COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matters of:

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

AND

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

KENTUCKY SOLAR INDUSTRIES ASSOCIATION, INC.
COMBINED RESPONSE TO
JOINT PETITION OF KENTUCKY UTILITIES COMPANY
AND LOUISVILLE GAS AND ELECTRIC COMPANY FOR
RECONSIDERATION OF THE FEBRUARY 16, 2026 ORDERS

Comes now the Kentucky Solar Industries Association, Inc. ("KYSEIA"), by and through counsel, and, pursuant to KRS 278.400 and 807 KAR 5:001 Section 5, files a Combined Response to the Joint Petition of Kentucky Utilities Company ("KU") and Louisville Gas and Electric Company ("LG&E" and, collectively, "Companies") for reconsideration of the February 16, 2026 Orders in the above-styled cases ("Case No. 2025-00113" and "Case No. 2025-00114").

KYSEIA, in summary, limits the discussion in this Joint Response to matters core to KYSEIA's advocacy in these proceedings. KYSEIA, nonetheless, expressly responds to the Companies' claims of error concerning the sharing mechanism and the astonishing attack upon the Commission's decision to act with caution. KYSEIA notes that the absence of discussion of any other issue should not be construed as an agreement with the Companies' position or (otherwise) supportive of any suggestion of error in the Commission's Orders in the instant proceedings.

1. <u>The Companies' Request For Unconditional Acceptance of the Nonunanimous Stipulation and Recommendation is Improper if Not Unlawful and Should Be Denied.</u>

The Companies seek rehearing because the Stipulation and Recommendation was not accepted in its entirety. The relief sought by the Companies is an unqualified approval of the "Stipulation as filed."[1] In the alternative, the Companies request the correction of certain matters alleged to be errors and inherently unreasonable;[2] and, further, the reconsideration of certain decisions alleged to lack substantial evidence.[3] KYSEIA agrees (in principle) that while the Companies' requests made in the alternative concern matters within the legitimate scope of KRS 278.400, the Companies request for approval of the Stipulation as filed is inappropriate if not unlawful. It should be denied.

The Companies have the burden of proof. There is no legal requirement for the Commission to accept any stipulation or recommendation of an applicant regardless of whether the stipulation or recommendation enjoys the concurrence of any party or all the

[1] Joint Petition at pages 26 and 29.

[2] Joint Petition at page 27,

[3] Joint Petition at page 28.

parties to the proceeding. The Companies failed to meet their burden that the nonunanimous attempt to settle the case through the Stipulation and Recommendation is lawful and reasonable. Their argument in support of their request for reconsideration of the Stipulation and Recommendation is exactly the type of argument that is outside the scope of a proper request for rehearing. It is nothing other than a bare request to relitigate a matter fully addressed in the initial Orders.

Notwithstanding the fact that it is a request to relitigate a matter fully addressed in the initial Orders, it is argument over a nonunanimous settlement agreement that the Companies have repudiated through their withdrawal from the Stipulation. It is a moot point. The Companies fail to identify through the Joint Petition or otherwise point to any language in the Stipulation itself through which they reserved the rights to enforce a Stipulation from which they have unconditionally withdrawn.

Article X (Miscellaneous Provisions) of the Stipulation addresses, among other things, a withdraw from the Stipulation. Specifically, at Section 10.6, the Companies reserved a right to withdraw from the Stipulation if it was not accepted and approved in its entirety. They exercised the right. The Companies are, accordingly, no longer bound by its terms. They fail to identify any provision in Article X through which they may revive or otherwise reinstate themselves to an agreement that they repudiated.

Having nullified their continuing participation in the Stipulation, the Companies are now venturing uncomfortably close to negotiating with the Commission for acceptance of a nonunanimous settlement, a practice condemned as unlawful.[4] The Commission has

[4] *See, for comparison, Louisville Gas and Electric Company v. Commonwealth of Kentucky, ex rel. Cowan*, 862 S.W.2d 897 (Ky. App. 1993) ("[I]t was error for the PSC to accept a less than unanimous settlement.").

jurisdiction over the Companies' rates and service. As a creature of statute, the Commission's powers to compel the Companies' performance have limits.

