**COMMONWEALTH OF KENTUCKY**

**BEFORE THE PUBLIC SERVICE COMMISSION**

**In the Matter of:**

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

**In the Matter of:**

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

**REBUTTAL TESTIMONY OF**
**ROBERT M. CONROY**
**VICE PRESIDENT, STATE REGULATION AND RATES**
**ON BEHALF OF**
**KENTUCKY UTILITIES COMPANY AND**
**LOUISVILLE GAS AND ELECTRIC COMPANY**

**Filed: September 30, 2025**

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## INTRODUCTION

**Q. Please state your name, position, and business address.**

A. My name is Robert M. Conroy. I am the Vice President of State Regulation and Rates for Kentucky Utilities Company ("KU") and Louisville Gas and Electric Company ("LG&E") (collectively, "Companies") and an employee of LG&E and KU Services Company. My business address is 2701 Eastpoint Parkway, Louisville, Kentucky 40223.

**Q. What is the purpose of your rebuttal testimony?**

A. I rebut a number of different arguments and assertions by various intervenors' witnesses. First, I rebut testimony by Attorney General ("AG") and Kentucky Industrial Utility Customers, Inc. ("KIUC") witness Lane Kollen concerning his highly selective set of proposed adjustments, his criticism of using a forecasted test year, and his proposal to re-trade the agreement made almost a decade ago concerning sharing of off-system sales ("OSS") margins. Second, I rebut AG-KIUC witness Randy A. Futral's assertion that including Long-Term Incentive Compensation Plan expense in the Companies' revenue requirements is unreasonable and creates improper incentives. Third, I rebut several policy-related arguments concerning the Companies' Rider NMS-2 net metering compensation rates and netting approach made by Joint Intervenors witness James Fine. Fourth, I rebut Joint Intervenors witness Roger D. Colton's testimony concerning his proposal to create return on equity penalties related to certain low-income and affordability metrics. Fifth, I rebut Sierra Club witness Jeremy I. Fisher's attempt to mount a collateral attack on the Companies' pending case seeking certificates of public convenience and necessity ("CPCNs"). Sixth and finally, I explain the constraints on the Commission's consideration of affordability and address Mr. Colton's concerns about the impact of the proposed increase to the Basic Service Charge on low-income customers.

## MR. KOLLEN'S SELECTION OF PROPOSED ADJUSTMENTS IS HIGHLY SELECTIVE

**Q. Do you have any overarching observations concerning Mr. Kollen's testimony?**

A. Yes. First, as Heather Metts addresses in her rebuttal testimony, Mr. Kollen (and others) assert the Companies' revenue requirements are overstated and selectively make recommendations to reduce the Companies' revenue requirements while ignoring other items that could result in *higher*, not lower, test year costs for the Companies. For example, Ms. Metts notes the PPL management challenge to reduce costs during the test year, which savings the Companies have assumed will occur and accordingly reduced their overall revenue requirement by $15.1 million; any shortfall in obtaining those savings will affect shareholders, not customers. Ms. Metts further notes that although certain intervenors have highlighted accounts in which actual expenses are lower than budgeted in the prior rate cases, they have not acknowledged accounts where actuals exceed the amounts embedded in rates—such as generation chemicals, depancaking, interest expense, and depreciation expense. The net effect of Mr. Kollen's (and others') recommendations and adjustments is to ensure that the Companies have no way to earn a reasonable return for their equity investors.

Second, I would note that Mr. Kollen begins with the Companies' August 25, 2025 update filings in making and applying his recommendations and adjustments.[1] Although the Companies did not intend for that update to in any way affect the rates they requested—certainly not to increase them—I believe it is appropriate to begin with

[1] Kollen at 6.

the update filings if any adjustments are made that would reduce the Companies' requested revenue requirement based on the values contained in Mr. Kollen's testimony.

## THE COMMISSION'S REGULATIONS PROVIDE FOR FORECASTED TEST YEARS AND USING THEM IS REASONABLE

**Q. Do you have any observations concerning Mr. Kollen's assertions that forecasted test years are "not tethered to actual results,"[2] giving utilities "every incentive to *understate* their revenues and *overstate* their costs"?[3]**

A. Yes. Contrary to Mr. Kollen's assertions, which he has made before to no avail,[4] there is nothing inappropriate about using a forecasted test year, for which the Commission's regulations have provided for over 30 years.[5] Also contrary to his assertions, there is an abundance of historical data in the record of this proceeding, as well as base year information, precisely to allow the Commission and others to evaluate the reasonableness of the Companies' forecasts. The Companies expect and welcome close scrutiny of all the information in the record, which they believe support their requested revenue increases.

