COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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. 2025-00113

In the Matter of:

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

REHEARING BRIEF OF JOINT INTERVENORS KENTUCKIANS FOR THE COMMONWEALTH, KENTUCKY SOLAR ENERGY SOCIETY, METROPOLITAN HOUSING COALITION, AND MOUNTAIN ASSOCIATION

Dated: June 19, 2026

TABLE OF CONTENTS

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Come now Kentuckians for the Commonwealth, Kentucky Solar Energy Society, Metropolitan Housing Coalition, and Mountain Association (collectively, "Joint Intervenors"), by counsel, pursuant to the Commission's June 8, 2026 Order, and submit this rehearing brief. On the whole, Joint Intervenors maintain the positions articulated in their March 18, 2026 Response to the Joint Petition of Kentucky Utilities Company ("KU") and Louisville Gas and Electric Company ("LG&E") (collectively, "the Companies") for Reconsideration of the Kentucky Public Service Commission's ("the Commission") February 16, 2026 Orders.

Here, Joint Intervenors incorporate that earlier Response in its entirety, and respond to further arguments and information regarding the same eight issues addressed previously, specifically: (1) overarching rehearing request; (2) ROE adjustments; (3) sharing mechanism; (4) pilot generation recovery; (5) Mill Creek 2 O&M; (6) QF avoided capacity; (7) time-based stock awards; and (8) three references in one footnote.

For the reasons stated in Joint Intervenors' Response and those articulated here, Joint Intervenors maintain that the Commission's Final Order is lawful, reasonable, and should not be disturbed on rehearing.[1]

[1] The Commission's order granting rehearing clarified that "the granting of the request for reconsideration for the purpose of gathering additional information should not be construed as making a finding on the merits of the rehearing motion as it merely allows for further proceedings to investigate the allegations." ("KU Rate Case") and Case No. 2025-00114 ("LG&E Rate Case") (together "LG&E-KU Rate Cases"), Order at 32 (Mar. 27, 2026) .

LEGAL STANDARD

Joint Intervenors Post-Hearing Brief and Response to the Companies' Joint Petition for Rehearing set out the applicable legal standards, which are incorporated here by reference.[2]

DISCUSSION

I. The Companies' Overarching Rehearing Request Has No Merit and Should be Rejected.

The Commission should affirm its modifications of the settlement, and provide no relief on rehearing related to the Companies' "overarching rehearing request." That overarching request is a plain attempt to relitigate the Companies' position with respect to the Stipulation, with no new evidence that would justify relief on rehearing. The "overall reasonableness of the Stipulation" is neither here nor there. The character of the Stipulation—reasonable or not—did not compel its approval.[3]

Furthermore, the Companies have conceded the reasonableness of the revenue requirements set by the Commission's February 16, 2026 Orders.[4] That settles the lawfulness and reasonableness of the Commission's ordered rate.[5]

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[2] *Posthearing Brief of Joint Intervenors Kentuckians For The Commonwealth, Kentucky Solar Energy Society, Metropolitan Housing Coalition, and Mountain Association*, at (Dec. 2, 2025); *Joint Intervenors' Response in Opposition to Joint Petition of Kentucky Utilities Company and Louisville Gas and Electric Company for Reconsideration of the February 16, 2026 Order*, at 5 (Mar. 18, 2026) ("JI Resp.")

[3] JI Resp. at 5; *Joint Petition of Kentucky Utilities Company and Louisville Gas and Electric Company For Reconsideration of the February 16, 2026 Orders*, at 7 (Mar. 11, 2026) ("LG&E-KU Joint Petition") (Companies acknowledge that, as a matter of law, "the Commission is not obligated to accept a stipulation").

[4] *Reply of Kentucky Utilities Company and Louisville Gas and Electric Company in Support of Their Joint Petition for Reconsideration of the February 16, 2026 Orders*, at 2 (Mar.23, 2026) ("LG&E-KU Reply"); *see also* JI Resp. at 5; LG&E-KU Rate Cases, *Response to Commission Staff's Second Rehearing Request for Information Dated May 6, 2026*, Request 6 (May 22, 2026) ("LG&E-KU Resp. to Staff RH 2-6") (comparing stipulation revenue requirements versus ordered); LG&E-KU Rate Cases, *Corrected Response to Sierra Club's Post Hearing Request for Information Dated April 10, 2026*, Question 4.2 (May 22, 2026) (comparing residential rate impact based on stipulation versus based on February 16, 2026 Orders).

[5] *Fed. Power Comm'n v. Hope Nat. Gas Co.*, 320 U.S. 591 (1944).

Still unsatisfied, the Companies' Reply defended their overarching rehearing request by emphasizing stability and a history of a single-digit base rate increase over seven years, which it contrasts against the obvious economic uncertainties of the future.[6] This misstates the effect of the stipulation as proposed, and attempts to mislead the public and the Commission. The Companies' emphasis on base rate increases misses that customers get hit with more than base rate hikes. Customers also pay a growing number of surcharges. Those surcharges add up, and they can fluctuate monthly, injecting volatility in customer bills where there could have been traditional base rate recovery.

The Companies' emphasis on base rates also distracts from the massive amounts that would be recovered from customers via the creation of a Pilot Generation Cost Recovery surcharge. The Companies do not dispute that the Stipulation as proposed only worked a $137 million reduction in the requested base rate revenue requirement as it conjured a new surcharge that would have yielded approximately $310 million in 2027 and 2028.[7] The Companies may want more money from customers; but that does not render the Commission's balancing of issues and exercise of discretion unlawful or unreasonable.

