENORS
METROPOLITAN HOUSING COALITION,
KENTUCKIANS FOR THE COMMONWEALTH,
KENTUCKY SOLAR ENERGY SOCIETY, AND
MOUNTAIN ASSOCIATION**

Tom FitzGerald
Ashley Wilmes
Byron Gary
Kentucky Resources Council, Inc.
P.O. Box 1070
Frankfort, KY 40602
(502) 551-3675
FitzKRC@aol.com
Ashley@kyrc.org
Byron@kyrc.org

*Counsel for Joint Intervenors, Metropolitan
Housing Coalition, Kentuckians for the
Commonwealth, Kentucky Solar Energy
Society, and Mountain Association*

Dated: November 27, 2023

**JOINT INTERVENORS’
PETITION FOR REHEARING**

Come now Metropolitan Housing Coalition, Kentuckians for the Commonwealth, Kentucky Solar Energy Society, and Mountain Association (collectively “Joint Intervenors”), by counsel, pursuant to KRS 278.400 and other applicable law, and petition the Kentucky Public Service Commission (“the Commission”) to grant rehearing on one issue in the Commission’s November 6, 2023 Order (“*November 6 Order*” or “*Order*”), respectfully stating as follows:

I. INTRODUCTION

Joint Intervenors seek rehearing on the reasonableness of the Companies’ proposal to raise the income-qualification threshold from 200% to 300% of the federal poverty limit for its Demand Side Management and Energy Efficiency (“DSM/EE”) programs aimed at low-income customers.

II. ARGUMENT

A. Applicable Legal Standard

Any party to a proceeding before the Commission “may, within twenty (20) days after the service of the order, apply for a hearing with respect to any of the matters determined.”¹ Rehearing is appropriate to hear “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 Findings are unreasonable where “the evidence presented leaves no room for difference of opinion among reasonable minds.”³

¹ KRS 278.400.

² *In re: Elec. Application of Big Rivers Elec. Corp. for Ann. Rev. of Its MRSM Charge for Calendar Year 2022*, Case No. 2023-00038, 2023 WL 7220130, at *1 (Ky. P.S.C. Oct. 26, 2023).

³ *Id.* (quoting *Energy Regul. Comm’n v. Ky. Power Co.*, 605 S.W. 2d 46 (Ky. App. 1980)).

When examining the reasonableness of demand-side management programs generally the Commission is required to consider a non-exhaustive list of elements laid out at KRS 278.285(1)(a)–(h). When considering approval of home energy assistance programs as part of a utility’s proposed demand-side management program the Commission is limited to examining the participation in developing and support of customer representatives and the Office of the Attorney General, and whether the cost is assigned to the class of customers which will benefit.⁴

B. The Commission Should Restore the Eligibility Threshold for the Income Qualified Solutions Programs to 200% of the Federal Poverty Level.

With the Commission’s approval of the Companies’ proposed DSM/EE Plan, the Companies project that it will roughly triple the level of annual investment from \$15 million to \$45–\$50 million, increase the 7-year cumulative MW energy efficiency savings through 2030 from 112 MW to 170 MW, and more than double the demand response savings available in 2030 from 86 MW to 207 MW.⁵ Although Joint Intervenors believe that more should have been required of the Companies, not just on DSM/EE but on the other issues in the case as well, Joint Intervenors appreciate the full and fair opportunity that the Commission afforded intervening parties to participate in this process.

However, undisputed record evidence demonstrates that the Companies’ proposal to expand eligibility for its Income Qualified Solutions Programs from 200% to 300% of the federal poverty level is arbitrary, unsupported by data, and will result in fewer funds being available for

⁴ KRS 278.285(4).

⁵ Direct Testimony of John Bevington, *In re Electronic Joint Application of Kentucky Utilities Company and Louisville Gas and Electric Company for Certificates of Public Convenience and Necessity and Site Compatibility Certificates and Approval of a Demand Side Management Plan*, Case No. 2022-00402, Diagram at 3 (Dec. 15, 2022).

lower-income customers who have the greatest need for energy-savings programs.⁶ Critically, in its post-hearing reply briefing, the Companies did not attempt to refute intervenors’ arguments but instead state that they “do not object to retaining the eligibility level of 200% of the federal poverty level for Income Qualified Solutions.”⁷ The *November 6 Order*, however, did not make any specific findings on this issue, despite noting intervenors’ positions and the Companies’ lack of objection.⁸ Respectfully, the Joint Intervenors request that the Commission grant rehearing to modify the *November 6 Order* on this narrow, but significant, issue and find that an increase in the income-qualification threshold from 200% to 300% of the federal poverty level is unreasonable.