And based on my decades of experience in the Companies' rate cases, which used historical test years until their 2014 base rate cases, it is clear that the same debates

[2] Kollen at 9. *See generally id.* at 9-11.
[3] Kollen at 10 (emphases original). *See generally id.* at 9-11.
[4] *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, Direct Testimony of Lane Kollen at 11-12 (Mar. 5, 2021); *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, Direct Testimony of Lane Kollen at 11-12 (Mar. 5, 2021).
[5] *See* 19 Ky. R. 1145-49 (Nov. 1, 1992); 19 Ky. R. 2047-51 (Mar. 1, 1993); 19 Ky. R. J11 (Apr. 1, 1993) (showing Mar. 12, 1993 effective date for revisions to 807 KAR 5:001 concerning forecasted test year).

and assertions arise regardless of the type of test year used. Thus, it is odd at best to insinuate that all would have been well if only the Companies had used a historical test year in these cases. Mr. Kollen is no stranger to disputes in historical test year cases; unsurprisingly, he did not file testimony fully endorsing the Companies' revenue requests when the Companies used historical test years, but rather argued that certain revenues were too low and various costs were too high, necessitating any number of adjustments.[6] Indeed, using *any* test year—as one must—invites challenge; more than once there have been assertions of "cherry picking" a historical test year and arguments about why its results would not reasonably indicate future results. Therefore, it is a sort of nostalgic fiction to assert that historical test years were or would be any less controversial than forecasted test years.

Finally, against Mr. Kollen's assertions about utilities' incentives in forecasted test year cases, it would be exceptionally shortsighted for the Companies to downplay revenues and inflate costs.[7] This is neither the Companies' first rate case, nor will it be their last. The Companies fully appreciate that they have built their credibility over decades; they equally appreciate they can lose it in a single case. Therefore, I respectfully but strongly disagree with Mr. Kollen's casual assertions about the Companies' incentives. Our long-term interests—and our customers' interests—are best served by seeking and having approved fair, just, and reasonable rates. We believe we have proposed just such rates in these proceedings.

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[6] *See, e.g., Application of Kentucky Utilities Company for an Adjustment of Its Electric Rates*, Case No. 2012-00221, Direct Testimony of Lane Kollen (Oct. 3, 2012); *Application of Louisville Gas and Electric Company for an Adjustment of Its Electric and Gas Rates, A Certificate of Public Convenience and Necessity, Approval of Ownership of Gas Service Lines and Risers, and a Gas Line Surcharge*, Case No. 2012-00222, Direct Testimony of Lane Kollen (Oct. 3, 2012).
[7] Kollen at 10.

## THE COMPANIES' EXISTING OFF-SYSTEM SALES APPROACH IS REASONABLE

**Q. How do you respond to Mr. Kollen's recommendation to "modify the sharing percentages for off-system sales margins through the OSS from the present 75% customers/25% Companies to 100% customers/0% Companies"?[8]**

A. As Mr. Kollen acknowledges, the Companies' existing Adjustment Clause OSS mechanisms, including the current OSS margin sharing ratios, resulted from the settlement approved in the Companies' 2014 base rate cases.[9] Notably, the AG and KIUC were signatories to that settlement agreement.[10]

What Mr. Kollen does not discuss is that prior to the 2014 base rate cases, the Companies reflected certain amounts of OSS margins in their proposed base rates.[11] If the Companies achieved more OSS margins than the amount embedded in base rates, they kept 100% of the benefit; if they achieved less, the relative loss was also 100% on the Companies. In the Companies' 2014 base rate cases, Mr. Kollen argued this should not continue and proposed an OSS margin mechanism for each of the Companies with a 90%-10% sharing approach relative to any OSS margins assumed in base rates:

> I recommend that the Commission adopt 90% to customers and 10% to the Companies sharing factors for the differences between actual OSS margins and the OSS margins included in the base revenue requirement. For example, if actual OSS margins are $1 million more than included in the base revenue requirement, then customers would be allocated $900,000 and shareholders would be allocated $100,000. On the other

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[8] Kollen at 8. *See id.* at 91-93.
[9] *Id.* at 91.
[10] *Application of Kentucky Utilities Company for an Adjustment of Its Electric Rates*, Case No. 2014-00371, Order Appx. A (Ky. PSC June 30, 2015); *Application of Louisville Gas and Electric Company for an Adjustment of Its Electric and Gas Rates*, Case No. 2014-00372, Order Appx. A (Ky. PSC June 30, 2015).
[11] *See, e.g., Application of Kentucky Utilities Company for an Adjustment of Its Electric Rates*, Case No. 2014-00371, Direct Testimony of Lane Kollen at 56 ln. 12-13 (Mar. 6, 2015) ("KU reflected OSS margins of $0.5 million as a reduction to its revenue requirement and LG&E reflected $2.7 million in its revenue requirement.").

> hand, if OSS margins are $1 million less, then customers would "pay" $900,000 and shareholders effectively would "pay" $100,000.[12]

Where the parties ultimately settled—including the AG and KIUC—was on a new OSS margin mechanism with a 75%-25% sharing arrangement and *no risk to customers* because OSS margins were assumed to be zero in base rates.[13] The Commission approved the OSS mechanism as part of its approval of the total settlement as fair, just, and reasonable.[14]

Mr. Kollen seeks *again* to re-trade the deal that the AG, KIUC, and others made—and the Commission approved—in the 2014 base rate cases; he sought to re-trade the deal in the Companies' 2018 and 2020 base rate cases, too.[15] With only two exceptions, his asserted reasons for re-trading the deal now are not new;[16] the same arguments existed in 2014 when he argued for a 90%-10% sharing (with potential *downside* to customers) and the AG and KIUC agreed to the existing 75%-25% sharing arrangement.

