

**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)	CASE NO. 2023-00159
PRACTICES TO ESTABLISH REGULATORY)	
ASSETS AND LIABILITIES; (4) A SECURITIZATION)	
FINANCING ORDER; AND (5) ALL OTHER)	
REQUIRED APPROVALS AND RELIEF)	

**MOTION FOR REHEARING AND RESPONSE TO KENTUCKY POWER
COMPANY’S MOTION FOR EXPEDITED REHEARING OF APPALACHIAN
CITIZENS’ LAW CENTER, KENTUCKIANS FOR THE COMMONWEALTH,
KENTUCKY SOLAR ENERGY SOCIETY, AND MOUNTAIN ASSOCIATION**

Come now Appalachian Citizens’ Law Center, Kentuckians For The Commonwealth, Kentucky Solar Energy Society, and Mountain Association, (collectively “Joint Intervenors” or “JIs”), by and through counsel, pursuant to KRS 278.400, and respectfully requests rehearing of the Commission’s February 21, 2025 Order in this case (“Order on Remand”), and responds to Kentucky Power Company’s Motion for Expedited Rehearing. In support of this motion, JIs state as follows:

Introduction & Background

1. Kentucky Power Company (“KPCo” or “the Company”) filed its application in this case for an adjustment to Base Rates on June 29, 2023. Relevant to this motion, the Company requested an adjustment to the service charge for residential customers in Tariff R.S. from \$17.50 to \$20 per month, and of the energy charge from \$0.10799 to \$0.12947 per kWh. Application, Section II Filing Requirements, Exhibit E at 36 (Jun. 29, 2023).

2. JIs entered into a settlement agreement with the Company on November 17, 2023, along with Kentucky Industrial Utility Customers (KIUC) and Walmart. The only other intervenors, the Attorney General and SWVA Kentucky, did not oppose the agreement. That settlement agreement included the proposed monthly service charge of \$20 for residential customers, but would have reduced the energy charge of \$0.12036 per kWh. Corrected Settlement Agreement, Exhibit BKW-1S at 63 (Dec. 06, 2023).

3. The Commission originally issued a final order in this matter on January 19, 2025, denying certain expenses. Final Order (Jan. 19, 2024). The rates ordered in that Order for Tariff R.S. included the same \$20 monthly service charge from the application and settlement agreement, but reduced the energy charge further to \$0.11284 per kWh. Final Order, Appendix C at 1 (Jan. 19, 2024).

4. Kentucky Power Company subsequently appealed that Order to the Franklin Circuit Court, which determined the Commission's decision was unreasonable with regard to their disallowance of two revenue adjustments requested by Kentucky Power. The first disallowance at issue was a \$14.2 million reduction in transmission-related expenses, specifically LSE (load-serving entity) OATT (Open Access Transmission Tariff) expenses charged to Kentucky Power by PJM. The Court found that the Commission's reduction was unreasonable in denying the known and measurable change to test year expenses, and beyond the Commission's jurisdiction because wholesale transmission costs are FERC-regulated. *Ky. Power Co. v. Ky. Pub. Serv. Comm'n*, Franklin Circuit Court Case no. 2024-00160, Order at 7-8 (Jan. 22, 2025). The second disallowance at issue was the Commission's reduction of rate case

expense by \$64,000. The Court found this reduction unreasonable as it was not specifically discussed in the Commission's Order. *Id.* at 10-11. Based on these findings, the court reversed the Commission's Final Order, and remanded to the Commission to enter an order consistent with the court's findings within 30 days.

5. After the Franklin Circuit Court remanded the case, Commission Staff scheduled an informal conference to discuss the decision. Commission Staff's Notice of Informal Conference (Feb. 07, 2025). At that informal conference options for implementing the Order of the Franklin Circuit Court were discussed, and the Company presented options and agreed to provide further information. Letter Filing IC Memo and Sign In Sheet into the Record at 2 (Feb. 25, 2025).

6. On February 11, 2025, the Company filed a Notice of Filing Rates To Be Implemented After Appeal, stating that accompanying spreadsheets showed "the rates that should be implemented in order to effectuate the Franklin Circuit Court's order on appeal, as well as the updated base fuel rates approved in Case No. 2023-00008." Notice of Filing Rates To Be Implemented After Appeal at 2 (Feb. 11, 2025). That spreadsheet showed Tariff R.S. rates including a \$20.00 service charge per month and an energy charge of \$0.12785 per kWh. *Id.*, Appendix C at sheet titled "Remanded Rates."

