

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

In the Matter of:

ELECTRONIC APPLICATION OF KENTUCKY)
UTILITIES COMPANY FOR AN ADJUSTMENT OF)
ITS ELECTRIC AND GAS RATES AND) CASE NO. 2025-00113
APPROVAL OF CERTAIN REGULATORY AND)
ACCOUNTING TREATMENTS)

In the Matter of:

ELECTRONIC APPLICATION OF LOUISVILLE)
GAS AND ELECTRIC COMPANY FOR AN)
ADJUSTMENT OF ITS ELECTRIC AND GAS) CASE NO. 2025-00114
RATES AND APPROVAL OF CERTAIN)
REGULATORY AND ACCOUNTING)
TREATMENTS)

**JOINT INTERVENORS KENTUCKIANS FOR THE COMMONWEALTH,
KENTUCKY SOLAR ENERGY SOCIETY, METROPOLITAN HOUSING
COALITION, AND MOUNTAIN ASSOCIATION’S RESPONSE IN
OPPOSITION TO JOINT PETITION OF KENTUCKY UTILITIES
COMPANY AND LOUISVILLE GAS AND ELECTRIC COMPANY FOR
RECONSIDERATION OF THE FEBRUARY 16, 2026 ORDER**

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**JOINT INTERVENORS RESPONSE IN OPPOSITION TO JOINT
PETITION OF KENTUCKY UTILITIES COMPANY AND LOUISVILLE
GAS AND ELECTRIC COMPANY FOR RECONSIDERATION**

Come now Metropolitan Housing Coalition, Kentuckians for the Commonwealth, Kentucky Solar Energy Society, and Mountain Association (collectively “Joint Intervenors”), by counsel, pursuant to KRS 278.400 and other applicable law, and submit this response in opposition to the Joint Petition of Kentucky Utilities Company (“KU”) and Louisville Gas and Electric Company (“LG&E”) (collectively, the “Companies”) for Reconsideration of the the Kentucky Public Service Commission’s (“the Commission”) February 16, 2026 Orders.¹

Introduction

While much of the Companies’ petition is worded in the form of inexorable logic, on closer inspection the syllogisms simply fail, and it is apparent the Companies’ motion is merely an attempt to improperly relitigate issues already properly decided by the Commission, based on no new evidence, material error, or unreasonable or unlawful finding. Specific responses to some of the issues in the Companies’ petition for rehearing are addressed below. Any issues not addressed are by no means conceded, and Joint Intervenors respectfully request the Commission deny the Companies’ motion for rehearing on all matters.

Legal Standard

Any party to a proceeding before the Commission “may, within twenty (20) days after the service of the order, apply for a hearing with respect to any of the matters determined.”² Rehearing is appropriate to hear “new evidence not readily discoverable

¹ Unless otherwise noted, citations are made to the Feb. 16, 2026 Orders in Case No. 2025-00113. Where materially different from the Feb. 16, 2026 Orders in Case No. 2025-00114, such differences are specifically noted.

² KRS 278.400.

at the time of the original hearings, to correct any material errors or omissions, or to correct findings that are unreasonable or unlawful.”³ Findings are unreasonable where “the evidence presented leaves no room for difference of opinion among reasonable minds.”⁴ “Rehearing does not present parties with the opportunity to relitigate a matter fully addressed in the original Order.”⁵

In regards to review of a settlement agreement, specifically:

the Commission owes no duty of deference to the parties' Settlement Agreement or that the settlement provisions are de facto fair, just and reasonable. This is especially so given that settlement agreements are typically the process of negotiation and compromise between the parties. The Commission has a statutory duty to investigate whether the provisions of a settlement agreement are fair, just and reasonable. That investigation is based upon the Commission's unique expertise and application of the facts developed in the case record to the applicable law.⁶

Discussion

I. The Commission Should Reject the Companies' Overarching Rehearing Request.

The Commission's February 16 Order approved the stipulation subject to modifications necessary to reasonably balance all interests and provide lawful, just and

³ *In re Elec. Application of Big Rivers Elec. Corp. for Ann. Rev. of Its MRSM Charge for Calendar Year 2022*, Case No. 2023-00038, 2023 WL 7220130, at *1 (Ky. P.S.C. Oct. 26, 2023).

⁴ *Id.* (quoting *Energy Regul. Comm'n v. Ky. Power Co.*, 605 S.W.2d 46 (Ky. App. 1980)).

⁵ *Electronic Application of Kentucky Utilities Company for an Adjustment of Its Electric Rates, a Certificate of Public Convenience and Necessity to Deploy Advanced Metering Infrastructure, Approval of Certain Regulatory and Accounting Treatments, and Establishment of a One-Year Surcredit*, Case No. 2020-00349 (“2020 KU Rate Case”), and *Electronic Application of Louisville Gas and Electric Company for an Adjustment of Its Electric and Gas Rates, a Certificate of Public Convenience and Necessity to Deploy Advanced Metering Infrastructure, Approval of Certain Regulatory and Accounting Treatments, and Establishment of a One-Year Surcredit*, Case No. 2020-00350 (“2020 LG&E Rate Case”), Order at 2 (Ky. P.S.C. Aug. 12, 2021) (together, “2020 LG&E-KU Rate Cases”).

⁶ 2020 LG&E-KU Rate Cases, Aug. 12, 2021 Order at 11-12. It is also worth noting that FERC has recently decided a very similar issue in the context of modifying a portion of a settlement, stating that “the fact that the settlement was negotiated as a total dollar resolution of the issues and that modification of dollar settlements will undermine the important policy of encouraging settlements” was not a sufficient reason for a settlement provision that violated Commission policy. *KN Energy, Inc.*, 33 FERC 61,430, 61,830 (1985).

reasonable rates.⁷ Although the result reached is a remarkably similar revenue requirement, the Companies make an “overarching” rehearing request, asking the Commission to instead approve the Stipulation as filed (and amended).⁸ For the reasons explained below, this overarching rehearing request should be denied.

First, the Companies’ overarching request is identical to their position since proposing the Stipulation and boils down to an attempt to relitigate the reasonableness of the Stipulation as proposed. The character of the Stipulation—reasonable or not—did not compel its approval, and the Commission acted well within its authority to establish rates.

Furthermore, the Companies present no new evidence, nor do they correct any material errors or omissions. Instead, the Companies primarily argue on rehearing that their Stipulation, without modification, could have resulted in reasonable rates, relying on the “minor variance” between the stipulated and ordered revenue requirements shows as much.⁹ That logic cuts both ways though, with the minor variance in revenue requirement just as readily affirming the reasonableness of the ordered rates.

Regardless, as the Companies’ themselves acknowledge, even if the Stipulation might have reached a reasonable result, that does not mean that the Commission was required to approve it, or restrained in its authority to reach a different result.¹⁰

⁷ *Contra Joint Petition of Kentucky Utilities Company and Louisville Gas and Electric Company for Reconsideration of the February 16, 2026 Orders*, Case Nos. 2025-00113, and 2025-00114, at Sec. I, 3-7 (Mar. 11, 2026) (“Jt. Pet.”). See, e.g., Case Nos. 2025-00113, 2025-00114, Feb. 16, 2026 Order at 19 (“the Commission must ensure that all rates meet the requirements of KRS Chapter 278, and while the Commission generally finds the proposed Stipulation appropriate, it is unable to approve the Stipulation without modification.”)

⁸ Jt. Pet. at 3-7.

⁹ *Id.* at 3-5.

¹⁰ See e.g., *id.* at 6 (acknowledging that “the Commission must exercise its own judgment to determine whether a stipulation is reasonable”); *id.* at 7 (“Companies also recognize that the Commission is not obligated to accept a stipulation”).

Second, given that the Companies have already withdrawn from the October Stipulation, it is questionable that the Commission could approve it at this point. On March 11, 2026, the Companies provided “formal notice to the Commission and all parties that Kentucky Utilities Company and Louisville Gas and Electric Company hereby withdraw from the October 20, 2025 Stipulation and Recommendation pursuant to Paragraph 10.6 of that Stipulation and Recommendation.”¹¹ Applying basic contract principles, the Companies’ withdrawal sinks the Stipulation all together, as the agreement now lacks any consideration from the applicant seeking relief in this proceeding and no longer obligates the Companies.

The language of the Stipulation does not provide for its own restoration after the Companies’ withdrawal, and paragraph 10.6 did not require the Companies to withdraw when they did. Paragraph 10.6 allows a party to withdraw from the Stipulation “within the statutory periods provided for rehearing and appeal of the Commission’s order by (1) giving notice of withdrawal to all other Parties and (2) timely filing for rehearing or appeal.”¹² The statutory period provided for appeal is tolled by the Companies’ rehearing petition, and thus the Companies were not required to provide notice of withdrawal at the time of this rehearing petition. It makes little sense for the Companies to first withdraw from the Stipulation, and then relitigate that Stipulation on rehearing.

Third, absent modification, the Stipulation did not provide “material customer benefits” that the Commission could not order on its own accord in this proceeding.¹³

¹¹ Case Nos. 2025-00113, 2025-00114, Letter Withdrawing from Stipulation (March 11, 2026).

¹² Case Nos. 2025-00113, 2025-00114, Stipulation Testimony Exhibit 1: Stipulation and Recommendation, at 22-23 (Oct. 20, 2025) (“Stipulation”).

¹³ *Contra* Jt. Pet. at 5. See, *generally*, Post-hearing Brief of Joint Intervenors Kentuckians For The Commonwealth, Kentucky Solar Energy Society, Metropolitan Housing Coalition, and Mountain Association, Case Nos. 2025-00113, 2025-00114, Case No. 2025-00113, 2025-00114, at 83-89 (Dec. 2, 2025) (“JI Post-Hearing Br.”)..

The Commission does not need a stipulation in order to exercise its authority to determine just and reasonable rates. The only possible exception may be the authority to order a stay-out provision absent a stipulation, but on balance, the stay-out provision was not worth much. The so-called “two-and-a-half-year base rate stay out” was buckshot with exceptions, and only realistically delayed the next base rate case for just 14 months.¹⁴ Furthermore, any benefit to ratepayers from the stay-out provision are erased by creation of the PGR surcharge and its bill impacts.¹⁵ As detailed in Joint Intervenors’ Post-Hearing Brief, the Companies proposal for the GCR Surcharge would have yielded approximately \$310 million in revenue from customers in 2027 and 2028, which significantly exceeds the stipulated base rate revenue requirement reduction of just \$137 million.¹⁶

It also bears noting that the Commission explained that “while the [GCR/PGR] adjustment clause is not strictly necessary to maintain LG&E’s financial health, it could make it easier for LG&E to stay out longer before filing another rate case.”¹⁷ That is still true. Even without a stay out provision ordered by the Commission, the Companies may not be in the position to claim that their filed rates are inadequate for some time, especially with the PGR approval enabling the Companies to accelerate recovery of hundreds of millions of dollars of capital spending per year until new rates are established.