The first new argument Mr. Kollen asserts is that "in KPC's [Kentucky Power Company's] most recent rate case the Commission eliminated OSS margin sharing and

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[12] Case No. 2014-00371, Direct Testimony of Lane Kollen at 60 (Mar. 6, 2015); Case No. 2014-00372, Direct Testimony of Lane Kollen at 60 (Mar. 6, 2015).
[13] Case No. 2014-00371, Order at 4, 11, and Appx. A (Ky. PSC June 30, 2015); Case No. 2014-00372, Order at 5, 12, and Appx. A (Ky. PSC June 30, 2015).
[14] *Id.*
[15] *Electronic Application of Kentucky Utilities Company For an Adjustment of Its Electric Rates*, Case No. 2018-00294, Direct Testimony of Lane Kollen at 28-30 (Jan. 16, 2019); *Electronic Application of Louisville Gas and Electric Company For An Adjustment of Its Electric and Gas Rates*, Case No. 2018-00295, Direct Testimony of Lane Kollen at 28-30 (Jan. 16, 2019); Case No. 2020-00349, Direct Testimony of Lane Kollen at 109-111 (Mar. 5, 2021); Case No. 2020-00350, Direct Testimony of Lane Kollen at 109-111 (Mar. 5, 2021).
[16] The non-new arguments Mr. Kollen assert are at page 92 of his testimony:

> As regulated utilities, the Companies have an obligation to operate their systems efficiently and minimize fuel expense in exchange for guaranteed recovery of all prudent and reasonable fuel expenses through the F[AC] and base revenue requirements.
>
> In addition, there is no evidence that the present allocation to the Companies has incentivized them to make off-system sales that it otherwise could not or would not have made in the normal course of business.

required that all OSS margins be allocated to ratepayers."[17] That oversimplified account of what the Commission stated in the Commission order for which Mr. Kollen did not provide a citation misses two important points that entirely undermine his assertion.[18] First, the Commission issued the relevant Kentucky Power Company order *before* it issued its orders in the Companies' most recent base rate cases, orders in which the Commission did *not* change OSS margin sharing for the Companies.[19] Second, the reason the Commission gave for changing the margin sharing arrangement for Kentucky Power Company does not apply to the Companies: "Because Kentucky Power participates in PJM's energy market on an economic basis and the OSS margins are simply the outfall of its participation in PJM, the Commission finds that the OSS margins should not be shared between ratepayers and Kentucky Power."[20] Notably, the Companies are *not* RTO members and do actively seek beneficial trading opportunities; it is reasonable to continue to incentivize that beneficial, intentional activity.

Mr. Kollen's second new asserted justification is that "the Companies are constructing new generation capacity that likely will provide additional energy for off-

[17] Kollen at 92 ln. 22-23.
[18] Presumably Mr. Kollen intended to refer to *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) Approval of a Certificate of Public Convenience and Necessity; and (5) All Other Required Approvals and Relief*, Case No. 2020-00174, Order at 85-86 (Ky. PSC Jan. 13, 2021).
[19] *See 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, Order (Ky. PSC June 30, 2021); *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, Order (Ky. PSC June 30, 2021).
[20] Case No. 2020-00174, Order at 86 (Ky. PSC Jan. 13, 2021).

system sales and increased OSS margins, at least temporarily."[21] Although the Companies share Mr. Kollen's confidence and hope the Commission will approve the proposed Stipulation in the pending CPCN case, it is not a foregone conclusion. Moreover, as Mr. Kollen's testimony indicates, any ability to make large amounts of off-system sales any newly approved generation might allow should be temporary; the Companies do not construct generation to make off-system sales, and customers will still enjoy a significant benefit (75% of all OSS margins) to the extent favorable OSS opportunities arise. Finally, if load develops as the Companies anticipate, they will have less available capacity to make off-system sales in the future, even if the Commission approves all of the CPCN Stipulation-recommended resources.

In short, there are no changed circumstances that justify re-trading the 2014 rate case settlement agreement the AG and KIUC signed, just as there is no justification for Mr. Kollen to change the 90%-10% sharing position—with customer downside risk—he advocated in the Companies' 2014 base rate cases. Rather, he would simply like to reduce the Companies' revenue, which the Commission should disregard.

## THE COMPANIES' INCLUSION OF LONG-TERM INCENTIVE COMPENSATION PLAN EXPENSE IN THEIR REVENUE REQUIREMENTS IS REASONABLE AND DOES NOT CREATE IMPROPER INCENTIVES

**Q. How do you respond to Mr. Futral's assertion that the Companies' Long-Term Incentive Compensation Plan ("LTI Plan") motivates the Companies' personnel to seek "greater and more frequent rate increases from customers in order to**

[21] Kollen at 93.