On Reply, the Companies further defend their overarching rehearing request by casting application of the rehearing standard as an effort to narrow review and deprive the Companies of due process.[8] That may be projection at its finest. Application of the rehearing standard defines the scope of review in service of due process, and protects

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[6] LG&E-KU Reply at 2.
[7] JI Resp. at 7. On Reply, the Companies did not dispute the accuracy of these figures, settling the fact that the Companies' generation cost recovery surcharge would increase customer costs more significantly than the Companies' base rate increase.
[8] LG&E-KU Reply at 3-4.

the finality of Commission orders from mere relitigation of parties' original positions on rehearing, among other things. After hearing, the Companies urged the Commission to approve the Stipulation as filed; after the final order, the Companies sought rehearing to re-urge that the Commission should approve the Stipulation as filed. The Companies' position is unchanged, making it the sort of sour grapes that are inappropriate for rehearing. It would improperly and unlawfully expand the scope of rehearing to grant "overarching" relief in these circumstances.

In sum, for the reasons set out in Joint Intervenors' Response and those articulated here, no overarching relief is due and the Commission should affirm its February 16, 2026 Orders.

II. The Commission's Modifications to the Companies' Authorized Return on Equity Are Well-Supported by the Record.

In its February 16, 2026 Orders, the Commission increased the Companies' authorized return on equity ("ROE") from the current 9.425% for base rates and 9.35% for capital riders, to 9.775% and 9.675%, respectively. Dissatisfied with this substantial increase in ROE, the Companies try to reframe it as an "unreasonable" reduction from the 9.9% for both base rates and capital riders proposed in the Stipulation. As Joint Intervenors detailed in their Response to the Companies' Petition for Reconsideration, the modest adjustments to the stipulated ROE are well-supported by the evidentiary record, Commission precedent, and the balancing of utility and ratepayer interests the Commission is legally required to undertake, and nothing in the Companies' Petition comes anywhere close to suggesting otherwise.[9] In their Reply, the Companies simply rehash the two primary complaints about the adjusted ROE that they raised in their

[9] JI Resp. at 9-17.

Petition. Both continue to fail to undermine in any way the Commission's adjustments to the stipulated ROE.

First, the Companies contend that the adjustment to a 9.775% base rate ROE constituted "disparate treatment" because the Commission recently approved a stipulated 9.8% base rate ROE for Duke Energy's gas utility while acknowledging that such ROE was higher than what the Commission would have authorized in the absence of a stipulation.[10] But the simple fact that the Commission determined in the Duke case that, "based upon the entirety of the Joint Stipulation terms,"[11] it should accept a stipulated ROE, does not mean that the Commission must do so in every case. In fact, just twelve days after issuing its Order in the present case, the Commission authorized a 9.75% base rate ROE for Kentucky Power in lieu of the 9.8% ROE that the parties had stipulated to in that proceeding.[12] In order to be entitled to rehearing, a party has to demonstrate that the Commission's order in this proceeding is based on "material errors or omissions" or "findings that are unreasonable or unlawful." Especially for such a fact-specific issue as ROE, simply pointing to a modestly different result in another case obviously falls far short of that exacting rehearing standard.

Second, the Companies continue to complain about the Commission setting an ROE of 9.675% for capital riders, rather than the 9.775% applied to the Companies' base rates.[13] As Joint Intervenors detailed in their Response, a 10 basis point reduction

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[10] LG&E-KU Reply at 8, citing Case No. 2025-00125, *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).
[11] Case No. 2025-00125, Dec. 23, 2025 Commission Order at 16.
[12] Case No. 2025-00257, *Electronic Application of Kentucky Power Company for (1) A General Adjustment of Its Rates for Electric Service; (2) Approval of Tariffs and Riders; (3) Approval of Certain Regulatory and Accounting Treatments; and (4) All Other Required Approvals and Relief* Order at 127 (Ky. P.S.C. Feb. 28, 2026).
[13] LG&E-KU Reply at 8.

in ROE for capital riders is reasonable given that the guaranteed and immediate recovery of capital costs provided by such riders reduces the utility's risk profile.[14] The Commission's approach here is also consistent with its well-established practice of applying a modestly lower ROE to capital riders than to base rates,[15] including in the Duke Energy order discussed above that the Companies rely on in their Petition and Reply. The Commission has continued this practice in the recent Kentucky Power order mentioned in the previous paragraph, explaining that:

> 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 establishing the ROE component of Kentucky Power's remaining capital riders as 9.65 percent is fair, just, and reasonable.[16]

In its Reply, the Companies attack this long-standing Commission practice by claiming that it is "undisputed that the Companies' witness demonstrated that although riders are common, this Commission's rote, systematic reduction to ROEs for such riders is out of step with other state commissions."[17] While the Companies cite in support a couple pages of written testimony and Exhibit DWD-12 from witness D'Ascendis, along with his answer at the hearing to a question the Companies' counsel asked on redirect, only the answer at the hearing even mentions other state commissions.[18] In that answer, Mr. D'Ascendis opined that, with one exception, Kentucky is the only state he knows of