7. On February 21, 2025 the Commission entered an Order outlining the procedural posture of the proceedings, including the appeal and reversal based on the denial of the \$14.2 million LSE OATT adjustment and \$64,000 in rate case expenses. The Commission stated in that Order that:

Based upon other test year amounts, the Commission finds that the rates as shown in the Appendix to this Order comply

with the instructions from the Franklin Circuit Court and should be effective for service rendered on and after the date of entry of this Order. All other rates and charges not specifically mentioned in the Appendix to this Order shall remain the same as those in effect under the authority of this Commission prior to the effective date of this Order.

Order at 3 (Feb. 21, 2025). The Appendix to that Order provided Residential Service - RS rates of a \$24.50 monthly service charge, and an energy charge of \$0.11652 per kWh. *Id.*, Appendix at 1. This amounts to a 40% increase in the service charge for the Company's residential customers, from the rate of \$17.50 per month prior to this rate case.

8. The Company filed a Motion for Expedited Rehearing four days later, stating:

The energy charge prescribed for Tariff R.S. also does not allow Kentucky Power to collect from that subclass the increased base fuel rate approved by the Commission in Case No. 2023-00008 or the full amount of the Transmission Expense Adjustment or the Rate Case Expense.

Kentucky Power Company's Motion For Expedited Rehearing and for Compliance with the Franklin Circuit Court's Order on Appeal at 7-8 (Feb. 25, 2025). The Company requested that either the rates provided in its February 11, 2025 Notice of Filing Rates To Be Implemented After Appeal should be implemented, or offered as an alternative:

If the Commission instead prefers that collection of the annual Transmission Expense Adjustment and Rate Case Expense be split between service charges and energy charges (as indicated by the Commission's Order on Remand), then the Commission should implement the below rates

Id. at 8. The Company went on to provide an alternative Tariff R.S. structure including the \$24.50 Service Charge included in the Commission’s Order on Remand, and an energy charge of \$0.12420 per kWh.

9. JIs believe that the increase of the service charge, for the first time considered on remand from appeal, is unreasonable and unsupported by substantial evidence, and respectfully request that the Commission grant rehearing on the limited issue of the proper amount of the service charge. JIs provide the below memorandum in support of this motion.

Memorandum in Support

I. Legal Standard

After the Commission makes a determination, any party to the proceedings may apply for rehearing “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

A Commission Order must be supported by substantial evidence and specific findings of evidentiary fact. As restated by the Franklin Circuit Court on appeal from the Commission:

A Commission order must be supported by substantial evidence and, without it, the order is unreasonable and must be overturned. “[S]ubstantial evidence is more than a scintilla, and must do more than create a suspicion of the existence of the fact to be established.” *George T. Stagg Co. v. O’Nan*, 151 S.W.2d 51, 54 (Ky.

¹ KRS 278.400.

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

1941). The order must also contain specific findings of evidentiary fact. Recitations of [] ultimate or generalized facts are insufficient.³

In addition, the Commission has the legal obligation to ensure that all rates, including the residential basic service and energy charges at issue here, are fair, just, and reasonable.⁴

II. Rehearing is Warranted on Reasonableness of the Increase to the Basic Service Charge.

Joint Intervenors respectfully move the Commission for rehearing on the reasonableness of increasing the basic service charge for residential customers in its Order on Rehearing from \$20 per month to \$24.50 per month, which the Commission ordered for the first time here, on remand from appeal, an increase from the original order, the proposed settlement rate, and the originally applied-for rate. The Commission's decision to increase the service charge is unsupported by substantial evidence, as the Commission provides no evidentiary findings to explain its decision to recover the adjustments ordered by the Franklin County Court through the basic service charge. Further, the evidentiary record in this case does not support recovering the transmission and base rate case expenses at issue in the appeal and on remand through a basic service charge.

For the reasons stated herein, Joint Intervenors respectfully request that the Commission issue an Order setting the basic service charge back at \$20 per month. In the alternative, if the Commission wishes to consider increasing the basic service charge on remand, JIs request that the Commission grant rehearing and set a

³ Order at 8, *Ky. Power Co. v. Pub. Serv. Comm'n*, No. 24-CI-00160 (Franklin Cir. Ct. Jan. 22, 2025) (also citing *Marshall County v. South Central Bell Tel. Co.*, 519 S.W.2d 616, 619 (Ky. 1975)).

