COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF KENTUCKY POWER COMPANY FOR: (1) APPROVAL TO EXPAND ITS TARGETED ENERGY EFFICIENCY PROGRAM; (2) APPROVAL OF A HOME ENERGY IMPROVEMENT PROGRAM AND A COMMERCIAL ENERGY SOLUTIONS PROGRAM; (3) AUTHORITY TO RECOVER COSTS AND NET LOST REVENUES, AND TO RECEIVE INCENTIVES ASSOCIATED WITH THE IMPLEMENTATION OF ITS DEMAND-SIDE MANAGEMENT/ENERGY EFFICIENCY PROGRAMS; (4) APPROVAL OF REVISED TARIFF D.S.M.C.; (5) ACCEPTANCE OF ITS ANNUAL DSM STATUS REPORT; AND (6) ALL OTHER REQUIRED APPROVALS AND RELIEF	)	CASE NO. 2024-00115

POST-HEARING RESPONSE BRIEF OF JOINT INTERVENORS MOUNTAIN ASSOCIATION, KENTUCKIANS FOR THE COMMONWEALTH, APPALACHIAN CITIZENS' LAW CENTER, AND KENTUCKY SOLAR ENERGY SOCIETY

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TABLE OF CONTENTS

INTRODUCTION

Mountain Association, Kentuckians for the Commonwealth, Appalachian Citizens' Law Center, and Kentucky Solar Energy Society ("Joint Intervenors"), in accordance with the December 23, 2024 Order of the Kentucky Public Service Commission ("Commission"), offer this response brief to address certain points raised by Kentucky Power Company's ("Kentucky Power" or "the Company") Initial Brief.

Joint Intervenors reassert the facts and arguments presented in their Initial Brief, which attempted to provide a comprehensive discussion of disputed issues in the proceeding and expert witness recommendations. The Company took a narrower approach. But for one sentence misrepresenting Joint Intervenors' testimony as seeking only "a more expansive portfolio with more programs,"[1] and continuing mischaracterizations of Witness Sherwood's incentive recommendation,[2] the Company's Initial Brief does not attempt to directly address any other contested issue.

Hopefully, the Company's silence implies agreement. If instead that silence was a tactic, and the Company raises arguments for the first time in its Response, Joint Intervenors refer the Commission to the facts and argument presented in their Initial Brief, and request that the

[1] Initial Brief of Kentucky Power Company, at 16, n.83 (Jan. 22, 2025) ("KPC Br.") (citing "generally" to Witness Harris and Witness Sherwood Direct Testimony in their entirety, without any page references, for the proposition that Joint Intervenors agree the DSM Plan proposal is cost-effective and argue that the Company should expand the portfolio). This is the only citation to Joint Intervenors' expert witnesses' testimony in the entirety of Kentucky Power's Initial Brief. In point of fact, Joint Intervenors' recommendations address several other contested points, summarized in Table A of Joint Intervenors' Initial Brief ("JI Br.").

[2] *Compare* KPC Br. at 14 *and* JI Br. at 44 (discussing mischaracterization of incentive recommendation); Direct Testimony of Stacy L. Sherwood at 54 (filed Aug. 21, 2024, corrected Dec. 20, 2024) ("Sherwood Direct") ("I recommend that the Commission adjust the shared-savings incentive to be a performance management incentive that rewards the Company for achieving various goals based upon the established budget.").

Commission take this context into account when weighing the facts and arguments presented by the parties in this case.

Here, Joint Intervenors respond to and emphasize three points: (1) the record supports, and the Commission has previously directed, more aggressive investment in demand-side management ("DSM") than the Company has proposed; (2) those investments will not cause a rate spike; and (3) if customers must pay incentives, they should only be asked to pay if Kentucky Power and its third-party implementer deliver real savings.

DISCUSSION

I. SCALING UP THE COMPANY'S DSM PROGRAMS NOW IS BOTH REASONABLE AND IN CUSTOMERS' BEST INTEREST.

Without squarely responding to the facts, authorities, and argument advanced by Joint Intervenors' expert witnesses, the Company's Initial Brief appears largely focused on explaining why it cannot, must not be expected to pursue a greater level of energy savings or expand budgets beyond $6 million total over three years. That hesitancy to expand and improve the DSM Plan is unfounded and against customers' best interests. There is every reason to think Kentucky Power can cost-effectively help more customers with expanded budgets, and no reason to delay.

