

**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 Practices To Establish)	Case No. 2023-00159
Regulatory Assets And Liabilities; (4) A)	
Securitization Financing Order; And (5) All Other)	
Required Approvals And Relief)	

POST-HEARING BRIEF OF KENTUCKY POWER COMPANY

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I. INTRODUCTION

Kentucky Power Company (“Kentucky Power” or the “Company”) filed its application in this case seeking, generally, a rate increase and a securitization financing order. Through these requests, Kentucky Power sought first to recover its cost of providing service plus a reasonable return, and second an order allowing Kentucky Power to securitize large non-recurring costs and to bring rate relief to customers paying those costs. Kentucky Power is acutely aware of the economic struggles faced by its customer base and its service territory over the last several years, which were made worse after the historic flood event in the summer of 2022.¹ The last time Kentucky Power filed an application for an increase in base rates was more than three years ago, in June 2020. Since that time, nearly every industry has faced a substantial increase in the cost to do business and the cost to borrow. Kentucky Power was not an exception to that impact.

Nonetheless, Kentucky Power worked creatively to employ several mitigation measures that enabled the Company to limit this request for a rate increase to the amount necessary to continue to provide adequate and reliable service, or in other words, to recover its costs to provide that service plus the reasonable return required by law. Those measures included foregoing the recovery in this case of certain costs that otherwise should be collected in rates, including reducing the requested return on equity 70 basis points below that recommended by the Company’s expert witness (worth \$7 million annually),² postponing an update to depreciation rates for the Mitchell Plant (worth \$65 million annually),³ foregoing continuation of its

¹ Hearing Test. of Cynthia Wiseman, Tr. Hearing Vol. I at 41 (Nov. 28, 2023) (“[W]e are acutely aware of our territory that we serve and the struggles that people are facing with – you know, as you’ve heard in the public comment sessions and in the public comments submitted, with fixed income and high energy usage, and so when we consider, you know, our – any decision, the customer is always considered and top priority.”).

² Kentucky Power’s Response to Commission Staff’s Third Request for Information, Item 30 (Sept. 25, 2023).

³ Wiseman Direct Test. at 20; Kentucky Power’s Response to Joint Intervenors’ Second Request for Information, Item 10 (Sept. 25, 2023).

transmission cost tracking mechanism (worth \$30 million),⁴ and conditionally suspending the collection of two regulatory assets until securitized bonds for those assets can be issued. If approved, the Company's securitization application also would lower the charges on customers' bills for the costs securitized. These proposals were decided upon by the new Kentucky Power management team, led by President and Chief Operating Officer Cynthia Wiseman, as they engage with stakeholders and attempt to repair the Company's financial health while being mindful of the macroeconomic realities facing eastern Kentucky.

The proposed Settlement Agreement, unopposed by any party in this case, further reduces the Company's requested increase by nearly \$20 million and also ensures additional customer benefits, including many aimed at further assisting the Company's most vulnerable low-income residential customers. For example, as part of the overall package of settlement terms, the Company has agreed to double the shareholder contribution that funds Tariff R.E.A. to a two-for-one match of the \$0.40 per meter monthly residential customer surcharge proposed in the Application. The Settlement Agreement, if approved, would result in an increase of only about 3% over current rates paid by an average residential customer until securitization financing is implemented.⁵ After that time, the same average residential customer would see an increase of about 9% over current-billed rates,⁶ as opposed to the approximately 18% increase requested in and supported by the Company's Application.

The Settlement Agreement brings certainty, significant customer benefits, reasonable and appropriate rates, and is supported by diverse parties representing a wide variety of customer

⁴ Kentucky Power's Supplemental Response to AG-KIUC's First Request for Information, Item 18, Attachment 1 (Sept. 8, 2023)

⁵ See Kentucky Power's response to Commission Staff's Post-Hearing Data Request, Item 7, Attachment 1, "1313" Tab (Dec. 15, 2023).

⁶ See *id.*

interests. Although not a focus at the hearing, it is important to recognize the customer benefits reached in this case through collaboration by all of the parties working together. It cannot be overlooked that every intervenor in this case either supported and signed the Settlement Agreement or affirmatively indicated that they do not oppose the Settlement Agreement. In addition, no intervenor asked a single cross-examination question of any witness at hearing.

Kentucky Power also makes great effort even before requesting a rate increase to manage and reduce costs on a daily basis in order to make the provision of service as efficient and cost-effective as possible.⁷ The Commission’s inquiry at the hearing focused specifically on this issue. Kentucky Power’s local leadership team knows their customer base and the service territory. Kentucky Power leadership employs several practices to ensure that costs are monitored, regularly examined, and minimized wherever practical and possible.⁸ These efforts also include continuing efforts to increase economic development in the service territory in order to reduce customers’ individual share of the fixed cost of service. Kentucky Power also ensures that it is operating as efficiently as possible by relying on cost-effective support from a team of experts at American Electric Power Service Corporation (“AEPSC”), who work specifically for and with Kentucky Power and its customers’ interests in mind.⁹ Not only does receiving support from a centralized team at AEPSC save the Company money in the form of not having to employ

⁷ Hearing Test. of Cynthia Wiseman, Tr. Hearing Vol. I at 42:1 (Nov. 28, 2023) (“[W]e were very careful in what we put in this rate case so that it can have a minimal impact on customers. We plan accordingly for looking for the least-cost option for our customers in everything that we do.”).

⁸ *See id.*, Tr. Hearing Vol. I at 56:2 (Nov. 28, 2023) (“[I]t is pretty much a daily exercise that we do working with Mr. West and Mr. Phillips and Ms. Elliott, which is – makes up the executive team at Kentucky Power, and certainly looking at ways that we can cut costs... And, you know, my word this year has been let's look at everything and make sure there's no waste out there... But we're ... always looking at our budget and trying to find ways to be more efficient with it.”).

⁹ *See id.*, Tr. Hearing Vol. I at 56:2 (Nov. 28, 2023) (“[W]e work hand in hand with AEP on pretty much every decision that we make... You know, we have a lot of subject matter experts at the parent company, and we're not all subject matter experts in every topic, and they advise and guide us, but ultimately the operating company has a lot of final say in what we do.”).

individuals solely dedicated to Kentucky Power, the AEPSC team also further assists in finding cost-effective ways for Kentucky Power to provide adequate and reliable service to customers.

Much of the bench's inquiry at the three-day hearing on the uncontested Settlement Agreement also focused on the Company's transmission expenses and the actions Kentucky Power has taken to address the Commission's concerns about these rising expenses in the Company's last rate case. The Commission's order in the Company's last base rate case granted Kentucky Power's request to recover 100% of certain incremental transmission expenses known as PJM Load Serving Entity Open Access Transmission Tariff ("LSE OATT") costs through a tracking mechanism in Tariff P.P.A. (Purchase Power Adjustment), above the level recovered through base rates. The Commission granted that request with the expectation that Kentucky Power take steps to address those rising costs.¹⁰ The approval was granted "until the next rate case, when the issue will be re-examined,"¹¹ or "for the next three years."¹² Elsewhere in that order, the Commission directed Kentucky Power to "file a general base rate adjustment application for rates effective January 1, 2024."¹³

Kentucky Power respectfully observes it and the Commission have differing views on the value that Kentucky Power's transmission expenditures provide to the Company and its customers, and on the relative cost of those expenditures compared to non-transmission alternatives. The Company nonetheless has taken meaningful and immediate steps to address

¹⁰ See Order at 60, *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 Practices To Establish Regulatory Assets And Liabilities; (4) Approval Of A Certificate Of Public Convenience And Necessity; And (5) All Other Required Approvals And Relief*, Case No. 2020-00174 (Ky. P.S.C. Jan. 13, 2021) ("2020 Rate Case Order").

¹¹ *Id.*

¹² *Id.* at 63.

¹³ *Id.* at 32.

transmission investment and transmission costs, and to determine if there are viable ways to reduce these costs for customers. Kentucky Power immediately ceased transmission investment through AEP Kentucky Transmission Company and began making those investments through Kentucky Power. Further, shortly after receiving the Commission's January 13, 2021 Order in the Company's last rate case, AEP undertook its strategic review of its Kentucky Assets. Kentucky Power then entered a two-year sale process, which the Commission approved as in the public interest and a benefit to Kentucky ratepayers. Ultimately, that sale was mutually terminated by the parties in April 2023.

Immediately after the sale was terminated, Kentucky Power began working diligently on this Application for rates effective January 1, 2024, as ordered by the Commission.¹⁴ Importantly, this Application, in response to the Commission's January 13, 2021 Order in the last rate case, includes a request to cease all tracking of PJM LSE OATT costs through Tariff P.P.A., and to instead collect a normalized amount of those costs through base rates. The Company also initiated an analysis and review process to examine how PJM transmission costs are allocated to and among the Company and the other AEP operating companies operating in PJM, focusing primarily on cost allocation in the AEP Zone in PJM. Kentucky Power intends to engage with stakeholders, including the Commission, regarding the study's results and the potential impact of the analysis's recommendations. Kentucky Power therefore has complied, in all material respects, with the Commission's directives concerning transmission expenses in the

¹⁴ *Id.*; see also Order, *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 Practices To Establish Regulatory Assets And Liabilities; (4) Approval Of A Certificate Of Public Convenience And Necessity; And (5) All Other Required Approvals And Relief*, Case No. 2020-00174 (Ky. P.S.C. March 20, 2023) (denying Kentucky Power's motion to amend the Commission's 2020 Rate Case Order requiring Kentucky Power to file a general base rate adjustment application for rates effective January 1, 2024 in the event that the sale of Kentucky Power to Liberty Utilities did not close).

last rate case. Further, Kentucky Power’s proposal to cease PJM LSE OATT cost tracking through Tariff P.P.A. (at the end of the Commission’s conditional approval period) while the transmission analysis proceeds obviates the need for further Commission inquiry at this time, as rates approved in this case will reflect a normalized level of the federally approved jurisdictional expenses as of the test year end.