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[14] JI Resp. at 15-16.
[15] *Id.* at 16-17.
[16] Case No. 2025-00257, Feb. 28, 2026 Order at 127.
[17] LG&E-KU Reply at 9, citing Direct Testimony of Dylan W. D'Ascendis at 66-68 and Exhibit DWD-12; Nov. 4, 2025 Hearing Transcript, 1:41:30 p.m.
[18] The written testimony of Mr. D'Ascendis and Exhibit DWD-12 cited by the Companies in their Reply do not address how other state commissions handle ROE in the context of capital riders. Instead, in that written testimony and exhibit, Mr. D'Ascendis opines that rate stabilization mechanisms (of which capital riders are one type) are widespread and therefore do not impact the comparative risk that factors into the cost of capital for utilities. The witness then identifies a few studies from the early-to-mid-2010s evaluating the impact of a different rate stabilization mechanism known as revenue decoupling (which is designed to encourage utility energy efficiency) on utility cost of capital.

where the commission sets a different ROE for riders as it does for base rates.[19] How other state commissions handle ROE in the context of capital riders does not, of course, dictate how Kentucky does. Regardless, even if Mr. D'Ascendis' hearing testimony accurately addresses all 50 states, it ignores the fact that some other state commissions factor the reduction of risk from capital riders and other rate stabilization mechanisms into setting a lower overall utility ROE, rather than just a lower ROE for the rider itself.[20] Presumably, a reduction in their overall ROE, rather than just the ROE for capital riders, is not what the Companies are looking for in seeking reconsideration on this topic.

III. The Commission Correctly Rejected the Sharing Mechanism and Should Uphold Its Decision to Do So.

The Commission correctly rejected the Companies' proposed Sharing Mechanism, and the Companies have still not provided any compelling reason for the Commission to reconsider its decision. As Joint Intervenors explained in their Response to the Companies' Petition for Reconsideration, and incorporate here in full, the Companies' Petition ignored several of the Commission's well-reasoned bases for rejecting the Sharing Mechanism. These reasons include that the Sharing Mechanism would create the potential for large bill increases without customer notice, and that the Commission did not see value in the Sharing Mechanism as opposed to a full rate case, where the Commission would review essentially the same information to determine the Sharing Mechanism rates, with the benefit of customer notice, intervention by interested parties, and public comment.[21] Notably, the Companies' Reply once more completely ignored these findings of the Commission.[22] As the case now stands before the

[19] Nov. 4, 2025 Hearing Transcript, 1:41:30 p.m.
[20] JI Resp. at 15-16 & n. 48.
[21] JI Resp. at 17-19.
[22] LG&E-KU Reply at 4-6.

Commission on rehearing, the Companies have provided no new evidence or argument that could support a finding that the Commission's original decision to reject the Sharing Mechanism was mistaken.

In their Reply, the Companies reasserted that they will be forced to file new rate cases earlier than they would if the Sharing Mechanism were approved. Again, this argument ignores the Commission's reasoned finding 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."[23] The Companies' continued threat of an additional rate case should not persuade the Commission to reconsider its decision, when such a rate case would provide meaningful protections to ratepayers from unjust cost shifting.

The Companies' Reply also accuses Joint Intervenors of focusing on a "quibble" with their incorrect reference to their own witness's testimony. The Companies' Petition had claimed that Companies Witness Garrett had testified that an ROE lower than 9.40% would "likely" result in the Companies' underearning, and Joint Intervenors pointed out that Witness Garrett had instead testified that underearning at a rate lower than 9.40% would be "likely *possible*," while noting that questions about underearning are "difficult to predict" due to there being "so many variables that are associated with [the Companies'] earnings."[24] This is not a "quibble," it is a fundamental difference in the evidentiary record, and the Commission should not find the Companies' attempt to paper over it in briefing persuasive.

[23] LG&E-KU Rate Cases, Order at 153 (Feb. 16, 2026).
[24] JI Resp. at 20 (citing Nov. 4, 2025 Hearing Transcript, 3:38:18 to 3:39:25 p.m. (Garrett)).

The new evidence gathered since the Commission's original decision only reinforces the appropriateness of denying the Sharing Mechanism. Throughout their attempts to get the Sharing Mechanism approved, the Companies have insisted on potential benefit to ratepayers of the hypothetical bill credit if the Companies earn above the 10.15% ROE cap under the Sharing Mechanism. For instance, in their Post-Hearing Brief, the Companies argued that "customers will see no impact at all if earned ROE is between 9.40% and 10.15%, but they will see a bill credit if the Companies earn just 25 basis points above the stipulated ROE."[25] But when the Companies were asked to perform a bill impact analysis comparing benefits to customers under the 10.15% ROE and the Commission-approved 9.775% ROE, the Companies responded that the "requested analysis cannot be performed because the Companies have no projections whereby they will earn above 10.15% ROE with their projected capital investments."[26] In other words, according to the Companies, the 10.15% ROE that is necessary for customers to receive a bill credit under the Sharing Mechanism is so unlikely that the Companies cannot even run an analysis that assumes such an ROE is achieved. The Companies further admitted in discovery that "achieving a 10.15% ROE would require $240 million of additional revenue for the 13 month stay-out period *which is well above the Companies['] current projections*."[27] This admission undermines the Companies' own argument about the potential benefit of the Sharing Mechanism to ratepayers, because if a 10.15% ROE is "well above the Companies' current projections," then it is

[25] *Post-Hearing Brief Of Kentucky Utilities Company And Louisville Gas And Electric Company*, at 9 (Dec. 2, 2025) ("LG&E-KU Post-Hearing Br.").
[26] *Response to Supplemental Rehearing Requests for Information of Joint Intervenors Kentuckians for the Commonwealth, Kentucky Solar Energy Society, Mountain Association and Metropolitan Housing Coalition Dated May 8, 2026*, Question 1(b) (May 22, 2026) ("LG&E-KU Resp. to JI 6.1(b)").
[27] *Id*.

incredibly unlikely for customers to see any bill credits under the Sharing Mechanism. The Commission should not accept this alleged benefit of the Sharing Mechanism.