The Companies chose to offer less than all parties certain commitments that the Commission could not impose in the absence of the Stipulation, an agreement that no longer includes the Companies as parties. Confirmation of this point is manifested through the Companies' repudiation of the Stipulation – "The Companies cannot be bound to a stay-out period that was expressly premised on a framework the Commission has now rejected."[5] Further; through the Stipulation, "[T]he Companies agreed to material customer benefits that could not be ordered by the Commission – most prominently, a two-and-a-half year base rate stay out."[6] The Joint Petition presents a Pandora's Box that the Commission should approach with great skepticism and caution. The Commission, through its initial Orders, supplies ample sound reasons why the Stipulation and Recommendation could not be accepted in its entirety and required modification to meet the requirements of KRS Chapter 278.

2. <u>The Companies' Argument Concerning Adjustment Clause SM is Without Merit.</u>

Adjustment Clause SM was designed by the Companies and parties to the Stipulation and Recommendation (designed by the Companies and less than all parties to the proceeding). It was not proposed as part of either application in these cases. Hence, the Companies and less than all parties met very late in the game and devised a clause to impose upon the Commission and remaining parties a self-aggrandizing framework

[5] Joint Petition at page 2.

[6] Joint Petition at page 5.

which purports to determine fair, just, and reasonable rates. While innovation and creativity merit encouragement, novelty, of itself, does not satisfy a burden of proof. Also, the pursuit of Adjustment Clause SM was voluntarily abandoned by the Companies through their withdrawal from the Stipulation. It is a moot point.

Notwithstanding its mootness, from the Order in Case No. 2025-00113: "The Commission believes there is not sufficient information for a known and reasonable amount of revenue likely to be recovered from customers during the sharing mechanism period."[7] In combination with the foregoing finding, the Commission further finds: "Also, the Commission does not see the value in authorizing Adjustment Clause SM as opposed to a full rate case, when the Commission will have to review essentially the same information to determine the Adjustment Clause SM rates."[8] The Companies proposed a novel approach; however, the Companies failed to carry their burden to demonstrate it as a reliable approach or an approach that adds value.

The Companies have the burden of proof. They failed to meet their burden. Their argument in support of their request for reconsideration is exactly the type of argument that is outside the scope of a proper request for rehearing. Notwithstanding the fact that it is argument over an item that the Companies have repudiated through their withdrawal from the Stipulation, it is nothing other than a mere request to relitigate a matter fully addressed in the original Orders. It is without merit.

3. <u>The Companies' Argument Concerning Alleged Out-of-Record Evidence is a Gross Mischaracterization of the Orders and is Without Merit.</u>

[7] Case No. 2025-00113, Order (Ky P.S.C. Feb. 16, 2026) at 153.

[8] *Id.*

The starting point for analysis of the Companies' grievance is the plain language of the Order referenced in the Joint Petition, the KU Order in Case No. 2025-00113 (portions of which are absent from the Joint Petition). From the Order, at pertinent part and in whole:

> When viewing the proposed Stipulation holistically, the Commission finds it compelling. The Commission agrees with the Signing Parties of the proposed Stipulation that ensuring sufficient revenue to maintain utility stability is essential in order to fulfill the agreed upon stay out provision. However, the current economic and energy uncertainty must be balanced against the interests of customers of both LG&E and KU. **[Footnote 81]** The current uncertainty regarding electricity demand and shifting customer requirements ***necessitates a cautious approach that balances the equities***. **[Emphasis added.]**

From Footnote 81, at pertinent part:

> The purpose of this discussion is ***not to indicate the Commission's prognosis for the Kentucky economy and expected demand***. However, the Commission cannot artificially blind itself to the realities on the ground when it comes to considering ***this, and other cases***. Ratepayers require nothing less. **[Emphasis added.]**

The Companies fail to place the use of the material in Footnote 81 into correct context. The Commission's reliance upon the information mentioned in Footnote 81 was (expressly) not to find an adjudicative fact. The stated purpose of the information is to state a basis for the Commission's "cautious approach" in "this, and other cases." The Companies fail to demonstrate any procedural due process concerns through the Commission's decision to act with caution.