In short, Kentucky Power makes every effort to reduce costs and manage its business as cost-effectively as possible before asking for a rate increase. When it is required to seek a rate increase, it makes every effort to minimize and mitigate the request to ensure it seeks only the amount required to provide adequate and reliable service, or the amount to which it is entitled by law. However, there are some costs of providing service that the Company cannot unilaterally lower or choose to forego without potentially harming its ability to continue to provide that adequate and reliable service and earn an appropriate return on its investments. Nor is Kentucky Power required by law do so. The regulatory compact¹⁵ and KRS 278.030(2) impose the obligation on Kentucky Power to provide “adequate, efficient, and reasonable service” to each of the Company’s 163,400 customers whether they are located in Ashland, Pikeville, or Hazard, or at the end of a six-mile radial distribution line that serves only two customers. Kentucky Power (and every other utility) is statutorily¹⁶ and constitutionally¹⁷ entitled to recover the costs of doing so. Rate cases are the legislatively sanctioned vehicle through which utilities obtain the financial wherewithal to meet their obligation to provide service to their customers. Kentucky

¹⁵ *United States Gypsum, Inc. v. Indiana Gas Co.*, 735 N.E.2d 790, 797 (Ind. 2000).

¹⁶ KRS 278.030(1); *South Cent. Bell Tel. Co. v. Utility Regulatory Com’n*, 637 S.W.2d 649, 652 (Ky. 1982) (“The General Assembly has unequivocally allowed utilities to be fairly paid for their service.”).

¹⁷ *Commonwealth ex rel. Stephens v. S. Cent. Bell Tel. Co.*, 545 S.W.2d 927, 930 (Ky. 1976) (a just and reasonable, and hence constitutional, rate is one that “enable[s] the utility to operate successfully, to maintain its financial integrity, to attract capital and to compensate its investors for the risks assumed....”).

Power has the right – which only Kentucky Power can limit through a settlement agreement – to employ that legislatively-sanctioned vehicle to obtain fair, just, and reasonable rates sufficient to cover its expenses in providing service to its customers.

The Settlement Agreement represents a reasonable compromise and collaboration between the parties and the unique customer interests they represent, and it helps the Company to take steps toward a healthy financial future. The Company firmly believes that there is value in collaborating with the involved stakeholders and reaching settlement, both in terms of the certainty that the settlement provides, and the customer benefits that could not be realized other than through the settlement process. Settlement is a balance of all the parties' interests. Modification of the Settlement Agreement allows the parties to withdraw from the Settlement Agreement, and thereby erases that certainty and those customer benefits. It could also chill the possibility of settlement in future Commission proceedings. For these reasons, and those set forth below, the Commission should approve the Settlement Agreement in its entirety and without modification.

II. PROCEDURAL BACKGROUND

A. Kentucky Power's Application

Kentucky Power filed its Application in this case on June 29, 2023 seeking two main approvals. First, for an increase in base rates to enable it to operate in a financially healthy manner. Second, for a securitization financing order that would allow it to securitize significant non-recurring costs and ultimately reduce the rate impact of those costs on customers' bills.

Kentucky Power waited as long as the Commission's order in its last base rate case would allow,¹⁸ and as long as financially possible,¹⁹ to file its application for an increase in base rates.

Kentucky Power also filed the request seeking a securitization financing order on the first day that the enabling statute became effective in order to flow those benefits back to customers as soon as possible. Kentucky Power worked collaboratively with interested stakeholders to make securitization possible in Kentucky.²⁰ After discussion in prior cases with intervenors like the Attorney General and KIUC, Kentucky Power lobbied the Kentucky General Assembly to enact a law allowing securitization for Kentucky Power customers' benefit.²¹ The securitization law was passed and became effective on June 29, 2023.²²

Kentucky Power filed its Application in this case seeking a securitization financing order to allow the Company to finance the entirety of the Decommissioning Rider Regulatory Asset, Rockport Deferral Regulatory Asset, Tariff P.P.A. Under-Recovery Regulatory Asset, and

¹⁸ The Commission ordered Kentucky Power to "file a general base rate adjustment application for rates effective January 1, 2024" in its January 13, 2021 order approving Kentucky Power's current rates in Case No. 2020-00174.

¹⁹ For example, the Company's earned ROE for the 12-months ending March 31, 2023 was 2.9%. *See* Wiseman Direct Test. at 12-14.

²⁰ West Direct Testimony at 21-22.

²¹ *Id.*

²² KRS 278.670, *et seq.* (eff. June 29, 2023).

several Major Storm regulatory assets deferred since March 31, 2020.²³ Those regulatory assets have a cumulative total value of approximately \$471.2 million.²⁴ Securitizing these costs would allow the Company to spread customers' payment of the deferred costs over a longer period of time in order to reduce immediate bill impacts that would otherwise have been seen absent securitization.²⁵ The Company estimates that securitization of the deferred costs would provide a quantifiable net present value ("NPV") benefit to customers of approximately \$74 million.²⁶

The rates proposed in the Company's Application were designed to produce an increase in annual revenues of \$93,935,727.²⁷ The proposed increase was based on the historical test year ending March 31, 2023, with known and measurable adjustments to test year revenues and operating expenses, which equated to a total overall increase of 13.54%.²⁸ The increase represented an 18.3% increase on the average residential customer's bill.²⁹ In addition to the Company's securitization application, Kentucky Power proposed several measures aimed at reducing and offsetting the customer rate impacts associated with filing this application, including:

a) committing to conditionally suspend collection of the Decommissioning Rider and the Rockport Deferral (collected through Tariff P.P.A.) upon implementation of base rates

²³ West Direct Test. at 23.

²⁴ *Id.*

²⁵ *Id.* at 27-28.

²⁶ *Id.* at 27; Messner Direct Test. at 7-11.

²⁷ Wiseman Direct Test. at 18.

²⁸ *Id.*

²⁹ *Id.*

approved in this case, if the Company's securitization proposal is approved and other conditions are met,³⁰

b) reducing the requested return on equity 70 basis points below the return recommended by the Company's expert witness;³¹

c) postponing an update to depreciation rates for the Mitchell Plant to reflect that Kentucky Power's interest in Mitchell terminates after 2028, which would have otherwise resulted in an approximately \$69 million annual increase in Mitchell depreciation expense for the next five years,³² and

d) reducing the level of total distribution major and non-major storm project expense in the test year from \$7.3 million to approximately \$1.0 million, and maintaining the actual test year level of transmission major and non-major storm project expense of \$0.1 million, rather than proposing an increase to expense to reflect the three-year average of actual expenses (excluding February 2021 Ice Storm and July 2022 Flood expenses), which would have equaled approximately \$9.4 million.³³

The Company also took further steps to meet the Commission's expectations that were communicated to the Company in its last base rate case with respect to transmission expenses. In addition to the steps the Company has already taken, including discontinuing transmission investment through AEP Kentucky Transmission Company, the Company proposed a new distributed solar garden program, which among other things will reduce the Company's 12CP

³⁰ *Id.* at 19.

³¹ *Id.* at 21.

³² *Id.* at 19-20.

³³ *Id.* at 20.

used to allocate PJM LSE OATT charges to the Company.³⁴ The Company also proposed to discontinue cost-tracking of PJM LSE OATT costs through Tariff Purchase Power Adjustment, and to instead collect those costs through base rates, which was intended to better levelize those costs for customers.³⁵ The Company also noted that AEPSC retained a consultant to conduct an analysis of PJM transmission cost allocation and its impacts on Kentucky Power and other AEP East Operating Companies in order to better understand those costs and how the Company can further address the Commission's expectations.³⁶

The Company also made several other proposals aimed at increasing reliability, making service more affordable, and improving the customer experience. The Company proposed to establish a Distribution Reliability Rider, which will provide additional capital funding to expand the Company's existing trees outside the rights-of-way expansion work and additional incremental distribution investments targeted at improving reliability.³⁷ To provide customers with more fuel cost certainty and stability, the Company proposed a financial hedging plan to mitigate the volatility of its PJM market energy purchases.³⁸ The Company also proposed the previously-mentioned distributed solar garden program,³⁹ which will provide significant benefits to customers, generate jobs and property taxes, and provide an approximately \$66 annual energy credit to low-income customers. To provide customers with additional time to pay their bills and better align with peer utilities in Kentucky and AEP, Kentucky Power proposed to extend the

³⁴ See Vaughan Direct Test. at 32.

³⁵ West Direct Test. at 30-31.

³⁶ Wiseman Direct Test. at 21.

³⁷ See generally Phillips Direct Test.

³⁸ See generally Vaughan Direct Test.

³⁹ *Id.*

deadline for customer bill payment from 15 to 21 days.⁴⁰ Kentucky Power also proposed to increase its residential energy assistance surcharge and Company match from \$0.30 per month to \$0.40 per month to support approximately 1,000 additional customers through its existing energy assistance program offerings.⁴¹ Finally, the Company also proposed a voluntary seasonal residential service tariff option, which will enable residential customers to reduce impacts associated with higher usage in the winter as a result of electric heating and provide greater electric heating cost predictability and stability.⁴²

The Company's request and its proposed adjustments were based on the principles of cost-based ratemaking and represented the Company's cost to provide service, plus a reasonable return. The request, in turn, yielded fair, just, and reasonable rates that would allow the Company to continue to provide adequate, safe, and reliable service that customers expect and that Kentucky law requires. Nonetheless, as described below, the Company entered into a Settlement Agreement that resolves all of the issues, satisfies the interests of the parties to the agreement, and also results in fair, just, and reasonable rates.

B. The Intervenors and the Procedural Schedule

Several parties were granted intervention in this proceeding, including the Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention ("Attorney General");⁴³ Kentucky Industrial Utility Customers, Inc. ("KIUC");⁴⁴ Mountain Association, Appalachian Citizens' Law Center, Kentuckians for the Commonwealth, and

⁴⁰ See generally Cobern Direct Test.

⁴¹ *Id.*

⁴² See generally Spaeth Direct Test.

⁴³ Order (Jun. 6, 2023).

⁴⁴ Order (Jun. 20, 2023).

