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 BRIEF UPON REHEARING

Comes now the Kentucky Solar Industries Association, Inc. ("KYSEIA"), by and through counsel, and, pursuant to the Kentucky Public Service Commission's ("PSC" or "Commission") Order of June 8, 2026, files a Combined Brief for the rehearing granted in the above-styled cases ("Case No. 2025-00113" and "Case No. 2025-00114").

I. "Reasonable in its Totality" is not the law for the Kentucky PSC.

The Commission ordered rehearing in the instant cases. Rehearing is limited to correcting material errors or omissions, and findings that are unreasonable or unlawful, or to weigh new evidence not readily discoverable at the time of the original hearing.[1] The position of Kentucky Utilities Company ("KU") and Louisville Gas and Electric Company ("LG&E" collectively "Companies") is set forth through the plain language of their Joint Petition for rehearing, specifically: "The Stipulation is Reasonable in its Totality Without Modification."[2] Thus, the grievance of the Companies is that the Commission is acting unlawfully or unreasonably through tinkering with an agreement reached by the Companies with less than all the parties.[3] The Companies posit that they are the drivers, and it is beyond the Commission's proper place in this arrangement to consider and pass upon the route, destination, or manner of getting from point A to point B.

As the Commission reminded the Companies roughly a decade ago, it is the Commission's "statutory responsibility to determine whether proposed utility rates are fair, just, and reasonable, and we [the Commissioners] cannot delegate that responsibility to

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[1] Case No. 2021-00365, *Electronic Application of Kenergy Corp. for a Certificate of Public Convenience and Necessity for Construction of a High-Speed Fiber Network and for Approval of the Leasing of the Networks' Excess Capacity to an Affiliate to be Engaged in the Provision of Broadband Service to Unserved and Underserved Households and Businesses of the Commonwealth,* (Ky. P.S.C. Aug. 10, 2022), page 1.

[2] Case No. 2025-00113, Joint Petition of Kentucky Utilities Company and Louisville Gas and Electric Company for Reconsideration of the February 16, 2026 Orders, page 3. In lieu of dual references for the dockets, unless otherwise noted, KYSEIA will reference material for Case No. 2025-00113 for this brief.

[3] Case No. 2025-00113, Joint Petition, page 26 ("The Companies' overarching request is that the Commission approve the stipulation as filed.").

the parties to these cases."[4] Indeed, the Commission conveyed this principle to the Companies more than once in those proceedings.

> The Commission's statutory obligation when reviewing a rate application is to determine whether the proposed rates are "fair, just, and reasonable." While numerous intervenors with significant experience in rate proceedings and collectively representing a diverse range of customer interest have participated in this case, the Commission cannot defer to the parties as to what constitutes fair, just, and reasonable rates. The Commission must review the record, including the two stipulations, and apply its expertise to make an independent decision as to the level of rates, including terms and conditions of service, that should be approved.
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> To satisfy its statutory obligation in this case, the Commission has performed its traditional ratemaking analysis, which consists of reviewing the reasonableness of each revenue and expense adjustment proposed or justified by the record, along with a determination of a fair ROE.[5]

To the extent that Kentucky ever (actually) had a "reasonable in totality" standard, then it was a part of the so-called "black box settlement" era which conclusively and affirmatively ended several years ago. Aside from the fact that the "reasonable in totality" standard is violative of the Commission's statutory obligation (unlawful), it is also an open invitation to bad policy and ratemaking treatments (unreasonable).

In the instant cases, in terms of a remarkably demonstrative example, the Stipulation and Recommendation included the Companies' pro forma expenses for

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[4] Case No. 2016-00370, *Electronic Application of Kentucky Utilities Company for an Adjustment of Its Electric Rates and for Certificates of Public Convenience and Necessity,* and Case No 2016-00371, *Electronic Application of Louisville Gas and Electric Company for an Adjustment of Its Electric and Gas Rates and for Certificates of Public Convenience and Necessity*, (Ky. P.S.C. May 3, 2017), page 2.

[5] Case No. 2016-00370, (Ky. P.S.C. Jun 22, 2017), pages 12 and 13 (footnote in original omitted).

restricted stock units ("RSUs") that vest over a multi-year period.[6] Thus, expenses for RSUs are part of the mix sought for approval based upon the totality of the package. From the Commission's February 16, 2026 Order:

> The Commission has historically disallowed recovery of incentive compensation tied to the financial performance of the company, and while the RSUs are in part awarded based on length of employment, the Commission is not moved by KU'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 entirely to perform more work at the benefit of PPL shareholders, not KU's customers. For those reasons, the Commission finds that the entirety of KU's LTI plan expense in the forecasted test year should be removed, **consistent with Commission precedent (emphasis added).** The resulting revenue requirement impact is a reduction of $1,911,340. This reduction creates a corresponding decrease of $150,341 to KU's forecasted test year Payroll Tax Expense, which results in a revenue requirement reduction of $150,978.[7]

Thus, for the Commission to have unconditionally accepted the Stipulation and Recommendation (despite any protestations and window-dressings in the Stipulation and Recommendation that the package was somehow not concerned with the theory of any particular adjustment), the result would have been the acceptance and ratification of a ratemaking treatment clearly at odds with Commission precedent. This is exactly the theory of deference that the Commission expressly rejected; the theory of deference based upon totality of reasonableness is inconsistent with the Commission's duty to make independent decisions.