Fourth, while there is some diversity of interest and perspectives among the stipulating parties, there is also great diversity of interest and perspectives among the

¹⁴ See, generally, JI Post-Hearing Br. at 88-89.

¹⁵ *Id.* at 88-89.

¹⁶ *Id.* at 89.

¹⁷ Case No. 2025-00114, Feb. 16, 2026 Order at 157.

parties that opposed the Stipulation.¹⁸ The Commission's modifications to the stipulation respond to legitimate concerns raised by non-stipulating parties and the Commission itself,¹⁹ and the Companies' Joint Petition does not argue that the resulting rates are unjust or unreasonable.

Fifth, the Companies' reference to a fourteen year old rate case discussion does not compel any particular result here and does not render the ordered rates unreasonable or unlawful.²⁰ As the Companies concede, "the Commission must exercise its own judgment to determine whether a stipulation is reasonable," and "the Commission is not obligated to accept a stipulation."²¹ Furthermore, the Commission must consider all record evidence in a proceeding, irrespective of whether a party supports or opposes a proposed stipulation.²²

Finally, the Companies have failed to show that the Commission's approval of the stipulation with modifications was an unreasonable balance of the interests and perspectives of the Companies, customers, and the state. Instead, the Companies cynically forecast that the Commission's modifications of the Stipulation "eliminate[] any meaningful incentive" for parties to pursue collaborative resolutions in future proceedings,²³ but that says more about the Companies' interests and perspectives than it does about anything else. From the perspective of Joint Intervenors, the value of pursuing collaborative resolutions is not at all reduced as a result of the February 16 Orders.

¹⁸ JI Post-Hearing Br. at 13.

¹⁹ *E.g.*, Case Nos. 2025-00113, 2025-00114, Feb. 16, 2026 Orders at 19 ("the Commission recognizes the good faith efforts of all parties involved in the Stipulation, as well as the dissenting views of non-joining intervening parties, in providing a full record of all material issues in this case").

²⁰ *Contra* Jt. Pet. at 5.

²¹ Jt. Pet. at 6-7.

²² *Contra* Jt. Pet. at 6.

²³ *Id.*

In sum, it makes sense that the Companies would want a result more to their liking, but that does not give rise to a legitimate rehearing issue. The Commission reasonably exercised its discretion and authority, and should reject the Companies' effort to relitigate the Commission's decision.

II. The Commission's Modifications to the Companies' Authorized Return on Equity Are Well-Supported by the Record and Generously Compensate Out-of-State Investors.

In its final orders in these cases, the Commission modified the stipulation by reducing the Companies' authorized return on equity ("ROE") from the Stipulation amount of 9.9% on both base rates and surcharges,²⁴ to 9.775% for base rates, and 9.675% for capital riders,²⁵ a significant increase from the currently-authorized 9.425% and 9.35%, respectively.²⁶ While not entirely clear from the Companies' Petition what their specific objections are, they claim that "[t]he Reduction to the ROE Is Unreasonable."²⁷

The guiding principle set by the Kentucky legislature as to rates, common with many jurisdictions, is that utilities are entitled to "demand, collect and receive fair, just and reasonable rates."²⁸ Since at least *Fed. Power Com. v. Hope Nat. Gas Co.* was decided by the United States Supreme Court in 1944, what constitutes fair, just, and

²⁴ Case Nos. 2025-00113, 2025-00114, Stipulation Testimony Exhibit 1: Stipulation and Recommendation, at 2.2.(A) (Oct. 20, 2025). The Companies' initial request was for an ROE of 10.95%, Direct Testimony of Dylan W. D'Ascendis, Rate of Return, at 2 (May 30, 2025), a level which all the other parties rightly objected to as being absurdly high (see JI Post-Hearing Br. at 27-28, 85-86).

²⁵ Case No. 2025-00113, Feb. 16, 2026 Order at 135; Case No. 2025-00114, Feb. 16, 2026 Order at 137-38.

²⁶ 2020 KU Rate Case, Order at 21, 23 (Jun. 30, 2021); 2020 LG&E Rate Case, Order at 23, 25 (Jun. 30, 2021). The Companies complain that the Commission's characterization of "such an increase" as an increase requiring additional context, noting the passage of time. Jt. Pet. at 19-20. This complaint amounts to even less of an argument about the reasonableness of the Commission's Order than the rest of the petition, but to the extent it is intended to show unreasonableness, the Joint Intervenors note that the ROEs approved by the Commission are indeed a substantial increase over the Companies' currently-authorized ROEs.

²⁷ Jt. Pet. at 19.

²⁸ KRS 278.030(1).

reasonable rates are the **lowest** reasonable rates that would not be confiscatory under the Constitutions of the United States and the Commonwealth of Kentucky while enabling successful operation, maintaining financial integrity, and providing a return commensurate with the risks of the investment even if meager.²⁹ The Commission, therefore, must balance its responsibility “to protect consumers against exploitation,” and ensure that utilities have the opportunity to recover revenue through rates sufficient to ensure their “financial integrity.”³⁰ As stated in the Joint Intervenors’ initial brief, the Commission is well within its rights to make such determinations regarding the Companies’ request on its own, and should do so with an eye to this balance of interests, and an aim “to decrease any rate which is not the ‘lowest reasonable rate.’”³¹

In adjusting the stipulated ROE, the Commission noted a number of factors that played into its decision, each well-founded in evidence of record and Commission precedent. First, the Commission rejected the use of the Predictive Risk Premium Model (“PRPM”), agreeing with the testimony of the Attorney General and Kentucky Industrial Utility Customers (“KIUC”) and U.S. Department of Defense and Federal Executive Agencies (“DOD/FEA”) that “LG&E/KU has not proven that the PRPM is relied upon by investors to determine their required ROE for regulated electric and gas utilities, and the results of the PRPM should be disregarded,” and noting that it has rejected its use in the past.³²

²⁹ *Commonwealth ex rel. Stephens v. S. Cent. Bell Tel. Co.*, 545 S.W.2d 927, 930-31 (Ky. 1976) (citing *Fed. Power Comm’n v. Hope Nat. Gas Co.*, 320 U.S. 591 (1944); *Fed. Power Comm’n v. Nat. Gas Pipeline Co. of Amer.*, 315 U.S. 575 (1942)).

³⁰ *Fed. Power Comm’n v. Memphis Light, Gas & Water Div.*, 411 U.S. 458, 465-66 (1973) (citing *Hope* at 320 U.S. 610, 603).

³¹ JI Post-Hearing Brief at 27, citing *Fed. Power Comm’n v. Nat. Gas Pipeline Co.*, 315 U.S. 575, 585–86, (1942); see also *Commonwealth ex rel. Stephens v. S. Cent. Bell Tel. Co.*, 545 S.W.2d 927, 931 (Ky. 1976).

³² 2023-00113, Feb. 16, 2026 Order at 133.

Second, the Commission “reiterate[d] it continues to reject the use of flotation cost adjustments, size adjustments, and credit risk adjustments, and the use of non-regulated proxy groups.”³³ Aside from noting that this has continually been the case, the Commission noted the argument of the Attorney General/KIUC that stock prices already account for flotation costs, “to the extent that such costs are even considered by investors.”³⁴

Third, the Commission cautioned against the removal of subjectively-determined “outlier” data.³⁵

Finally, the Commission noted that while the 2.5 year base rate “stay out” presented risks to the company, the approval of the modified Generation Cost Recovery Rider (“GCR”) significantly diminished this risk.³⁶ Approval of the GCR, as modified to the Pilot Generation Recovery Adjustment Clause (“PGR”), allows the Company to recover for the costs of new generation that comes online before the next base rate case, without the expense and uncertainty of a base rate case.³⁷

For these reasons the Commission found:

that an ROE of 9.775 percent is fair, just, and reasonable and appropriately balances the needs of LG&E/KU and its customers and addresses the current economic state of the capital market, and the risks noted above. Due to the lower risk associated with contemporaneous recovery, the Commission continues to view capital riders as providing lower risk to the utility and finds that a 10- basis point reduction in the

³³ *Id.*

³⁴ Case No. 2025-00113 Order at 133-34, *citing* Direct Testimony and Exhibits of Richard A. Baudino, at 63 (Aug. 29, 2025) (“Baudino Direct”).

³⁵ Case No. 2025-00113, Feb. 16, 2026 Order at 134.

³⁶ *Id.* It is also worth mentioning here that the fate of the “stay out” itself is now in question, with the Company having provided notice that it is withdrawing from the Stipulation, KU LGE Notice of Withdrawal from Stipulation and Recommendation (Mar. 11, 2026), and stating that they will likely not stay out of base rate cases through August 2028. *Jt. Pet.* at 2, 28.

³⁷ Case No. 2025-00113, Feb. 16, 2026 Order at 145-51; Case No. 2025-00114, Feb. 16, 2026 Order at 153-60.

ROE component of LG&E/KU's capital riders, including the GCR, from 9.775 percent to 9.675 percent is fair, just and reasonable.³⁸

The Companies' primary argument against the reduction of the base rate ROE by 12.5 basis points is that the Commission has recently approved separate ROEs only 10 basis points below that in the Stipulation, including one "with a stay-out agreement similar to the term the Stipulating Parties agreed to in these cases."³⁹ The Companies do not state whether a similar ROE 0.025% higher than that authorized would have been "reasonable" in their view.

The Commission's authorized ROE does have a clear basis in the evidentiary record. As Joint Intervenors summarized in our initial brief:

On behalf of the Attorney General and Kentucky Industrial Utility Customers, Richard A. Baudino recommended an ROE of 9.6%, and suggested a reasonable range of 9.0 to 10.0%. Michael P. Gorman, for the Department of Defense and all other Federal Executive Agencies, proposed an ROE of 9.5%, with a reasonable range from 9.20 to 9.85%. The witness for Walmart, Lisa V. Perry, surveyed other authorized ROEs and found the Companies' request would put it near the top of authorized ROEs for regulated utilities nationally, and recommended the Commission keep the Companies' currently-authorized ROE of 9.425%, unless there has been a change in circumstances, citing in particular the customer impact.⁴⁰

Paired with the reduced risk associated with the stay out due to the allowance of an additional surcharge for new generation, the evidence clearly supports the

³⁸ Case No. 2025-00113, Feb. 16, 2026 Order at 135; Case No. 2025-00114 Order at 137-38.

³⁹ Jt. Pet. at 20, *citing In re Electronic Application of Duke Energy Kentucky, Inc. for: 1) an Adjustment of the 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. 2024-00354, at 51 (Ky. PSC Oct. 2, 2025); and *In re Electric Application of Duke Energy Kentucky, Inc. for 1) an Adjustment of the Natural Gas Rates; 2) Approval of the Natural Gas Rates; and 3) All Other Required Approvals, Waivers, and Relief*, Case No. 2025-00125, at 16 (Ky. PSC Dec. 23, 2025).