⁴ KRS 278.030(1).

procedural schedule to receive additional evidence regarding the justness and reasonableness of doing so.

a. *The Commission’s Decision in Feb. 21 Order to Raise the Service Charge is Unsupported by Substantial Evidence.*

The Commission’s February 21st Order increased the basic service charge from \$20 per month to \$24.50, without explanation.

An unexplained decision to significantly alter the residential rate design on remand falls far short of the Commission’s obligation to support its decisions with substantial evidence and specific findings of fact.⁵ Substantial evidence is evidence of record bearing “sufficient probative value to induce conviction in the minds of reasonable ... [persons].”⁶ Specific findings of evidentiary fact must be more than “recitations of [] ultimate or generalized facts.”⁷ “Without such findings, a reviewing court is unable to perform its function of ascertaining that the ultimate conclusions are derived from the record before the agency and not the result of discretion exercised in an arbitrary and capricious manner.”⁸

The Order cites *no* facts from the record to explain or support a decision to increase the basic service charge on remand to account for transmission and base rate case expenses. The only support offered for this service charge increase is that it is “based upon other test year amounts,” which are not identified.⁹ The Commission then concludes that the rates it has proposed “comply with the instructions from the Franklin Circuit Court.” Yet the Franklin Circuit Court opinion contains no instruction that implies

⁵ See Order at 8, *Ky. Power Co. v. Pub. Serv. Comm’n*, No. 24-CI-00160 (Franklin Cir. Ct. Jan. 22, 2025) (citing *George T. Stagg Co. v. O’Nan*, 151 S.W.2d 51, 54 (Ky. 1941) and *Marshall County v. South Central Bell Tel. Co.*, 519 S.W.2d 616, 619 (Ky. 1975)).

⁶ *Kentucky State Racing Com’n v. Fuller*, 481 S.W.2d 298, 303 (Ky. 1972).

⁷ *Id.* (citing *Marshall County v. South Central Bell Tel. Co.*, 519 S.W.2d 616, 619 (Ky. 1975)).

⁸ *Argo-Collier Truck Lines Corp. v. United States*, 611 F.2d 149, 152 (6th Cir. 1979) (emphasis added).

⁹ Order at 3 (Feb. 21, 2025).

that the overturned disallowances should be collected through the service charge, nor does it even mention service charge. The Order does not explain how the Commission derived those numbers, or how changing the balance of fixed/variable cost recovery in Tariff R.S. rate design relates to the disallowances found unreasonable by the Court. Based on what the Commission has provided, no party, let alone a reviewing court, would be able to ascertain whether the Commission's conclusions are the result of reasoned decision making derived from the evidentiary record.¹⁰

In fact, the decision to raise the basic service charge commits the same error that caused the Franklin Circuit Court to overturn the prior disallowances: that they lacked explanation and were not supported by specific findings of fact. "Without explanation," the Court found, the Commission's decision was "plainly deficient and therefore unreasonable."¹¹ Similarly, the Commission's unexplained decision to increase the service charge on remand is unreasonable, and the \$20 service charge from the January 2024 Order should be reinstated.

b. The Evidentiary Record Does Not Support Increasing the Residential Service Charge to \$24.50.

Moreover the evidentiary record in this proceeding does not support increasing the residential service charge. Neither the Commission nor any party proposed increasing the service charge above \$20 per month - until now - so the record on the reasonableness of raising the charge to \$24.50 is not developed.

The record is also undeveloped on the Commission's proposal to recover the types of costs at issue on remand through the service charge. These expenses, which

¹⁰ Moreover, the Order does not even make any assertions that the increase is fair, just, or reasonable, the standard it must uphold in regulating utilities' rates. KRS. 278.030(1).

¹¹ Order at 10-11.

are transmission costs and (to a much lesser extent) administrative costs, do not belong in the service charge. Cost-based rate design involves categorizing expenses as (1) energy-related costs, which vary by sales (kWh); (2) demand-related costs, which vary by demand (kW); and (3) customer-related costs, which vary by number of customers.¹² Once costs are categorized, they are then allocated to a particular rate class based upon the class's contribution to the costs, as summarized in the class cost of service study. A service charge is generally used to recover customer-related expenses, which increase per customer, such as maintenance of meters, billing systems, and customer support.¹³

The specific disallowances at issue here are *not* customer-related. Transmission costs, including the LSE OATT expense, are considered demand-related, meaning they vary according to demand, on a kW basis.¹⁴ Because the residential schedule lacks a demand charge, demand-related costs are recovered from residential customers through the energy charge. As an administrative and general cost, the base rate expense does not appear to vary on an energy, demand, or customer basis. Thus, the record is, at best, undeveloped and unclear as to the best rate design for that expense.