In the same response, the Companies claim that their "analysis indicates that it will have to file another rate case absent the Sharing Mechanism because they will have nearly a $170 million revenue requirement deficit during the 13 month stay-out period even with a lower assumed ROE of 9.40% absent significant load growth."[28] While the Companies' response is not entirely clear, the Companies appear to be claiming that they are projecting that under the Sharing Mechanism customers would need to pay an additional $170 million so that the Companies could achieve the 9.4% ROE baseline. The Sharing Mechanism would preclude this $170 million imposition on customers from ever being evaluated in a rate case, which is a result that the Commission should not find acceptable. Further, at the November hearing in this proceeding, Companies Witness Conroy was not able to testify as to whether the Companies had done any analysis of whether the Sharing Mechanism would lead to either a refund or an additional charge to customers,[29] and it is notable that the Companies are only now admitting this potential for a $170 million charge.

The Companies produced in discovery an analysis comparing expected revenues under the Commission-approved 9.775% ROE and the 9.4% ROE representing the low end of the Sharing Mechanism deadband.[30] The Companies claimed that this analysis shows that the Sharing Mechanism "is expected to provide significant financial benefits to customers,"[31] but it does no such thing. Specifically, the

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[28] *Id.*
[29] Nov. 3, 2025 Hearing Transcript, 5:09:55-5:10:40 p.m.
[30] *See Response to Commission Staff's First Rehearing Request for Information Dated April 10, 2026*, Question RH-5").
[31] *Id.*

Companies claim that the analysis indicates that customers will save approximately $35 million compared to the Commission-approved 9.775% ROE, *assuming* that the Companies earn specifically a 9.40% ROE under the Sharing Mechanism.[32] But nothing in the Sharing Mechanism assures that the Companies earn the low end of the 9.40% to 10.15% deadband. In fact, the Sharing Mechanism is irrelevant to whether any particular level of ROE is achieved; instead, it simply provides a financial benefit to the Companies if they earn less than a 9.40% ROE, and a refund to customers in what the Companies now claim is an extremely unlikely scenario in which they earn an ROE over 10.15%. Claiming that the difference between the 9.40% low end of the deadband and the 9.775% ROE approved by the Commission somehow constitutes a financial benefit to customers is disingenuous at best.

Furthermore, when asked in discovery if the Companies were aware of the Commission previously approving a guaranteed level of Return on Equity for any utilities, the Companies admitted that they were not.[33] The Companies claimed that the Sharing Mechanism would not in fact approve such a guaranteed level of Return on Equity, but this is simply not the case: the Sharing Mechanism *would* guarantee that the Companies earn at least a 9.40% ROE by requiring customers to make the Companies whole for any ROE below 9.40% they achieve during the 13-month stay-out period.[34] This guarantee is at the very heart of the Companies' proposal. And as Joint Intervenors' Post-Hearing Brief explained, such an ROE guarantee would conflict with a

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[32] *Id*.; LG&E/KU Resp. to JI 6.1(a) (confirming that "the 'analysis performed to determine' the 'benefits to customers' is based on a comparison of the Commission-approved return on equity in these cases (9.775%) and the lower end of the 'deadband' proposed in the Stipulation (9.40%)").

[33] *Response to Rehearing Requests for Information of Joint Intervenors Kentuckians for the Commonwealth, Kentucky Solar Energy Society, Mountain Association and Metropolitan Housing Coalition Dated April 10, 2026*, Request 2 (Apr. 24, 2026) ("LG&E-KU Resp. to JI 5.2").

[34] Nov. 3, 2025 HVT at 5:05 p.m.

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 new revenues."[35]

The basic fact is the same now as it was at the time of the Commission's original decision: the Sharing Mechanism would improperly shift to ratepayers the risk of factors beyond the utility's control, would weaken the Companies' incentive to perform well on the factors within its control, and should therefore be denied.

IV. The Commission's Modifications of the Pilot Generation Recovery Adjustment Clause Were Reasonable and Should Be Upheld.

As Joint Intervenors' Response to the Companies' Petition for Reconsideration explained, the Commission's modifications of the Pilot Generation Recovery Adjustment Clause ("PGR") in its original Order were reasonable, lawful, and adequately supported by the record.[36] Joint Intervenors incorporate the arguments in their Response in full here, and specifically address the arguments made by the Companies in Reply and any new data responses. These arguments pertain to the Commission's limitation of cost recovery under the PGR to the estimates provided in Case No. 2022-00402 and 2025-00045, since the Companies have provided no argument against the conversion of the mechanism to a pilot, and the Companies' arguments about the Commission's approved ROE for the PGR are addressed in Section II.