⁴⁰ JI Post-Hearing Brief at 27-28, *citing* Direct Testimony and Exhibits of Richard A. Baudino on Behalf of the Office of the Attorney General of the Commonwealth of Kentucky and Kentucky Industrial Utility Customers at 34, Case Nos. 2025-00113 and 2025-00114 (Sep. 2, 2025); Direct Testimony and Exhibits of Michael P. Gorman On behalf of United States Department of Defense and all other Federal Executive Agencies at 65-66, Case Nos. 2025-00113, 2025-00114 (Aug. 29, 2025); and Direct Testimony and Exhibits of Lisa V. Perry on Behalf of Walmart Inc. at 12-14, Case Nos. 2025-00113 and 2025-00114 (Aug. 29, 2025) ("Perry Direct").

Commission's reduction by 2.5 basis points from the similarly-situated ROE of 9.8% cited by the Companies. Furthermore, as the Joint Intervenors also pointed out in their brief, this is not the lowest of recently-approved ROEs by the Commission. Pointing to a recent decision regarding Atmos Energy Company, we stated:

the same witness who testified here on ROE for LG&E and KU, Dylan D'Ascendis, proposed a 10.95% ROE for Atmos in testimony quite similar to what the witness sponsored in the present proceedings. In its August order, the Commission granted Atmos a 9.75% ROE for its rate base, rejecting one of the models and certain adjustments relied on by Mr. D'Ascendis.⁴¹

Further, the Companies are far from struggling to compensate equity holders currently. With a currently-authorized return on equity ("ROE") of 9.425%,⁴² KU has consistently earned above an 8.8% return,⁴³ with LG&E earning a 10.40% return last year, and not earning below 9.6% in the last five years.⁴⁴ The Commission's authorized ROE of 9.775% is, for all these reasons, clearly sufficient to allow the Companies to maintain their financial integrity.

With regards to the 9.675% ROE for capital riders, the Companies opine that "[t]he evidence in the record does not support the Commission's finding that the mechanisms reduce the Companies' risk." They further contend that the Commission's approach of setting a modestly lower ROE for cost recovery mechanisms is an "outlier," noting in support that their ROE expert "is not aware of any other state commission that

⁴¹ JI Brief at 86, *citing* Case No. 2024-00276, *In re Electronic Application of Atmos Energy Corporation for an Adjustment of Rates; Approval of Tariff Revisions; and Other General Relief*, Commission Order at 36-38 (Ky. P.S.C. Aug. 11, 2025).

⁴² 2020 KU Rate Case, June 30, 2021 Order at 23; 2020 LG&E Rate Case, June 30, 2021 Order at 25, (Jun. 30, 2021).

⁴³ Case No. 2025-00113, Response to United States Department of Defense and All Other Federal Executive Agencies' Initial Data Request Dated July 3, 2025, Question 8, Attachment, (July 17, 2025).

⁴⁴ Case No. 2025-00114, Response to United States Department of Defense and All Other Federal Executive Agencies' Initial Data Request Dated July 3, 2025, Question 8, Attachment (July 17, 2025).

systematically reduces the ROE for mechanisms as compared to the ROE for base rates.”⁴⁵

Aside from simply recycling arguments from its initial brief,⁴⁶ and therefore attempting to relitigate issues already properly decided by the Commission, the Companies fail the baseline requirement of a petition for rehearing of even stating, let alone proving, that the finding contains “material errors or omissions,” or “findings that are unreasonable or unlawful.” They simply state they don’t think it is supported by evidence in the record because their witness said riders are common, and he was not aware of other states that systematically reduce the ROE for riders. But the Commission is not required to credit only the testimony of a single witness with admittedly limited knowledge, and the record certainly supports the finding that riders reduce risk. As stated by Attorney General/KIUC witness Baudino:

Most recently, the Commission awarded a 10 basis point reduction for capital riders in Case No. 2024-00276 involving Atmos Energy Corporation and asserted that the ROE for capital riders is adjusted downwards because “[w]ith a rider, since a return is guaranteed and the time line of recovery is known and ordinarily not meaningfully delayed, the required return is less than the ROE associated with a rate case as the risk involved is decreased and most lag associated with recovery is eliminated.” This approach continues to be appropriate and applicable for LGE and KU’s ECR riders and I recommend that the Commission apply a 10 basis point reduction to my recommended ROE of 9.60%, making the ECR ROE 9.50%.⁴⁷

Testimony as to the Commission-approved PGR Rider, or the stipulation GCR and MC 2 Riders that formed the basis of the pilot, is admittedly not in the record—because they were not proposed by the Company until *after* the close of testimony, in the case of recovery for Mill Creek 2 not until *Halloween night the Friday*

⁴⁵ Jt. Pet. at 20.

⁴⁶ Case No. 2025-00113, 2025-00114, Post-hearing Brief of Kentucky Utilities Company and Louisville Gas and Electric Company, at 12-13 (Dec. 2, 2025) (“LG&E-KU Post-Hearing Br.”).

⁴⁷ Baudino Direct at 40, *citing* Case No. 2024-00276, Aug. 11, 2025 Order at 38.

before the start of the hearing. While the expert testimony offered in this case already and prior precedent of the Commission form sufficient bases for the Commission's decision, were the Commission to find otherwise and grant rehearing on this matter, it should set a schedule for accepting testimony, evidence, and argument on this specific matter.

Finally, contrary to the Companies' claim, other Commissions have recognized that riders guaranteeing recovery of capital costs immediately, with monthly adjustments, lowers a utilities' risk profile, and have factored that lower risk profile into their ROE determinations.⁴⁸ While reductions specifically on ROE associated with

⁴⁸ See, e.g., *People ex rel. Madigan v. Ill. Commerce Comm'n*, 2011 IL App (1st) 100654, 85, 958 N.E.2d 405, 425 (Ill. App. Ct. 1st Dist. 2011) (upholding Commission 10-point reductions to approved ROE as a result of the approval of riders that were "designed to ensure accurate recovery of the Utilities 'margin' revenues regardless of how weather affected the Utilities' sales of natural gas" and to ensure recovery of the Utilities' uncollectible expenses); *Citizens Util. Bd. v. Ill. Commerce Comm'n*, 2018 IL App (1st) 170527, ¶¶ 21, 49, 116 N.E.3d 226, 233, 239 (Ill. App. Ct. 1st Dist. 2018) (upholding a Commission's eight point reduction in the ROE in order to reflect the "reduced operating risk" that would result from an approved rider.); *In the Matter of the Application of Uns Elec., Inc. for the Establishment of Just & Reasonable Rates & Charges Designed to Realize A Reasonable Rate of Return on the Fair Value of the Props. of Uns Elec., Inc. Devoted to Its Operations Throughout the State of Arizona & for Related Approvals.*, No. 79277, 2024 WL 755418, at *1 (O.L.C. Jan. 30, 2024) ("UNSE proposes an ROE of 9.95% if the proposed SRB [System Reliability Benefits Mechanism] is approved, and an ROE of 10.25% if the SRB is not approved.... We agree with Walmart, RUCO, and Staff's characterization of UNSE's requested ROE as excessive.... In addition, by our approval of the proposed SRB with modifications, as discussed further below, the Company's risk is further reduced.... Because of the Company's reduced risk due to our approval of the proposed SRB with modifications, we find it is reasonable and appropriate to authorize an ROE of 9.75%...."); *Petition of Fitchburg Gas & Elec. Light Co. (Elec. Div.) d/b/a Unitil Pursuant to G.L. C. 164, S 94, & 220 C.M.R. S 5.00 et Seq. for Approval of A Gen. Increase in Elec. Base Distribution Rates & Implementation of A Cap. Cost Adjustment Mechanism to Become Effective July 1, 2015. Petition of Fitchburg Gas & Elec. Light Co. (Gas Div.) d/b/a Unitil Pursuant to G.L. C. 164, S 94, & 220 C.M.R. S 5.00 et Seq. for Approval of A*, No. 15-80, 2016 WL 1756708, at *147, 148 (Apr. 29, 2016) (Reducing a utility's requested 10.25% ROE to 9.8 percent in part because of the utility's "use of reconciling mechanisms to recover certain costs, dollar-for-dollar, outside of base rates . . . which will reduce regulatory lag in recovery" and approval of "a capital tracker . . . which [] allows recovery related to capital expenditures for electric infrastructure." In so holding, the Commission explained that "[t]he use of the types of reconciling mechanisms produces a more timely and predictable recovery of costs compared to traditional ratemaking. By shortening the time between when Unitil incurs costs and when it recovers those costs in rates, the reconciling mechanisms reduce the possibility of earnings volatility. These financial benefits will lower the business risk for Unitil, which would tend to reduce the risk premium that prospective investors place on the Company. In addition, we recognize that the RDM employed by Unitil reduces the variability of the Company's revenues and, accordingly, reduce its risks and its investors' return requirement.").

capital riders may not be common (although they do exist),⁴⁹ Commissions have often lowered a utilities' total ROE based on the decreased risk associated with such riders. Further, to the extent examples are sparse, (a) the Commission's authority stems from Kentucky law, and not any other authority; and (b) it is precisely because this type of *capital* rider is rare. The Environmental Cost Recovery ("ECR") rider is the result of a statute only first effective in Kentucky in 1993.⁵⁰ Several of the examples cited by the Companies in their initial brief are not *capital* riders, for instance the Companies' Off-System Sales adjustment clauses, and Earnings Sharing Mechanism.⁵¹

Where there are capital riders, they have often been subject to a lower ROE by the Commission.⁵² For instance, the primary legal authority cited by the Companies for support for the inclusion of Adjustment Clause MC2, *Ky. Pub. Serv. Comm'n v. Com. ex rel. Conway*, 324 S.W.3d 373 (Ky. 2010),⁵³ was itself based on an underlying case in which the Commission approved a lower-than-requested ROE because it was also approving a capital rider that it agreed would lower risk⁵⁴ in a "case of first impression."⁵⁵ The Companies similarly point to prior approval of the Retired Asset Recovery Rider, however that situation is distinguishable, as it was a specific ratemaking method introduced at settlement. Critically, the rider accomplished recovery of expenses and revenues originally included in base rates in the Companies' last rate cases, and

⁴⁹ *Entergy Arkansas, Inc. v. Ark. Pub. Serv. Comm'n*, 289 S.W.3d 513, 526-27 (Ark. Ct. App. 2008).

⁵⁰ KRS 278.183(1).

⁵¹ LG&E-KU Post-Hearing Br. at 24.