Kentucky Solar Energy Society (collectively, “Joint Intervenors”);⁴⁵ Walmart, Inc. (“Walmart”);⁴⁶ and SWVA Kentucky, LLC (“SWVA”).⁴⁷ Combined, the intervenors represent diverse and unique customer interests, including industrial, commercial, residential, and low-income residential customers. The Attorney General and KIUC elected to proceed jointly in this proceeding (collectively, “AG-KIUC”).⁴⁸

The Commission served six sets of discovery upon the Company prior to the evidentiary hearing. Each of the intervenors had the opportunity to serve two sets of data requests upon the Company prior to the hearing.⁴⁹ AG-KIUC, Walmart, and the Joint Intervenors each filed their respective direct testimonies. The Company served one set of discovery upon AG-KIUC, Walmart, and the Joint Intervenors. The Company also filed its rebuttal testimonies in response to the intervenors’ testimony. The Commission scheduled four local public meetings to be held in Catlettsburg, Hazard, Frankfort (with a virtual attendance option), and Pikeville on November 8, 2023, November 9, 2023, November 16, 2023, and November 20, 2023, respectively.⁵⁰ Several Kentucky Power employees attended each of these meetings and heard all public comments. The Commission scheduled an evidentiary hearing for seven days, from November 28, 2023, through December 1, 2023, and December 4, 2023, through December 6, 2023.⁵¹

Following negotiations to which all parties were invited, Kentucky Power, KIUC, Walmart, and the Joint Intervenors (collectively, the “Signatory Parties”) entered into a

⁴⁵ Order (Aug. 16, 2023).

⁴⁶ Order (Aug. 10, 2023).

⁴⁷ Order (Aug. 16, 2023).

⁴⁸ See e.g. Joint Initial Data Requests of the Attorney General and KIUC (Aug. 14, 2023).

⁴⁹ See Order (Jul. 20, 2023).

⁵⁰ See Order (Oct. 26, 2023).

⁵¹ See Order (Jul. 20, 2023).

comprehensive Settlement Agreement on November 17, 2023.⁵² The Attorney General and SWVA signed the Settlement Agreement as “non-opposing” parties and indicated that they did not oppose any aspect of the Settlement Agreement and that they would not cross-examine any of the Company’s witnesses at the evidentiary hearing (“Non-Opposing Parties”).⁵³ Kentucky Power submitted an executed copy of the Settlement Agreement, along with supporting testimony and exhibits from Company Witnesses Brian K. West and Katharine I. Walsh, for Commission approval on November 20, 2023.⁵⁴ The Commission held an evidentiary hearing over the course of three days, on November 28, 29, and 30, 2023. None of the parties to the Settlement Agreement, including the Non-Opposing parties, cross-examined each other’s witnesses at the evidentiary hearing. Only Commission Staff and the Commissioners questioned the Company’s witnesses, as well as one witness for AG-KIUC, at the evidentiary hearing.

C. The Settlement Agreement

The Settlement Agreement was supported by the testimony of 25 witnesses, who either filed testimony specifically in support of the Settlement Agreement and/or filed testimony in support of the Company’s initial proposals that were incorporated into the agreement. Eight of those witnesses are employed directly by Kentucky Power. Eleven of those witnesses are employed by AEPSC and submitted testimony on Kentucky Power’s behalf and at the direction of Kentucky Power. For all intents and purposes, those AEPSC employees work *for* Kentucky Power.⁵⁵

⁵² See Exhibit BKW-1S to West Settlement Test.

⁵³ *Id.* at Recital No. 4.

⁵⁴ Exhibit BKW-1S to West Settlement Test. (“Settlement Agreement”).

⁵⁵ Hearing Testimony of Brian West, Tr. Hearing Vol. I at 178:12 (Nov. 28, 2023) (“[T]hey don’t take a paycheck from Kentucky Power, but they certainly work for Kentucky Power...”).

The Settlement Agreement is the result of constructive and creative negotiations among the parties⁵⁶ and provides for a balanced package that allows the Company to address the financial challenges it has seen recently while mitigating rate impact on its customers. The Settlement Agreement addresses a number of substantive areas that differ from the Company's Application, and only reflects changes to the Application.⁵⁷ Unless otherwise altered in the Settlement Agreement, the Signatory Parties agreed to the proposed rates and other changes to the Company's terms and conditions of providing service set forth in the Application.⁵⁸ The Settlement Agreement also provides that any Signatory Party may withdraw from the agreement if the Commission does not approve the agreement in its entirety and without modification.⁵⁹

The major terms of the Settlement Agreement are:

a) A net annual increase in the Company's retail revenues of \$74,666,028 which represents a decrease of \$19,269,699 from the requested \$93,935,727 set forth in the Application.⁶⁰

b) A return on equity of 9.75% applicable to base rates, a return on equity of 9.65% applicable to the equity component of the Company's riders to which a weighted average cost of capital is applied, and an update to the Company's capitalization to allocate the Mitchell Coal Stock Adjustment across the capital structure rather than allocating it solely to short-term debt. This compromise represents a \$2.17 million reduction to the Company's revenue requirement requested in the Application.⁶¹

⁵⁶ See West Settlement Test. at S5.

⁵⁷ *Id.* at S2.

⁵⁸ *Id.*; Settlement Agreement at ¶ 1.

⁵⁹ *Id.* at ¶ 16.

⁶⁰ *Id.* at ¶ 2.A.

⁶¹ *Id.* at ¶ 2.C.

c) Acceptance of all rate base adjustments proposed by AG-KIUC Witness Kollen, except for those related to the treatment of prepaid pension and other post-employment benefit (“OPEB”) assets and the treatment of accumulated deferred income taxes (“ADIT”) on certain regulatory assets proposed for securitization. This compromise represents a \$11.879 million reduction to the Company’s revenue requirement requested in the Application.⁶²

d) Acceptance of AG-KIUC Witness Kollen’s operating expense adjustments related to incentive compensation, SERP expense, and 401(k) matching expense for employees who also participate in the pension plan. This compromise represents a \$6.585 million reduction to the Company’s revenue requirement requested in the Application.⁶³

e) Forgoing recovery of the approximately \$11.52 million in test year Winter Storm Elliott peaking unit equivalent (“PUE”) expense and the approximately \$4.02 million in non-FAC eligible PUE expense incurred between March 31, 2020, and March 31, 2023.⁶⁴

f) Approval of the Company’s securitization application as filed.⁶⁵

g) Approval of the Company’s proposed Distribution Reliability Rider with agreed-upon guardrails to ensure that the costs included for recovery via the rider are incremental and are appropriately capped.⁶⁶

h) Additional assistance and other support for vulnerable residential customers, including doubling the shareholder contribution funding Tariff R.E.A. to \$0.80 per meter, or in

⁶² *Id.* at ¶ 2.D.ii.

⁶³ *Id.* at ¶ 2.E.ii.

⁶⁴ *Id.* at ¶ 2.E.vi.

⁶⁵ *Id.* at ¶ 3.

⁶⁶ *Id.* at ¶ 4.

other words, a two-for-one match of the \$0.40 per meter monthly residential customer Tariff R.E.A. surcharge proposed in the Company's Application.⁶⁷

i) A revenue allocation that provides additional benefit to residential customers.⁶⁸

j) Commitments to work with the intervenors on updates to the Solar Garden Program, the Company's demand-side management and energy efficiency programs, customer education programs, distributed energy resources opportunities, and to provide additional assistance to the Company's vulnerable residential customers.⁶⁹

The Settlement Agreement includes many other provisions aimed at improving service and providing meaningful benefits to customers, and also at providing the Company a tangible path toward a healthy financial future. The Signatory Parties worked diligently and purposefully to produce a comprehensive Settlement Agreement that, as a whole, provides benefits to all parties, including all of the diverse customer interests represented by the intervening parties. While the Settlement Agreement satisfies the varied interests of each Signatory Party, it also results in fair, just, and reasonable rates,⁷⁰ as discussed further below. The Settlement Agreement as a whole improves on the Company's as-filed Application while providing additional benefits not available in the absence of the agreement, and it should be approved without modification.

⁶⁷ *Id.* at ¶ 6.

⁶⁸ *Id.* at ¶ 2.B.

⁶⁹ *Id.* at ¶¶ 5 through 12.

⁷⁰ West Settlement Test. at S25.

III. COMMISSION JURISDICTION AND STANDARD OF REVIEW

The Commission’s jurisdiction extends to the “rates” and “service” of public utilities.⁷¹ As the Kentucky Supreme Court has observed, “[t]he manifest purpose of the Public Service Commission is to require and insure fair and uniform rates, prevent unjust discrimination, and prevent ruinous competition.”⁷² In fact, the Public Service Commission itself states that its mission “is to foster the provision of safe and reliable service at a reasonable price to the customers of jurisdictional utilities while providing for the financial stability of those utilities by setting fair and just rates, and supporting their operational competence by overseeing regulated activities.”⁷³ Furthermore, the regulation of public utilities “has a substantial relation to the public welfare, safety and health and, in a real degree, promotes these objects.”⁷⁴

In setting utility rates, however, the Commission also is “dealing with property rights of ... corporations.”⁷⁵ The Commission may not act in a manner that is unlawful or unreasonable.⁷⁶ “Unreasonable has been construed in the rate-making sense to be the equivalent of confiscatory.”⁷⁷ The Kentucky Supreme Court “has equated an unjust and unreasonable rate to the confiscation of utility property” and has “declared that rates established by a regulatory agency must enable the utility to operate successfully and maintain its financial integrity in order

⁷¹ See KRS 278.040. See also *Public Service Comm’n v. Blue Grass Natural Gas Co.*, 197 S.W.2d 765, 768 (Ky. 1946) citing *Smith v. Southern Bell Telephone and Telegraph Co.*, 104 S.W.2d 961 (Ky. 1937); *Benzinger, etc., v. Union Light, Heat, & Power Co.*, 170 S.W.2d 38 (Ky. 1943); *Peoples Gas Co. of Kentucky v. City of Barbourville*, 165 S.W.2d 567 (Ky. 1942).

⁷² *Simpson County Water Dist. v. City of Franklin*, 872 S.W.2d 460, 464 (Ky. 1994) citing *City of Olive Hill v. Public Service Comm’n*, 203 S.W.2d 68 (Ky. 1947).

⁷³ <https://psc.ky.gov/Home/About#AbtComm>.

⁷⁴ *City of Florence v. Owen Elec. Co-op., Inc.*, 832 S.W.2d 876, 882 (Ky. 1992).

⁷⁵ *Bobinchuck v. Levitch*, 380 S.W.2d 233, 236 (Ky. 1964).

⁷⁶ See KRS 278.430.