In their Reply, the Companies claim that there is no basis to believe that review of costs under the PGR surcharge would be less rigorous than through standard rate cases.[37] This beggars belief. As Joint Intervenors' Post-Hearing Brief explained, it would

[35] *Post-hearing Brief of Joint Intervenors Kentuckians For The Commonwealth, Kentucky Solar Energy Society, Metropolitan Housing Coalition, and Mountain Association*, at 105 (Dec. 2, 2025) ("JI Post-Hearing Br.") (citing *Fed. Power Comm'n v. Nat. Gas Pipeline Co.*, 315 U.S. 575, 590 (1942)).
[36] *See* JI Resp. at 22-25.
[37] LG&E-KU Reply at 6.

not be reasonable to expect Staff or the Commission to be able to assess prudency of the PGR costs in the 10 days between the filing of monthly reports and the collection of costs, leaving prudency review to occur after costs have been recovered, rather than occurring before cost recovery as in a base rate case.[38] Therefore, in standard rate cases, the various benefits that the Commission has identified—customer notice, intervention by interested parties, and public comment by customers[39]—can occur *before* cost recovery, which would not be possible under the PGR. The Companies' Reply claims that "[a]s the Commission has experienced, single-focused rider review proceedings often result in more thorough examinations than in complex, multifaceted rate proceedings,"[40] but the Companies provide no citation or evidence for this bare assertion, and therefore provide no basis for the Commission to overturn its decision on rehearing.

The Companies also claim that limiting the costs is inappropriate because "[e]ven if the costs are later included in rate base, the carrying costs—which are substantial for generation projects—will never be recovered."[41] The Companies have not provided sufficient evidence to support this argument. First, recovery of pre-in-service carrying costs is not a concern for generation assets included in the PGR. The Commission has already approved Allowance for Funds Used During Construction ("AFUDC") and regulatory asset treatment for Mill Creek 5, Mercer County Solar, and the Brown BESS in Case No. 2022-00402, which will allow "LG&E/KU [to] seek recovery of costs related to the regulatory asset and the Commission [to] thoroughly review the reasonableness

[38] JI Post-Hearing Br. at 102.
[39] Feb. 16, 2026 Order at 153.
[40] LG&E-KU Reply at 6.
[41] *Id.*

of the deferred construction financing costs in a future rate case."[42] In the same case, the Companies explained that they were only seeking Construction Work in Progress ("CWIP"), rather than AFUDC, for Marion County Solar, since the project is "smaller in scale" with "a shorter construction time period."[43] As such, the Commission should not credit any alleged concerns about limitations on recovery of pre-in-service carrying costs through the PGR.

The Companies asserted in discovery that, beyond these pre-in-service carrying costs, there is still a loss of monthly carrying costs for the period between the in-service date and the date the incremental project costs are included in rate bases.[44] However, the Companies provide no evidence or estimate of the amount of such carrying costs that they expect to exceed the amounts provided in Case Nos. 2022-00402 and 2025-00045. It is therefore impossible for intervenors or the Commission to determine their significance on reconsideration. Furthermore, prior to the in-service dates for the projects, the Companies could request to record post-in-service carrying costs as a regulatory asset, to be addressed as part of the first post-in-service rate case, when the Commission will be in a better position to determine whether they were prudently incurred. In the meantime, the Companies would be better motivated to control excessive costs, and ratepayers would receive meaningful protection against paying for imprudently incurred costs.

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[42] Case No. 2022-00402, *Electronic Joint Application of Kentucky Utilities Company and Louisville Gas and Electric Company for Certificates of Public Convenience and Necessity and Site Compatibility Certificates and Approval of a Demand Side Management Plan and Approval of Fossil Fuel-Fired Generating Unit Retirements*, Order at 139-42. (Ky. P.S.C. Nov. 6, 2023).
[43] *Id*. at 140 ("LG&E/KU maintained that they would record only CWIP for all other new construction projects").
[44] LG&E-KU Resp. to JI 5.1.

Because the Companies have provided no sound argument or compelling evidence to reverse the Commission's modifications of the PGR, the Commission should uphold its original decision.

V. The Commission should affirm its denial of the MC2 Surcharge, and allow recovery of "incremental" MC2 O&M costs incurred on and after issuance of the Commission's Final Order.

The Commission's Order lawfully and reasonably limited surcharge recovery of "incremental" Mill Creek 2 O&M costs to those incurred after the Commission's February 16, 2026 Order. For the reasons already set forth in Joint Intervenors' Response, that limitation is based on established law, logic, and fact, with attention to fairness, and should not be disturbed on rehearing.[45]

Here, Joint Intervenors address new arguments and information from the Companies, none of which justify disturbing the Commission's February 16, 2026 holding on this issue. With respect to Mill Creek 2 O&M costs incurred under LGE's previous base rates, the Companies are not entitled to additional recovery from captive ratepayers for costs already collected under just and reasonable rates,[46] and cannot adjust rates for non-existent past losses.[47]

Judging from its Reply, LGE rejects application of the filed rate doctrine to its Mill Creek 2 O&M costs, and urges the Commission to allow retroactive recovery as a matter of "basic fairness."[48] But basic fairness compels the same result. As observed in Joint Intervenors' Response and undisputed by LGE's Reply, "there is no actual loss