⁵² Regarding the environmental cost recovery (ECR) Rider, see 2020 KU Rate Case, Order at 21 (Jun. 30, 2021); regarding ECR and LG&E's gas line tracker, see 2020 LG&E Rate Case, Order at 23 (Jun. 30, 2021). In each instance the Commission approved a lower ROE for capital riders, which the Companies had even agreed to in a stipulation.

⁵³ LG&E-KU Post-Hearing Br. at 22-23.

⁵⁴ Case No. 2001-00092, *In re Adjustment of Gas Rates of the Union Light, Heat And Power*, Order at 66 (Ky. P.S.C. Jan. 31, 2002).

⁵⁵ *Id.* at 78.

adjusting to allow for extended depreciation, not the addition of new costs.⁵⁶ Finally, the recent Commission Order in the Duke Energy Kentucky, Inc., base gas rates cited by the Companies for its 9.80% ROE also approved a lower, 9.7% ROE for its natural gas capital riders.⁵⁷

The Companies' initial brief also undermines its own argument with respect to PGR, which is a time-limited pilot. One of the arguments for adopting the same ROE for the GCR was that "it is particularly appropriate for the proposed Adjustment Clause GCR mechanism to use the stipulated base rate ROE because it is designed to recover costs over the full life of each generation asset, not temporarily or until the next base rate case."⁵⁸ Since "[t]he Commission approve[d] this adjustment clause on a pilot basis, rather than for the full life of the assets,"⁵⁹ part of the Companies' original argument is in fact in favor of a lower ROE for this pilot program.

For all of these reasons, the Commission should deny rehearing on the adjusted ROE for base rates and for capital riders. If the Commission were to grant rehearing on the issue of the appropriate ROE for such riders, the Commission should also set an appropriate schedule for submission of testimony on that issue from all interested parties, and further hearing on related matters.

III. The Commission Correctly Rejected the Proposed Sharing Mechanism.

In its Final Order, the Commission rejected the proposed Sharing Mechanism on several well-reasoned bases. The Commission correctly decided that there was not

⁵⁶ 2020 LG&E-KU Rate Cases, Application, (Nov. 25, 2020), Stipulation Testimony of Kent W. Blake Chief Financial Officer Kentucky Utilities Company and Louisville Gas and Electric Company, at 17-19 (Apr. 19, 2021).

⁵⁷ Case No. 2025-00125, *In re Electronic Application of Duke Energy Kentucky, Inc. For 1) an Adjustment of the Natural Gas Rates; 2) Approval of New Tariffs; And 3) All Other Required Approvals, Waivers, and Relief*, Order at 16 (Ky. P.S.C. Dec. 23, 2025).

⁵⁸ LG&E-KU Post-Hearing Br. at 13.

⁵⁹ Case No. 2025-00113, Feb. 16, 2026 Order at 148; Case No. 2025-00114, Feb. 16, 2026 Order at 157.

sufficient information for a known and reasonable amount of revenue likely to be recovered from customers during the Sharing Mechanism period, and that the Sharing Mechanism would create the potential for large bill increases without customer notice.⁶⁰ The Commission also noted that it did not see value in the Sharing Mechanism as opposed to a full rate case, where the Commission would have to review essentially the same information to determine the Sharing Mechanism rates, with the benefit of customer notice, intervention by interested parties, and public comment.⁶¹ Finally, the Commission identified significant potential for cost shifting through the Sharing Mechanism, particularly in light of a 2003 audit of the Companies' Earnings Sharing Mechanism that highlighted similar potential concerns.⁶²

The Companies now urge the Commission to change its mind, but the Companies do not even address several of the core reasons why the Commission rejected the Sharing Mechanism.⁶³ First, the Companies ignore the Commission's finding that the Sharing Mechanism would introduce "significant potential for cost shifting."⁶⁴ The Commission noted that a Focused Management Audit of the Companies' Earnings Sharing Mechanism occurred in 2003, which found that that "[u]nder certain circumstances, this [sharing mechanism] structure invites cost shifting between filing years in order to maximize returns."⁶⁵ The Commission rightly noted that cost-shifting "continues to be a concern here,"⁶⁶ yet the Companies do not even acknowledge this finding, much less offer any argument that such finding is unlawful or unreasonable.

⁶⁰ Case No. 2025-00113, Feb. 16, 2026 Order at 153.

⁶¹ *Id.*

⁶² *Id.* at 154.

⁶³ Jt. Pet. at 9-12.

⁶⁴ Case No. 2025-00113, Feb. 16, 2026 Order at 154.

⁶⁵ *Id.*

⁶⁶ *Id.*

Similarly, the Companies ignore the Commission's reasoned finding that the Sharing Mechanism could lead to large bill increases without customer notice. The Commission noted—and the Companies ignored—that “a full rate case allows for customers to receive notice on the proposed increases, interested parties to intervene, and, at a minimum, customers to provide comment.”⁶⁷ The “time and cost” of a full rate case that the Companies complain of in their Petition⁶⁸ are necessary to provide these important benefits to ratepayers, and it is preeminently reasonable for the Commission to retain the notice requirements and procedural benefits of rate cases.

With regards to the Commission's findings that the Companies do address, the Companies fail to identify any ways in which the Commission's decision reflects material errors or omissions or is unreasonable or unlawful. To the extent that any potential concerns with denying the Sharing Mechanism exist—which they do not—the Companies have certainly not proven that the evidence “leaves no room for difference of opinion among reasonable minds,” which would be necessary to determine on rehearing that denial of the Sharing Mechanism was unreasonable.⁶⁹ Nor do the Companies offer any new evidence not readily discoverable at the time of the original hearings. In fact, the Companies' own Petition contains material errors that further warrant denying their Petition.

The Companies' basic argument in their Petition seems to be that earning an ROE below the 9.40% that would be guaranteed by the Sharing Mechanism would be unfair to them. The Companies claim that under the Sharing Mechanism, if there were a

⁶⁷ *Id.* at 153.

⁶⁸ See Jt. Pet. at 11.

⁶⁹ *In the Matter of: Elec. Application of Kentucky Utilities Co. & Louisville Gas & Elec. Co. for Certificates of Pub. Convenience & Necessity & Site Compatibility Certificates*, No. 2025-00045, 2025 WL 3605135, at *1 (Dec. 9, 2025).

revenue deficiency below 9.40%, the subsequent bill impact “would not provide a windfall” but “would merely prevent the Companies from operating at returns the Commission itself has long recognized as inadequate.”⁷⁰ But as noted in their Post-Hearing Brief, Joint Intervenors have not located a single example of the Commission previously approving a guaranteed ROE,⁷¹ and the Companies have not identified any example in their Petition. Rather, the Commission has simply allowed the Companies the *opportunity* to earn above 9.40%, which the Companies may still do under the Commission’s Order.⁷² Without “sufficient information for a known and reasonable amount of revenue likely to be recovered from customers during the sharing mechanism period,”⁷³ there is nothing unfair about the Commission’s decision to reject the Sharing Mechanism.

In an effort to bolster their argument, the Companies claim that their Witness Garrett testified that an ROE lower than 9.40% would “likely” result in the Companies’ underearning. That is simply an incorrect characterization of Mr. Garrett’s testimony. Mr. Garrett testified that underearning at a rate lower than 9.40% would be “likely *possible*,” not “likely,” while noting that questions of underearning are “difficult to predict” due to there being “so many variables that are associated with [the Companies’] earnings.”⁷⁴ The mere *possibility* of underearning 9.40% cannot justify altering the Commission’s

⁷⁰ Jt. Pet. at 11.

⁷¹ JI Post-Hearing Br. at 106.

⁷² See Case Nos. 2025-00113, 2025-00114, Direct Testimony of Dylan W. D’Ascendis, at 9 (Ky. P.S.C. May 30, 2025) (“D’Ascendis Direct”) (“Consistent with the Hope and Bluefield standards, the ratemaking process should provide the utility a reasonable opportunity to recover its return of, and return on, its reasonably incurred investments, but it does not guarantee that return.”); *Fed. Power Commission v. Natural Gas Pipeline Co. of Amer.*, 315 U.S. 575, 590 (1942) (stating the core principle of utility regulation that “the hazard that the property will not earn a profit remains on the company in the case of a regulated, as well as an unregulated business” and that “regulation does not insure that the business shall produce net revenues.”).

⁷³ 2025-00113, Feb. 16, 2026 Order at 153.

⁷⁴ November 4, 2025 HVT, 3:38:18 to 3:39:25 p.m. (Garrett).

reasoned decision to reject the Sharing Mechanism on rehearing, and any such risk is appropriately borne by the Companies, not by their captive ratepayers.⁷⁵

The Companies also broadly claim that the reasonableness of the Sharing Mechanism is supported by the fact that the 9.40% to 10.15% deadband is symmetrical relative to the 9.775% ROE the Commission found reasonable.⁷⁶ This argument is a red herring. Whether or not the deadband is “symmetrical” is not relevant to whether the Commission should take the unprecedented step of guaranteeing a certain return. Rejecting such an unprecedented rate mechanism is neither unlawful or unreasonable, regardless of whether the deadband is “symmetrical” or not.

Finally, the Companies claim that the Sharing Mechanism would benefit customers by “delay[ing] any potential bill impact until after the stay-out period as any potential under-earning would be recorded but not billed immediately.”⁷⁷ This claim is nonsensical. Under traditional ratemaking, customers would not be at risk of retroactive surcharges as a result of the Companies’ underearning. The rule against retroactive ratemaking “prohibits regulatory commissions, when setting utility rates, from adjusting for past losses or gains to either the utility,” and “protects the consumer from surprise surcharges allocable to the utility’s losses in prior years.”⁷⁸ Thus, the only potential ratepayer impact of the Companies underearning a 9.4% ROE would be created by the Sharing Mechanism, not delayed by it.

⁷⁵ See JI Post-Hearing Br. at 106 (“By providing a 9.4% ROE guarantee, the SM Surcharge would improperly shift to ratepayers the risk of factors that are beyond the utility’s control, while weakening the incentive for the Companies to perform well on the factors that are.”).

⁷⁶ Jt. Pet. at 10.

⁷⁷ *Id.* at 11-12.

⁷⁸ Case No. 1995-00011, *Kentucky Industrial Utility Customers v. Big Rivers Electric Corporation*, Order at 7 (Apr. 1, 1997).