As Joint Intervenors noted in their post-hearing brief, not only is the Companies’ proposed expansion of eligibility for the Income Qualified Solutions programs unsupported by customer representatives, the Office of the Attorney General, or the data – because the Companies do not have any data on income levels among their customers or within their service territories – it is also illogical.⁹ The Companies have asserted that their justification for the

⁶ Initial Brief of Joint Intervenors Metropolitan Housing Coalition, Kentuckians for the Commonwealth, Kentucky Solar Energy Society, and Mountain Association, *In re Electronic Joint Application of Kentucky Utilities Company and Louisville Gas and Electric Company for Certificates of Public Convenience and Necessity and Site Compatibility Certificates and Approval of a Demand Side Management Plan*, Case No. 2022-00402, at 21–27 (Sept. 22, 2023) (“JI Br.”); Post-Hearing Brief of the Kentucky Attorney General, *In re Electronic Joint Application of Kentucky Utilities Company and Louisville Gas and Electric Company for Certificates of Public Convenience and Necessity and Site Compatibility Certificates and Approval of a Demand Side Management Plan*, Case No. 2022-00402, at 38 (Sept. 22, 2023) (“OAG Br.”).

⁷ Post-Hearing Reply Brief of Kentucky Utilities Company and Louisville Gas and Electric Company, *In re Electronic Joint Application of Kentucky Utilities Company and Louisville Gas and Electric Company for Certificates of Public Convenience and Necessity and Site Compatibility Certificates and Approval of a Demand Side Management Plan*, Case No. 2022-00402, at 36 (Oct. 4, 2023) (“LG&E/KU Reply Br.”).

⁸ Nov. 6 Order at 159, 163–64, 166, 168–70, 172.

⁹ JI Br. at 21–25.

expansion is that they “simply sought to make the program available to more customers,”¹⁰ but undisputed evidence shows that there is more demand for the program than available funds among customers at or below 200% of the federal poverty level.¹¹ As a result, expanding eligibility for the program to include higher-earning customers would not make the program available to a greater number of customers, it would instead (even with the additional resources for the program that the Companies have proposed) only dilute the program’s ability to serve lower-earning customers, who continue to have significant unmet needs.¹² The Companies bear the burden of proof on every aspect of their application, and on this issue the Companies failed to provide any data or other concrete evidence to rebut these concerns.¹³

Joint Intervenors’ arguments on this issue were specifically supported by both the Office of the Attorney General (“OAG”) and in the comments filed by the Association of Community Ministries (“ACM”). The OAG agreed with Joint Intervenors that “the funding for these programs should continue to be targeted to those customers whose income is at [or below] 200% of the federal poverty level.”¹⁴ The OAG further suggested that, at most, it would “be appropriate to provide assistance to customers whose incomes fall in the range between 200%–300% of the federal poverty level” only if any funds remain “after all customers at [or below] the 200% income level who have applied . . . have been provided assistance.”¹⁵

¹⁰ LG&E/KU Reply Br. at 36 (citing Rebuttal Testimony of Lana Isaacson, *In re Electronic Joint Application of Kentucky Utilities Company and Louisville Gas and Electric Company for Certificates of Public Convenience and Necessity and Site Compatibility Certificates and Approval of a Demand Side Management Plan*, Case No. 2022-00402, at 8 (Aug. 9, 2023) (“Isaacson Rebuttal”).

¹¹ JI Br. at 22–23, 25–26.

¹² *Id.* at 22–26.

¹³ *See* Isaacson Rebuttal at 8.

¹⁴ OAG Br. at 38.

¹⁵ *Id.* at 38–39.