In sum, there is no evidence that recovery of either expense via the service charge is appropriate rate design, let alone just and reasonable.

¹² Direct Testimony of Katharine I. Walsh on behalf of Kentucky Power Company at 4.

¹³ See Primer on Rate Design for Cost-Reflective Tariffs, prepared by the National Association of Regulatory Utility Commissioners (NARUC), for the United States Agency for International Development (USAID), at 17 (Jan. 2021), <https://pubs.naruc.org/pub.cfm?id=7BFEF211-155D-0A36-31AA-F629ECB940DC>.

¹⁴ Direct Testimony of Jaclyn N. Cost on behalf of Kentucky Power Company at 5.

c. If the Commission Wishes to Consider Raising the Basic Service Charge, It Must Reopen the Record for Additional Evidence on Whether the Increase is Just and Reasonable.

Based on the above, Joint Intervenors ask the Commission to grant rehearing and issue an order restoring the basic service charge to the \$20 per month level previously ordered by the Commission, and agreed upon by all the parties in the Settlement Agreement. However, if the Commission wishes to consider allocating some of the expenses to the service charge on remand, rehearing is still necessary in order to hear evidence on the reasonableness of increasing the service charge to recover transmission and base rate case related expenses from residential customers.

Hearing additional evidence to address this issue serves the statutory purpose of assuring fully developed records through rehearing. Further, it would be consistent with the opportunity provided by statute: "Upon the rehearing any party may offer additional evidence that could not with reasonable diligence have been offered on the former hearing." KRS 278.400. The parties could not with reasonable due diligence have offered evidence regarding a potential 40% increase in the service charge, from \$17.50 to \$24.50, as no such proposed increase was on the table. Nor was there a proposal to recover transmission expenses through the basic service charge, which the parties could not have foreseen. It would not have made sense for the parties to have offered evidence on these issues, which would have at the time been only straw men.

On rehearing, facing a proposal to substantially increase the basic service charge for the first time, Joint Intervenors would now offer additional evidence that increasing the service charge is not only unsupported by the record so far, but contrary to principles of cost-based rate-making. As described above, the costs at issue are not

customer-related, do not vary according to number of customers, and should not be recovered through the service charge.

Moreover Joint Intervenors doubt that recovering these costs via an increase to the service charge is fair, just and reasonable, and this issue warrants exploration through further evidence, such as expert testimony. Increasing a fixed service charge reduces customer control over bill affordability by requiring customers to pay a larger fixed amount regardless of how much energy they use. Fixed service charges also reduce incentives for energy efficiency and distributed generation by reducing the value of the kilowatt-hour saved, and harm customers who have already invested in energy efficiency and distributed generation.¹⁵

Reopening the record in order to hear evidence regarding this new potential service charge increase would enable the Commission to make a reasoned decision on remand, and support that decision with relevant record evidence.

III. KPC's Motion for Expedited Rehearing Should be Denied.

a. The Unsupported Alternative Rates Proposed in Subsection D of KPC's Motion Must Also Be Rejected.

Kentucky Power's proposed rates in Subsection D of its Motion for Expedited Rehearing¹⁶ must be rejected for the same reasons that the Commission's increase to the service charge must be rejected: the proposed change is unsupported by substantial evidence. These rates simply adopt the Commission's unsupported increase to the basic service charge without further evidentiary support, merely purporting to

¹⁵ See *generally* Melissa Whited et al., *Caught in a Fix: The Problem with Fixed Charges for Electricity*, prepared for Consumers Union (Feb. 9, 2016), <https://advocacy.consumerreports.org/wp-content/uploads/2016/02/Caught-in-a-Fix-FINAL-REPORT-20160208-2.pdf>.

¹⁶ KPC Motion for Expedited Rehearing (Feb. 25, 2025) at 8-9.

“effectuate . . . the Commission’s desire to split collection between the service and energy charges.”¹⁷ Such an intention does not amount to evidence, and cannot support the proposed rate change. If the Commission is inclined to accept the alternative proposal, those rates proposed for the first time in the motion for rehearing constitute new evidence offered by the Company, which all parties deserve an opportunity to explore.

b. There is no need for expedited processing or rushed decision-making.