As Joint Intervenors explained in their Post-Hearing Brief, the Sharing Mechanism would improperly guarantee a certain level of ROE, and the Companies did not prove that the Sharing Mechanism is needed to maintain the Companies' financial position during the stay out period.⁷⁹ The Commission was therefore correct to deny the Sharing Mechanism in its Final Order, and the Commission should likewise deny the Companies' request to reconsider that decision.⁸⁰

IV. The Commission's Modifications of the Pilot Generation Recovery Adjustment Clause Are Just and Reasonable

The Commission's modifications of the Pilot Generation Recovery Adjustment Clause ("PGR surcharge") are reasonable, lawful, and adequately supported by the record, and the Companies have failed to identify any basis for reverting the Commission's modifications. The Commission based its modifications on the potentially large bill impacts of the adjustment clause, and in order to limit these potential rate impacts and encourage the Companies to control construction costs, the Commission limited the construction costs recoverable under the adjustment clause to the estimations provided in Case No. 2022-00402 and 2025-00045.⁸¹ The Commission also correctly ordered an ROE of 9.675% and ordered the mechanism to be limited to a pilot period through ten months after the filed date of the next base rate case, or the effective date of new rates.⁸² The Companies have identified no new evidence to challenge the Commission's modifications, alleged no material errors or omissions, and have failed to

⁷⁹ JI Post-Hearing Br. at 103-06.

⁸⁰ Joint Intervenors further note that the Companies' March 11, 2026 Notice of Withdrawal from Stipulation appears to be an abandonment of their stay-out commitment, see Jt. Pet. at 2, 10 n. 20, and 28, without which even the Companies' alleged basis for the Sharing Mechanism is nullified.

⁸¹ Case No. 2025-00113, Feb. 16, 2026 Order at 148 ("The Commission is concerned about the potentially large bill impacts of the adjustment clause."); *id.* at 149-50 ("To limit the potential rate impacts and to encourage KU to control construction costs, construction costs for the pilot period should be limited to the estimations provided in Case Nos. 2022-00402 and 2025-00045.").

⁸² *Id.* at 148-51.

meet their burden to demonstrate that any aspect of the Commission's decision was unreasonable or unlawful.

Notably, despite requesting that the Commission approve the PGR surcharge as proposed and "remove the limitations" on it, the Companies provide *no* argument against the Commission's conversion of the mechanism to a pilot program, much less do they meet their burden of proof on rehearing. The Companies' section on the PGR surcharge addresses only the Commission's limitation of the costs that can be included in the PGR surcharge to the estimations provided in Case No. 2022-00402 and 2025-00045.⁸³ Because the Companies provide no argument against the conversion of the mechanism to a pilot program, and no valid argument against such conversion exists, the Commission should uphold that decision.

The Companies have also failed to meet the rehearing standard regarding the Commission's limitation of the costs that can be included in the PGR surcharge. The Companies provide only one sentence of attempted argument on this issue, alleging the decision is flawed because "the Commission will review costs that are proposed to be recovered through the PGR Clause, in addition to the monitoring requirements imposed in those CPCN cases."⁸⁴ The Companies' argument misses the mark, and certainly fails to prove that the Commission's decision violates statutory or constitutional law or leaves "no room for difference of opinion among reasonable minds."⁸⁵

First, the review of costs through the PGR surcharge is notably less rigorous than through standard rate cases, and the Commission's modification was therefore

⁸³ Jt. Pet. at 12. Elsewhere, the Companies argue against reducing the ROE for the Companies' mechanisms to 9.675%. Joint Intervenor's respond to this argument in Section II.

⁸⁴ *Id.*

⁸⁵ *In re Elec. Application of Ky. Utils. Co. & Louisville Gas & Elec. Co. for Certificates of Pub. Convenience & Necessity & Site Compatibility Certificates*, No. 2025-00045, 2025 WL 3605135, at *1 (Dec. 9, 2025) (providing the rehearing standard for determining that a Commission Order is unreasonable or unlawful).

necessary to encourage the Companies to control construction costs. As Joint Intervenors addressed at length in their Post-Hearing Brief and incorporate by reference here, the PGR surcharge review process will likely not provide anything near the level of review as occurs in a base rate case.⁸⁶ The limited window between when monthly reports would be filed and costs collected fails to provide sufficient time to assess the prudence of PGR costs, and any prudence review under the PGR surcharge would occur only after the costs have been recovered, rather than occurring before cost recovery as in a base rate case.⁸⁷ PGR dockets will also likely be lower-profile dockets than base rate case dockets, with less engagement and opportunity for analytical rigor.⁸⁸ The Commission was therefore justified in limiting the costs that can be included in the PGR surcharge to the estimates provided in prior CPCN cases, with any additional costs being considered as part of the holistic balancing of interests that occurs in a base rate case.

Second, and crucially, the Commission's decision does not deprive the Companies of the opportunity to recover costs not provided in the estimates in Case No. 2022-00402 and 2025-00045. Instead, the Commission only limited the costs immediately recoverable through the pilot mechanism, but the Companies would still be able to seek full recovery of costs when the project costs are added to the rate base.⁸⁹ If, for some reason that the Companies have not identified, the limitation of costs under the PGR surcharge causes negative impacts in the future, the CPCN monitoring

⁸⁶ JI Post-Hearing Br. at 101-03.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ See Case No. 2025-00113, Feb. 16, 2026 Order at 149 ("The Commission finds that all costs recovered through Adjustment Clause PGR should be separately identified in the next base rate case. Those costs could be kept separate in perpetuity, or the Commission could have KU incorporate existing rider costs into base rates in a subsequent rate case. The Commission will weigh all options in the next base rate case where the impacts can be holistically determined.")

requirements that the Companies allude to will allow the Companies and the Commission to address such impacts in the Companies' next rate case in an informed manner.

Finally, while the Companies' argument focuses only on the review requirements associated with the PGR surcharge, it bears noting that nothing in the record shows that a significant erosion of the Companies' financial position would result through limiting the PGR surcharge to the cost estimates approved in estimations provided in Case No. 2022-00402 and 2025-00045. As Joint Intervenors explained in their Post-Hearing Brief, the Companies did not provide any projection or estimate purporting to show that they would experience significant erosion of their financial position without the mechanism.⁹⁰ Furthermore, assuming that the Companies abide by the stipulated Stay-Out Commitment, any theoretical impact of the Stay-Out provision that could support the PGR surcharge would end when the Stay-Out ends, on August 1, 2028, well before the pilot version of the PGR could terminate.⁹¹ As a result, the Commission's modifications of the PGR surcharge were imminently reasonable, and rehearing on this Commission's decision is not justified.

⁹⁰ JI Post-Hearing Br. at 98-99.

⁹¹ *Id.* Joint Intervenors further note that the Companies' primary justification for proposing the Generation Cost Recovery rider was to recover costs during the stipulated Stay Out Period, and the Commission approved the PGR rider on that basis. See Order at 148 ("While the adjustment clause is not strictly necessary to maintain KU's financial health, it could make it easier for KU to stay out longer before filing another rate case. This is because large generation assets will go into service in the 2027–2028 time frame"); Case No. 2025-00113 and 2025-00114, *Joint Supplemental Testimony of Robert M. Conroy, Vice President, State Regulation and Rates and Christopher M. Garrett, Vice President, Financial Strategy and Chief Risk Officer on Behalf of Kentucky Utilities Company and Louisville Gas and Electric Company*, at 2:19-3:1 (Oct. 31, 2025) (LG&E/KU Jt. Supp. Test.) (stating that Adjustment Clause GCR is a key element of the stipulation because it will help to allow the Companies to stay out of base rate cases for the agreed period under the Stipulation). The Companies have since withdrawn from the stipulation and have indicated that they will likely not stay out of base rate cases through August 2028, potentially filing rate cases within the next year. Jt. Pet. at 2, 10 n. 20, and 28. If the Companies are no longer committing to a base rate case stay-out through August 2028, they have revoked their alleged need for the PGR mechanism, which would make it appropriate for the Commission to revoke its approval of the mechanism in turn.

V. The Commission Should Deny Rehearing and Affirm Disallowance of PGR Recovery for Mill Creek 2 Costs Incurred Prior to the February 16, 2026 Order Establishing New Rates.

The Commission’s final order denied creation of a new Mill Creek 2 Adjustment Clause, but allowed incremental Mill Creek 2 “expenses incurred after the date of this order” to be recovered via the PGR Adjustment Clause.⁹² The Commission declined to allow “stay open costs already incurred” prior to establishing the PGR Adjustment Clause to avoid retroactive ratemaking.⁹³

On rehearing, the Companies complain that disallowance of incremental Mill Creek 2 expenses undertaken whilst the Companies’ prior rates were in effect was unreasonable and arbitrary. This complaint has no merit, and rehearing should be denied. Contrary to the claims in the Joint Petition, the exclusion of pre-February 16, 2026 Mill Creek 2 costs has strong grounding in law, logic, and policy, and does not penalize the Companies.⁹⁴

If the Commission instead grants rehearing on this issue, Joint Intervenors would encourage the Commission to require the Companies to supply further evidence in support of amounts at issue and correct a misstatement in the original order related to the Stipulation terms.

A. The Companies are not entitled to recovery of Mill Creek 2 related expenses incurred prior to establishment of new rates in this proceeding.

The Commission appropriately limited Mill Creek 2 surcharge cost recovery to going forward costs, and nothing in the Companies’ rehearing petition unsettles the lawfulness and reasonableness of that holding. The Commission is right: It would violate

⁹² Case No. 2025-00114, Feb. 16, 2026 Order at 151, 157.

⁹³ *Id.* at 151-52.

⁹⁴ *Cf.* Jt. Pet. at 18 (asserting that the “order lacks any rational basis and unnecessarily penalizes the Company”).

the filed rate doctrine and its prohibition against retroactive ratemaking to allow separate recovery of the Companies' Mill Creek capital and Operation and Maintenance ("O&M") expenses incurred while its previously filed rate was in effect.

The filed rate doctrine "defines the legal relationship between the regulated utility and its customer with respect to the rate that the customer is obligated to pay and that the utility is authorized to collect."⁹⁵ It flows from this doctrine that a rate "cannot be altered retroactively and holds constant until a rate change is formally requested or a challenge to the rate is raised by an interested party"; *and* "the filed rate cannot, pursuant to established Commission precedent, be altered *prospectively* to adjust for *past* losses."⁹⁶

Under the filed rate doctrine, the Companies are due no further compensation for capital and O&M expenses incurred during calendar year 2025. It is undisputed that base rates established via settlement in Case No. 2020-00350 were just and reasonable and collected by LG&E throughout calendar year 2025. As set out in Joint Intervenors' Post-Hearing Brief, the rates in effect up until the February 16, 2026 Order setting new rates already gave the Companies an opportunity to earn a fair return.⁹⁷

Not only did the Companies have that opportunity, the Companies realized a 10.32% ROE over the most-recent twelve months available, November 2024 to October 2025, substantially *exceeding* the approved ROE over the same period.⁹⁸ Thus, there is no actual loss here; the Companies and their shareholders are already better than

⁹⁵ *Cincinnati Bell Tel. Co. v. Ky. Pub. Serv. Comm'n*, 223 S.W.3d 829, 837 (Ky. Ct. App. 2007).