[45] JI Resp. at 26-34. *Contra* LG&E-KU Joint Petition at 18 (casting MC2 cost recovery decision as arbitrary and unlawful); LG&E-KU Reply at 7 (same).
[46] *Fed. Power Comm'n v. Hope Nat. Gas Co.*, 320 U.S. 591, 602 (1944) (in ratemaking "it is the result reached not the method employed which is controlling")
[47] *Cincinnati Bell Tel. Co. v. Ky. Pub. Serv. Comm'n*, 223 S.W.3d 829, 837 (Ky. Ct. App. 2007) (explaining that 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").
[48] LG&E-KU Reply at 7.

here" related to the Companies' plant O&M spending; "the Companies and their shareholders are already better than whole."[49]

Whether discussed in terms of filed rate doctrine or basic fairness, the record plainly shows that ratepayers do not owe more to LG&E for additional plant O&M related to Mill Creek 2.[50] This application of black letter law cannot work an unfairness to LGE, given that it traditionally recovers plant O&M via base rates and those base rates were in fact sufficient for the Companies to significantly overearn its authorized 9.425% ROE in the relevant time period, realizing a 10.32% ROE over 12 months.[51]

With that, the Companies' repeated statements of the general principle that a regulated utility can recover prudently incurred costs misses the point: customers have already paid for plant O&M under previous base rates, and a regulated utility is not entitled to double recovery. Even if the prudence of so-called "incremental" O&M could avoid the Companies' double recovery problem, the Companies reliance on prudence is premature in light of repeated statements that the Companies do not seek any findings related to the prudence of the O&M line items at issue.[52]

On Reply, the Companies also try, but fail, to defend their comparison of plant O&M costs and extreme storm costs. Unlike extreme storm costs, the ordinary and

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[49] JI Resp. at 27-28; LG&E-KU Reply at 7.
[50] Case No. 2025-00114, Feb. 16, 2026 Order at 151-52; JI Resp. at 30-32.
[51] JI Resp. at 27 (citing 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")) (Companies realized 10.32% ROE over 12-month period of November 2024 to October 2025); *id.* at 13 (citing 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) (LG&E earned 10.40% return in 2024).
[52] November 3, 2025 Hearing, 4:19:25 p.m. – 4:19:46 p.m. (Conroy) ("We are asking for approval of the mechanism itself."); LG&E's response to Sierra Club's Third Request for Information, No. 1 ("The Company is not asking the Commission to find any Mill Creek 2 stay-open or life extension cost to be prudent in this proceeding. The Commission will have the opportunity to review all actual costs recovered through Adjustment Clause MC2 and determine their prudence in the proposed annual review proceedings."); LG&E/KU Post-Hearing Brief at 21.

recurring character of plant O&M expenses is demonstrated by their traditional inclusion in base rates.[53] The Companies' own base rates follow this traditional approach: baking-in a ballpark level of plant O&M expense via a future test year.

The Companies' actual plant O&M costs under previously filed rates were never entitled to annual true-ups, and the Companies aren't entitled to a special Mill Creek 2 O&M true-up now. A forecast test year is not a covenant that a utility will spend only the estimated dollar amounts month-to-month, and not a covenant that amounts above or below forecast test year estimates will be credited to or collected from customers. It is unreasonable and unlawful for the Companies to retroactively demand that customers pay again for plant O&M already accounted for in base rates.[54]

Moreover, the Companies' only legal support for their analogy to extreme storm cost accounting is, in fact, unrelated to storm costs.[55] In Case No. 2008-00436, East Kentucky Power Cooperative sought special treatment for unrecovered replacement power costs made during forced outages of its generating units. Unlike LG&E, EKPC made a substantial showing of exigent financial need for regulatory asset treatment related to those unrecovered costs.[56] The replacement power costs at issue were not eligible for recovery through EKPC's fuel adjustment clause and were not accounted for in EKPC's filed rate. Without the requested regulatory asset treatment, EKPC showed that it would experience a net margin shortfall for the year, such that it would be out of

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[53] The Companies followed this traditional approach in their 2020/21 base rate cases.
[54] LG&KU Resp. to JI 5.3 (explaining that part of increase in "stay- open" costs between post-hearing briefing and rehearing is attributable to the Companies deciding to recalculate their original true-up to use a different 8-month period from their 2021/22 future test year).E-
[55] LG&E-KU Reply at 8 (providing single authority); *see also* LG&E-KU Pet. for Rehearing at 19 (providing no authority); JI Resp. at 28 (noting lack of authority).
[56] Case No. 2008-00436, *The Application of East Kentucky Power Cooperative, Inc. for an Order Approving Accounting Practices to Establish a Regulatory Asset Related to Certain Replacement Power Costs Resulting from Generation Forced Outages*, Order (Ky. P.S.C. Dec. 23, 2008).

compliance with the Debt Service Coverage requirement in its Private Credit Facility Agreement.[57] EKPC further showed that such a default on those debt agreements could, in turn, result in creditors recalling any outstanding balances (even demanding immediate payment), refusing to advance additional available funds, doubling or tripling EKPC's then-existing commitment fee of 17.5 basis points, and increasing EKPC's then-existing 82.5 basis points above LIBOR by 350 to 600 basis points over LIBOR.[58] EKPC's "precarious financial position" justified establishing a regulatory asset for otherwise unextraordinary costs.[59]

In stark contrast, the Companies have not shown any financial precarity related to plant O&M, which makes sense when they have suffered no actual losses here.[60]

For the reasons set forth here, and in Joint Intervenors' Response Brief, the Commission should affirm disallowance of Mill Creek 2 costs incurred prior to February 16 Order.