**improve PPL's stock price," and the Commission should therefore disallow recovery of its cost through base rates?[22]**

A. Mr. Futral is incorrect. The Commission has indeed long held that a utility generally may not recover the cost of an incentive plan that has (1) financial performance metrics for payouts or awards, (2) financial performance metrics for funding even if the payout or award criteria are not based on financial performance, or (3) both.[23] But the Companies' LTI Plan has *no connection at all* to financial metrics, either for funding or for making awards. Indeed, Mr. Futral's testimony contains a quote from the Companies that says as much:

> PPL's LTI is an at-risk form of compensation designed to reward employees for contributing to the company's long-term success and is critical in the attraction and retention of key talent for these roles. LTI is provided in the form of restricted stock units (RSUs) that vest over a multiyear period. *RSUs are forfeited if an employee separates from the organization before the vesting date outside of a qualified retirement, death, or disability. This vesting structure encourages recipient to*

[22] Futral at 28.

[23] *Application of Kentucky-American Water Company for an Adjustment of Rates Supported by a Fully Forecasted Test Year*, Case No. 2010-00036, Order at 32-33 (Ky. PSC Dec. 14, 2010) ("We remain unconvinced that Kentucky-American's ratepayers receive any benefit from the AIP program to support the recovery of AIP's costs through rates. While some consideration is given to non-financial criteria, the AIP appears weighted to financial goals that primarily benefit shareholders. If these goals are not met, the program is unfunded and no Kentucky-American employee receives an incentive award regardless of how well he or she meets the customer satisfaction or service quality goals. Accordingly, we find that forecasted labor expense should be decreased …."); *Application of Atmos Energy Corporation for an Adjustment of Rates and Tariff Modifications*, Case No. 2013-00148, Order at 20 (Ky. PSC Apr. 22, 2014) ("Incentive criteria based on a measure of EPS [earnings per share], with no measure of improvement in areas such as safety, service quality, call-center response, or other customer-focused criteria, are clearly shareholder-oriented. As noted in the hearing on this matter, the Commission has long held that ratepayers receive little, if any, benefit from these types of incentive plans. … It has been the Commission's practice to disallow recovery of the cost of employee incentive plans that are tied to EPS or other earnings measures …."); *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) Approval of a Certificate of Public Convenience and Necessity; and (5) All Other Required Approvals and Relief*, Case No. 2020-00174, Order at 14 (Ky. PSC Jan. 13, 2021) ("[T]he Commission finds that incentive plan costs for funding metrics and performance metrics tied to financial objectives should be disallowed from recovery for ratemaking purposes absent a clear showing of benefit to ratepayers.").

> *remain employed through each vesting date to avoid forfeiture, which supports talent retention initiatives.*[24]

In short, there is no financial metric associated with the LTI Plan in any way; rather, eligible employees' RSUs vest solely if they remain employed, regardless of stock price performance or any other financial metric. This directly contradicts Mr. Futral's assertion that "the LTI plan expense [is] tied to total shareholder return [and] should be borne by shareholders, not customers."[25] Moreover, as the quote above explicitly states, the LTI Plan supports talent retention, which is a benefit to customers for all the reasons Vincent Poplaski explains in his rebuttal testimony. It is therefore appropriate for the Commission to include LTI Plan costs in the Companies' revenue requirements.

But then Mr. Futral goes beyond anything the Commission has previously held by asserting the Commission should exclude the cost of the LTI Plan's RSU awards because owning PPL stock "provides eligible directors and officers a direct incentive to seek greater and more frequent rate increases from customers in order to improve PPL's stock price."[26] But nowhere in the record is there any evidence the Companies have sought, are seeking, or will seek "greater and more frequent rate increases" than are necessary, and certainly there is no evidence the Companies would do anything differently in terms of rate case timing or magnitude if the LTI Plan awards were in cash rather than RSUs. Moreover, only the most shortsighted would see having too many and too large rate cases as a way to increase PPL's share price, particularly its long-term share price—yet a *long-term* incentive is exactly what is at issue here—as

[24] Futral at 26 (quoting Companies' Response to AG-KIUC 1-47 but providing no citation; surrounding citations and Exh. RAF-11 refer to and provide a copy of the Companies' Responses to AG-KIUC 1-46 and AG-KIUC 2-7) (emphasis added).
[25] Futral at 27 ln. 16-17.
[26] Futral at 28 ln. 9-11.

though the reputational damage from such behavior would have no effect on the Companies (and thus PPL's share price) or the Commission would uncritically accede to too frequent and unsupported rate requests. Indeed, contrary to Mr. Futral's assertion, one might just as easily and more reasonably argue that issuing RSUs rather than cash through the LTI Plan increases employees' incentives to do things that benefit customers at least as much as shareholders, including seeking ways to reduce expenses and obtain new revenue sources like additional off-system sales. Therefore, Mr. Futral's assertion lacks any support in fact or Commission precedent, and the Commission should reject it.

## THE COMPANIES' PROPOSED RIDER NMS-2 RATES ARE REASONABLE AND THEIR ESTABLISHED RIDER NMS-2 NETTING APPROACH IS CONSISTENT WITH AND REQUIRED BY KENTUCKY STATUTES AND COMMISSION ORDERS

**Q. Regarding the Companies' proposed Rider NMS-2 compensation rates, Mr. Fine argues the Companies are "denying the values of DER [distributed energy resources]."[27] Is that what the Companies are doing?**

A. Not at all. The Companies do not oppose DERs. But the Commission must bear in mind that *all* customers—not the Companies—pay the cost of Rider NMS-2 compensation for energy supplied to the grid. It is a pure pass-through cost for the Companies, collected through the Companies' FAC mechanisms as a purchase power expense. The Companies' interest and goal in proposing the Rider NMS-2 (and qualifying facility) rates they have proposed is to present their best view of the costs such resources will help avoid, which is part of the Companies' overarching duty to provide safe and reliable service at the lowest reasonable cost.