The record shows what is possible with reasonable effort. Sophisticated expert analysis established the reasonably achievable savings potential that Kentucky Power can and should be able to achieve cost-effectively, even after taking into account technical, economic and practical barriers. As compared to the Company's proposed DSM Plan, GDS Associates, Inc. ("GDS") identified five to six times more reasonably achievable savings in the Company's service territory *after* adjusting for the ability of Kentucky Power and TRC Companies ("TRC") to boost program activity over time from their current starting place, among other limiting factors.[3] Customers paid to develop that Market Potential Study ("MPS") to provide Kentucky Power with a roadmap to "aggressively pursue" cost-effective savings potential,[4] but customers are not getting the benefits they should out of the MPS because the Company has arbitrarily pursued a mere fraction of the identified reasonably achievable potential.[5]

A. To Allow DSM to Play a Meaningful Role in the Company's Resource Portfolio, the Company Must Expand Programs Now.

Going after a fraction of the known reasonably achievable potential reflects siloed resource planning that does not reasonably account for the potential for DSM to displace higher-cost supply-side resources that customers are also on the hook for—especially as the Companies prepare to address the escalating capacity shortages identified in their most recent Integrated Resource Plan.[6] According to the Company, the constrained DSM budgets are designed "to be part of a comprehensive and intentional suite of DSM programs available to its customers."[7]

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[3] The difference between "economic potential" and "achievable potential" in the Market Potential Study includes downward adjustments accounting for real-world barriers to customer adoption of efficiency measures (e.g., financial barriers, lack of awareness, customer willingness to participate), non-measure costs of delivering programs (e.g., administration, marketing, analysis, and the evaluation, measurement and verification ("EM&V") process), and the ability of program administrators to boost program activity over time. JI Br. at 17 (citing Direct Testimony of Barrett L. Nolen on Behalf of Kentucky Power Company (May 1, 2024) ("Nolen Direct"), Ex. BLN-1 at 29-30 of 123). The downward adjustment from "maximum" to "reasonably" achievable potential reflects the downward shift in participation due to the use of partial incentives rather than incentives that cover the full cost of the measures. Nolen Direct, Ex. BLN-1 at 30 of 123.

[4] Order, *Electronic App. of Kentucky Power Co. for (1) Approval of Continuation of its Targeted Energy Efficiency Program; (2) Authority to Recover Costs and Net Lost Revenues, and to Receive Incentives Associated with the Implementation of its Demand-Side Management Programs; (3) Acceptance of its Annual DSM Status Report; and (4) All Other Required Approvals and Relief*, Case No. 2023-00362, at 7 (Dec. 15, 2023).

[5] JI Br. at Sec. II.B.

[6] *Id.* at 5-6; Kentucky Power Integrated Resource Planning Report to the Kentucky Public Service Commission, Vol. A, *In the Matter of Electronic 2022 Integrated Resource Planning Report of Kentucky Power Company*, Case No. 2023-00092, at 13-14 (Mar. 20, 2023) ("2022 IRP").

[7] KPC Br. at 1.

That is different from proposing DSM programs as part of comprehensive and intentional **resource portfolio**. As a least-cost resource, the Company should be maximizing potential DSM plan savings—not constraining them.

Customers need the full benefits of demand-side resources to be brought to bear immediately, and Kentucky Power's proposed suite of DSM programs falls far short of doing so. Joint Intervenors' witness testimony detailed—and Initial Brief summarized—the size and urgency of customer needs for these programs.[8] The need for DSM to play a role in meeting system-wide capacity obligations is just as great and urgent. Kentucky Power identified a capacity shortfall of 115 MW beginning in 2026, growing to 713 MW in 2028, and to roughly 1,000 MW in 2031.[9] By contrast, Kentucky Power's proposed DSM plan aims to achieve only 1.4 MW reduction in summer demand cumulatively over the three-year program, from 2025 to 2027.[10] Compare this total to the reasonably achievable potential identified in the Market Potential Study, which identified a cumulative 12.4 MW of savings through the first three years of expanded DSM programs, or *nine times* the savings that the Company has proposed.[11] If the Company does not come back to the Commission for approval of additional programs until the end of this three-year plan, that timeline virtually guarantees that DSM will not be able to play a meaningful role in addressing their capacity shortfall. The Company is proposing far too little, and too late.