⁹⁶ *City of Pikeville v. Pub. Serv. Comm'n of Kentucky*, No. 2023-CA-0338-MR, 2024 WL 1686864, at *11 (Ky. Ct. App. Apr. 19, 2024).

⁹⁷ JI Post-Hearing Br. at 127-28.

⁹⁸ Companies' Response to Commission Staff's Post-Hearing Request, Case Nos. 2025-00113, 2025-00114, Response to Question No. 6 (Nov. 25, 2025) ("LG&E/KU Resp. to PH-6").

whole. The Companies are due nothing more related to expenses resulting from their ordinary operational decisions at Mill Creek 2 in calendar year 2025.⁹⁹

Tellingly, the Companies use just one sentence and no authority to support their assertion that the Commission's retroactive ratemaking concerns are misplaced. Actually, it is the Companies' analogy to recovery of extreme storm expenses that is misplaced. In contrast with the extraordinary, nonrecurring, and unforeseeable character of extreme storm expenses, plant operating and O&M expenses are ordinary and reasonably anticipated expenses in utility planning, traditionally accounted for via base rates.¹⁰⁰ Furthermore, plant operating and O&M expenses at Mill Creek 2 in 2025 did not result from a statutory or administrative directive, are unrelated to industry-sponsored initiatives, and should continue to be treated as expenses—not regulatory assets.¹⁰¹

Although the Companies' rehearing petition also notes that the Commission would retain "full oversight and authority" over Mill Creek 2 expenses regardless of when the Companies incur those expenses,¹⁰² that has nothing to do with the disallowance of Mill Creek 2 expenses under the principles of the filed rate doctrine. The Commission's authority to decline to treat ordinary plant expenses as a regulatory asset is not in question.

⁹⁹ See generally JI Post-Hearing Br. at 127-29.

¹⁰⁰ Case No. 2025-00196, *In re Electronic Application of Kentucky Utilities Company and Louisville Gas and Electric Company for an Order Approving the Establishment of Regulatory Assets*, Order at 3 (Ky. P.S.C. Aug. 27, 2025) (noting past approval of regulatory asset treatment when extraordinary, nonrecurring expenses which could not have been reasonably anticipated or included in the utility's planning).

¹⁰¹ *Id.* (noting past approval of regulatory asset treatment for "an expense resulting from a statutory or administrative directive," or "in relation to an industry sponsored initiative").

¹⁰² Jt. Pet. at 19.

Finally, the filed rate doctrine's prohibition against retroactive ratemaking applies to even prudently incurred costs.¹⁰³ Even if prudence holdings were a necessary predicate, the Companies previously acknowledged that there had not been a prudence holding with respect to the Mill Creek 2 stay-open costs in the CPCN proceeding, and consistently asserted that they did not seek such a determination in this proceeding.

In data requests, the Companies made plain that it "is not asking the Commission to find any Mill Creek 2 stay open or life extension cost to be prudent in this proceeding."¹⁰⁴ The Companies' counsel elaborated at hearing:

The commission will have every opportunity later for all of these mechanisms to review the numbers that the companies propose and pass judgment on those numbers about whether they're prudent and fair and just and reasonable. That's **all for another day at another time. This is just approval of the mechanism itself. That's all it is.**¹⁰⁵

The Commission's final order acknowledges this position, noting the Companies' expectation that the Commission would "evaluate the prudence of the costs recovered through" Adjustment Clause MC2 in annual review proceedings dedicated to the surcharge.¹⁰⁶ Prudence of the stay-open costs was not at issue in this proceeding, and even if it had been, that does not overcome the Commission's legitimate retroactive ratemaking concerns.

The Commission should deny rehearing and affirm disallowance of Mill Creek 2 expenses incurred prior to the establishment of new rates on February 16, 2026.

¹⁰³ Cf. Jt. Pet. at 18.

¹⁰⁴ Companies' Response to Sierra Club's Post-Hearing Request, Case Nos. 2025-00113, 2025-00114, Response to Question No. 1 (Nov. 25, 2025) ("LG&E/KU Resp. to Sierra Club PH-1").

¹⁰⁵ Nov. 3, 2025 HVT at 9:28:40 to 9:28:58 a.m.

¹⁰⁶ Case No. 2025-00114, Feb. 16, 2026 Order at 148-49.

B. The Commission reasonably denied retroactive rates for 2025 Mill Creek costs incurred under the Companies' previous rates.

While largely avoiding the filed rate doctrine, the Companies argue that disallowance of regulatory asset treatment for ordinary expenses recovered under existing rates is unreasonable for a variety of reasons. Each falls flat.

First, the Companies state that LG&E's 2025 rates did not include \$7.5M in Mill Creek 2 capital and O&M expenses, which somehow translates to the Companies believing they are due regulatory asset treatment. But regulated utilities are guaranteed only the opportunity, through just and reasonable rates, to recover expenses and an approved return on investment. As set forth in earlier briefing, the Companies got that. The Companies' 2020 rate case application accounted for Mill Creek 2's operating and O&M expenses based on a 2021/2022 Forecasted Test Year (i.e., before reducing Mill Creek 2 investment in relation to 2027 "soft landing").¹⁰⁷ Ultimately, LG&E's revenue requirement and rates were the result of a stipulation. Parties to that stipulation¹⁰⁸ "recognize[d] and agree[d] that the effects, if any, of any future events upon the operating income of the [Companies] are unknown and this Stipulation shall be implemented as written."¹⁰⁹ The Companies cannot now legitimately say that they are due further compensation for a category of expenses already accounted for in their 2020 rate case test year.

¹⁰⁷ Case No. 2020-00350, *In re Electronic Application of Louisville Gas and Electric Company for an Adjustment of Its Electric and Gas Rates, A Certificate of Public Convenience and Necessity to Deploy Advanced Metering Infrastructure, Approval of Certain Regulatory and Accounting Treatments, and Establishment of a One-Year Surcredit*, Application at 7 (Ky. P.S.C. Nov. 25, 2020) (defining 12-month forecasted test period of July 1, 2021 to June 30, 2022).

¹⁰⁸ Mountain Association was among the stipulating parties in Case Nos 2020-00349 and -00350.

¹⁰⁹ Case No. 2020-00350, Stipulation Testimony Exhibit KWB-1 at 18, attached to the Stipulation Testimony of Kent W. Blake, Chief Financial Officer, Kentucky Utilities Company and Louisville Gas and Electric Company (Apr. 9, 2021).

Second, the fact that the future test year utilized in the previous rate cases did not include updated Mill Creek 2 capital and O&M plans is neither here nor there. The test year also did not include any plant expense beyond the 2021/2022 future test year, or any covenants that the utility would incur only the expenses included in their 2021/2022 future test year in subsequent years. Those just and reasonable rates continued in effect until January 1, 2026, and separately allowing retroactive recovery of additional expenses would be unlawful and unreasonable.

Third, what the Companies did or did not request in a previous CPCN proceeding has no bearing here.¹¹⁰ Particularly so in light of the fact that the only holding related to a Mill Creek 2 Adjustment Clause in the CPCN Case was to deny the proposal without prejudice.¹¹¹ Contrary to their rehearing position, the absence of further findings or holdings in the CPCN proceeding did not “require[] the Companies to make the request a second time in the rate cases.”¹¹² As explained in Joint Intervenors’ post-hearing brief, the Companies had well-established and known procedural avenues available within and beyond this proceeding every day since the Companies conceded in settlement to change their 2025 Mill Creek 2 spending plans.¹¹³

Fourth, it is a mistake to confuse the Franklin Circuit Court decision allowing certain transmission expenses to be included in Kentucky Power’s base rates with the question of whether the Commission should prospectively set rates to compensate for

¹¹⁰ Cf. Jt. Pet. at 17.

¹¹¹ Case No. 2025-00045, *In re Electronic Application of Kentucky Utilities Company and Louisville Gas and Electric Company for Certificates of Public Convenience and Necessity and Site Compatibility Certificates*, Final Order at 171 (Ky. P.S.C. Oct. 28, 2025).

¹¹² Jt. Pet. at 17 (“Also, the Companies expressly requested regulatory asset approval for these costs in the CPCN Case, but the Commission’s order did not address the request for deferral accounting, which required the Companies to make the request a second time in the rate cases.”).

¹¹³ JI Post-Hearing Br. at 117; see also Case Nos. 2025-00113, 2025-00114, Sierra Club Post-Hearing Br. at 3-4 (Dec. 2, 2025)..

non-existing losses in violation of the filed rate doctrine.¹¹⁴ Critically, that Circuit Court case concerns the Commission’s authority to deny inclusion of FERC-jurisdictional interstate transmission expenses in just and reasonable retail rates.¹¹⁵ There is no similar conflict of authority with respect to ratemaking for utility plant expenses; an expense category within the Commission’s exclusive jurisdiction. Also, this issue remains unsettled as the Commission continues to pursue appeals of FERC’s denial of a complaint from the Commission and Attorney General related to these expenses.

In sum, there is no principled basis to argue that the Companies have suffered a loss, are entitled to special treatment, or are somehow being penalized. All that the Commission has done with respect to 2025 Mill Creek 2 expenses is reasonably apply the filed rate doctrine.

C. If the Commission grants rehearing, the Companies must supply evidentiary support for claimed \$7.5 million Mill Creek 2 costs at issue.

If the Commission does grant rehearing with respect to pre-February 16, 2026 Mill Creek 2 costs, the Companies must be expected to provide verifiable accounting of those costs. Nothing in the record could address costs incurred after the Companies’ most recent data responses, and it is not clear how the \$7.5 million claimed on rehearing corresponds to earlier evidence in this proceeding.

When the Companies first introduced Mill Creek 2 “stay open” costs to this proceeding on the eve of hearing, and in response to post-hearing data requests from the Sierra Club, the Companies claimed roughly \$2.6 million in actual July to October

¹¹⁴ Cf. Jt. Pet. at 18-19.

¹¹⁵ *Ky. Power Co. v. Ky. Pub. Svc. Comm’n*, 24-CI-00160, Order at 8 (Franklin Cir. Jan. 22, 2025) (“Transmission Expense is a FERC-jurisdictional cost and its reasonableness is not subject to the Commission’s jurisdiction. Once approved by FERC, Transmission Expense cannot be reduced or disallowed by the Commission under the Supremacy Clause of the United States Constitution.”)

2025 Mill Creek 2 expenses and \$9.9 million in capital projects; combined, just shy of \$12.5 million.¹¹⁶ In Response to Staff, the Companies estimated \$3,807,067 in O&M and a roughly \$2.7 million increase in plant in service, translating into a roughly \$3.75 million revenue requirement for Mill Creek 2 over the July 2025 to February 2026 timeframe.¹¹⁷ Neither response has been supplemented or updated to provide actual expenses through February 2026. The Companies should specifically identify where the record contains support for the additional \$7.5 million adjustment requested on rehearing, if granted, and if such support is lacking, promptly supplement the record.