VI. The Companies representations regarding impacts of Qualifying Facilities on their asserted capacity need are irrelevant.

The Companies' assertion in their reply supporting overturning the Commissions' decision that "Solar or wind qualifying facility ("QF") capacity will have zero effect on the Companies' required capacity and the resulting capacity costs"[61] is utterly irrelevant, and a distraction from the standard required to be applied for valuing QF capacity.

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[57] Case No. 2008-00436, Dec. 23, 2008 Order at 2-3.
[58] *Id.*; *id.* at 5 ("East Kentucky must realize net margins of approximately $22 million for calendar year 2008. Its failure to do so will – at best – result in significant penalties, higher interest expense costs, and diminished access to capital markets.").
[59] *Id.* at 6 ("We find that East Kentucky's request to establish a regulatory asset to account for nonFAC-recoverable purchased power costs arising from forced outages is for a lawful purpose and reasonable in light of its precarious financial condition."); *id.* at 4-5 (EKPC conceded that costs are not extraordinary in nature).
[60] JI Resp. at 27-28; LG&E-KU Reply at 7 (not disputing absence of losses related to Mill Creek O&M decisions and costs).
[61] LG&E-KU Reply at 10.

To the contrary, as stated in JI's response to the Companies' motion for rehearing:

> 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.[62]

Nothing in the record on rehearing changes this legal standard, nor could it. This is simply another attempt by the Companies to relitigate an issue already settled by the Commission not only in its Order here, but in previous precedent. Instead of presenting evidence that the Companies do not have an avoided capacity cost (which they, of course, could not), the Companies instead attempt to construe Commission precedent stating how to determine the *value of avoided capacity into a statement that somehow they need to actually decide not to build new generation due to an individual QF contribution. The statement, however, that "[t]he Commission is of the opinion that capacity payments are appropriate in most circumstances if the QF meets the reliability and dispatchability criteria which a utility would use for its own generation plant"*[63] *is not such a* requirement*. It is merely a qualification for the QF - that it be reliable and dispatchable.*

VII. The Commissions' Plenary Ratemaking Authority fully allows incorporation of Jobs Benefits in Determining the Value of Distributed Generation

In support of its argument that ordering study of jobs benefits is contrary to law, the Companies create a straw man to knock down, and from there moves to an argument against the Commissions' plenary ratemaking authority.

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[62] JI Resp. at 35.

[63] LG&E-KU Reply at 11, *quoting Setting the Rates and Terms and Conditions of Purchase of Electric Power form Small Power Producers and Cogenerators by Regulated Electric Utilities*, Case No. 8566, Order at 4-5 (Ky. PSC June 28, 1984).

As stated by the Kentucky Supreme Court, and reemphasized by the Commission: "the General Assembly granted the Commission general powers and plenary authority arising from the Commission's exclusive jurisdiction to regulate utility rates and service under KRS 278.030 and KRS 278.040."[64] It is that authority that the Commission relied on in ordering the Companies to study the jobs benefits of distributed generation under the Net Metering Statute.[65]

The Companies attempt to construe references to other instances of consideration of jobs benefits of ratemaking, specifically in the context of economic development rates, to carryover each of the individual requirements for such specific rates.[66] This is simply not a requirement of such consideration. However, even if it were, the Commission has only required the *study of such benefits at this point - it has not ordered any rate which could be subject to such scrutiny.*

The Companies move from this straw man to a broader argument that such consideration is therefore beyond the Commissions' authority to even consider.[67] *Again, however, n*othing in the record on rehearing changes the legal standard, nor could it. This is simply another attempt by the Companies to relitigate an issue already settled by the Commission not only in its Order here, but in previous precedent. As stated in JI's initial Response to the Companies' Rehearing request, "[w]ith 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."[68]

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[64] *In re Electronic Application of Kentucky-American Water Co.*, Case No. 2020-00257, Order at 2 (Ky. P.S.C. Dec. 30, 2020).
[65] KRS 278.465 *et seq.*; *In re Electronic Application of Kentucky Utilities Co.*, Case Nos. 2020-00349 & 2020-00350, Order at 4 (Ky. P.S.C. Sept. 24, 2021).
[66] LG&E-KU Reply at 12-13.
[67] LG&E-KU Reply at 13-14. The Companies further, essentially as an aside, note that the JI's reference to their expert witness testimony in the Companies' previous rate case is outside the record of this case. That testimony, however, was relied on by the Commission in determining the proper method for setting NMS rates. *See In re Electronic Application of Kentucky Utilities Co.*, Case Nos. 2020-00349 & 2020-00350, Order at 25-26, 52 (Ky. P.S.C. Sept. 24, 2021)
[68] JI Resp. at 38, *quoting* 2020 LG&E-KU Rate Cases, Order at 57-58 (Ky. P.S.C. Sept. 24, 2021).

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

The Commission's removal of certain Long-Term Incentive ("LTI") compensation provided in the form of restricted stock units ("RSU") is lawful, reasonable, well-supported, and should not be disturbed on rehearing. As set forth more fully in Joint Intervenors' Response,[69] this is another improper attempt by the Companies to relitigate an issue on rehearing because they "disagree" with the Commission's ordered result.[70] The Companies are free to disagree, but there is nothing unlawful or unreasonable about the Commission's rejection of incentive compensation tied to the Companies' financial performance, including stock value.[71]

Contrary to the Companies' Reply spin,[72] the Commission did not take an "unsupported leap" in reasoning that a stock award is tied to the Companies' financial performance and introduces an incentive for the employee/RSU-owner to prioritize shareholder gains.[73] First, the interdependence of financial performance and stock value

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[69] JI Resp., Sec. VIII, at 40-41.

