

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

In the Matter of:

ELECTRONIC APPLICATION OF KENTUCKY)	
POWER COMPANY FOR (1) A GENERAL)	
ADJUSTMENT OF ITS RATES FOR ELECTRIC)	
SERVICE; (2) APPROVAL OF TARIFFS AND)	CASE NO. 2025-00257
RIDERS; (3) APPROVAL OF CERTAIN)	
REGULATORY AND ACCOUNTING)	
TREATMENTS; AND (4) ALL OTHER REQUIRED)	
APPROVALS AND RELIEF)	

**POSTHEARING BRIEF OF JOINT INTERVENORS APPALACHIAN
CITIZENS' LAW CENTER, KENTUCKIANS FOR THE
COMMONWEALTH, KENTUCKY SOLAR ENERGY SOCIETY, AND
MOUNTAIN ASSOCIATION**

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INTRODUCTION AND BACKGROUND

Procedural History

This matter is before the Commission on the Application of Kentucky Power Company (“Company” or “KPCo”) for an increase to its base rates pursuant to KRS 278.180.¹ Kentucky Power Company is a subsidiary of American Electric Power Company (“AEP”), a multi-state parent company of several different operating companies, including KPCo.²

Following the Company’s Notice of Intent³ several parties moved for and were granted full intervention, including the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention (“OAG”);⁴ Kentucky Industrial Utility Customers, Inc. (“KIUC”);⁵ Kentucky Solar Industries Association, Inc. (“KYSEIA”);⁶ SWVA Kentucky, LLC (“SWVA”);⁷ and Appalachian Citizens’ Law Center (“ACLC”), Kentuckians For The Commonwealth (“KFTC”), Kentucky Solar Energy Society (“KYSES”), and Mountain Association (collectively, “Joint Intervenors”).⁸

Pursuant to the Commission’s Scheduling Order, each intervening party was permitted two prehearing sets of discovery requests upon the Company and to provide Direct Testimony on their behalf to the Commission.⁹ Commission Staff submitted four

¹ Application (Aug. 29, 2025).

² Direct Testimony of Cynthia G. Wiseman on Behalf of Kentucky Power Company at 3, 5 (Aug. 29, 2025) (“Wiseman Direct”).

³ Notice of Intent (Jul. 29, 2025).

⁴ Attorney General’s Motion to Intervene (Jul. 31, 2025), *granted*, Order (Aug. 13, 2025).

⁵ Motion to Intervene of Kentucky Industrial Utility Customers, Inc. (Sep. 05, 2025), *granted*, Order (Sep. 30, 2025). Through much of the proceeding the OAG and KIUC coordinated, and offered joint discovery requests and testimony. See Notice of Witness Sharing Agreement between AG/KIUC (Sep. 04, 2025).

⁶ Kentucky Solar Industries Association, Inc. Motion to Intervene (Sep. 17, 2025), *granted*, Order (Oct. 10, 2025).

⁷ Motion to Intervene of SWVA Kentucky, LLC (Sep. 17, 2025), *granted*, Order (Oct. 10, 2025).

⁸ Joint Motion of Appalachian Citizens’ Law Center, Kentuckians for the Commonwealth, Kentucky Solar Energy Society, and Mountain Association for Full Intervention Out of Time as Joint Intervenors (Sep. 19, 2025), *granted*, Order (Oct. 10, 2025).

⁹ Order (Sep. 11, 2025); each party availed themselves except SWVA, which offered only one set of discovery requests and no testimony.

sets of discovery requests on the Company prior to hearing, and one on each of the intervening parties that offered direct testimony.¹⁰ The Company also served discovery requests upon each intervening party that provided direct testimony, and provided rebuttal testimony, and all discovery requests were responded to in the record by all parties pursuant to the Commission’s Scheduling Order.¹¹

After several conferences, a settlement was reached prior to hearing between the Company, KIUC, and KYSEIA, (together, “Signatory Parties”) and entered with the Commission.¹² Joint Intervenors, OAG, and SWVA did not join the settlement. Pursuant to Orders of the Commission several public meetings to accept oral comments were held in the Company’s territory,¹³ and a formal hearing was held in this matter on January 13-15, 2025, at which all parties offering testimony made their witnesses present for cross-examination.¹⁴ Prior to adjournment of the hearing a post-hearing schedule was set by the Commission Chair from the bench,¹⁵ followed by written order,¹⁶ allowing one round of post-hearing data requests and responses.¹⁷ The matter stands ready for briefing.

