

**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,)	CASE NO. 2024-00115
AND TO RECEIVE INCENTIVES ASSOCIATED)	
WITH THE IMPLEMENTATION OF ITS)	
DEMANDSIDE 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)	

JOINT INTERVENORS' REQUEST FOR AN EVIDENTIARY HEARING, A PUBLIC HEARING, AND THE ESTABLISHMENT OF A PROCEDURAL SCHEDULE; AND RESPONSE IN OPPOSITION TO KENTUCKY POWER COMPANY'S REQUEST TO SUBMIT MATTER FOR DECISION ON THE WRITTEN RECORD

Mountain Association (“MA”), Appalachian Citizens’ Law Center (“ACLC”), Kentuckians for the Commonwealth (“KFTC”), and Kentucky Solar Energy Society (“KYSSES”) (collectively, the “Joint Intervenors”) respectfully move the Public Service Commission of Kentucky (“the Commission”) for the entry of an order setting a formal evidentiary hearing, a public hearing, and a related procedural schedule in this proceeding; and Joint Intervenors respond in opposition to Kentucky Power Company’s (“Kentucky Power” or “the Company”) request to submit this matter for decision on the written record.¹

Joint Intervenors respectfully submit that an evidentiary hearing in this proceeding is necessary and consistent with the public interest. Kentucky Power “would be amenable to” an

¹ *Kentucky Power Company’s Request to Submit Matter for Decision on the Written Record* (Sept. 18, 2024) (“Company’s Request to Submit for Decision”).

evidentiary hearing,² and one should be provided in this proceeding to afford a fair opportunity to judge witness credibility, address disputed facts in the pre-filed testimony and exhibits, address false characterizations of the pre-filed testimonies, and further develop the record with respect to facts and opinions newly introduced through the Company’s rebuttal testimony.

Joint Intervenors further request that the Commission hold a public hearing to provide an opportunity for Kentucky Power customers and interested stakeholders to offer comments regarding Kentucky Power’s proposed Demand-Side Management Plan (“DSM Plan”). Avenues for participation by the general public can be maximized by holding a public meeting in Kentucky Power’s service territory and providing for telephonic or other means of remote participation.

I. PROCEDURAL BACKGROUND

On May 1, 2024, Kentucky Power Company initiated this proceeding, proposing a three-year DSM Plan, associated increases in the DSM surcharge factors, and other related relief. The Company initially offered testimony and exhibits in support of its proposal from two witnesses: Barrett L. Nolen and Scott E. Bishop;³ with Witness Bishop’s testimony subsequently adopted by Tanner S. Wolfram.⁴

On May 30, 2024, the Commission entered a procedural order scheduling deadlines for intervention, initial and supplemental data requests, and public hearing requests.⁵ That schedule

² Company’s Request to Submit for Decision at 2 (“the Company would be amenable to making its witnesses available for any such hearing at the convenience of the Commission”).

³ Direct Testimony of Barrett L. Nolen on Behalf of Kentucky Power Company (May 1, 2024) (“Nolen Direct”); Direct Testimony of Scott E. Bishop on Behalf of Kentucky Power Company (May 1, 2024) (adopted July 8, 2024 by Tanner S. Wolfram) (“Bishop (Wolfram) Direct”).

⁴ Verified Notice of Adoption of Testimony (July 8, 2024).

⁵ May 30, 2024 Order at Appendix.

was superseded by an August 1, 2024 Order, setting a September 20, 2024 deadline to request a hearing in this matter.⁶

In response to the Company's case-in-chief, Joint Intervenors filed testimony from witnesses Stacy Sherwood and Bradley Harris addressing the reasonableness of the Company's proposed DSM plan and associated cost recovery, and explaining the untapped potential of implementing an inclusive utility investment program, respectively.⁷

Witness Wolfram subsequently submitted written rebuttal testimony.⁸

Immediately after introducing new evidence via Witness Wolfram's rebuttal, the Company asked for a decision based on the written record. The Company, however, does not oppose an evidentiary hearing: "[T]he Company would be amenable to making its witnesses available for any such hearing at the convenience of the Commission."⁹

Here, Joint Intervenors request an evidentiary hearing and a public hearing, preferably in Kentucky Power's service territory and with an option to participate telephonically or through other remote means; and respond in opposition to the Company's request for a decision based on the written record.