ACM's comments, which the Commission admitted into evidence at the hearing, are particularly compelling because "ACM's member ministries directly assist[] LG&E ratepayers who have received disconnection notices by making payments to LG&E sufficient to maintain service for thirty days and also by helping to reconnect customers who have been disconnected."¹⁶ Based on this firsthand experience, ACM stated that "there are many more low-income customers who could benefit from weatherization and increased energy efficiency than the current capacity of the existing WeCare program allows."¹⁷ In light of these unmet needs, ACM raised the concern that raising the income-qualification threshold could result in "lower income customers . . . being displaced by higher income customers" from "the only program specifically targeted to low-income ratepayers."¹⁸

Modifying the *November 6 Order* to restore the income-qualification threshold to 200% of the federal poverty level would also better align with the Commission's mandate under KRS 278.285, for at least two reasons. First, because expanding the eligibility of the only programs that are specifically targeted at lower-income customers dilutes their availability, affordability, and usefulness to such customers, the November 6 Order's approval of that expanded threshold is inconsistent with KRS 278.285(1)(g).¹⁹ Second, the Commission should give heavy weight to the opposition of the OAG and customer representatives to the expansion the income-qualification threshold, pursuant to KRS 278.285(1)(f) and especially to the extent that the low-

¹⁶ JI Hearing Ex. 9 at 1.

¹⁷ *Id.* at 2.

¹⁸ *Id.* at 3.

¹⁹ *See* KRS 278.285(1)(g) (requiring the Commission to consider as a factor "[t]he extent to which the plan provides programs which are available, affordable, and useful to all customers").

income weatherization program can be considered a “home energy assistance program” under KRS 278.285(4).²⁰

As noted above, in their post-hearing reply brief, the Companies stated that they did not object to keeping the threshold at 200% of the federal poverty level or below for Income Qualified Solutions programs.²¹ In the *November 6 Order*, the Commission describes the parties’ positions on this issue but did not address or resolve it specifically.²² Instead, the *November 6 Order* approved the Companies’ programs as proposed, without any modifications and without any explicit discussion of the eligibility threshold for Income Qualified Solutions programs.²³ The Commission should grant rehearing and find that the Companies’ proposed expansion of the income-qualification threshold from 200% to 300% of the federal poverty limit is unreasonable. At a minimum, the Commission should accept the OAG’s suggestion that program funds should only be made available to assist customers whose incomes fall in the range between 200%–300% of the federal poverty level only if any funds remain after all customers with incomes at or below 200% of the federal poverty level who have applied in a given year have received assistance.

III. CONCLUSION

WHEREFORE, for the reasons set forth above, Joint Intervenors respectfully request that the Commission grant rehearing and find that the Companies’ proposed expansion of the

²⁰ See KRS 278.285(1)(f) (requiring the Commission to consider as a factor “[t]he extent to which customer representatives and the Office of the Attorney General have been involved in developing the plan, including program design, cost recovery mechanisms, and financial incentives, and if involved, the amount of support for the plan by each participant, provided however, that unanimity among the participants developing the plan shall not be required for the commission to approve the plan”); KRS 278.285(4) (“In considering a home energy assistance program, the commission shall only utilize the criteria set forth in subsections (1)(f) and (3) of this section.”).

²¹ LG&E/KU Reply Br. at 36.

²² Nov. 6 Order at 159, 163–164, 166, 168–70, 172.

²³ *Id.* at 168–70, 172.

income-qualification threshold for Income Qualified Solutions programs from 200% to 300% of the federal poverty limit is unreasonable.

Respectfully submitted,

Byron L. Gary
Tom FitzGerald
Ashley Wilmes
Kentucky Resources Council, Inc.
P.O. Box 1070
Frankfort, KY 40602
(502) 875-2428
Byron@kyrc.org
FitzKRC@aol.com
Ashley@kyrc.org

Thomas Cmar (appearing *pro hac vice*)
Cassandra McCrae (appearing *pro hac vice*)
Gilbert Zelaya (appearing *pro hac vice*)
Earthjustice
6608 Wooster Pike
Cincinnati, OH 45227
(312) 257-9338
tcmar@earthjustice.org
cmccrae@earthjustice.org
gzelaya@earthjustice.org

*Counsel for Joint Intervenors Metropolitan
Housing Coalition, Kentuckians for the
Commonwealth, Kentucky Solar Energy
Society, and Mountain Association*

CERTIFICATE OF SERVICE

In accordance with the Commission's July 22, 2021 Order in Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19*, this is to certify that the electronic filing was submitted to the Commission on November 27, 2023; that the documents in this electronic filing are a true representations of the materials prepared for the filing; and that the Commission has not excused any party from electronic filing procedures for this case at this time.

Byron L. Gary