[6] Case No. 2025-00113, (Ky. P.S.C. Feb. 16, 2026), page 43.

[7] Case No. 2025-00113, (Ky. P.S.C. Feb. 16, 2026), page 44 (footnote omitted).

The protestations by the Companies that the Commission's exercise of authority to carry out its statutory duties creates a disincentive to potential settlements miss the mark: (1) There has never been an obstacle to the Companies working with the parties ***prior to the filing of an application*** for an adjustment in rates (or earlier in the process) to resolve as many issues as possible and (2) ***Any adversarial flavor*** in the rate adjustment proceedings is within the control of the Companies and the parties and not mandated by the Commission or its Staff. While we respect the Companies (and tend toward avoiding second-guessing on such points), it is the Companies who set the pace on cooperation and consensus-building. Perhaps there are more significant opportunities (in fact, much low-hanging fruit) in terms of advancements in settlements that are readily-available and not dependent upon unconditional deference by the Commission. However, the most important fact that the Companies neglect to mention is that incentivizing potential settlements cannot interfere with the Commission's "independent decision" responsibility when reviewing any settlement proposal.

The Companies have not demonstrated any error on the part of the Commission in rejecting the Stipulation and Recommendation. The "reasonable in totality" standard is an unlawful standard. As demonstrated in the instant cases, elements of the Stipulation and Recommendation are contrary to established Commission precedent, and the Companies and the parties are not free to compel an override of such precedent because the result is, in their view, unreasonable. The Companies argue based upon a standard that does not exist and on behalf of a result that is unlawful and unreasonable. The Commission's rejection and modifications to the Stipulation and Recommendation was correct. The Companies fail to demonstrate any basis for the Commission to now

surrender its decision-making authority to the Companies and less than all the parties through accepting the Stipulation and Recommendation without modification.

II. The Companies Do Not Demonstrate Any Entitlement to Relief.

KYSEIA, for the remainder of its comments, limits the discussion to matters core to KYSEIA's advocacy in these proceedings. KYSEIA, further, incorporates by reference its Combined Response to the Joint Petition filed with this Commission on March 18, 2026. For brevity, KYSEIA will forego all problems with the Companies' positions but will instead highlight the most significant.

1. The Companies' Request for Unconditional Acceptance of the Nonunanimous Stipulation and Recommendation Should Be Denied Because It Does Not Meet the Standard Applicable to Rehearing Relief.

The Stipulation contains elements at odds with lawful and reasonable ratemaking. Unwise ratemaking treatments do not gain any wisdom when paired with acceptable ratemaking treatments. The Companies fail to demonstrate entitlement to relief upon rehearing because, while they certainly point to the fact that the Commission could have ordered a different result, they do not demonstrate the Orders as unreasonable or unlawful. They simply want to relitigate matters fully addressed in the original order. Relitigating matters that have been fully addressed is not the purpose of KRS 278.400.[8]

2. The Companies' Argument Concerning Adjustment Clause SM is Without Merit.

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."[9] In combination with

[8] Case No. 2021-00365, (Ky. P.S.C. Aug, 10, 2022), page 2.

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

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."[10] The Companies proposed a novel approach; however, the Companies failed to carry their burden to demonstrate the proposal as a reliable approach or an approach that adds value. The matter was fully addressed in the original Orders. There is no merit to the Companies' request for relief through rehearing.

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

KYSEIA incorporates by reference its prior arguments. The Companies are not entitled to an impetuous decision-maker. The interests of the Commonwealth, its citizens, and the customers of the Companies are not served through insistence upon the Commission acting without caution.

Additionally, in terms of the basis for rejecting the Stipulation and Recommendation, as one example, the Commission (as discussed above) modified the Stipulation and Recommendation regarding RSUs (and Long-Term Incentive Plan expense) because their inclusion is inconsistent with Commission precedent. This, and other modifications, had nothing to do with the Commission's articulation of the basis for acting with caution. A review of the remainder of the Orders and the reasons for modification, likewise, demonstrates that the decision by the Commission to not unconditionally accept the Stipulation and Recommendation is not based upon the Commission's explanation of its decision to act with caution. Yes; the Commission found

[10] *Id.*

the Stipulation compelling; nonetheless, it also found elements of the Stipulation at odds with clearly established ratemaking practices while ordering modifications.

The Companies do not have a due process right protecting them against 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.

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

KYSEIA addressed and explained the Companies current capacity need in its Combined Post-Hearing Brief and again asserted and furthered its arguments in its Combined Response to the Joint Petition. KYSEIA again notes that the Companies seek through rehearing nothing more than continued argument over a matter that has already been fully and correctly addressed in the initial Orders. KRS 278.400 is not for this purpose, and the Companies do not demonstrate entitlement to relief through rehearing.

The Companies, through their own evidence, 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,"[11] those allegations do not concern how the Companies determined the $0 capacity value for wind and solar which was based upon capacity contributions in specific

[11] Joint Petition at page 24.

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. Instead, the Companies argue against 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.

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.

WHEREFORE, KYSEIA respectfully requests that the Commission deny the Companies' request for rehearing relief.

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 19th day of June 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