⁷⁷ *Public Service Comm’n v. Dewitt Water District*, 720 S.W.2d 725, 730 (Ky. 1986) citing *Commonwealth ex rel Stephens v. South Central Bell Telephone Co.*, 545 S.W.2d 927 (Ky. 1976).

to meet the just and reasonable nonconfiscatory tests.”⁷⁸ Indeed, the Commission affirmatively recognized at the hearing in this case that Kentucky law contemplates cost-based regulation, or that the revenue requirement is based on the utility’s cost of service.⁷⁹

In light of the foregoing constitutional and statutory limits on the Commission’s authority, it is well-established that the Commission “has no authority to impose a new duty on utilities when that duty has no foundation in law. To do so is an unconstitutional legislative act....”⁸⁰ In undertaking its work, the focus of the Commission’s efforts are upon the outcome. As stated by the Kentucky Supreme Court: “[T]he Commission has discretion in working out the balance of interests necessarily involved and that it is not the method, but the result, which must be reasonable.”⁸¹ The Kentucky Court of Appeals offered this similar perspective:

The teaching of these cases is straightforward. In reviewing a rate order courts must determine whether or not the end result of that order constitutes a reasonable balancing, based on factual findings, of the investor interest in maintaining financial integrity and access to capital markets and the consumer interest in being charged non-exploitative rates. ... those choices must still add up to a reasonable result.⁸²

In setting rates, “the future as well as the present must be considered.”⁸³ Indeed, “rates are merely the means designed for achieving a predetermined objective, which in this instance was how much additional revenue should the Company be allowed to earn.”⁸⁴ As the applicant,

⁷⁸ *Id.*

⁷⁹ Tr. Hearing Vol. I at 77:20 (November 28, 2023).

⁸⁰ *Public Service Comm'n v. Jackson County Rural Elec. Co-op., Inc.*, 50 S.W.3d 764, 766 (Ky. Ct. App. 2000), as modified (July 21, 2000) citing *Henry v. Parrish*, 211 S.W.2d 418 (Ky. 1948).

⁸¹ *Kentucky Indus. Utility Customers, Inc. v. Kentucky Utilities Co.*, 983 S.W.2d 493, 498 (Ky. 1998) citing *Federal Power Comm'n v. Hope Natural Gas*, 320 U.S. 591 (1944). See also *National-Southwire Aluminum Co. v. Big Rivers Elec. Corp.*, 785 S.W.2d 503, 515 (Ky. App. 1990) (“We are primarily concerned with the product and not with the motive or method which produced it.”) citing *Louisville & Jefferson County Met. Swr. Dist. v. Joseph E. Seagram & Sons*, 211 S.W.2d 122 (Ky. 1948).

⁸² *National-Southwire*, 785 S.W.2d at 513 citing *Jersey Central Power & Light Co. v. Federal Energy Regulatory Comm'n*, 810 F.2d 1168, 1177 (D. C. Cir. 1987).

⁸³ *Dewitt Water District*, 720 S.W.2d at 730 citing *McCardle v. Indianapolis Water Company*, 272 U.S. 400 (1926).

⁸⁴ *Kentucky Power Co. v. Energy Regulatory Comm'n*, 623 S.W.2d 904, 908 (Ky. 1981).

Kentucky Power bears the burden of proof to demonstrate that it is entitled to the relief which it seeks.⁸⁵ Kentucky Power has met that burden in this case.

IV. THE SETTLEMENT AGREEMENT PROVIDES A FAIR, JUST, AND REASONABLE RESOLUTION OF ALL ISSUES IN KENTUCKY POWER'S APPLICATION AND SHOULD BE APPROVED BY THE COMMISSION IN ITS ENTIRETY AND WITHOUT MODIFICATION.

Kentucky Power, KIUC, Walmart, and Joint Intervenors, each representing diverse interests and viewpoints,⁸⁶ have reached a complete settlement of all the issues raised in this proceeding and have tendered the Settlement Agreement to the Commission for consideration and approval. The uncontested Settlement Agreement, as a package, constitutes a reasonable resolution of all issues in this proceeding.⁸⁷ The Settlement Agreement fairly balances the interests of the Company and its customers, both providing Kentucky Power with the ability to earn a fair return on its investment and address its dire financial circumstances and also minimizing customer rate impacts and setting fair, just, and reasonable rates.⁸⁸ The uncontested Settlement Agreement also provides numerous customer benefits and programs in addition to the proposals included in Kentucky Power's Application.⁸⁹ Those terms, described further below, provide meaningful support and opportunities for the Company's customers and stakeholders, particularly its vulnerable low-income residential customers.⁹⁰ "Overall, the bargained for settlement presented by the Signatory Parties represents a reasonable and beneficial resolution of

⁸⁵ See *Energy Regulatory Comm'n v. Kentucky Power Co.*, 605 S.W.2d 46, 49 (Ky. App. 1980).

⁸⁶ Settlement Agreement Recital No. 9; West Settlement Test.

⁸⁷ Settlement Agreement, Recital No. 10.

⁸⁸ West Settlement Test. at S24-S25.

⁸⁹ *Id.* at S25.

⁹⁰ *Id.*

the issues in this proceeding and lays the groundwork for a constructive path forward for the Company.”⁹¹

The Signatory Parties represent a broad range of diverse interests and viewpoints, including those of low-income residential, commercial, and industrial customers.⁹² The only other parties to this proceeding, the AG and SWVA, have each affirmatively represented that they do not oppose the Settlement Agreement.⁹³ AG-KIUC Witness Kollen, the only intervenor witness for whom the Commission or Staff had questions at hearing, affirmed that he “support[s] the settlement” and “think[s] it’s a reasonable settlement.”⁹⁴ Thus, all the record evidence in this proceeding consistently and unanimously demonstrates that the Settlement Agreement is reasonable and appropriate.

As Kentucky Power President and Chief Operating Officer Cynthia Wiseman explained at the hearing, “[W]e’ve listened to [the Commission] ... and to our intervenors. ... [The Commission] encouraged us in April to collaborate with – or to continue talking with the intervenors ... and we’ve done that, and as a result, ... we have a settlement agreement. And we’ll continue to do that.”⁹⁵ The parties to this case have presented the Commission with a meaningful package of terms that provides a constructive framework for continued and future collaboration for customers’ benefit. Failure to approve the Settlement Agreement as agreed upon by the Signatory Parties as filed would deprive one or more of the agreement’s Signatory

⁹¹ *Id.* at S26.

⁹² *Id.* at S4; Settlement Agreement, Recital No. 9. The intervenor Signatory Parties represent the interests of the Company’s low-income residential customers (Joint Intervenors), as well as a wide range of the Company’s commercial (Joint Intervenors, Walmart, and KIUC) and industrial (Walmart and KIUC) customers.

⁹³ Settlement Agreement, Recital No. 4 and Non-Opposing signature blocks; West Settlement Test. at S4.

⁹⁴ Tr. Hearing Vol. III at 344:2 (November 30, 2023).

⁹⁵ Tr. Hearing Vol. I at 105:2 (November 28, 2023).

Parties of the benefit of the bargain presented in the Settlement Agreement and could result in one or more Signatory Parties' withdrawal from the agreement.⁹⁶ Moreover, it could have a chilling effect on future rate case settlements and would deprive customers of the benefits, including certainty, associated with resolving cases through compromise and collaboration.⁹⁷ For the reasons set forth herein, the Settlement Agreement and the stakeholder collaboration it represents should be honored and approved without modification.

A. The Company's Unopposed Request For A Securitization Financing Order Is Reasonable, Will Benefit Customers Through Reduced Bill Impacts, And Should Be Approved As Proposed.

KRS 278.670, *et seq.*, enacted through Senate Bill 192 in March 2023, enables electric utilities to securitize certain Commission-approved regulatory assets. The opportunity to securitize costs for customers' benefit became available this year as a result of collaboration among the Kentucky General Assembly, the Company, the Attorney General, KIUC, and other stakeholders.⁹⁸ Kentucky Power acted quickly to bring the benefits of securitization to customers, filing its securitization application at the earliest possible opportunity, filing this case on the first day the securitization statute was effective. As set forth in the Company's Direct Testimony, Application, and the Settlement Agreement,⁹⁹ and as summarized below, the Commission should approve the Company's securitization request in its entirety and without modification.

⁹⁶ Settlement Agreement ¶ 16.

⁹⁷ Tr. Hearing Vol. I at 174:2 (November 28, 2023) (As Mr. West explained, "[t]here's value to our customers in having certainty of rates . . ."); Tr. Hearing Vol. II at 38:13 (November 29, 2023) (Mr. West describing how the Settlement Agreement provides clarity, certainty, collaboration, and customer and Company benefits).

⁹⁸ Wiseman Direct Test. at 18; West Direct Test. at 21-22.

⁹⁹ West Direct Test. at 21-30; Messner Direct Test. at 7-11; Niehaus Direct Test.; Spaeth Direct Test. at 20-22; Blankenship Direct Test.; Application at Exhibit 5; Settlement Agreement, ¶ 3.

Kentucky Power proposes to securitize regulatory assets with a June 30, 2023 value totaling approximately \$471.2 million.¹⁰⁰ Securitization is an important tool that will enable the Company, when appropriate, to spread the recovery of prudently incurred costs over a longer period of time, reducing monthly customer bills.¹⁰¹ The securitization bond issuance also will provide Kentucky Power with cash proceeds that the Company can utilize to retire debt, fund capital expenditures to support utility operations and service, and otherwise improve its financial condition.¹⁰²

No party opposes the Company's securitization proposal. The Settlement Agreement recommends that the Commission approve the Company's securitization request as proposed in Kentucky Power's Application and find that the regulatory assets that the Company has sought to securitize are comprised of prudently incurred costs.¹⁰³ Thus, there is no dispute that Kentucky Power has demonstrated that the regulatory assets it seeks to securitize were reasonably and prudently incurred.¹⁰⁴

There also is no dispute that Kentucky Power has shown that the issuance of securitized bonds and the imposition of securitized surcharges through the Company's proposed Securitization Financing Rider are in the public interest and will result in rates that are fair, just, and reasonable.¹⁰⁵ Indeed, as demonstrated by Company Witness Messner, securitization is estimated to provide an approximately \$74 million net present value benefit to customers, compared to the cost that would result from an alternative means of providing for the full

¹⁰⁰ West Direct Test. at 23-24.

¹⁰¹ Wiseman Direct Test. at 18; West Direct Test. at 27-28.

¹⁰² See Kentucky Power's Response to Joint Intervenors' First Set of Data Requests, Item 8.

¹⁰³ Settlement Agreement, ¶ 3.

¹⁰⁴ West Direct Test. at 26; see also Blankenship Direct Test. and Schlitz Rebuttal Test.