¹⁰ Commission Staff’s First Request for Information to Kentucky Power Company (Aug. 14, 2025); Commission Staff’s Second Request for Information to Kentucky Power Company (Sep. 24, 2025); Commission Staff’s Third Request for Information to Kentucky Power Company (Oct. 23, 2025); Commission Staff’s Fourth Request for Information to Kentucky Power Company (Dec. 16, 2025); Commission Staff’s First Request for Information to the Attorney General of the Commonwealth of Kentucky, by and Through the Office of Rate Intervention and Kentucky Industrial Utility Customers, Inc. (Nov. 25, 2025); Commission Staff’s First Request for Information to Joint Intervenors Appalachian Citizens Law Center, Kentuckians For The Commonwealth, Kentucky Solar Energy Society, and Mountain Association (Nov. 25, 2025); Commission Staff’s First Request for Information to Kentucky Solar Industries Association, Inc. (Nov. 25, 2025).

¹¹ Order (Sep. 11, 2025).

¹² Joint Motion to Approve Settlement Agreement (Jan. 09, 2026); Testimony of Tanner S. Wolffram on Behalf of Kentucky Power Company in Support of the Settlement Agreement at S1-S2 (Jan. 09, 2026) (“Wolffram Settlement Testimony”).

¹³ Order (Oct. 17, 2025).

¹⁴ Order (Nov. 17, 2025); Hearing Video Testimony (“HVT”) Jan. 13-15, 2026.

¹⁵ HVT Jan. 15, 2026 at 4:57 to 5:00 p.m.

¹⁶ Order (Jan. 20, 2026).

¹⁷ HVT Jan. 15, 2026 at 4:57 to 5:00 p.m.; Order (Jan. 20, 2026).

Background

The Company serves a swath of primarily rural Eastern Kentucky bordering Virginia and West Virginia.¹⁸ The area suffers from high unemployment, and below average income levels.¹⁹ Overall, the Company's rates have outpaced incomes in the area, with rates outpacing incomes for the lowest 40% of incomes in every County served by the Company.²⁰ Yet the Company has not earned its authorized return on equity ("ROE") since at least prior to March 2018, with an apparent downward linear trend in earned ROE occurring since that time.²¹ This is described as the primary reason for the application in this case.²²

This is the third application for an increase to the Company's base rates in a period of five years, following increases in 2021,²³ and 2024.²⁴ Final Orders setting increases less than applied for in each of those cases were challenged by the Company in motions for rehearing and subsequent appeals to the Franklin Circuit Court, with the most recent dispute being settled with an additional surcharge being only just approved

¹⁸ Direct Testimony of Michele Ross on Behalf of Kentucky Power Company at 4, Exhibit MR-1 (Aug. 29, 2025) ("Ross Direct").

¹⁹ HVT Jan. 13, 2026 at 9:58 a.m.

²⁰ Direct Testimony of Roger D. Colton on Behalf Of: Joint Intervenors Appalachian Citizens Law Center, Kentuckians for the Commonwealth, Kentucky Solar Energy Society, and Mountain Association at 7-14 (Nov. 17, 2026) ("Colton Direct"). As noted by Mr. Colton, although prices declined from 2022-2023 slightly, they immediately rebounded in 2024 and 2025.

²¹ Direct Testimony of Jeffrey D. Newcomb on Behalf of Kentucky Power Company at 8, Figure JDN-1 (Aug. 29, 2025).

²² Wiseman Direct at 12-13.

²³ Case No. 2020-00174, *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*, Order (Jan. 13, 2021), rehearing granted in part and denied in part, Order (Feb. 22, 2021), affirmed, *Ky. Power Co. v. Public Service Comm'n of Ky.*, Franklin Circuit Case No. 21-CI-00211 (Oct. 30, 2024).

²⁴ 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 (Jan. 19, 2024); rehearing denied, Order (Feb. 19, 2024), reversed, *Ky. Power Co. v. Public Service Comm'n of Ky.*, Franklin Circuit Case No. 24-CI-00160 (Jan. 22, 2025).

in October, 2025.²⁵ Interim changes to rates have occurred through adjustments following implementation of securitization in the previous case,²⁶ as well as amendments to the Company's environmental surcharge,²⁷ and standard increases in pass-through surcharges such as the fuel adjustment clause.²⁸

The Company's financial position, and that of the economy in its area has been described as a "financial death spiral," with increasing rates contributing to population decline, which in turn contributes to further increases in rates.²⁹ This leaves a situation where some portion of the Company's residential rate paying base is in such a financial position, with poorly insulated housing stock, that they are left either heating the ground beneath their home or isolating themselves to a single room with a space heater.³⁰

Instead of seeking to solve the underlying problem of high rates, low income, high unemployment, and high usage, this proposal only contributes to the issues plaguing KPCo's territory, while throwing a bone to the highest usage customers and at the same time encouraging the opposite of reduction in usage or lower long-term bills.

LEGAL STANDARD

Utilities are granted a monopoly status normally disfavored in our system of governance and economics, under the "regulatory bargain" where the exclusive right to serve is predicated on an obligation to provide safe and reliable services without

²⁵ Case No. 2023-00159, Order (Oct. 15, 2025).