D. The Mill Creek 2 Adjustment Clause proposal and related costs were not part of the Stipulation, and contrary statements in the final order should be corrected.

The Commission's February 16, 2026 Order inaccurately stated that the "Stipulation specifically does not address" a Mill Creek 2 Adjustment Clause, but one "was agreed to pursuant to the catch-all provision set forth in the amendment to the Stipulation."¹¹⁸ That conflicts with the record and should be corrected.

The Stipulation specifically excluded the Mill Creek 2 Adjustment Clause:

For avoidance of doubt, the Parties clarify that **the Stipulation and Recommendation does not address or include Adjustment Clause MC2** and therefore the Parties are not limited in the positions they may take in these proceedings regarding Adjustment Clause MC2.¹¹⁹

The catch-all provisions of the Stipulation do not provide otherwise. First, the existence of a specific paragraph addressing Adjustment Clause MC2 doubtlessly puts

¹¹⁶ Attachment 1 to LG&E/KU Resp. to Sierra Club PH-3, Case No. 2025-00114 (Nov. 25, 2025).

¹¹⁷ Companies' Response to Staff PH-5, Attachment 1 ("MC2 LGE (Monthly)" tab, line 16); *see also* Companies' Supp. Test., Ex. 5 (Oct. 31, 2025) (estimated MC2 cost recovery; tab "MC2 LGE", line 16).

¹¹⁸ Case No. 2025-00114, Feb. 16, 2026 Order at 148 (citing Amendment to the Stipulation, Section 11.1. (filed Nov. 5, 2025)).

¹¹⁹ Amendment to the Stipulation, Section 11.2 (filed Nov. 5, 2025).

that issue beyond the reach of the catch-all provision.¹²⁰ This is confirmed by Sierra Club’s ability to sustain their support for the stipulated agreement while also opposing the last-minute Mill Creek 2 Adjustment Clause proposal.¹²¹

Second, the catch-all provision addresses only “other relief requested in the Utilities’ filings in the Rate Proceedings,”¹²² and neither an Adjustment Clause MC2 nor the costs proposed to be collected through such a rate were included in the Companies’ initial filings or subsequent corrections and amendments.¹²³ As a result, neither the adjustment clause as a mechanism nor the specific costs at issue here could be reached by the catch-all provision. The statement to the contrary in the Commission’s February 16, 2026 Order should be corrected.

The Stipulation in this proceeding did not address or include Adjustment Clause MC2, and any order on rehearing should correct this misstatement in the Commission’s earlier order.

VI. The Commission Properly Recognized That At Least So Long as the Companies Have a Capacity Need, They Must Compensate QFs for Avoided Capacity Value.

In its Order, the Commission recognized that only when a utility shows that it does not have a capacity *need* can it “preclude the necessity for capacity payments.”¹²⁴

Quoting from Administrative Case 8566, the Commission reiterated:

¹²⁰ *City of Louisa v. Newland*, 705 S.W.2d 916, 919 (Ky. 1986) (“Any contract or agreement must be construed as a whole, giving effect to all parts and every word in it if possible.”)

¹²¹ Sierra Club Post-Hearing Br. at 3 (“the Sierra Club respectfully asks the Commission to approve the Stipulation as proposed in these dockets and deny the Company[s]’ last-minute Mill Creek 2 Adjustment Clause proposal); Stipulation paragraph 10.4 (requiring parties to the stipulation agreement to “represent to the Commission that the Stipulation is a fair, just, and reasonable means of resolving all issues in this proceeding, and all Parties will clearly and definitively ask the Commission to accept and approve the Stipulation as such.”).

¹²² Amendment to the Stipulation, Section 11.1 (filed Nov. 5, 2025).

¹²³ JI Post-Hearing Br. at 107-11.

¹²⁴ Case No. 2025-00113, Feb. 16, 2026 Order at 201; Case No. 2025-00114, Feb. 16, 2026 Order at 210.

If a utility demonstrates to the commission's satisfaction that it simultaneously faces insignificant load growth, excess capacity, minimum off system sales and is neither planning nor constructing capacity within its ten-year planning horizon then the utility cannot avoid capacity-related costs at that time so a capacity payment would not be justified.¹²⁵

The Company again reiterates arguments from testimony and briefing in its petition for rehearing, attempting to add a requirement that the Company actually avoid capacity additions through reliance on distributed resources before awarding compensation for avoided capacity to qualifying facilities (“QFs”). This is contrary to Commission precedent, and an improper attempt to spin the burden of proof onto the Commission or other parties, and should be rejected.

The burden is on the utility to show that it does not actually have avoided costs.¹²⁶ The standard is not whether the Companies actually chose to take advantage of distributed resources to avoid over-investment, but to show that it does not have a capacity need in the first place. Where a utility is actually constructing new capacity “that is not imminently scheduled for completion, then it is appropriate for a utility to offer avoided capacity cost purchase rates for that proxy unit.”¹²⁷ Similarly, FERC has found that only when capacity is not needed, the avoided capacity cost rate can then be zero.¹²⁸

Instead of arguing here that they followed Commission precedent, the Company reiterates its argument that because they do not have seasonal or peak avoided

¹²⁵ Case No. 2025-00113, Feb. 16, 2026 Order at 201; Case No. 2025-00114, Feb. 16, 2026 Order at 310, quoting *Administrative Case No. 8566, Re Small Power Producers and Cogenerators*, Order at 5 (Ky. PSC June 28, 1984).

¹²⁶ Case No. 2023-00404, *In re Electronic Tariff Filings of Louisville Gas and Electric Company and Kentucky Utilities Company to Revise Purchase Rates for Small Capacity and Large Capacity Cogeneration and Power Production Qualifying Facilities and Net Metering Service-2 Credit Rates*, Order at 20 (Ky. P.S.C. Aug. 30, 2024).

¹²⁷ *Id.* at 22.

¹²⁸ *Qualifying Facility Rates and Requirements Implementation Issues Under the Pub. Util. Regul. Policies Act of 1978*, Order No. 872A., 173 FERC 61,158, 61,984 at P 196 (Nov. 19, 2020).

capacity costs, and do not participate in a regional transmission organization (“RTO”), the Commission is somehow wrong for relying on the Companies’ planned capacity additions.¹²⁹ The argument lacks logic, however. The fact that the Companies do not have seasonal or peak avoided capacity costs, and do not participate in an RTO, does not mean they do not have avoided capacity costs. It simply does not follow from the Companies’ assertion that its capacity costs are the same in all hours,¹³⁰ that the Commission's finding of avoided capacity costs¹³¹ is in any way incorrect.

The Company has even acknowledged that it didn’t follow Commission precedent. On the stand at hearing when asked whether “the proposal here for avoided capacity cost for QFs and net metering customers in the original application was ... consistent with what the commission ordered,” Mr. Schram politely responded “[n]o, the commission ordered something different.”¹³²

The Companies further attempt to argue that Commission uncertainty regarding the Companies’ load growth projections means that the Commission cannot rely on the same projections to reject the Companies’ argument that it has \$0 in avoided costs.¹³³ This is a simple non sequitur, and also illogical. The Companies have received approval for, and are endeavoring to build, significant new capacity additions.¹³⁴ The Commission found that any uncertainty regarding the load projections was not sufficient to deny a certificate of public convenience and necessity, albeit while opening a separate docket

¹²⁹ Jt. Pet. at 24.

¹³⁰ *Id.*

¹³¹ Case 2025-00114, Feb. 16, 2026 Order at 211; Case No. 2025-00113, Feb. 16 Order at 202-03.

¹³² Nov. 6, 2025 HVT at 10:10:40 to 10:10:53 a.m. (Schram).

¹³³ Jt. Pet. at 24.

¹³⁴ Case No. 2025-00114, Feb. 16, 2026 Order at 210-11. *See In re Electronic Application of Kentucky Utilities Company and Louisville Gas and Electric Company for Certificates of Public Convenience and Necessity and Site Compatibility Certificates*, Case No. 2025-00045, Order (Ky. P.S.C. Oct. 28, 2025).

to monitor those costs and projections.¹³⁵ If load growth fails to materialize, or the Companies already agree that there is sufficient uncertainty, they may decide not to proceed with these capacity additions, and then perhaps after unwinding those obligations they will have met the requirements and can demonstrate in a future application that they do not have a capacity need, and therefore can offer \$0 avoided capacity costs.

In the meantime, however, the Commission was correct in its finding that the Companies have an avoided capacity cost, and at a minimum until such time as they do not, they must offer a capacity value to qualifying facilities.¹³⁶

VII. The Commission’s Order to Consider Jobs Benefits Is Lawful, and Already Settled.

The Companies take issue with the Commission’s order to follow through on the previously-ordered study of the jobs benefits of distributed generation. The Companies’ argument boils down to an assertion that the Commission cannot do that.

The Commission has, as the Companies state, previously found that it “has no jurisdiction over environmental impacts, health, or other non-energy factors that do not affect rates or service.”¹³⁷ It is also true, however, that the Commission has considered economic benefit as part of evaluation of rates, including jobs benefits.¹³⁸ Indeed, the

¹³⁵ Case No. 2025-00045, Oct. 28, 2025 Final Order at 97-98.

¹³⁶ Joint Intervenors also maintain, as stated in their separate *Motion for Rehearing*, that the same capacity value should be applied in calculating the compensation to customer-generators under Tariff NMS-2. *Motion for Rehearing of Joint Intervenors Kentuckians for the Commonwealth, Kentucky Solar Energy Society, Metropolitan Housing Coalition, and Mountain Association*, Case Nos. 2025-00113 and 2025-00114 (Mar. 9, 2026).

¹³⁷ Jt. Pet. at 25, n. 81, quoting *In re Electronic Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for Review, Modification, and Continuation of Certain Existing Demand-side Management and Energy Efficiency Programs*, Case No. 2017-00441, Order at 28 (Ky. P.S.C. Oct. 5, 2018).

¹³⁸ 2020 LG&E-KU Rate Cases, Order at 57 (Ky. P.S.C. Sep. 24, 2021), citing See Administrative Case No. 327, *An Investigation into the Implementation of Economic Development Rates by Electric and Gas Utilities* (Ky. P.S.C. Sept. 24, 1990), Order at unnumbered page 1.