II. LEGAL STANDARD

Under the Commission's rules, evidentiary hearings are mandatory in some cases and circumstances, but not all. Section 9 provides that, if requested, the Commission shall conduct hearing "unless a hearing is not required by statute, is waived by the parties in the case, or is found by the commission to be unnecessary for protection of substantial rights or not in the

⁶ Aug. 1, 2024 Order at Appendix.

⁷ Direct Testimony of Stacy L. Sherwood on behalf of Joint Intervenors (Aug. 21, 2024) ("Sherwood Direct"); Direct Testimony of Bradley G. Harris on behalf of Joint Intervenors (Aug. 21, 2024) ("Harris Direct").

⁸ Rebuttal Testimony of Tanner S. Wolfram on behalf of Kentucky Power Company (Sept. 20, 2024) ("Wolfram Rebuttal").

⁹ Company's Request to Submit for Decision at 2.

public interest[.]”¹⁰ This rule advances due process, particularly the parties’ right “to know what evidence is being considered” and to have “an opportunity to test, explain and/or refute that evidence.”¹¹

In order to determine the reasonableness of a proposed DSM Plan, the Commission must consider, but is not limited to, the following factors:

- (a) The specific changes in customers’ consumption patterns which a utility is attempting to influence;
- (b) The cost and benefit analysis and other justification for specific demand-side management programs and measures included in a utility's proposed plan;
- (c) A utility's proposal to recover in rates the full costs of demand-side management programs, any net revenues lost due to reduced sales resulting from demand-side management programs, and incentives designed to provide positive financial rewards to a utility to encourage implementation of cost-effective demand-side management programs;
- (d) Whether a utility’s proposed demand-side management programs are consistent with its most recent long-range integrated resource plan;
- (e) Whether the plan results in any unreasonable prejudice or disadvantage to any class of customers;
- (f) The extent to which customer representatives and the Office of the Attorney General have been involved in developing the plan, including program design, cost recovery mechanisms, and financial incentives, and if involved, the amount of support for the plan by each participant, provided however, that unanimity among the participants developing the plan shall not be required for the commission to approve the plan;
- (g) The extent to which the plan provides programs which are available, affordable, and useful to all customers; and
- (h) Next-generation residential utility meters that can provide residents with amount of current utility usage, its cost, and can be capable of being read by the utility either remotely or from the exterior of the home.

¹⁰ 807 KAR 5:001, Section 9(1). *See also* K.R.S. § 278.310 (providing that hearings and investigations before the Commission shall be governed by the Commission’s rules).

¹¹ *Kentucky American Water Co. v. Comm’r ex rel. Cowan*, 847 S.W.2d 737, 741 (Ky. 1993).

As the Commission has previously noted, the “statute is permissive, not prescriptive,” and the Commission “may exercise its discretion in considering and weighing the factors enumerated... as well as any other relevant factors.”¹²

III. DISCUSSION

Joint Intervenors respectfully submit that an evidentiary hearing in this matter is necessary and consistent with the public interest. Additionally, Joint Intervenors request a public hearing to afford the general public an opportunity to directly address the Commission.

A. An Evidentiary Hearing is Necessary and Consistent with the Public Interest.

Kentucky Power is amenable to a hearing, and an evidentiary hearing is necessary for the complete development of the record and consistent with the public interest. In this proceeding, an opportunity for the cross-examination of witnesses’ pre-filed testimony is necessary to judge witness credibility and to further develop the record for decision with respect to disputed facts, mischaracterizations of the record, and facts newly introduced by the Company on rebuttal.

First, an evidentiary hearing is necessary to afford the Commission an opportunity to judge witness credibility. Although the Commission does not strictly follow the Kentucky Rules of Evidence, it has recognized the importance of judging witness credibility through hearing participation.¹³ Parties, Commission Staff, and the Commissioners should be afforded an opportunity to cross-examine each of the four testifying witnesses in this proceeding, thereby enabling the Commissioners to better discern how much weight to give offered facts and expert opinions.

¹² Case No. 2014-00003, *In re LG&E-KU for Review, Modification, and Continuation of Existing, and Addition of New, Demand-side Management and Energy Efficiency Programs*, Order at 24 (Ky. P.S.C. Nov. 14, 2014).