¹⁰⁵ West Direct Test. at 27-28; Messner Direct Test. at 7-11; Spaeth Direct Test. at 22 and Exhibit MMS-5.

recovery of and return on those securitized costs from customers using the Company's weighted average cost of capital proposed in this case.¹⁰⁶ The net present value benefit of securitization will only increase to the extent the Company's weighted average cost of capital increases in the future.¹⁰⁷

All record evidence supports that the Company's securitization proposal, as embodied in the Settlement Agreement and supported by the Direct Testimony of Company Witnesses West, Messner, Niehaus, Spaeth, and Blankenship,¹⁰⁸ is in the public interest and will result in fair, just and reasonable rates. Accordingly, pursuant to KRS 278.674(1)(b), the Commission should issue a decision approving the Company's securitization application and issue a financing order in the form the Company and Signatory Parties have requested.¹⁰⁹

B. The Settlement Agreement's Proposed Revenue Increase Is Fair, Just, And Reasonable.

The Settlement Agreement recommends a net annual increase in the Company's base revenues of \$74,666,028.¹¹⁰ The annual retail revenue amount represents a \$19,269,699 reduction from the \$93,935,727 sought in the Company's Application and an overall increase of 10.76% on test year retail revenue.¹¹¹ For the average residential customer who uses 1,500 kWh of electricity a month, this increase in the revenue requirement would amount to a 10.6% increase over existing rates.¹¹² Combined with the implementation of the Company's proposals

¹⁰⁶ Messner Direct Test. at 7-11 and Exhibit FDM-1.

¹⁰⁷ Tr. Hearing Vol. III at 318-320 (November 30, 2023).

¹⁰⁸ West Direct Test. at 21-30; Messner Direct Test. at 7-11; Niehaus Direct Test.; Spaeth Direct Test. at 20-22; Blankenship Direct Test.

¹⁰⁹ See Application at Exhibit 5, as modified by Settlement Agreement, ¶ 3.B.

¹¹⁰ Settlement Agreement, ¶ 2.A.; West Settlement Test. at S7.

¹¹¹ *Id.*

¹¹² *Id.*

related to suspension of the Decommissioning Rider and portions of Tariff P.P.A. following Commission approval of the Settlement Agreement,¹¹³ the bill increase experienced by a residential customer with 1,500 kWh of monthly usage will decrease to a 3.2% increase over current billed amounts.¹¹⁴ To arrive at the proposed revenue requirement, the Signatory Parties agreed to several adjustments to rate base and operating expenses, which are presented in Paragraphs 2.D and 2.E of the Settlement Agreement and summarized below.

1. Rate Base Adjustments

The Settlement Agreement, as a package of bargained-for terms, agrees to adopt nearly all the rate base adjustments that AG-KIUC Witness Kollen proposed in this proceeding, with exceptions for certain tax items, prepaid pension and other post-employment benefit (“OPEB”) assets and liabilities, and the accumulated deferred income taxes (“ADIT”) related to the non-Decommissioning Rider regulatory assets that are subject to the Company’s securitization request.¹¹⁵ The package of agreed upon changes to rate base represents an approximately \$14.5 million decrease in the Company’s original proposed revenue requirement.

With respect to rate base adjustments for tax items, the Settlement Agreement provides that the Company normalize Corporate Alternative Minimum Tax (“CAMT”) and include the accrued CAMT deferred tax asset in rate base, rather than following flow-through treatment for that cost as the Company originally proposed.¹¹⁶ The Settlement Agreement further provides that Kentucky Power will exclude the proposed return on its stand-alone net operating loss carryforward (“NOLC”) from rate base and instead defer that item to a regulatory asset (“NOLC

¹¹³ See Wiseman Direct Test. at 19; West Settlement Test. at S7.

¹¹⁴ West Settlement Test. at S7. This anticipated bill increase is exclusive of the additional increase that will occur as a result of the securitization surcharge proposed to be recovered through Securitization Financing Rider. *Id.*

¹¹⁵ See Settlement Agreement ¶ 2.D. and Exhibit 1; West Settlement Test. at S9-S12.

¹¹⁶ See Settlement Agreement ¶ 2.D.iii.; West Settlement Test. at S12.

Regulatory Asset”) and an offsetting NOLC Regulatory Liability until base rates including the stand-alone NOLC are effective following a future base rate case.¹¹⁷ Neither the NOLC Regulatory Asset nor the NOLC Regulatory Liability will accrue carrying charges.¹¹⁸ Kentucky Power also will separately track NOLC Deficient Taxes, which are comprised of the return on the reduction to excess protected taxes, or deficient taxes, due to the establishment of the stand-alone NOLC deferred tax asset, along with the annual impact to the cost of service.¹¹⁹

Recovery of the NOLC Regulatory Asset and NOLC Deficient Taxes is contingent upon the Company’s receipt of a private letter ruling (“PLR”) from the Internal Revenue Service (“IRS”) verifying the Company’s position that it is a normalization violation to exclude the NOLC and NOLC Deficient Taxes from the calculation of the Company’s revenue requirement.¹²⁰ Following receipt of a PLR verifying the Company’s position, the Settlement Agreement provides that the Company shall reverse the NOLC Regulatory Liability and be entitled to both (i) recover the NOLC Regulatory Asset and the NOLC Deficient Taxes over a three-year period through base rates established in the first base rate case filed following receipt of the PLR, and (ii) adjust the excess deferred income tax regulatory liability to reflect the deficient deferred income taxes related to the stand-alone NOLC.¹²¹ If the Company receives a PLR that states that inclusion of the NOLC is not necessary to comply with the normalization requirements, the Settlement Agreement requires the Company to reverse the NOLC Regulatory Asset and NOLC Regulatory Liability.¹²² In summary, if the IRS does not agree with the

¹¹⁷ Settlement Agreement ¶ 2.D.i.; West Settlement Test. at S9-S11.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

rationale offered by Kentucky Power, then customers will not be impacted by the treatment of this issue.

The Settlement Agreement also accepts with modification AG-KIUC Witness Kollen's proposal to exclude from rate base all pension and OPEB assets and liabilities, net of related ADIT. Consistent with the treatment of such costs in Case No. 2020-00174,¹²³ and as supported by Company Witness Whitney's Rebuttal Testimony,¹²⁴ the Settlement Agreement excludes all pension and OPEB assets and liabilities subject to the exclusion from the Company's base rates of the current annual level of cost savings related to pension and OPEB that were originally included in the Company's cost of service.¹²⁵ The treatment proposed in the Settlement Agreement is necessary to ensure that "the effect of increased expenses by not including the prepaid assets in rate base [are] adequately reflected in the cost of service."¹²⁶

Finally, the Settlement Agreement accepts with modification AG-KIUC Witness Kollen's proposal regarding ADIT related to the non-Decommissioning Rider regulatory assets included in the Company's securitization request. Rather than including that ADIT in rate base as Mr. Kollen proposed, the Settlement Agreement proposed to flow ADIT benefits back to customers through the Company's Federal Tax Change Tariff ("Tariff F.T.C."), subject to Commission approval to securitize those regulatory assets and the Company's issuance of securitized bonds that include the assets.¹²⁷ Utilizing Tariff F.T.C. to return ADIT benefits back to customers

¹²³ 2020 Rate Case Order at 11.

¹²⁴ Whitney Rebuttal Test. at R5-R26.

¹²⁵ See Settlement Agreement ¶ 2.D.ii.a.; West Settlement Test. at S11.

¹²⁶ 2020 Rate Case Order at 11.

¹²⁷ See Settlement Agreement ¶ 2.D.ii.b.; West Settlement Test. at S12, S15.

ensures that the actual amount of ADIT benefits associated with the regulatory assets are realized in customer rates on a more timely basis.

2. Operating Expense Adjustments

The Settlement Agreement also proposes six adjustments to the proposed level of operating expenses included in Kentucky Power's base rates.¹²⁸ Significantly, Kentucky Power has agreed to forgo recovery of the approximately \$11.52 million test year peaking unit equivalent ("PUE") expense related to Winter Storm Elliott.¹²⁹ The Company's other operating expense adjustments include removal of PUE expense incurred between March 31, 2020, and March 31, 2023, that the Company submits would otherwise be recoverable through base rates; a correction to payroll expense; acceptance of AG-KIUC Witness Kollen's proposed adjustments related to incentive compensation, SERP expense, 401(k) matching expense for employees who participate in the pension plan, and the amortization of NOL ADIT subject to the NOLC treatment described in the foregoing section of this brief.¹³⁰ They further include compromises to accept 50 percent of Mr. Kollen's adjustment to reduce the amount of property tax expense in base rates and an adjustment to factoring expense related to the sale of accounts receivable in base rates to reflect the mid-point of Mr. Kollen's and Company Witness Whitney's calculations.¹³¹ Finally, the tax expense for interest synchronization adjustment has been updated to reflect the changes in rate base proposed in the Settlement Agreement.¹³² The package of agreed upon non-Winter Storm Elliott PUE operating expense adjustments represents

¹²⁸ See Settlement Agreement ¶ 2.E.; West Settlement Test. at S12-S14.

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

an approximately \$2.6 million decrease in the Company's original proposed revenue requirement.¹³³

In summary, the rate base and operating expense adjustments to which the Signatory Parties have agreed for purposes of resolving this proceeding are reasonable, represent a fair compromise of the parties' litigation positions, and should be approved without modification along with the overall Settlement Agreement.

C. The Settlement Agreement Relies Upon Reasonable Cost Of Capital Calculations.

From the point of view of actual rate impact, the Company's capital structure as adjusted in the Settlement Agreement is beneficial to customers and further supports approval of the Settlement Agreement. The proposed capital structure has a higher level of debt and lower level of equity, as compared to the capital structure approved by the Commission in the Company's previous base rate case (Case No. 2020-00174). The proposed capital structure of approximately 58% debt and 42% equity appropriately balances the needs of both the customers and Kentucky Power, and significantly mitigates the impact on rates associated with the proposed 9.75% return on equity ("ROE"), while at the same time providing the needed support of the Company's credit rating metrics.

The capital structure relied upon by the Settlement Agreement is appropriate particularly in light of the Commission's recent order authorizing as just and reasonable a 9.75% ROE for Duke Energy Kentucky ("Duke"), with a capital structure of approximately 48% debt and 52% equity.¹³⁴ The greater equity percentage approved in Duke's cost of capital at the same ROE as

¹³³ See Settlement Agreement, Exhibit 1.