Companies here sought, unopposed, continuation of its Standard Rate Rider EDR, Economic Development Rider, which requires a customer applying for service to, among other things, provide information on “the number of new employees, if any, Customer anticipates employing associated with the new load;” and “the capital investment Customer anticipates making associated with the EDR load....”¹³⁹

With respect to the Jobs Benefits component of the NMS-2 compensation rate, the Commission, as noted, previously found this to be a proper consideration, rejecting arguments to the contrary.¹⁴⁰ The testimony of Joint Intervenor witness Rabago in that case is equally applicable now:

First, witness Conroy’s testimony reports broadly worded language from prior Kentucky Public Service Commission (“Commission”) decisions that involve the interpretations of those Commissions of their statutory authority. With all due respect to prior Commissions and Commissioners, it is the ongoing duty of sitting Commissions to interpret the authority—especially relatively new authority—that their legislatures have granted them, updated as necessary for current circumstances, and tailored to the cases presented for decision. The instant cases relate to assessing a just and reasonable compensation value embodied within a specific rate for exported energy under a net metering service tariff. The question of whether the Commission should consider employment and other economic development activities resulting from the increased deployment of electric generation and the associated rates is within the proper scope of assessment of rates and services and whether those rates are just, fair, and reasonable.

Second, as a former utility commissioner, I would be surprised if the Commonwealth’s primary economic regulators did not consider the job impacts of its decisions relating to utility rates and services. The lengths to which the Companies’ witness goes in a failed effort to distinguish economic development rates only serves as testament to the relevance of economic impacts—including job impacts—to Commission decision making.

Third, the Companies’ position is at its heart discriminatory and at odds with best practices relating to the evaluation of costs and benefits of

¹³⁹ Case No. 2024-00114, LG&E Application, Attachment to Filing Requirement, Tab 4 - 807 KAR 5:001 Section 16(1)(b)(3), Page 123 of 204.

¹⁴⁰ 2020 LG&E-KU Rate Cases, Order at 57-58 (Ky. P.S.C. Sept. 24, 2021).

energy resources. The Companies are perfectly comfortable touting the economic development benefits of self-build resources they propose and the load-building activities, like economic development rates, that it advances to generate increases in its' revenue requirements and profits. To take the exact opposite view of the positive economic development benefits associated with non-utility generation is on its face unreasonable and discriminatory. It appears the only real distinction is that customer generation does not add to the rate base and is even more economic than some of the existing rate base of the utilities. This issue reinforces the need for and wisdom in the Commission adopting the principle that benefits and costs must be treated symmetrically, as stated in the KPC order.¹⁴¹

This testimony was at least somewhat persuasive to the Commission, as it “direct[ed] LG&E/KU to evaluate job benefits and economic development as an export rate component for LG&E/KU’s next rate case filing.”¹⁴² The Companies here, instead of offering any new authority for their assertion that jobs benefits are outside the Commission’s authority, provides only its recycled argument already rejected by the Commission, and unsupported conjecture that “whatever jobs benefits distributed generation may provide, if any, they have no effect on the Companies’ rates or service....”¹⁴³

Because, once again, the Companies offer no reason to reject the established precedent of the Commission reaffirmed in this Order, and attempt only to relitigate an issue settled now for nearly five years, the Companies’ petition on this matter should be rejected by the Commission. A finding to the contrary would be unreasonable, unsupported, and contrary to the spirit and word of the Companies’ own tariffs targeting economic development.

¹⁴¹ 2020 LG&E-KU Rate Cases, Supplemental Rebuttal Testimony of Karl R. Rábago on Behalf of Joint Intervenors, at 2-3 (Aug.5, 2021).

¹⁴² 2020 LG&E-KU Rate Cases, Order at 58 (Ky. P.S.C. Sep. 24, 2021). This is a direction which, as the Commission noted here, was completely disregarded by the Companies. Case No. 2025-00114, Feb. 16, 2026 Order at 242.

¹⁴³ Jt. Pet. at 25.

VIII. Making Awards of Stock Time-Based Does not Make Them Independent of Financial Measures.

In its Order modifying the Stipulation, the Commission made an adjustment related to incentive compensation by removing Long-Term Incentive (“LTI”) compensation provided to certain executives in the form of restricted stock units (“RSUs”).¹⁴⁴ The Companies take issue with this removal,¹⁴⁵ but like other of the Companies’ objections, the argument that rejection of stock-based compensation is unreasonable falls apart in the face of basic logic. The Companies’ basic repeated argument that making a form of compensation dependent on length of employment removes other incentives related to the same compensation is simply irrational.

The Commission has regularly denied inclusion of executive compensation that is tied to financial performance of the utility in rate base.¹⁴⁶

The Companies attempt to get around this basic rule by claiming that “the only prerequisite to the award of” LTI compensation in the form of Restricted Stock Units “is tenure with the company, making them solely a time-based measure rather than a financial measure.”¹⁴⁷ First, this is a nearly verbatim repetition of an argument made by the Companies in their initial post-hearing brief in this matter,¹⁴⁸ and already directly addressed and rejected by the Commission.¹⁴⁹ This makes it a clearly improper attempt to relitigate an issue already settled by the Commission.¹⁵⁰

Second, as the Commission stated in its original Order:

¹⁴⁴ Case No. 2025-00114, Feb. 16, 2026 Order at 45-46.

¹⁴⁵ Jt. Pet. at 21-22.

¹⁴⁶ Case No. 2025-00114, Feb. 16, 2026 Order at 46, n. 205.

¹⁴⁷ Jt. Pet. at 22.

¹⁴⁸ LG&E/KU Post-Hearing Br. at 42.

¹⁴⁹ Case No. 2025-00114, Feb. 16, 2026 Order at 46.

¹⁵⁰ 2020 LG&E-KU Rate Cases, Aug. 12, 2021 Order at 2. (“Rehearing does not present parties with the opportunity to relitigate a matter fully addressed in the original Order.”).

While the RSUs are in part awarded based on length of employment, the Commission is not moved by LG&E's position that incentive compensation paid out in the form of RSUs is solely a time-based measure. While RSUs do not fully vest upon issuance, the mere fact of an employee receiving PPL stock incentivizes that employee to perform more work at the benefit of PPL shareholders, not LG&E's customers.¹⁵¹

The Companies claim that "[t]he Commission's conclusion is unsupported by any evidence in the record," and that "[i]t rests on conjecture about employee motivation as there is no testimony or documentation demonstrating that RSUs are tied to shareholder benefit" flies in the face of logic. Ownership of stock makes one a shareholder. RSUs are stock. Therefore, RSUs benefit shareholders. No further evidence is needed to support this logical conclusion. However, there is evidence *from the Companies* to support this conclusion.

As stated in response to a request from the Attorney General and KIUC, "LTI plan eligibility is limited to directors and a portion of managers and highlevel individual contributors. PPL's LTI is an at-risk form of compensation designed *to reward employees for contributing to the company's long-term success...*"¹⁵² As clearly stated by AG-KIUC witness Futral, "[t]hus, 100% of the LTI plan compensation expense is tied to reaching the financial performance goals of PPL that include its stock price. The stock price, by definition, is a measure of PPL's financial performance."¹⁵³

The Commission properly rejected inclusion of the Long-Term Incentive Compensation in the form of Restricted Stock Units, and should reject the attempt by the Companies to relitigate this issue on rehearing.

¹⁵¹ Case No. 2025-00114, Feb. 16, 2026 Order at 46. Identical language can be found in the 2025-00113 Feb. 16, 2026 Order at 44.

¹⁵² Response to Attorney General and Kentucky Industrial Utility Customers' Initial Request for Information, Case Nos. 2025-00113 and 2025-00114, Question 47 (July 3, 2025) (emphasis added).

¹⁵³ Direct Testimony and Exhibits of Randy A. Futral on Behalf of the Office of the Attorney General of the Commonwealth of Kentucky and Kentucky Industrial Utility Customers, Case Nos. 2025-00113 and 2025-00 114, at 26 (Aug. 29, 2025).

IX. Record Evidence Supports the Commission’s Modifications to the Stipulation, and a Passing Reference to a Few News Articles Does Not Change that Fact or Render the Proceeding Unfair.

The Companies’ Rehearing Petition also complains that a single footnote reference to three news articles meaningfully undermines the Commission’s judgment or deprived the Companies of fair process. Neither complaint warrants rehearing.

First, substantial record evidence supports the Commission’s conclusions regarding economic development and demand uncertainty.¹⁵⁴ Far from being perplexing or surprising,¹⁵⁵ the Commission’s acknowledgment of the unprecedented uncertainty of the moment is a continuation of similar findings made four months ago in the CPCN final order and included in the rate case final order.¹⁵⁶

Second, it is possible that a forecast, while not found to be “unreliable, overstated, or understated,” still presents significant uncertainty and risk to ratepayers. The Commission’s cautious outlook is well-supported by a record that reflects the unprecedented level of uncertainty associated with out-of-model large load growth projections and the reality that billions of dollars are at risk here.

Third, the creation of an Extremely High Load Factor tariff does not resolve those known uncertainties and risks. It is entirely possible that the Companies have a dedicated tariff, yet do not attract as much new load as the Companies’ economic development director hopes they might.

¹⁵⁴ Cf. Jt. Pet. at 9. See, generally, Case No. 2025-00045, Testimony of Elizabeth A. Stanton, PHD, on Behalf of Joint Intervenors Kentuckians for the Commonwealth, Kentucky Solar Energy Society Metropolitan Housing Coalition, and Mountain Association (June 16, 2025) (incorporated by reference to the rate case records); Case No. 2025-00045, Direct Testimony of Chelsea Hotaling on Behalf of Sierra Club, Case No. 2025-00045, at 22 (June 16, 2025).

¹⁵⁵ Cf. Jt. Pet. at 8.

¹⁵⁶ Case No. 2025-00113, Feb. 16, 2026 Order at 18, n.80 (“the current economic and energy uncertainty must be balanced against the interests of customers of both LG&E and KU”) (citing Case No. 2025-00045, Electronic Application of Kentucky Utilities Company and Louisville Gas and Electric Company for Certificates of Public Convenience and Necessity and Site Compatibility Certificates, Order at 35-37 (Ky. PSC Oct. 28, 2025)).

Finally, while Joint Intervenors are not unsympathetic to the Companies' due process concerns, one footnote among more than 1,300 footnotes and hundreds of pages of discussion and analysis does not materially deprive the Companies of fair and full proceedings. Particularly so, given that the footnote in question referenced public news articles, and the Companies do not dispute any fact or assertion within those articles. Furthermore, the Companies offer no new evidence not available at the time of the order that would bear on the Commission uncertainty concerns.

Rehearing on this issue would be improper and should be denied.

Conclusion

For the foregoing reasons, and because the Companies improperly attempt to relitigate issues based on no new evidence, material error, or unreasonable or unlawful finding, Joint Intervenors respectfully request that the Commission deny the Companies' Joint Petition for Reconsideration in its entirety.

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CERTIFICATE OF SERVICE

In accordance with the Commission's July 22, 2021 Order in Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19*, this is to certify that the electronic filing was submitted to the Commission on March 18, 2026; that the documents in this electronic filing are a true representation of the materials prepared for the filing; and that the Commission has not excused any party from electronic filing procedures for this case at this time.



Byron L. Gary