²⁶ Case No. 2023-00159, Order (Apr. 11, 2025).

²⁷ Case No. 2025-00175, *Electronic Application of Kentucky Power Company for Approval of (1) a Certificate of Public Convenience and Necessity to Make the Capital Investments Necessary to Continue Taking Capacity and Energy from the Mitchell Generating Station After December 31, 2028, (2) an Amended Environmental Compliance Plan, (3) Revised Environmental Surcharge Tariff Sheets, and (4) All Other Required Approvals and Relief*, Order (Dec. 30, 2025).

²⁸ See, e.g., Case No. 2025-00338, *An Electronic Examination of the Application of the Fuel Adjustment Clause of Kentucky Power Company from November 1, 2022 Through October 31, 2024*, Direct Testimony of Lerah M. Kahn on Behalf of Kentucky Power Company (Jan. 23, 2026).

²⁹ HVT Jan. 13, 2026 at 3:28 to 3:40 p.m.

³⁰ HVT Jan. 13, 2026 at 1:59 to 2:00 p.m.

discrimination under tariffs that are fair, just, and reasonable. That oversight is a legislative function, which the legislature may either carry out directly or delegate to an agency.³¹ The Kentucky General Assembly has delegated that oversight, including over ratemaking, to this Commission.³²

I. Fair, Just, and Reasonable

The guiding principle set by the Kentucky legislature as to rates, common with many jurisdictions, is that utilities are entitled to “demand, collect and receive fair, just and reasonable rates.”³³ Utilities must act in accordance with the requirements of the statutes and Commission regulations in setting and charging rates.³⁴ It is the burden of the utility to demonstrate to the satisfaction of the Commission that proposed rates are fair, just, and reasonable.³⁵ It is for the Commission, though, to determine the approved rates to be fair, just, and reasonable. As the Supreme Court of Kentucky has stated, “[t]he accountants for the Utility do not establish the rates for the consuming public. Only the regulatory commission has that responsibility.”³⁶

Since at least *Fed. Power Com. v. Hope Nat. Gas Co.* was decided by the United States Supreme Court in 1944, what constitutes fair, just, and reasonable rates has consistently been the *lowest* reasonable rates that would not be confiscatory under the Constitutions of the United States and the Commonwealth of Kentucky while enabling

³¹ *Ky. Indus. Util. Customers, Inc. v. Ky. Utils. Co.*, 983 S.W.2d 493, 495 (Ky. 1998).

³² KRS 278.040.

³³ KRS 278.030(1).

³⁴ KRS 278.180.

³⁵ KRS 278.190(3).

³⁶ *Ky. Indus. Util. Customers*, 983 S.W.2d at 501.

successful operation, maintaining financial integrity, and providing a return commensurate with the risks of the investment even if meager.³⁷

According to the Kentucky Supreme Court:

A confiscatory rate is one that is unjust and unreasonable. Rates are non-confiscatory, just and reasonable so long as they enable the utility to operate successfully, to maintain its financial integrity, to attract capital and to compensate its investors for the risks assumed even though they might produce only a meager return on the so-called 'fair value' rate base.³⁸

Utilities, therefore, have a constitutional right to rates that afford an opportunity to keep doing business.³⁹ However, ratepayers also have "a right to expect reasonable utility rates."⁴⁰ The Commission, therefore, must balance its responsibility "to protect consumers against exploitation," and ensure that utilities have the opportunity to recover revenue through rates sufficient to ensure their "financial integrity."⁴¹ However, the setting of fair, just, and reasonable rates do not *guarantee* net revenues, but rather the opportunity to earn such revenue.⁴² To the extent that there is a "zone of reasonableness" within which rates may fall without being confiscatory, the Commission is free "to decrease any rate which is not the 'lowest reasonable rate.'"⁴³

³⁷ *Commonwealth ex rel. Stephens v. S. Cent. Bell Tel. Co.*, 545 S.W.2d 927, 930-31 (Ky. 1976) (citing *Fed. Power Com. v. Hope Nat. Gas Co.*, 320 U.S. 591, 64 S. Ct. 281 (1944); *Fed. Power Comm'n v. Nat. Gas Pipeline Co.*, 315 U.S. 575, 62 S. Ct. 736 (1942)).

³⁸ *Ex rel. Stephens*, 545 S.W.2d at 930-31.

³⁹ *Fed. Power Com. v. Hope Nat. Gas Co.*, 320 U.S. 591, 603, 64 S. Ct. 281, 288 (1944) ("Rates which enable the company to operate successfully, to maintain its financial integrity, to attract capital, and to compensate its investors for the risks assumed certainly cannot be condemned as invalid, even though they might produce only a meager return on the so-called "fair value" rate base.")