¹³⁴ Order at 33-34, 41-42, *In The Matter Of: Electronic Application Of Duke Energy Kentucky, Inc. For (1) An Adjustment Of Electric Rates; (2) Approval Of New Tariffs; (3) Approval Of Accounting Practices To Establish Regulatory Assets And Liabilities; And (4) All Other Required Approvals And Relief*, Case No. 2022-00372 (Ky. P.S.C. Oct. 12, 2023).

is proposed in the Settlement Agreement for Kentucky Power, which has a thinner proposed equity layer, reinforces the reasonableness of the Company's settlement ROE. Moreover, given that Duke's credit rating and common equity ratio imply significantly less financial risk than Kentucky Power's, it is easy to make the logical conclusion from these undisputed facts that the ROE approved for Kentucky Power should actually be higher than the 9.75% reflected in the Settlement Agreement and which the Commission found to be just and reasonable in Duke's Case No. 2022-00372.

The proposed capital structure and ROE relied upon by the Settlement Agreement support approval of the agreement and provide the Company with much needed credit metric support while as an overall package delivers significant benefits to Kentucky Power's customers.

D. The Settlement Agreement's Proposed Rate Design Is Fair, Just, And Reasonable.

As part of the package of terms embodied in the Settlement Agreement, the Signatory Parties agreed to allocate the recommended revenue increase in the manner proposed by AG-KIUC Witness Barron, with an additional \$500,000 allocated from the Residential Class to Rate I.G.S. to reduce the impact of the revenue increase on residential customers.¹³⁵ The resulting revenue allocation and relative rate impact on various tariff classes are reflected in Exhibit 3 to the Settlement Agreement. Company Witness Walsh presented a summary of base rates designed in accordance with the terms of the Settlement Agreement.¹³⁶ The agreed revenue allocation and resulting rates are fair, just, and reasonable and reflect a fair and proper balancing of the interests of the affected customer classes as a result of settlement negotiations.¹³⁷

¹³⁵ Settlement Agreement ¶ 2.B. and Exhibit 3.

¹³⁶ Walsh Settlement Test. at Exhibit KIW-2S.

¹³⁷ West Settlement Test. at S25; Settlement Agreement, Recital No. 9.

E. The Settlement Agreement’s Recommended Distribution Reliability Rider Is Reasonable And Appropriate.

Kentucky Power faces challenges with its distribution system that most other utilities in Kentucky do not. These challenges include the service territory terrain and vegetation density, which exacerbate the challenges posed by insects, Major Storm Events, rainfall, wind, long circuit lengths, and fewer customers per line-mile.¹³⁸ Company Witness Phillips described in detail in his Direct Testimony how each of these factors uniquely affect Kentucky Power’s distribution system, including reliability performance and the cost to serve customers.¹³⁹ These challenges are a direct threat to Kentucky Power’s reliability,¹⁴⁰ and the Company must develop creative solutions to combat these threats, while balancing the cost of those solutions with the level of investment the Company can afford to take on, and what customers can afford to pay.

The Company specifically analyzed the major outage causes on the distribution system and developed a work plan that includes targeted programs aimed at reducing those kinds of outages (“DRR Work Plan”).¹⁴¹ The Company proposes the Distribution Reliability Rider (“DRR”) to recover the costs associated with those specific projects, which are described in the DRR Work Plan. For example, the Company found that vegetation outside of the rights-of-way (“ROW”) and equipment failures are the two leading causes of service interruption.¹⁴² The DRR Work Plan includes a three-pronged strategy focusing on these two leading outage causes in

¹³⁸ See Phillips Direct Test. at 14-17.

¹³⁹ *Id.*

¹⁴⁰ *Id.* at 30.

¹⁴¹ *Id.*

¹⁴² *Id.*

order to meaningfully improve reliability more quickly than it otherwise could if these projects were funded through base rates.¹⁴³

First, the Company will build upon its success with its pilot tree outside rights-of-way (“TOR”) program,¹⁴⁴ by implementing the program on a system-wide basis.¹⁴⁵ Second, the Company will add additional opportunities for transferring customers when a fault occurs by implementing programs for additional tie-lines, additional substation sources, Distribution Automation Circuit Reconfiguration (“DACR”), and recloser modernization.¹⁴⁶ Third, the Company will focus on asset renewal by monitoring and tracking specific defective equipment such as cutouts and insulators and upgrading the equipment.¹⁴⁷ As stated by Company Witness Phillips at hearing: “these are the improvements that will give us the biggest bang for the buck in reliability and resiliency benefits for our customers.”¹⁴⁸

The Settlement Agreement accepts the Company’s DRR proposal, with the addition of certain “guardrails.” Specifically, the DRR will be approved only for an initial five-year term, after which time the DRR will sunset absent Commission approval to continue the program.¹⁴⁹ Annual DRR rate increases will be capped at 1% of the prior year’s total retail revenue, with the ability to rollover unused annual DRR revenue requirement amounts year-to-year.¹⁵⁰ A DRR baseline will be established annually based on five-year average historical distribution base rate

¹⁴³ *Id.*

¹⁴⁴ *See Id.* at 28-29.

¹⁴⁵ *Id.* at 30.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at 31.

¹⁴⁸ Tr. Hearing Vol. II at 63:11 (November 29, 2023).

¹⁴⁹ Settlement Agreement at ¶ 4.A.

¹⁵⁰ Settlement Agreement at ¶ 4.C. and D.

spending and adjusted for inflation by the Handy-Whitman Distribution Plant Index, in order to ensure that expenditures recovered through the DRR are incremental to the Company's existing distribution expenditures recoverable through base rates.¹⁵¹ Finally, the Settlement Agreement modifies the date by which the annual DRR Work Plan must be filed to September 1 of each year preceding the start of the Work Plan.¹⁵²

The DRR cost recovery mechanism is vital to the implementation and success of the DRR projects. Without it, the Company could not make the scale of investment within the same time frame that it could with the DRR.¹⁵³ In addition, approval of the rider mechanism makes it more likely for capital to be allocated to Kentucky Power in order to make the investments in between rate cases.¹⁵⁴

Although the Company has appropriately invested in its distribution system in the past,¹⁵⁵ the Company has demonstrated there is additional opportunity for increased distribution investment in the future to meaningfully improve reliability in the most cost-effective ways, *i.e.*,

¹⁵¹ Settlement Agreement at ¶ 4.E.

¹⁵² Settlement Agreement at ¶ 4.B.

¹⁵³ See Hearing Test. of Everett Phillips, Tr. Hearing Vol. III at 106-107 (“We do provide safe, reliable service, yes, but in order to enhance that reliability, we feel that the DRR is a mechanism that would help expedite those opportunities to improve reliability more for our customers.”); see also Company’s Response to Staff’s Second Set of Data Requests, Item 29 (“[T]he funding in the DRR is incremental to base rates and will allow the Company to address some of the leading causes of outages that the Company is facing more quickly than would otherwise be the case without the DRR.”); Company’s Response to Staff’s Third Set of Data Requests, Item 21(b) (“The major difference between the DRR and the Distribution Reliability Programs discussed on pages 19-29 of Company Witness Phillips’s Direct Testimony, is that the DRR would allow the Company to perform incremental work to the Distribution Reliability Programs, but on an expedited basis, utilizing a targeted approach to improve reliability related to specific major outage causes. Absent the DRR program, the same general programs will be completed as the Company is able to perform them.”).

¹⁵⁴ Tr. Hearing Vol. I at 188 (November 28, 2023) (Mr. West explaining that the DRR “would help to secure the additional capital by having a more concurrent recovery mechanism,” which “will also support the Company financially in between rate cases. . . . I expect to have a greater chance, a greater likelihood of getting the capital allocated to [Kentucky Power] with the DRR as opposed to without it.”).

¹⁵⁵ See Rebuttal Testimony of Eugene L. Shlatz.

to do projects that will give customers the most “bang for their buck.”¹⁵⁶ Although upon a surface level of consideration, these two ideas may seem to conflict, they in fact do not. Both of these facts can be and are true. The Rebuttal Testimony of Company Witness Shlatz describes in detail how Kentucky Power’s distribution investment in the past generally is in line with its peers. It also is a fact that Kentucky Power can invest more in order to improve reliability (for instance, the significant incremental improvements seen with the pilot TOR program¹⁵⁷). The Company has devised an efficient way in the DRR to perform projects to meaningfully improve reliability on a shorter timeline so that customers can see those reliability improvements much sooner.¹⁵⁸ Limiting Kentucky Power’s ability to invest more in distribution by locking Kentucky Power into the idea that it has appropriately invested in the past *and* does not need to invest more would be counterproductive, would negatively impact Kentucky Power’s ability to make prudent investments, and ultimately would be detrimental to customers.

Kentucky Power has shown the need for the DRR as well as the prudence of the proposed investments to be made through the DRR Work Plan. Each of the Signatory Parties to the Settlement Agreement agreed that the DRR, with guardrails, is appropriate and in the public interest. The Company’s DRR proposal, as modified, should be approved as part of the Settlement Agreement.

F. The Settlement Agreement’s Remaining Terms Reasonably Resolve All Remaining Issues And Provide Significant Customer Benefits.

1. Solar Garden Program

¹⁵⁶ Tr. Hearing Vol. II at 63:9, 106:22 (November 29, 2023).

¹⁵⁷ See Phillips Direct Test. at 28-29.

¹⁵⁸ See n. 153.

The Settlement Agreement modified the Company's proposal for the deployment of solar gardens in its service territory, specifically by (a) adding battery storage subject to such a project passing the economic test set forth in Company Witness Vaughan's Direct Testimony, (b) committing the Company to consider the locational benefits for the distribution grid when selecting locations for Solar Garden Program facilities, and to provide a report to the Commission defining those benefits, and (c) committing the Company to evaluate and consider expanding the Solar Garden Program beyond the initial 25 MW aggregate limit if it is successful in securing the initial 25 MW.¹⁵⁹ With these added features, the consensus among the settling parties is that the modified Solar Garden Program is beneficial to Kentucky Power's customers as part of the overall compromise in the Settlement Agreement.