¹³ *E.g.*, *In the Matter of Jackson Purchase Energy Corp.*, Case No. 2017-00202 (Ky. P.S.C. Jan. 3, 2018) (noting in context of a hearsay objection that, although Commission not bound by rules of evidence, individual’s “absence from the hearing deprived the Commissioners of an opportunity to judge his credibility”).

Second, an evidentiary hearing is necessary to further develop the record. The Company's contrary suggestion is misguided. To start, the Company's filing of rebuttal evidence shows that factual disputes persist. But for persistent factual disputes and disagreements, the Company would have no need for rebuttal evidence, or it would have offered testimonial evidence expressing agreement with Joint Intervenors' witnesses. Instead, the Company offered additional testimony from Witness Wolfram, showing both in character and in substance that the factual record remains disputed and incomplete.

Unresolved factual issues necessitating an evidentiary hearing in this proceeding include, but are not limited to, the following:

- The record remains unclear and incomplete regarding whether and how Kentucky Power has adjusted its DSM surcharge methodology to protect against recurrence of the rate volatility it previously subjected customers to in 2016/2017.
- The record remains incomplete and unclear with respect to how the Company would calculate the as-filed shared-savings incentives.
- The record remains incomplete and unclear with respect to rate impacts for the proposed DSM Plan over the three-year plan period.

On these issues, and those of similar character, a fair opportunity to cross-examine the Company's witnesses—and to make Joint Intervenors' witnesses equally available for cross-examination—is necessary to clarify inconsistencies and gaps in the Company's evidence.

Disputed issues necessitating an evidentiary hearing in this proceeding are many, and include at least the following:

- Whether the Company has been over-collecting lost revenues attributable to its TEE Program for an untold number of years and whether it is reasonable for the Company to be allowed to continue over-collecting.
- The appropriate number of years for the recovery of net lost revenues.
- The design of an effective utility incentive for DSM program implementation, and what the Company's proposed shared savings incentive is designed to incent.

- The DSM Plan’s alignment with the Company’s Integrated Resource Plan and the Market Potential Study.
- The overall energy savings goal and level of program investment that reasonably balances benefits and costs.
- The amount of reasonably achievable and cost-effective savings potential in the Company’s service territory.
- The ability of and need for program design to better support eligibility for, and actual participation in, DSM programs.
- The Company’s ability to outlay capital to support demand-side management programs.
- The potential for cost-effective Inclusive Utility Investment programs in Kentucky Power’s territory.

Among these examples, some factual disputes were deepened by the Company’s decision to file rebuttal, and all warrant further development, within reasonable bounds set by the Commission, via cross-examination of witnesses on their pre-filed testimonies.

Third, Witness Wolfram’s rebuttal mischaracterizes certain portions of Joint Intervenors’ witnesses’ testimony, making an evidentiary hearing necessary to complete and correct the record. For example, Witness Wolfram’s rebuttal waves off various portions of Witness Sherwood and Witness Harris’s testimony and recommendations as “unsupported by any evidence”¹⁴—a characterization Joint Intervenors unreservedly dispute and seek a fair opportunity to address via cross-examination. In another example, Witness Wolfram’s rebuttal misconstrues recommended changes to the shared-savings incentive,¹⁵ necessitating an opportunity to clarify and correct the record. Notably, in such instances, an evidentiary hearing

¹⁴ Wolfram Rebuttal at 1 (sweeping dismissal of Sherwood and Harris testimonies as “unsupported by any evidence”); *see also, e.g., id.* at 2 (same); *id.* at 7 (mischaracterizing Sherwood’s reliance on the Company’s Market Potential Study to determine reasonably achievable savings as an “unsupported opinion”).

¹⁵ *Compare* Wolfram Rebuttal at 14–16 *and* Sherwood Direct at 54–56.

also offers Kentucky Power a second chance to respond to witnesses' actual testimony, not misunderstandings or mischaracterizations.

Fourth, Witness Wolfram's rebuttal testimony introduces new facts and opinions, necessitating an evidentiary hearing to afford a fair opportunity to explore and further develop the record on those points. For example, Witness Wolfram introduces new facts to rebut the suggestion that the Company more seriously evaluate an Inclusive Utility Investment program, claiming an inability to outlay capital to serve customers.¹⁶ In another example, Witness Wolfram offers new opinions concerning the design of an effective utility incentive and what various incentive structures might actually incent.¹⁷ An evidentiary hearing is necessary to afford a fair opportunity to cross-examine witnesses with respect to facts and opinions newly introduced via the Company's rebuttal testimony.