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[8] Sherwood Direct at 25-29 (discussing substance and prevalence of need for energy assistance among TEE Program qualified customers); *id.* at 37-39 (discussing local need for programs to support more efficient manufactured homes and new homes); JI Br. at 14-15.
[9] 2022 IRP, Vol. A at 13 of 1182, fig.ES-1 (Kentucky Power "Going-In" Capacity Position throughout Planning Period (MW-UCAP)).
[10] *See* Nolen Direct at 25.
[11] *Id.*, Ex. BLN-1 at 34, 28 of 123 (sum of Cumulative Annual Summer Peak Demand Savings (MW) for Residential and Commercial Sectors for year three (2026)).

B. Expanding Programs Increases System Benefits and Kentucky Power's Customers Should Not Have to Wait.

Rather than settling for "the beginnings of a gradualist approach,"[12] it is just and reasonable to expand programs now to increase total system benefits and improve cost-effectiveness by harnessing economies of scale. In addition, the Company has the experience to do more, the Commission has previously set expectations for exactly that,[13] and customers cannot settle for less.

Maximizing cost-effective DSM plan savings immediately will only improve their cost-effectiveness through economies of scale. As proposed, a significant proportion of total costs for the Home Energy Improvement Program ("HEIP") and Commercial Energy Solutions Program ("CESP") goes to non-incentive costs of standing up new programs: administrative, marketing, and technology costs.[14] As incentives paid to customers increase, the ratio of incentives to non-incentive costs will improve. The Company acknowledges that such economies of scale are critical, such that any reduction in proposed budgets would reduce DSM program cost-effectiveness:

> Furthermore, any reduction or further limitation to the program measures for them to be considered "pilot programs" would have the potential effect of reducing the achieved savings, thereby reducing the ability for the programs to be cost-effective. If the programs had been proposed as pilot programs, the Company would still be required to onboard a contractor and incur costs to build out the IT infrastructure to implement the pilot programs. That, coupled with the potential reductions in

[12] KPC Br. at 18.

[13] Case No. 2023-00362, Dec. 15, 2023 Order at 7.

[14] Kentucky Power Company's Response to Commission Staff's Post-Hearing Data Requests, Question 1 (Jan. 17, 2025) ("KPC Response to Staff PH Q1"). To illustrate, as originally proposed, roughly 21% of the HEIP Year 1 budget would go to incentives, and as the total HEIP budget decreases in Years 2 and 3, the percentage of the total budget dedicated to customer incentives increases to 40% and 41%, respectively. Nolen Direct, Ex. BLN-2 at 2 of 2. The same trend applies to the CESP budgets, as originally proposed: roughly 37% of the Year 1 budget would go to incentives, increasing to 41% in Year 2, and 53% in Year 3. *Id.*, Ex. BLN-3 at 2 of 2.

> savings achieved, would not put the programs in the best position to be successful, i.e. cost-effective, for its customers.[15]

The inverse is every bit as true. Customers will get more bang for the buck from the Market Potential Study and the DSM Programs if these start-up costs are immediately spread across expanded incentive budgets and more aggressive energy savings goals.

Kentucky Power's wait-and-see approach invites failure. For example, the Company expects that incentive budgets may be exhausted before the end of each program year.[16] Meaning, if the Company's marketing succeeds in reaching a customer with an immediate need, and that customer has the financial means and other resources to overcome real-world barriers to participate, the Company may not actually be able to deliver on the promise of an energy efficiency rebate or other incentive. The Company thus sets itself up to disappoint customers and miss opportunities—opportunities that it spent marketing and administration dollars to create.

If the Company wants to "entice" customer participation and provide value to customers,[17] it needs to have more to offer. Rather than hoping for success in spite of constraints, the Company should design its programs to be less constrained and expand budgets now. That would ensure continuity of program funding, which will be critical to the long-term success of DSM programs and Kentucky Power's credibility with customers.