[70] Case Nos. 2020-00349 and 2020-00350, *Electronic Application of [Companies] 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*, Order at 2 (Ky. P.S.C. Aug. 12, 2021) ("Rehearing does not present parties with the opportunity to relitigate a matter fully addressed in the original Order.").

[71] Case No. 2023-00159, *Electronic Application of Kentucky Power Company For (1) A General Adjustment of its Rates for Electric Service; (2) Approval of Tariffs and Riders; (3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; (4) A Securitization Financing Order; and (5) All Other Required Approvals and Relief*, Order at 26 (Ky. P.S.C. Jan. 19, 2024); Case No. 2013-00148, *Application of Atmos Energy Corporation for an Adjustment of Rates and Tariff Modifications*, Order at 20 (Ky. PSC Apr. 22, 2014).

[72] *See* LG&E-KU Reply at 10.

[73] "The Commission has historically disallowed recovery of incentive compensation tied to the financial performance of the company, and while the Commission agrees partially that RSUs are a time-based measure, 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." Case No. 2025-00114, Feb. 16, 2026 Order at 39. Identical language can be found in the 2025-00113 Feb. 16, 2026 Order at 44.

is general knowledge and not subject to reasonable dispute. Second, if evidence of general knowledge were required, the record provides:

> From the Companies: "LTI plan eligibility is limited to directors and a portion of managers and high-level 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**…."[74]

> From AG-KIUC witness Futral: "Thus, 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**.[75]

Whether based on common sense or witness statements, reasonable people cannot deny that receipt of RSUs makes an employee a shareholder, and as a shareholder, there would be an incentive for that employee to work for the benefit of shareholders/themselves.

In response to Staff rehearing request 1-10(b), the Companies assert that "if [incentive] payments were made in cash, the Commission would have approved them for rate recovery," *ipso facto* "it should make no difference that they are paid in shares of stock instead of cash."[76] But of course it makes a difference. Unlike cash, payment in RSUs conveys a value that is directly contingent on the Companies' financial performance over certain time periods. That difference matters.

Instead of more banging on the same drum, the Companies could solve this for themselves by seeking approval to pay a time-based incentive with a fixed cash value—a solution they're confident would be approved.[77] And if the Companies are right

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[74] *Response to Attorney General and Kentucky Industrial Utility Customers' Initial Request for Information Dated July 3, 2025*, Question 47 (July 16, 2025) (emphasis added).
[75] *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*, at 26 (Aug. 29, 2025) (emphasis added).
[76] LG&E-KU Resp. to Staff RH-10(b).
[77] *Id*.

that the RSU-financial performance nexus does not exist, a fixed cash amount payable after a certain period of time should be every bit as valuable and effective as RSUs.

IX. The Commission's Final Order is well-supported by record evidence, and one passing reference does not change that fact or render the proceeding unfair.

In defense of the Companies' most trivial rehearing argument—concerning references in a single footnote—the Companies misunderstand Joint Intervenors' mention of being "not unsympathetic" to due process concerns.[78] Joint Intervenors respect due process for all parties, even after being on the receiving end of the Companies' abuses of due process in this proceeding. The difference, of course, is that the Companies' argument does not begin to rise to the level of a legitimate due process issue.

There is a world of difference between the Companies' conduct in this proceeding and one footnote in the Commission's final order. The Companies' introduction of new issues and testimony on the eve of hearing prejudiced the parties by introducing entirely new issues for approval by the Commission.[79] In contrast, one footnote among 1,300, across hundreds of pages of discussion and analysis does not materially offend due process or otherwise undermine the ordered result.

As raised in Joint Intervenors Response, and unaddressed by the Companies' Reply, substantial record evidence supports the Commission's conclusions regarding economic development and demand uncertainty; even a reasonable forecast can present significant uncertainty and risk for customers; the existence of a special tariff does not resolve the uncertainties and risks that come with speculating about the arrival

[78] JI Resp. at 42-43; LG&E-KU Reply at 4.
[79] *See generally*, *Joint Intervenors' Response in Opposition to LGE/KU Motion for Leave to File Supplemental Testimony Regarding Stipulation Mechanisms and Mill Creek 2 Adjustment Clause* (Nov. 2, 2025).

of new data center customers; and the Companies offered no new evidence on rehearing that would bear on the Commission's legitimate uncertainty concerns.[80] There is no harm or foul here that the Commission needs to address on rehearing.

However, should the Commission wish to address the footnote in question on rehearing, it can be deleted with no other changes to the order. The Commission's final orders in these proceedings were robust and did not materially hinge on any individual footnote.[81]

CONCLUSION

For the foregoing reasons, Joint Intervenors respectfully urge the Commission to affirm its Final Order with respect to the issues addressed above.

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[80] JI Resp. at 42-43.
[81] *Id.*

Respectfully Submitted,

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CERTIFICATE OF SERVICE

In accordance with the Commission’s July 22, 2021 Order in Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19*, this is to certify that the electronic filing was submitted to the Commission on June 19, 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