[27] Fine at 39 ln. 15.

But it is also important to bear in mind what the Companies' witness Peter W. Waldrab stated in his direct testimony concerning avoided costs and Rider NMS-2 rates: It is certainly possible that sufficient quantities of DERs with the appropriate characteristics that the Companies can control and dispatch could create additional avoided costs. But compensating customers for allowing the Companies to have the requisite control should not occur through Rider NMS-2 compensation rates precisely because the statutory construct for those rates does not include any provision or requirement for participating customers to allow the serving utility requisite control. That control is something the Companies would seek and compensate through other offerings, e.g., a bring-your-own-device or bring-your-own-battery program. In short, it makes no sense to compensate Rider NMS-2 customers for costs they do not help avoid because Rider NMS-2 does not require customers to grant the Companies the control necessary to plausibly create additional avoided costs; rather, it is appropriate to compensate customers willing to offer such control through voluntary programs established for that purpose.

**Q. How do you respond to certain of Mr. Fine's other arguments for promoting DERs, including advancing fossil unit retirements, particularly coal unit retirements,[28] and "non-monetizable benefits [that] accrue to non-NMS customers"?[29]**

A. Mr. Fine advocates for promoting DERs as a way to accelerate fossil unit retirements, especially coal unit retirements:

> [T]he Companies can expand/create utility programs that activate and utilize DERs at scales of significance (e.g., big and fast enough to enable

[28] Fine at 9.
[29] Fine 39.

> the retirement of more-costly coal plants, or minimize the need for new capacity additions).
>
> For example, a significant benefit can be the closure of coal power plants well ahead of the schedule shown in the Companies' 2024 IRP.
> …
>
> Coal and natural gas plant closures are appropriate goals for expanding capacities on the customer side of the meter.[30]

But Mr. Fine's position ignores the General Assembly's longstanding statutory policy "to foster and encourage use of Kentucky coal by electric utilities serving the Commonwealth,"[31] its recent enactment of statutes intended to slow, not speed, fossil unit retirements,[32] and its recently enacted policy statements opposing fossil unit retirements:

> (k) Further retirement of fossil fuel-fired electric generating resources is not necessary for the protection of the environment or the health, safety, and welfare of the citizens of the Commonwealth;
>
> (l) The health, happiness, safety, economic opportunity, and general welfare of the citizens of the Commonwealth will be promoted and protected by the operation of fossil fuel-fired electric generating resources and, conversely, those interests would be harmed by the premature retirement of those generating resources[.][33]

Regarding "non-monetizable benefits [that] accrue to non-NMS customers," the Commission, following Kentucky courts' guidance,[34] has explicitly stated it lacks

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[30] Fine at 9.
[31] KRS 278.020(1)(c).
[32] KRS 278.262 and 278.264.
[33] KRS 164.2807(1)(k) and (l). *See generally* KRS 164.2807(1).
[34] *EnviroPower, LLC v. Public Service Commission of Kentucky*, 2007 WL 289328 at *4 (Ky. App. 2007) (not to be published) ("First, there is the statutory limitation under KRS 278.040(2) that the person seeking intervention must have an interest in the 'rates' or 'service' of a utility, since those are the only two subjects under the jurisdiction of the PSC."); *The 2011 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company*, Case No. 2011-00140, Order at 4 (Ky. PSC July 8, 2011) ("[I]ssues of environmental externalities, such as air and water pollution from generating electricity and mining fuel to supply the generating plants, are all issues beyond the scope of the Commission's jurisdiction."); *The 2008 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company*, Case No. 2008-00148, Order at 5-6 (PSC Ky. July 18, 2008) ("Notably absent from the Commission's jurisdiction are environmental concerns,

jurisdiction over such non-energy benefits: "The Commission has no jurisdiction over environmental impacts, health, or other non-energy factors that do not affect rates or service."[35]

In sum, Mr. Fine's policy-related arguments favoring DERs to support higher Rider NMS-2 compensation rates are contrary to the General Assembly's stated polices concerning fossil units and outside the Commission's jurisdiction concerning "non-monetizable benefits." Therefore, the Commission should disregard them.

**Q. Are the Rider NMS-2 compensation rates Mr. Fine proposes plausible?[36]**

A. No, the Rider NMS-2 compensation rates Mr. Fine proposes are implausible on their face. They are more than double the Rider NMS-2 rates most recently approved for the Companies,[37] and they are nearly triple those the Commission approved for Duke Energy Kentucky in Case No. 2023-00413.[38] They are higher than the Companies'

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which are the responsibility of other agencies within Kentucky state government."); *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 28-29 (Ky. PSC Oct. 5, 2018) (emphasis added; internal citation to KRS 278.040(2)):

> KRS Chapter 278 creates the Commission as a statutory administrative agency empowered with "exclusive jurisdiction over the regulation of rates and service of utilities." *The Commission has no jurisdiction over environmental impacts, health, or other non-energy factors that do not affect rates or service. Lacking jurisdiction over these non-energy factors, the Commission has no authority to require a utility to include such factors in benefit-cost analyses of DSM programs.* As LG&E/KU correctly note, it does not follow from their citing in 2014 of the potential avoidance of environmental compliance costs in rates in support of the construction of a 10 MW solar facility that the Commission has jurisdiction in a DSM case to require an analysis of non-energy criteria such as environmental and health factors that have no impact on rates.