In addition, Customers should not have to wait any longer for help reducing energy waste and improving efficiency. There is more than enough experience at hand to successfully implement more ambitious programs now. As Kentucky Power's Initial Brief touts, the utility has nearly 30 years of experience implementing DSM Programs.[18] The Company took its true

[15] KPC Response to Staff PH Q5.
[16] Sherwood Direct at 33 (citing Nolen Direct at 18).
[17] KPC Br. at 17.
[18] *Id.* at 2.

first step on demand-side management back in 1996 with the introduction of eight programs.[19] Over the years since, Kentucky Power has offered 30 different programs, and presumably a great number of design changes within those different programs over the decades.[20] With that history and experience, it is absurd for the Company to suggest it could not possibly expand budgets, improve program design, or even introduce additional programs now. Instead, they should be expected to hit the ground running.

The absurdity of the Company's position is even more plain after accounting for TRC's expertise and experience. The Company's Initial Brief boasts that TRC is a "boots-on-the-ground" program implementer, already "ingratiated in the communities" to be served and capable of "effectively and efficiently" marketing programs to customers.[21] The Company selected TRC for these reasons, as well as the ability of TRC to benefit from "economies of scale" since it already implements "similar programs" for affiliated utilities in southern West Virginia.[22]

With such experience, and knowing the benefits of economies of scale, the Company should be pursuing more of the reasonably achievable potential identified in the Market Potential Study. Customers need more than the "beginning of a gradualist approach."[23] Customers need the Commission to direct Kentucky Power to aggressively pursue cost-effective demand-side management as a least-cost resource.

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[19] *Id.*
[20] *Id.*
[21] *Id.* at 16.
[22] *Id.* at 8-9.
[23] *Id.* at 18.

II. KENTUCKY POWER COMPANY CAN INCREASE COST-EFFECTIVE INVESTMENTS IN DSM WITHOUT CAUSING A RATE SPIKE.

The Company's Brief presents the DSM Plan proposal as "the beginning of a gradualist approach to DSM/EE programming that is designed to offer consistent benefits to customers and avoid termination similar to that ordered by the Commission in 2018."[24] In the Company's telling, the modest size of the DSM Plan proposal answers a "need to control the resulting surcharge"[25] and limit costs to customers. For all its rhetorical appeal, the Company's framing is factually unsupported, divorced from Commission orders over the last four years, and antithetical to least-cost resource planning. Compared to alternative resources, increased investment in cost-effective DSM programs will save customers money.[26]

First, the facts relating to the causes of the 2017 spike in DSM rates are well-established: The Company jacked up DSM rates after mismanaging cost-recovery so greatly that its under-recovery balance exceeded an entire year of DSM costs, and the Company tried to recover it all at once.[27] But for the Company's urgency to catch up on years of under-recoveries in a single calendar year, there would not have been such a spike in customers' January 2017 bills.[28] And but for the Company's mismanagement, the surcharge would have stayed below the rates approved in 2012, *before* the Company began increasing DSM program budgets pursuant to the Mitchell settlement.[29] In 2017-18, the problem was not program budgets; the problem was mismanagement and lack of due care.

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[24] *Id.*
[25] *Id.*
[26] JI Br. at Sec. I.B.-C.
[27] *Id.* at Sec. I.C.
[28] *Id.*; Sherwood Direct at 48-49 (summarizing undisputed record evidence from Case No. 2017-00097, specifically including the Company's estimate that, but for under-recoveries, the residential surcharge necessary to sustain a $6 million annual portfolio budget would be $0.002071).
[29] *Id.*

As the Company long ago acknowledged and corrected the surcharge missteps of 2017 and 2018,[30] it must now turn its focus to the Commission's recent support for prompt expansion of its DSM programs. The wind down of programs in January 2018 was only ever intended to continue "until there is a change in Kentucky Power's capacity position that indicates a need for additional generation to serve its load."[31] That need arrived by early 2021, when Kentucky Power exited the Rockport Unit Power Agreement.[32] In the four years since then, the Commission has repeatedly encouraged the Company to identify cost-effective DSM programs to help "avoid more expensive supply-side resources."[33] Notably, in approving the costs of a Market Potential Study, the Commission's "expectation" was not only that Kentucky Power would restore cost-effective programs, but that it would "**utilize and observe the results from the MPS to aggressively pursue all reasonable cost-effective DSM programs** . . . ."[34]