Standing alone or combined, these four rationales show that an evidentiary hearing is necessary and consistent with the public interest. Furthermore, it bears emphasizing that Kentucky Power does not oppose an evidentiary hearing,¹⁸ no party has waived hearing, and a hearing in this matter could be completed in a reasonable amount of time, proportionate to the issues at hand, with only four testifying witnesses and no other intervenors.

¹⁶ Wolfram Rebuttal at 12.

¹⁷ Wolfram Rebuttal at 14–16.

¹⁸ Company's Request to Submit for Decision at 2 (“[T]he Company will defer to the Commission if the Commission or Commission Staff determine that a hearing is needed or would be beneficial to supplement the record of this matter with additional evidence so that the Company's application may be granted. In that event, the Company would be amenable to making its witnesses available for any such hearing at the convenience of the Commission.”).

B. Joint Intervenors request a public hearing to afford the general public an opportunity to directly address the Commission.

In addition to an evidentiary hearing, Joint Intervenors request the Commission host a public hearing, in Kentucky Power's service territory and with provisions for remote participation. By affording the general public an opportunity to speak directly to the Commissioners regarding individual and organizational views on the Company's proposal, the Commission serves the public interest and aids in the development of a robust record.

Critically, a public hearing affords the Commission an opportunity to hear directly from customers that depend on Kentucky Power for service, as well as other stakeholders. The two dozen public comments already received—including many from customers of Kentucky Power—reflect public interest in the matter, as well as potential confusion about the proposal. Customers do not have a choice in their utility service providers, and the ability to share their experiences and views on utility investments is critical to informing the Commission and assuring the public that they have some voice in the process.

A public hearing also affords an opportunity for participants in the DSM stakeholder group to directly address the Commission and share varied perspectives on the proposed DSM Plan. Although each of the four organizations participating as Joint Intervenors in this proceeding also participated in Kentucky Power's DSM stakeholder group, no other stakeholder group participants pursued intervention. Nevertheless, each of the non-party stakeholder participants—the Attorney General's Office, Kentucky Energy and Environment Cabinet, Community Action Agencies, Kentucky Conservation Committee, HOMES, Inc., Housing Development Alliance, and Federation of Appalachian Housing Enterprises—has distinct areas

of expertise, varied perspectives, and direct insights which could deepen the record and better enable the Commission to weigh the reasonableness of Kentucky Power's proposal.¹⁹

Furthermore, as emphasized in Witness Sherwood's testimony, Kentucky Power's service territory faces not only high energy burden, but contains a majority of households under 200% of the Federal Poverty Level,²⁰ creating significant barriers to public participation. A public hearing in Frankfort on the recent Kentucky Power Company rate case drew two commenters, including a County Judge Executive. Three further public hearings in Kentucky Power service territory, however, drew dozens of commenters, including County Judge Executives, and state representatives and senators, many of whom expressed appreciation for the Commission removing the barrier of travel by coming to Eastern Kentucky.

By making a public hearing accessible within Kentucky Power's service territory and via telephone or other means of remote participation, the Commission would maximize the avenues for participation. Doing so advances the public interest by broadly inviting engagement in this regulatory process.

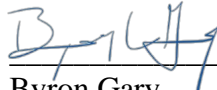
IV. CONCLUSION

WHEREFORE, for these reasons, the Joint Intervenors respectfully request that the Commission enter an order establishing an evidentiary hearing in this proceeding as well as a public hearing opportunity, preferably in Kentucky Power's service territory with opportunities for telephonic or other remote participation.

¹⁹ *E.g.*, KRS 278.285(1)(f) (directing the Commission to consider the extent to which customer representatives and the Attorney General were involved in developing a DSM Plan and the amount of support for the plan from each).

²⁰ Sherwood Direct at 27-28.

Respectfully submitted,



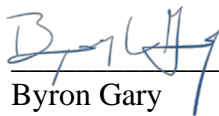
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CERTIFICATE OF SERVICE

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 September 20, 2024; that the documents in this electronic filing are a true representations of the materials prepared for the filing; and that the Commission has not excused any party from electronic filing procedures for this case at this time.



Byron Gary