*But see, e.g.,* Case Nos. 2020-00349 and 2020-00350, Order at 57-58 (Ky. PSC Sept. 24, 2021).

[35] Case No. 2017-00441, Order at 28 (Ky. PSC Oct. 5, 2018).

[36] Fine at 15, Tbl. JF-3.

[37] *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*, Case No. 2023-00404, Order Appx. A at 3 and Appx. B at 3 (Ky. PSC Aug. 30, 2024).

[38] *Electronic Application of Duke Energy Kentucky, Inc. for an Adjustment to Rider NM Rates and for Tariff Approval*, Case No. 2023-00413, Order Appx. (Ky. PSC Oct. 11, 2024).

Rate RS and GS energy rates. Indeed, they are higher on a per-kWh basis than the Companies' entire forecast revenue requirements in these cases spread over all the forecast energy (about $0.12/kWh for both Companies). And as Mr. Schram testifies, they are about triple the current cost of available solar power purchase agreements ("PPAs"), and the *most* any utility should pay for distributed solar is the cost of utility-scale solar plus any local system benefits.

Mr. Fine attempts to justify the enormous discrepancy between his proposed Rider NMS-2 rates and any more plausible rate by appealing to other states' value of solar or distributed generation rates.[39] But to state the obvious, other states' rates have nothing to do with the Companies' avoided costs in Kentucky.

In contrast, the Companies' proposed Rider NMS-2 rates rest on evidence of *the Companies'* avoided costs. An observation concerning those costs is that, to date, there have been no identifiable transmission, distribution, carbon, or ancillary service cost savings created by Rider NMS-2 customers, notwithstanding that all customers have been paying NMS-2 customers rates that assumed such avoided costs for four years. The Companies' analysis shows there is no reason to expect any such avoided costs in the future resulting from Rider NMS-2 customers (again, Rider NMS-2 does not provide the Companies control of customers' DERs). Therefore, the Companies' proposed Rider NMS-2 rates, not those proposed by Mr. Fine, are reasonable.

**Q. Mr. Fine asserts that the Companies are not following Commission guidance by using "instantaneous netting" for Rider NMS-2.[40] Is he correct?**

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[39] *See, e.g.,* Fine at 11-13.
[40] Fine at 40-41.

A. No. The Companies' Rider NMS-2 is fully in compliance with the order Mr. Fine cites, as well as KRS 278.465 and 278.466, which the Commission itself has stated. The Companies provided a lengthy explanation for why this is true in response to PSC 4-16, which includes as attachments a number of documents from the Companies' appeal to the Franklin Circuit Court on this very issue. It also notes that the Commission has since confirmed the Companies' approach to netting for Rider NMS-2 is the correct approach in at least two separate cases.[41] Therefore, the Companies' Rider NMS-2 provisions are fully in compliance with the order Mr. Fine cites, as well as KRS 278.465 and 278.466. Therefore, the Commission should disregard Mr. Fine's testimony on this issue.

## MR. COLTON'S PROPOSED PERFORMANCE-BASED RATEMAKING APPROACH IS CONTRARY TO COMMISSON PRECEDENT AND KENTUCKY STATUTE

**Q. Mr. Colton argues for the Commission to implement performance-based ratemaking ("PBR") for the Companies tied to certain low-income customer and affordability metrics, namely to reduce the Companies' allowed return on equity for non-compliance with his preferred metrics, including reduced disconnections and arrears and increased LIHEAP and WeCare enrollments.[42] How do you respond?**

A. There is no merit to Mr. Colton's proposals. The Commission has held for more than 20 years that it lacks authority to distinguish among customers based on income for

[41] *Alfred Saylor v. KU*, Case No. 2022-00030, Order at 4-6 (Ky. PSC July 1, 2022); Case No. 2022-00030, Order at 4-7 (Ky. PSC Dec. 12, 2022); *Electronic Application of Duke Energy Kentucky, Inc. for an Adjustment to Rider NM Rates and for Tariff Approval*, Case No. 2023-00413, Order at 40-42 (Ky. PSC Oct. 11, 2024).
[42] Colton at 92-102.

base rate purposes,[43] which position it reaffirmed as recently as last year.[44] In the same vein, the Commission has explicitly stated it cannot address affordability as a means of distinguishing among customers for rate purposes and noted that the U.S. Supreme Court has stated that affordability is not a proper concern of utility regulators:

> [A]ffordability is not a factor that the Commission can consider because KRS 278.170(1) prohibits rates that establish an unreasonable preference between classes of service for doing a like service under the same or substantially the same conditions. Further, the United States Supreme Court has held that a focus on the ability of the customer to pay for utility service is the concern of the utility and not the regulatory agency because the regulatory agency is charged with both assuring the public of reliable, efficient service at a reasonable price and assuring the utility that it may collect fair, just, and reasonable rates.[45]

Indeed, the only provision of Kentucky utility regulatory law of which I am aware that addresses income-related issues is the provision of the demand-side management ("DSM") statute allowing, *not requiring*, home energy assistance programs to be part of utilities' DSM programs.[46] Notably, the statute neither creates any enrollment requirements nor authorizes any penalty for not achieving any particular enrollment level; again, it does not even require utilities to implement such programs. Thus, there is no support for Mr. Colton's proposals in prior Commission orders, and there is clear Commission precedent undermining the foundation of his proposals.