Instead of resorting to scare tactics about a potential DSM rate shock, Kentucky Power owes more attention to the role of demand-side management as part of a least-cost resource

[30] Joint Stipulation of Facts (Dec. 18, 2024).
[31] Order, *In the Matter of Electronic Investigation of the Reasonableness of the Demand Side Management Programs and Rates of Kentucky Power Company*, Case No. 2017-00097, at 13 (Jan. 18, 2018).
[32] Application, *In the Matter of the Electronic Application of Kentucky Power Company for: (1) Approval of Continuation of Its Targeted Energy Efficiency Program (2) Authority to Recover Costs and Net Lost Revenues, and to Receive Incentives Associated with the Implementation of Its Demand-Side Management Programs; (3) Acceptance of Its Annual DSM Status Report; (4) Authorization to Conduct a Market Potential Study; and (5) All Other Required Approvals and Relief*, Case No. 2021-00420, at 7, ¶30 (Nov. 15, 2021) ("Kentucky Power anticipates that following the expiration of the Rockport UPA it will be in a deficit capacity position. The Company will require additional capacity in the form of additional generation or contract capacity following the expiration of the Rockport UPA.").
[33] Case No. 2021-00420, Dec. 27, 2021 Order at 7; Case No. 2023-00362, Dec. 15, 2023 Order at 7.
[34] Case No. 2023-00362 Dec. 15, 2023 Order at 7; Order, *In the Matter of Electronic Application of Kentucky Power Company for: (1) Approval of Continuation of Its Targeted Energy Efficiency Program (2) Authority to Recover Costs and Net Lost Revenues, and to Receive Incentives Associated with the Implementation of Its Demand-Side Management Programs; (3) Acceptance of Its Annual DSM Status Report; (4) Authorization to Conduct a Market Potential Study; and (5) All Other Required Approvals and Relief*, Case No. 2022-00392, at 7 (Jan. 6, 2023).

portfolio.[35] The Market Potential Study supports five-fold expansion of the Company's proposed DSM Plan in order to realize reasonably achievable *and cost-effective* savings in the territory.[36] Even at that higher budget level, DSM Plan costs would be dwarfed by the Company's spending on supply-side alternatives.[37] And of course, customers will pay for those supply-side alternatives, too, in base rates, fuel adjustment charges, environmental riders, and more.

Joint Intervenors understand that many of Kentucky Power's customers can scarcely afford a rate increase. At the same time, in this case, the record shows that increased spending on DSM is a bargain compared to the costs of building or acquiring new supply-side resources, for which Kentucky Power shows no similar hesitation to spend customer money.[38] Investing in DSM programs costs something, everything does. What distinguishes cost-effective demand-side investments is their ability to reduce overall system costs and provide a precious opportunity for participating customers to lower their usage and bills.

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[35] During the Company's 2022 Integrated Resource Plan proceeding, Witness Sherwood summarized the importance of evaluating demand-side management resources as part of least-cost resource portfolio planning. Sherwood Direct, Ex. SLS-2 at 40-41. In addition to providing comparisons based on levelized cost of different resource types, that comment explained that "EE and DR efforts can be implemented cost-effectively and at a lower cost than meeting ratepayers' energy needs through investments in new generation and transmission and distribution assets, essentially deferring or eliminating some infrastructure investments." *Id. See also* Sherwood Direct at 3 ("Energy efficiency is one of the least expensive energy resources to invest in . . . .").

[36] Nolen Direct, Ex. BLN-1 at 10 of 123, tbl.1-7 (comparing Reasonably Achievable Potential (RAP) budgets to Program budgets). The Company consistently relies on the Market Potential Study's "program potential" rather than "realistically achievable potential." *E.g.*, Nolen Direct at 18 ("The Company ultimately based the DSM portfolio proposals in this case on the program potential . . . ."). But the Commission should be skeptical about such reliance on the program potential, which was shaped by arbitrary and unsupported budget constraints. JI Br. at Sec. I.B.; Nolen Direct, Ex. BLN-1 at 40 of 123 (confirming "Program Potential" was identified "based on general portfolio budget constraints").