The Commission, at this moment, has numerous dockets open bearing upon future energy demands within the Commonwealth of Kentucky. In recent years, the Commission has considered future energy demands in numerous other dockets including proceedings

involving the Companies. The Commission's decision to approach the issue with caution is wholly within its jurisdiction. The Commission was not required to announce any reason why it elects to act with caution, and the Companies are without any procedural due process right to an impetuous decision-maker.

The Commission's explanation does not adjudicate any specific issue concerning expected demand; therefore, it does not fall within the scope of an adjudicative fact. It is, instead, the Commission's confirmation of the obvious – there are a lot of questions concerning energy demand that our outside the scope of these proceedings and are yet to be resolved. The Companies fail to identify a credible claim of error in the Commission's decision to act with caution in carrying out its statutory mandate to balance the interests of the Companies and their ratepayers.

4. <u>The Companies' Argument Concerning Qualifying Facilities is Without Merit.</u>

KYSEIA fully addressed and explained the Companies current capacity need in its Combined Post-Hearing Brief, and it again asserts these arguments and incorporates them into this pleading by reference. The Companies seek through their Joint Petition nothing more than continued argument over a matter that has already been fully and correctly addressed in the initial Orders.

The Companies, through their own evidence, have demonstrated time and again that they have unmet capacity needs. Although the Companies allege, among a variety of claims, that "do not have seasonal or peak avoided capacity costs, do not participate in RTOs' seasonal capacity auctions, and costs associated with capacity are the same in all hours,"[9] those allegations do not concern how the Companies determined the $0

[9] Joint Petition at page 24.

capacity value for wind and solar which was based upon capacity contributions in specific hours in specific months. The Companies' "baseload capacity" argument is a complete (and unfortunate) misdirection in that capacity (be it baseload or peak) is capacity.

The Commission is the trier of fact, and the credibility of the evidence is a matter wholly within the discretion of the Commission. The Companies did not offer the best evidence that was in their possession regarding the capacity of their own renewable energy assets. The allegations in the Joint Petition are inconsistent with the PPL study of their own facilities in Kentucky. The Companies' advocacy lacks any credibility on the issue of capacity for qualifying facilities. More importantly, if capacity costs are the same in all hours, then all QF energy delivered in any hour should receive a capacity credit because they are reducing the same capacity cost in that hour as any other hour.

There is no merit in the Companies' Joint Petition concerning qualifying facilities. With regard to net metering, in its Combined Post-Hearing Brief, KYSEIA took the position that no change in net metering rates was demonstrated by the Companies as appropriate - that the Companies failed to meet their burden of proof. KYSEIA's position remains unchanged. Nonetheless: In passing, following their repudiation of their own Stipulation and Recommendation, KYSEIA notes that if anything has been proven in these proceedings, it is that the net metering rates are, in fact, too low.

WHEREFORE, KYSEIA respectfully requests that the Commission deny the Companies' Joint Petition.

Respectfully submitted,

/s/ David E. Spenard

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NOTICE AND CERTIFICATION FOR FILING AND SERVICE

Undersigned counsel provides notices that the electronic version of the paper has been submitted to the Commission by uploading it using the Commission's E-Filing System on this 18th day of March 2026. Pursuant to the Commission's July 22, 2021 Order in Case No. 2020-00085 (Electronic Emergency Docket Related to the Novel Coronavirus COVID-19), the paper, in paper medium, is not required to be filed. The Commission has not yet excused any party from electronic filing procedures for this case.

/s/ David E. Spenard