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[43] *Adjustment of Rates of Kentucky-American Water Company*, Case No. 2004-00103, Order at 82-84 (Ky. PSC Feb. 28, 2005).

[44] *Electronic Application of Kentucky-American Water Company for an Adjustment of Rates, A Certificate of Public Convenience and Necessity for Installation of Advanced Metering Infrastructure, Approval of Regulatory and Accounting Treatments, and Tariff Revisions*, Case No. 2023-00191, Order at 67-69 (Ky. PSC May 3, 2024).

[45] *Electronic Application of Kentucky-American Water Company for an Adjustment of Rates*, Case No. 2018-00358, Order at 3 (Ky. PSC Jan. 3, 2019), citing *Gainesville Util. Dept. v. Fla. Power Corp.*, 402 U.S. 515, 528 (1971).

[46] KRS 278.285(4).

Note also that KRS Chapter 278 already has a penalty provision, namely KRS 278.990, which does not allow or even address return on equity reductions (or their dollar-value equivalents) as penalties.

But perhaps most importantly, the Kentucky Supreme Court has stated, and the Commission has recognized, that the Commission cannot reduce returns on equity or use any others means of reducing rates to penalize utilities for service or management performance. Therefore, the Commission cannot approve Mr. Colton's proposed PBR approach.[47]

## THE COMMSSION SHOULD REJECT MR. FISHER'S ATTEMPTED COLLATERAL ATTACK ON THE COMPANIES' PENDING CPCN CASE

**Q. Mr. Fisher asserts the Companies have put the cart before the horse by seeking approval for CPCNs in Case No. 2025-00045 before having approval for Rate**

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[47] *Ky. Pub. Serv. Comm'n v. Commonwealth ex rel. Conway*, 324 S.W.3d 373, 381 n. 16 (Ky. 2010) ("While we recognize that the PSC has discretion in fulfilling its statutory duty of insuring that rates are fair, just, and reasonable, we do not hold that the PSC has unlimited power to do whatever it wants in regards to ratemaking. For example, in *South Central Bell v. Utility Regulatory Commission*, 637 S.W.2d 649 (Ky.1982), we recognized that the PSC (or its predecessor) could not use its plenary ratemaking authority for purposes other than insuring that rates were fair, just, and reasonable; specifically we held that the Commission could not order a rate that was too low to be "fair, just, and reasonable" to penalize a utility for poor service because statutes required separate procedures for dealing with ratemaking issues and dealing with service issues."); *S. Cent. Bell v. Util. Regul. Comm'n*, 637 S.W.2d 649, 653 (Ky.1982) ("Clearly, the legislature has provided two effective vehicles to enforce its order, including those that deal with adequacy of service. It is equally clear that the General Assembly omitted a specific provision allowing the Commission to enforce its service cases by a reduction in the rate case. … We believe that granting the Commission the authority, in a rate case, to penalize the utility for poor service would be an improper extension of the statutory procedure."); *An Investigation into the Reasonableness of the Earnings of Brandenburg Telephone Company, Inc.*, Case No. 92-563, Order at 6 (Ky. PSC Oct. 15, 1993) ("[T]he rates of a utility and its service standards are to be considered as separate issues and not intertwined. In *S. Cent. Bell v. Util. Regul. Comm'n*, 637 S.W.2d 649 (Ky.1982), the Kentucky Supreme Court forbade this Commission to consider South Central Bell's poor quality of service to lower an otherwise reasonable rate of return. In that case, the Commission had determined, as it has here, a rate of return for a utility and after making that determination, penalized the utility by reducing the rate of return for its poor service quality. The Commission is, therefore, precluded by law from considering quality of service in awarding to a utility a rate of return other than that found reasonable.") (internal citation abbreviated); *Electronic Application of Southern Water and Sewer District for an Alternative Rate Adjustment*, Case No. 2018-00230, Order at 4-5 (Ky. PSC Jan. 31, 2019) (citing *S. Cent. Bell v. Util. Regul. Comm'n*, 637 S.W.2d 649, 653 (Ky.1982)) ("Although the Commission shares the Attorney General's concerns regarding Southern Districts' management practices, contrary to the Attorney General's assertion the Commission does not have statutory authority to penalize Southern District for its management practices by arbitrarily reducing rates as a penalty.").

**EHLF: "It is imperative that we put <u>infrastructure after tariffs</u> and not the reverse."[48] Is he correct?**

A. No. Contrary to Mr. Fisher's strenuous assertion, it is not necessary to establish Rate EHLF before the Commission can consider the Companies' resource needs. There are at least three reasons why Mr. Fisher is incorrect and his collateral attack on the Companies' pending CPCN case must fail.