[37] *E.g.*, Application, Ex. 4, Direct Testimony of Brad Young on Behalf of Eastern Kentucky Power Cooperative, Inc., *In the Matter of Electronic Application of East Kentucky Power Cooperative, Inc. for 1) Certificates of Public Convenience and Necessity to Construct A New Generation Resources; 2) for a Site Compatibility Certificate Relating to the Same; 3) Approval of Demand Side Management Tariffs; and 4) Other General Relief*, Case No. 2024-00370, at 5 (Nov. 20, 2024) (estimating $1.317 Billion for proposed combined cycle gas turbine project).

[38] Dec. 19, 2024 Hearing Video Transcript ("HVT") 10:24-10:30 a.m. (Wolffram). HVT citations refer to the approximate time of day as depicted on the video recording, rather than the run-time of the recording.

The Market Potential Study supports greater investment in DSM programs after comparing the costs and benefits of those investments against supply-side alternatives.[39] Kentucky Power can and should be doing more to help customers tap into that savings potential as part of a least-cost resource portfolio, and it is reasonable for the Commission to require the Company to do more under these circumstances.

III. THE COMMISSION SHOULD REVISE THE COMPANY'S PERFORMANCE INCENTIVE BECAUSE IT DOES NOT INCENTIVIZE SUCCESSFUL DSM PROGRAMS.

Finally, with respect to recovery of the shared savings incentive,[40] Joint Intervenors agree with Kentucky Power that an incentive, if allowed, should "incentivize[] the Company to manage its DSM programs . . . in a manner that achieves the maximum level of benefits to its customers while managing the attendant costs."[41] While Joint Intervenors and Kentucky Power agree in principle, two disputes remain.[42] First, does the Commission have authority to depart from a previously-approved incentive structure, either by denying or re-structuring an incentive?

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[39] *E.g.*, Nolen Direct, Ex. BLN-1 at 29 of 123 (explaining that "[e]conomic potential refers to the subset of the technical potential that is economically cost-effective (based on screening with the [Total Resource Cost] Test) as compared to conventional supply-side energy resources").

[40] Joint Intervenors will refer to the "shared savings incentive" simply as "incentive" for the following reasons. One, this is consistent with KRS 278.285(2), which uses only the word "incentive." Two, "sharing savings" can be misleading. Where, as in this case, a utility seeks compensation for lost revenue as a result of efficiency program savings, the utility recovers its fixed costs regardless of dampened sales. Particularly, when net lost revenue recovery is paired with an incentive, the incentive is a reward or bonus above and beyond what is needed to make a utility whole. KPC Br. at 18 (agreeing that "incentive designed to provide financial reward"). In that light, "incentive" bears clearer meaning standing alone.

[41] KPC Br. at 13; *id.* at 18 (explaining that incentive should provide financial reward "to encourage implementation of the programs"); *id.* at 19 (explain that incentive should "incentivize[] the Company to encourage participation in the programs").

[42] Although not revisited in this Response, Joint Intervenors note that Kentucky Power's Initial Brief failed to respond to requests to clarify how its proposed incentive will be calculated, and to more clearly state the inputs and formulas used in that calculation on the face of its tariff. *See* Sherwood Direct at 42-43; JI Br. at Sec. II.B.2. Joint Intervenors are disappointed that Kentucky Power has yet to offer any clarification in response to points raised multiple times by Joint Intervenors in this proceeding and continues to call for attention to these issues, if not from Kentucky Power, then from the Commission.

Second, does Kentucky Power's proposed incentive encourage Kentucky Power to accomplish anything that it otherwise lacks sufficient incentive to do?

Legally, the Commission must ensure just and reasonable rates, and has both the authority and the obligation to issue an order in this case that adjusts the DSM recovery mechanism (or not, as warranted) to ensure those rates continue to be just and reasonable.[43] Yet Kentucky Power's sole proffered reason to reject Joint Intervenors' proposed changes to the surcharge methodology mechanism is that the Commission has approved the methodology in the past.[44] With each case decided on its own record, simply citing back to the Commission's prior order approving the performance incentive does not satisfy the Company's burden of proof in its *prima facie* case. Its failure to meet its burden is even more stark when this reasoning is all the Company offers in response to evidence from Joint Intervenors that the performance incentive as designed does not, in fact, incent performance.