2. Assistance for Vulnerable Residential Customers

Paragraph 6 of the Settlement Agreement includes a number of commitments providing meaningful benefits to customers, and particularly to those among Kentucky Power's customers who may require the greatest support. Specifically, the Settlement Agreement includes proposed changes to the funding for the Residential Energy Assistance Tariff ("Tariff R.E.A.") to increase the per meter monthly residential customer Tariff R.E.A. surcharge from \$0.30 to \$0.40, and to double the corresponding Company shareholder match to \$0.80. This change is estimated to result in an additional \$610,000 being available for the programs funded by the Tariff R.E.A. surcharge annually. The Company shareholder match included as part of the Settlement Agreement is double the amount proposed in the Company's Application, and it will enable the

¹⁵⁹ West Settlement Test. at 18.

Company to serve an additional approximately 2,000 customers compared to the Tariff R.E.A. proposal included in the Company's Application.¹⁶⁰

The Settlement Agreement also includes a protection for customers that, when temperatures are forecast to be 32 degrees or below or 95 degrees or higher, the Company will not disconnect service to residential customers for the next 24 hours and it will limit residential disconnections to 8 a.m. through 5 p.m. Monday through Thursday and 8 a.m. through noon on Friday. Additionally, under the terms of the Settlement Agreement the Company agreed to collaborate with Joint Intervenors to develop service reconnection standards that enable residential customers to be reconnected based on to-be-determined partial payment and repayment plan terms.¹⁶¹

The Settlement Agreement also contemplates that, if in the future the Commission grants pre-approval that the costs of the study are recoverable in rates, the Company will contract for a comprehensive study to assess whether low-income discount rates for electric residential customers are appropriate, and for the potential design and implementation of any such rates.¹⁶²

These customer benefits are an important component of the overall compromise reached by the parties to the settlement and illustrate the common goal among all stakeholders to make sure that approval of the Settlement Agreement is in the public interest.

¹⁶⁰ West Settlement Test. at 19.

¹⁶¹ *Id.* at 18.

¹⁶² *Id.* at 20.

3. Customer Education and Communication Commitments and Other Customer Benefits

The Settlement Agreement outlines several commitments to enhance customer education and communication. For example, as part of the overall compromise reached by the parties, the Company made a commitment to make links to information about the USDA Rural Energy for America Program available to customers on its website. The Company also agreed to collaborate with Joint Intervenors to develop customer education and communication materials about the Company's distributed energy resource interconnection requirements, as well as materials highlighting the ability of customers taking service under Tariffs G.S. and L.G.S. to make an investment to obtain continuous interval demand readings, metering equipment upgrades, and energy management systems, providing interested customers the ability to obtain interval demand information at no additional charge, among others. Similarly, the Settlement Agreement includes a commitment by the Company to collaborate with Joint Intervenors to evaluate proposals for bill format changes designed to increase bill and charge transparency.¹⁶³

In the same vein, and as detailed by Company Witness West, approval of the Settlement Agreement will provide benefits to customers in connection with demand-side management and energy efficiency programs, the pursuit of government funding for eligible customer programs, distributed energy resources, and the process to select those resources through competitive processes (*i.e.*, requests for proposals, or "RFPs").¹⁶⁴

Approval of the Settlement Agreement will offer these benefits to Kentucky Power's customers.

¹⁶³ *Id.* at 2.

¹⁶⁴ *Id.* at 21-24.

4. The Settlement Agreement Appropriately Recommends Approval Of All Other Proposals Included in the Company's Application.

The Settlement Agreement reasonably and appropriately resolves and recommends approval of all the Company's other proposals in this case that were not modified by the agreement.¹⁶⁵ For example, the Company's proposal to cease tracking of PJM LSE OATT costs through Tariff P.P.A. and to instead recover a normalized amount of those costs through base rates was unopposed and incorporated into the Settlement Agreement. Likewise, the Company's financial hedging proposal was also unopposed and incorporated into the agreement. The Commission should approve each of the Company's unmodified original proposals as part of its approval of the overall Settlement Agreement package.

a. PJM LSE OATT Expense

One of the measures adopted by the Settlement Agreement is the proposed recovery of the annualized test year level of LSE OATT expenses in the Company's base rates, which will help levelize the bill impact of those costs for Kentucky Power's customers. Approval of the Settlement Agreement will result in these expenses no longer being recovered through the tracking mechanism authorized by the Commission in Case No. 2020-00174, which addresses and helps mitigate the volatility that these costs have on Kentucky Power's customers' monthly bills.

The base rate recovery approach adopted in the Settlement Agreement is aligned with the Company's efforts to both reduce the costs incurred by Kentucky Power under FERC-regulated transmission rates and mitigate the impact that these costs have on Kentucky Power's customers while the matters are further reviewed. Upon Commission approval of the Settlement

¹⁶⁵ Settlement Agreement ¶ 1.

Agreement, the customers of Kentucky Power will immediately start paying an authorized level of transmission expense embedded in the Company's annual base rate revenue requirement – a stable amount that will not be modified until the Commission revises the Company's base rates in the future.

The stability and certainty resulting from approval of the Settlement Agreement will in turn allow the Company to continue the implementation and investigation of other measures to address the expenses incurred by Kentucky Power pursuant to these FERC-regulated rates. Clearly the Commission has expressed concerns in this area, and those areas are under review with new opportunities under way to deal with some of the symptoms the Commission highlighted. Specifically, the adoption of a stable base rate going level of LSE OATT expenses will allow the necessary time for peak shaving measures, such as the Solar Gardens proposal also included in the Settlement Agreement, to contribute to the reduction of Kentucky Power's share of the PJM AEP Zone load coincident peak, which as explained by Company Witness Burkholder is a key factor in the determination of the amounts allocated to the Company under federal wholesale rate tariffs. Likewise, approval of the Settlement Agreement will result in additional time to advance the ongoing analysis concerning the allocation of transmission costs in PJM's AEP Zone, as well as among Kentucky Power and its affiliates in PJM under the FERC-regulated Transmission Agreement.

Although a determination about the ongoing level of transmission expenses to be included in rates set by the Commission in this proceeding is straight forward and governed by clear and well-settled principles under both federal and Kentucky law,¹⁶⁶ the Company is also

¹⁶⁶ See Section III; 16 U.S.C. Section 824; *Nantahala Power & Light Co. v. Thornburg*, 476 U.S. 953, 966-67 (1986); *PLIVIA, Inc. v. Mensing*, 564 U.S. 604, 617 (2011); *Oneok, Inc. v. Learjet, Inc.*, 575 U.S. 373, 377 (2015); *Ameren Ill. Co. v. FERC*, 58 F.4th 501, 502-03 (D.C. Cir. 2023); *Appalachian Power Co. v. Pub. Serv. Comm'n of W. Va.* 812 F.2d 898, 905 (4th Cir. 1987).

well aware of the impact that these expenses have on its customers. As the undisputed evidence on the record in this case demonstrates, on balance these expenses, which have been deemed just and reasonable by FERC, correspond to significant benefits to Kentucky Power's customers in terms of reliability of power supply, savings in energy and capacity costs, efficiency, system resilience, risk mitigation, adaptability to changing circumstances, and many more benefits.¹⁶⁷ The Company nonetheless is performing the transmission analysis to gather information about whether other potential avenues may also be of benefit to customers and to better inform some of the questions being asked in this case and others.

The Company remains focused on mitigating the impact of these costs presently on its customers and submits that approval of the Settlement Agreement goes a long way towards achieving that goal in the short term, giving opportunity and time for the Company to implement other measures and advance analysis aimed to develop recommendations concerning cost allocation, inclusive of the concerns identified by the Commission regarding transmission cost allocation impacts on the Company. Although at this point, it is not possible to predict what those recommendations may be, or the risks associated with various possible courses of action, presently this much is clear: approval of the Settlement Agreement as proposed will have the immediate effect of making certain and stable the going level of OATT transmission expenses that are included in the rates paid by Kentucky Power customers. On this basis, approval of the Settlement Agreement is in the public interest.

¹⁶⁷ Burkholder Direct Test at 8-9.

b. Financial Hedging Proposal

The Settlement Agreement adopts the Company's proposal to establish a financial hedging program, which over time will benefit customers by smoothing out the impact of PJM's spot energy market price volatility on customer rates. As explained in detail by Company Witness Vaughan, the programs would use financial hedge products (forward contracts) purchased in layers over time to match the Company's target hedge position and smooth out the impact of price volatility in the market, with flexibility to modify or unwind executed forward contracts, as necessary, when adjustments or changes are made to the forecasted load or planned outage schedules at the Mitchell and Big Sandy generation plants.¹⁶⁸ As part of the holistic compromise reached by the parties to the Settlement Agreement, the proposed hedging plan will reduce customer's sensitivity to PJM's spot market price volatility by creating more predictable fuel costs over time.¹⁶⁹ The hedging plan will benefit Kentucky Power's customers by reducing their exposure to the fluctuations in the PJM Day-ahead energy market and result in more predictable fuel costs over time. This will leave customers better positioned to budget for and manage their monthly energy bills.¹⁷⁰ Approval of the Settlement Agreement, which includes the hedging plan, is therefore in the public interest.

¹⁶⁸ Vaughan Direct Test. at 18-21.

¹⁶⁹ Vaughan Direct Test. at 22-24.

¹⁷⁰ Vaughan Direct Test. at 23-24, 26-27.

c. Other Unmodified Proposals

Finally, the Commission should approve each of the Company's other proposals made in this case and that were not modified by the Settlement Agreement. Those proposals include, among other things:

- Kentucky Power's proposal to extend the deadline for customer payment from 15 to 21 days so that customers have more time to pay their monthly bills;¹⁷¹
- The Company's proposed voluntary seasonal residential service tariff option, which will enable residential customers to reduce impacts associated with higher winter usage and provide greater electric heating cost predictability and stability;¹⁷²
- The Company's conditional proposal to suspend collection of the Decommissioning Rider and the Rockport Deferral;¹⁷³
- The Company's proposals to continue the K-PEGG economic development grant program and maintain the Kentucky Economic Development Surcharge Tariff (Tariff K.E.D.S.) at the current charge and Company match;¹⁷⁴
- The proposed residential basic service charge;¹⁷⁵
- The Company's proposed cost of capital;¹⁷⁶
- All revenue, operating expense, rate base, and capitalization adjustments not modified by the Settlement Agreement;¹⁷⁷ and
- The Company's proposed amortization periods for certain deferrals and requested deferral accounting authority related to proposed riders.¹⁷⁸

¹⁷¹ Cobern Direct Test. at 6-7.

¹⁷² Spaeth Direct Test. at 12-13.

¹⁷³ Wiseman Direct Test. at 19.

¹⁷⁴ Clark Direct Test. at 17-19.