First, the signatories to the Stipulation in the pending CPCN case—including the AG and KIUC—disagree with him; presumably they would not have signed an agreement asking the Commission to approve CPCNs for new generation resources if they took the view that no such resource decision can be made before Rate EHLF is established.

Second, the Companies have stated and reaffirm here that if a Rate EHLF-eligible customer desires to enter into a contract for retail electric service before the Commission approves the new rate schedule, the Companies will enter into a special contract with Rate EHLF's terms and will present it to the Commission for review.

Third, the Commission approved the Companies' proposed solar PPAs in Case No. 2022-00402 while also stating that the ratemaking for how to recover such costs could wait for another proceeding: "[T]he Commission concludes that it is premature to enter a decision on the method of cost recovery of the Solar PPAs."[49] Notably, Sierra Club did not seek rehearing or reconsideration of that issue.

[48] Fisher at 30 (emphasis original).

[49] *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 Generation Unit Retirements*, Case No. 2022-00402, Order at 131 (Ky. PSC Nov. 6, 2023). *See id.* at 171-72 and 179.

Finally, the real target of Mr. Fisher's argument is plain: he means to undermine the need for the Stipulation-recommended resources in the CPCN case. The Commission should thus disregard it as an attempt to influence the outcome of another proceeding; it adds nothing to the consideration of Rate EHLF in this case.

## THE COMMISSION SHOULD REJECT MR. COLTON'S LOW-INCOME AND BSC PROPOSALS

**Q. Mr. Colton makes numerous suggestions regarding low-income customers, which Ms. Montgomery addresses. Do regulatory constraints exist for the Commission's consideration of rates of low-income customers?**

A. Yes. The Commission has long held that low-income rates are impermissible under existing law;[50] it has never deviated from that position, which is consistent with the requirement of KRS 278.170(1) not to discriminate with regard to rates or service for "doing a like and contemporaneous service under the same or substantially the same conditions." Moreover, the Commission has stated that it cannot consider affordability in determining the reasonableness of rates: "[A]ffordability is not a factor that the Commission can consider because KRS 278.170(1) prohibits rates that establish an unreasonable preference between classes of service for doing a like service under the same or substantially the same conditions."[51] Therefore, although the Companies understand and empathize with the difficulties low- and moderate-income customers face, there are limits to how that information can bear upon ratemaking.

[50] *See, e.g., Application for Adjustment of the Rates of Kentucky-American Water Company*, Case No. 2004-00103, Order at 82-84 (Ky. PSC Feb. 28, 2005).
[51] *Electronic Application of Kentucky-American Water Company for Adjustment of Rates*, Case No. 2018-00358, Order at 3 (Ky. PSC Jan. 3, 2019).

**Q. Please comment on Mr. Colton's concerns about the impact of the proposed increase to the Basic Service Charge ("BSC") on low-income customers.**

A. The proposed adjustments to the BSC are designed to more accurately recover fixed costs through fixed charges. KU has proposed an average residential customer bill increase of $18.15,[52] of which less than $3.35[53] results from an increased BSC. The same is true for LG&E electric and gas, which have proposed average residential customer bill increases of $11.02[54] and $11.12,[55] respectively, of which less than $2.13[56] and $4.87,[57] respectively, result from an increased BSC. Mr. Colton is incorrect to assert that granting the Companies their requested residential BSCs will decrease incentives to engage in energy efficiency or conservation. Increasing the Companies' residential BSCs as proposed is consistent with cost of service and would increase energy efficiency incentives relative to today's rates.

**Q. Does this conclude your testimony?**

A. Yes, it does.

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[52] KU Application Sch. M-2.2.

[53] KU Application Sch. M-2.3. Multiplying the $0.11 difference between the current daily charge of $0.53 and the proposed charge of $0.64 by 365 days and dividing by 12 months yields $3.35.

[54] LG&E Application Sch. M-2.2-E.

[55] LG&E Application Sch. M-2.2-G.

[56] LG&E Application Sch. M-2-3-E. Multiplying the $0.07 difference between the current daily charge of $0.45 and the proposed charge of $0.52 by 365 days and dividing it by 12 months yields $2.13.

[57] LG&E Application Sch. M-2-3-G. Multiplying the $0.16 difference between the current daily charge of $0.65 and the proposed charge of $0.81 by 365 days and dividing it by 12 months yields $4.87.

## VERIFICATION

**COMMONWEALTH OF KENTUCKY )**
**)**
**COUNTY OF JEFFERSON )**

The undersigned, **Robert M. Conroy**, being duly sworn, deposes and says that he is Vice President, State Regulation and Rates for Kentucky Utilities Company and Louisville Gas and Electric Company and an employee of LG&E and KU Services Company, that he has personal knowledge of the matters set forth in the foregoing testimony, and that the answers contained therein are true and correct to the best of his information, knowledge, and belief.

Robert M. Conroy

**Robert M. Conroy**

Subscribed and sworn to before me, a Notary Public in and before said County and State, this 29th day of September 2025.

Tammy J. Elzy

Notary Public

Notary Public ID No. KYNP61560

My Commission Expires:

November 9, 2026