Moreover, Kentucky Power demonstrates the absurdity of this position with its request to pass the costs of legally required public notice from the Company to its customers through the DSM surcharge.[45] The Company's request seeks a new interpretation of both statute and regulation, and departure from past practice and the treatment of other utilities.[46] Without taking a position on this request itself, Joint Intervenors agree that the Commission certainly has the

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[43] JI Br. at Sec. II.B.

[44] KPC Br. at 18-19 (arguing in support of its surcharge methodology, including the performance mechanism, because "the Company has not proposed a change," and "it has utilized the methodology previously approved by the Commission").

[45] *Id.* at 19-20.

[46] *Id.* at 20 (arguing that a new "interpretation of the statute is supported because the Company is required to incur the customer notice publication costs pursuant to Commission regulation, the costs are reasonable and prudent and directly related to the DSM programs, and the Company would not have incurred the expense absent the proposals to implement new and modified programs in its application").

authority to grant this relief, if it finds reasoned justification for a changed interpretation to ensure just and reasonable rates—both for customers and utilities.

Furthermore, whatever rates and calculation methodologies were previously approved, nothing requires the Commission to approve recovery of both net lost revenues and an incentive,[47] and the Commission enjoys broad discretion in structuring incentives. If allowed, the Commission must ensure that an incentive is "designed to provide financial rewards to the utility for implementing cost-effective demand-side management programs[.]"[48] Here, the parties agree that a reasonable design should reward effective implementation, or to use the Company's own words, "incentivize[] the Company to manage its DSM programs . . . in a manner that achieves the maximum level of benefits to its customers while managing the attendant costs."[49]

Factually, customers have been paying for an incentive that does not work, and the Commission has a duty to correct that. On this point, Joint Intervenors stand by the facts and argument presented in Section II.B. of their Initial Brief. Estimated savings may be a reasonable starting point to estimate incentives, but at the conclusion of each program year, actual savings and spending must be reported, with potential for the financial reward earned to be adjusted to discourage wasteful or ineffective implementation and to incent cost-effective implementation. In other words, the incentive must be contingent upon the Company achieving actual results, rather than simply proposing to try. Customers cannot afford to reward the Company for poor performance.

[47] KRS 278.285(2) (allowing discretion to decline to include full costs, net lost revenues, and incentives in DSM recovery mechanism).
[48] *Id.*
[49] KPC Br. at 13.

CONCLUSION

Without a doubt, the Commission should approve new programs and expanded budgets for the Company's DSM Plan. Cost-effective demand-side management programs are least-cost resources that deliver benefits across the board: participating businesses and customers are better able to control their usage and mitigate the impact of future rate increases; good paying jobs in building trades are created and sustained in local communities; exposure to supply-side cost risk is mitigated; and door-by-door, the Company can be a partner in making homes and buildings more safe, comfortable, and affordable.

Eager to see the Company put its best foot forward, Joint Intervenors continue to urge more aggressive pursuit of reasonably achievable savings, program modifications to reduce financial barriers and ensure participation is financially possible for more customers, rigorous and transparent evaluation of Inclusive Utility Investments, the development of programs addressing new construction and mobile homes—both significant areas of need in the territory—and more.[50]

For the foregoing reasons, Joint Intervenors respectfully request that the Commission approve the Company's DSM Plan, but with the expanded scope and program modifications recommended by the Joint Intervenors' witnesses, and as discussed in their opening brief.

[Signature on Next Page.]

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[50] JI Br. at tbl.A (collecting recommendations from Witnesses Sherwood and Harris).

Respectfully submitted,

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CERTIFICATE OF SERVICE

In accordance with the Commission's July 22, 2021 Order in Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID*-19, this is to certify that the electronic filing was submitted to the Commission on February 3, 2025, that the documents in this electronic filing are true representations of the materials prepared for the filing; and that the Commission has not excused any party from electronic filing procedures for this case at this time.

Byron Gary