¹⁷⁵ Spaeth Direct Test. at 10-18.

¹⁷⁶ Messner Direct Test. at 45.

¹⁷⁷ See Walsh Direct Test. at 13-19; Whitney Direct Test. at 5-30, 32-38; Schlessman Direct Test. at 5-9, 34-35; Kahn Direct Test. at 11-14; Bishop Direct Test. at 3-13.

¹⁷⁸ West Direct Test. at 33; Whitney Direct Test. at 38-39.

Each of the Company's unmodified original proposals is reasonable, appropriate, supported by substantial record evidence, and should be approved without modification as part of the Commission's approval of the overall Settlement Agreement package.

G. The Settlement Agreement Provides Kentucky Power With A Tangible Path Towards A Healthy Financial Future.

Ultimately, and importantly, the Settlement Agreement provides significant benefits for customers, is a key sign of a developing partnership and collaboration amongst stakeholders that have not always agreed in the past, and provides Kentucky Power with a tangible path toward a healthy financial future. Finding this balance between allowing the Company to be financially healthy and also making service affordable to Kentucky Power customers requires that the Commission find a narrow landing point that, consistent with the Commission's stated mission, satisfies both of these important priorities. The Commission also must consider that within those two interests also lies the varied and unique interests of Kentucky Power's customer base. Put simply, the Settlement Agreement strikes that elusive balance that satisfies all interested parties, which the Commission may be hard-pressed to find any other way.

First, it is vital that the Company be allowed a reasonable rate increase that encompasses a reasonable rate of return in order for the Company to continue to attract affordable capital and continue to operate as it has in the past. As explained by Company Witness Fetter, "[i]nvestors expect that rates will be set at a level that allows the authorized ROE to be achieved by an efficiently-run utility, along with full recovery of prudent expenditures in the operation of the company. To the extent that those aims are not fulfilled, concerns would arise across the financial community, from the equity side through to the debt side."¹⁷⁹

¹⁷⁹ Fetter Direct Test. at 6.

Kentucky Power’s actual earned ROE has precipitously declined since the Company’s last base rate case. Continued decline in the earned ROE, or even sustained levels, could inhibit Kentucky Power’s ability to provide service at the reliability levels seen today. Witness Fetter testified that “serious financial weakness can only lead to one thing: diminished reliability to the detriment of customers.”¹⁸⁰ The Settlement Agreement helps achieve the goals of satisfying all interests. One specific example is the proposed DRR, which provides the Company the mechanism to make targeted reliability investments and recover those costs more quickly than it otherwise could through base rates. This, in turn, allows the Company to attract the capital investment needed to perform the projects on a more expedited basis than otherwise. It also will result in meaningful incremental reliability benefits for customers. Ultimately, the DRR is a win/win for the Company and customers.

Second, it is also important that Kentucky Power provide adequate and reliable service that its customers can afford. Kentucky Power is uniquely challenged in this regard among its peer investor-owned utilities in Kentucky. As stated by Kentucky Power President and Chief Operating Officer Cynthia Wiseman at the hearing, even customers served in Harlan County by Kentucky Utilities may have lower bills, but that is largely attributable to the fact that Kentucky Utilities has a much larger customer base and serves metropolitan areas like Lexington, which helps to spread the fixed costs to operate and decrease the customer’s individual share of those costs.¹⁸¹ Nearly the entirety of Kentucky Power’s service territory is rural, including most cities within it. Nonetheless, Kentucky Power’s rates still compare favorably to, and are significantly lower than, those of adjacent electric cooperatives:¹⁸²

¹⁸⁰ *Id.*

¹⁸¹ Tr. Hearing Vol. I at 50:4 (November 28, 2023).

¹⁸² *See* Kentucky Power Hearing Exhibit 1.

Total Average Rates By Year

Source: Public Service Commission of KY Annual Report Statistics

	KPCO	Big Sandy RECC	Grayson RECC	Licking RECC	% Lower than RECCs
2022	0.1263	0.1319	0.1369	0.1402	7%
2021	0.1052	0.1142	0.1323	0.1187	14%
2020	0.0931	0.1068	0.1237	0.1101	18%
2019	0.0893	0.1095	0.1231	0.1122	22%
2018	0.0912	0.1086	0.1192	0.1121	20%
2017	0.0843	0.1159	0.1185	0.1134	27%
2016	0.0858	0.1062	0.1205	0.1083	23%
2015	0.0729	0.1064	0.1217	0.1085	35%
2014	0.0647	0.1092	0.1246	0.1136	44%
2013	0.0639	0.1093	0.1205	0.1123	44%

Thus, although Kentucky Power is unable to leverage the large customer base other investor-owned utilities enjoy, the Company has leveraged its relative economies of scale to provide lower cost electric service than is available through the cooperative model. Company President Wiseman nonetheless committed at the hearing in this matter to review the cost structure of co-operatives around Kentucky Power’s service territory to look at whether there are additional opportunities to “right-size” the Company’s cost structure.¹⁸³

Kentucky Power works every day with affordability in mind and toward “right-sizing” its cost structure. For example, Kentucky Power leadership employs several practices to ensure that costs are monitored, regularly examined, and minimized wherever practical and possible.¹⁸⁴ These efforts also include continuing efforts to increase economic development in the service territory in order to reduce customers’ individual share of the fixed cost of service.

¹⁸³ Tr. Hearing Vol. I at 77:12 (November 28, 2023).

¹⁸⁴ See Wiseman Hearing Test., Tr. Hearing Vol. I at 56:2 (November 28, 2023) (“[I]t is pretty much a daily exercise that we do working with Mr. West and Mr. Phillips and Ms. Elliott, which is – makes up the executive team at Kentucky Power, and certainly looking at ways that we can cut costs...And, you know, my word this year has been let's look at everything and make sure there's no waste out there...But we're ... always looking at our budget and trying to find ways to be more efficient with it.”).

Kentucky Power also ensures that it is operating as efficiently as possible by relying on cost-effective support from a team of experts at AEPSC, who work specifically for and with Kentucky Power and its customers' interests in mind.¹⁸⁵ AEPSC employees provide services to Kentucky Power at Kentucky Power's request and direction, and for Kentucky Power's and its customers' benefit, pursuant to a Service Agreement between Kentucky Power and AEPSC.¹⁸⁶ The costs billed to Kentucky Power for those services are based upon the Company's need for the services.¹⁸⁷ AG-KIUC previously recognized and touted the benefits provided by the service corporation model.¹⁸⁸ For example, AG-KIUC Witness Lane Kollen testified in 2022 that "[t]he AEP model uses AEPSC to provide centralized services in a cost effective manner at a lower cost than if the AEP utilities acquired or provided the services themselves locally and on a standalone basis...[T]he larger the utility holding company and centralized service provider, the greater the economies and savings."¹⁸⁹ Moreover, "[i]n studies performed of large utility holding companies that acquired standalone utilities and other utility holding companies, actual savings have ranged from 3% for acquisitions of large utility holding companies to 40% or more for acquisitions of small standalone utilities due to the economies gained from the centralized

¹⁸⁵ See *id.*, Tr. Hearing Vol. I at 56:2 (November 28, 2023) (“[W]e work hand in hand with AEP on pretty much every decision that we make... You know, we have a lot of subject matter experts at the parent company, and we're not all subject matter experts in every topic, and they advise and guide us, but ultimately the operating company has a lot of final say in what we do.”); Tr. Hearing Vol. I at 137:24 (“[W]e have experts at the AEP level where we're not experts in every topic. We're running the company, but we rely on their talent and expertise to guide us on making decisions; and it's a collective decision.”).

¹⁸⁶ See Company's Response to AG-KIUC Second Set of Data Requests, Item 28 (September 25, 2023).

¹⁸⁷ See Company's Response to AG-KIUC First Set of Data Requests, Item 35 (August 28, 2023).

¹⁸⁸ See Direct Testimony of Lane Kollen at 22-28 (February 21, 2022), Attorney General/KIUC's Post-Hearing Brief at 23-24 (Apr. 12, 2022), *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.

¹⁸⁹ Direct Testimony of Lane Kollen at 22 (February 21, 2022), *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.

service company business model.”¹⁹⁰ This idea still applies to Kentucky Power’s test year cost of service in this case. The services provided to Kentucky Power by AEPSC, including the services provided by AEP executives, cost significantly less than the labor otherwise would if Kentucky Power directly and independently employed each of those individuals for their respective talent and expertise.¹⁹¹ Compensation studies supported by Company Witness Carlin also support the fact that the compensation paid to AEP executives is fair and market-competitive.¹⁹² Moreover, when considering the relatively small portion of AEP executives’ compensation allocated to Kentucky Power,¹⁹³ the value of those individuals’ expertise to Kentucky Power, and its customers, is only further emphasized. This is particularly true in this case, given the Settlement Agreement’s exclusion of incentive compensation tied to financial performance, SERP expense, and 401(k) matching expense from the Company’s cost of service.¹⁹⁴

While the Company commits to continue to find ways to operate as efficiently as possible and provide safe, adequate, and reliable service, the Company urges the Commission to approve the Settlement Agreement without modification and allow Kentucky Power to take those necessary steps toward a healthy financial future.

¹⁹⁰ *Id.* at 25-26

¹⁹¹ *See* Wiseman Hearing Test., Tr. Hearing Vol. I at 124:8 (November 28, 2023) (“I can't imagine if we were trying to fulfill the services and...the talent and expertise that the executives at AEP have or anybody at the service corp. level...[T]here is a cost to that...[I]t's part of our cost of -- of doing business, is that we have the service corp. portion and the AEP portion of it; and if that includes executives' salaries, then that's part of the model.”).

¹⁹² *See* Company’s Response to Staff’s First Set of Data Requests, Item 22, Confidential Attachment 1 (July 13, 2023).

¹⁹³ *See* Kentucky Power’s Supplemental Response to Staff’s First Set of Data Request, Item 33, Public Attachment 1, Column J “KPCo % Share” (December 6, 2023).

¹⁹⁴ *See* Settlement Agreement ¶ 2.E.ii.; *see also* Tr. Hearing Vol. I at 158-159 (November 28, 2023).

V. CONCLUSION

Kentucky Power respectfully requests that the Commission enable the Company to provide meaningful benefits for the Company's customers, including those most vulnerable, and that it provide the Company a tangible path toward a healthy financial future by approving, without modification, the Settlement Agreement in this case.

Respectfully submitted,



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