The Company also requested an order on rehearing “on an expedited basis,” specifically requesting “an order correcting the errors in setting prospective rates as soon as possible, but no later than 20 days from the date of this filing.”¹⁸ KPCo cites no legal basis for its request for extraordinary treatment, and instead only insists on such haste on the basis that it is “being prevented from collecting approximately \$38.9 thousand per day.”¹⁹

KRS 278.400, discussed above, lays out the process for petitions for and orders from the Commission on rehearing. As to timing, that statute only states that “[t]he 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.” A final Order amending rates is not required on that timeline, even if the Commission grants rehearing.

Indeed, the statute also requires that “[n]otice of the hearing shall be given in the same manner as notice of an original hearing.” Furthermore, “[a] fair trial in a fair

¹⁷ *Id.* at 10.

¹⁸ KPC Motion for Expedited Rehearing at 12 (Feb. 25, 2025).

¹⁹ *Id.* at 8.

tribunal is a basic requirement of due process. This applies to administrative agencies which adjudicate as well as to courts.”²⁰ This same right to procedural due process before administrative agencies has been affirmed by Kentucky Courts.²¹ “The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.”²² The Company’s motion, if granted without the opportunity for further record development regarding the proposed changes to the service charge, would fundamentally short-circuit procedural due process. As the Commission has just recently done in another, related case, if it determines that additional changes not originally contemplated are necessary, it should grant rehearing to further develop the record, and issue a further scheduling order for the processing of this matter on rehearing.²³

The Commission should not forego due process simply because of the Company’s claimed losses of \$38,900 daily. Ultimately, this is a fairly minor cost in the context of a case concerning an increase of annual revenue of \$93,935,727²⁴ But the changes sought would also have a real impact on the Company’s residential ratepayers. As Joshua Bills testified on behalf of the Joint Intervenors, the Company’s service territory includes some of the highest average monthly electric bills and energy burdens

²⁰ *Withrow v. Larkin*, 421 U.S. 35, 46-47 (1975) (internal citations and quotations omitted).

²¹ *Am. Beauty Homes Corp. v. Louisville and Jefferson Co. Planning and Zoning Comm.*, 379 S.W.2d 450, 456 (Ky. 1964).

²² *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (internal citation and quotation omitted).

²³ See Case No. 2023-00318, *Electronic Tariff Filing of Kentucky Power Company to Update Its Purchase Power Adjustment Rates*, Order at 8 (Jul. 25, 2024).

²⁴ Order at 1 (Feb. 21, 2025) (citing Application at 10; and Final Order (Ky. PSC Jan. 19, 2024) at 2).

in the state.²⁵ After the settlement in this case, the Company applied to offer its first Demand Side Management (DSM) offerings for most residential (and commercial) customers in a number of years, and just received approval for those programs.²⁶ An increase in the basic service fee in exchange for a decrease in the per kWh energy charge for residential customers would fundamentally undermine the usefulness of these very DSM offerings, as the bill savings for reducing energy consumption would be cut short.

Finally, interpreting the Court's Order that the Commission issue an order within 30 days implementing the decision surely does not require that the Commission rush its decision-making. Such an interpretation would frustrate the Court's intent, given that it found reversible error in the Commission's failure to support its first order with substantial evidence. If necessary, reopening the record for additional record development on the reasonableness of increasing the service charge would be consistent with the Court's decision requiring the Commission implement its findings, and the Commission's legal obligation to engage in reasoned decision-making.

WHEREFORE, Joint Intervenors respectfully request that the Commission grant rehearing on the limited issue of the increase in the Service Charge for Tariff R.S., and return the charge to the original level of \$20 per month. In the alternative, Joint

²⁵ Testimony of Joshua Bills On Behalf Of Joint Intervenors Mountain Association, Appalachian Citizens' Law Center, Kentuckians For The Commonwealth, and Kentucky Solar Energy Society, Corrected Version, at 9-11.

²⁶ Case No. 2024-00115, *Electronic Application of Kentucky Power Company For: (1) Approval to Expand Its Targeted Energy Efficiency Program; (2) Approval of a Home Energy Improvement Program and a Commercial Energy Solutions Program; (3) Authority to Recover Costs and Net Lost Revenues, and to Receive Incentives Associated with the Implementation of Its Demand-Side Management/Energy Efficiency Programs; (4) Approval of Revised Tariff d.s.m.c.; (5) Acceptance of Its Annual DSM Status Report; And (6) All Other Required Approvals and Relief*, Order (Feb. 28, 2025).

Intervenors request the Commission grant rehearing to further develop the record, and issue a further scheduling order for the processing of this matter on rehearing

Respectfully Submitted,



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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 March 04, 2025; that the documents in this electronic filing are a true representation 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