⁴⁰ *Ky. Indus. Util. Customers*, 983 S.W.2d at 495 (Ky. 1998). Indeed, the Commission can investigate rates upon complaint by a ratepayer, or "upon its own motion." KRS 278.270; see also KRS 278.260(1).

⁴¹ *Fed. Power Comm'n v. Memphis Light, Gas & Water Div.*, 411 U.S. 458, 465-66, 93 S.Ct. 1723, 1728 (1973) (citing *Hope* at 610, 603).

⁴² *Hope Nat. Gas Co.* 320 U.S. at 603 (quoting, *Fed. Power Comm'n v. Nat. Gas Pipeline*, 315 U.S. 575, 590, 62 S.Ct 736 (1942) ("Thus we stated in the Natural Gas Pipeline Co. case that 'regulation does not insure that the business shall produce net revenues.'").

⁴³ *Fed. Power Comm'n v. Nat. Gas Pipeline Co.*, 315 U.S. 575, 585-86, 62 S. Ct. 736, 743 (1942); see also *ex rel. Stephens*, 545 S.W.2d at 931.

The Commission has broad discretion in the weighing of factors it may consider in doing this balancing to determine the lowest reasonable rate.⁴⁴ In setting value for property for rate base, the Commission is required to give “due consideration” to a number of factors, including “other elements of value recognized by the law of the land for rate-making purposes.”⁴⁵ This includes such factors as capital structure, the prudence of investments, and “whether a particular utility is investor owned or a cooperative operation.”⁴⁶ Within that, as noted above, consideration is given to the financial health of the utility, including (if it is investor-owned), such metrics as the utilities’ valuation and history of dividend payouts.⁴⁷

II. Affordability and “discrimination”

In order to set fair, just, and the lowest reasonable rates, the Commission must balance an investor-owned utility’s interests and the interests of ratepayers. The minimum rates necessary to ensure rates are not confiscatory tend to garner much more discussion than the other side of the equation. However, the Commission has considered the financial health of ratepayers in setting rates.

In *Nat'l-Southwire Aluminum Co. v. Big Rivers Elec. Corp.*,⁴⁸ the Court of Appeals reviewed and approved the Commission’s balance of the interests of Big Rivers Electric Cooperative *as well as* the financial health of its two largest customers (two large aluminum smelters), and the interests of residential and other ratepayers, setting rates that would also allow the aluminum smelters to keep operating successfully.⁴⁹ The

⁴⁴ *Nat'l-Southwire Aluminum Co. v. Big Rivers Elec. Corp.*, 785 S.W.2d 503, 512 (Ky. App. 1990).

⁴⁵ KRS 278.290(1).

⁴⁶ *Nat'l-Southwire Aluminum*, 785 S.W.2d at 512.

⁴⁷ See, e.g., 807 KAR 5:001 §§ 12(2), 16(7)(h), (j), (l), (p), (r); *ex rel. Stephens*, 545 S.W.2d at 930-31; *Hope Nat. Gas Co.* at 603-04.

⁴⁸ *Nat'l-Southwire Aluminum*, 785 S.W.2d 503.

⁴⁹ *Id.* at 508.

Commission went so far as to set a variable rate based on the market price of aluminum, originally suggested by the aluminum companies in the case.⁵⁰ The Court's only concern regarding the rates set was that "it would be good to see more clear concern for the consumer, a clearer burden of proof on the producer to show that the excess capacity was a prudent investment, and a clear finding of just how much excess exists...."⁵¹

In *Nat'l Southwire*, the Court also considered a claim from the aluminum companies that the variable rates set were "discriminatory" in violation of KRS 278.170. The Court determined:

Even if some discrimination actually exists, Kentucky law does not prohibit it *per se*. According to KRS 278.170(1), we only prohibit "unreasonable prejudice or disadvantage" or an "unreasonable difference." KRS 278.030(3) allows reasonable classifications for service, patrons, and rates by considering the "nature of the use, the quality used, the quantity used, the time when used . . . and any other reasonable consideration."⁵²

That particular statement was later quoted with approval by the Kentucky Supreme Court in considering the issue of discrimination in the context of economic development rates.⁵³ In that case, the Court determined that although *unreasonable* discrimination as to rates was not allowed:

The Kentucky General Assembly has used plain language which, logically interpreted, leaves no doubt that while utilities are statutorily entitled to offer reduced rates to the persons and entities identified in KRS 278.170(2) and (3), those utilities may also offer other customers reduced rates subject to PSC approval and compliance with general statutory guidelines regarding reasonableness.⁵⁴

⁵⁰ *Id. at 507.*

⁵¹ *Id. at 513-14.*

⁵² *Id. at 514.*

⁵³ *Ky. Pub. Serv. Comm'n v. Commonwealth*, 320 S.W.3d 660, 667 (Ky. 2010).

⁵⁴ *Id.*

Further, subsequent to the *Nat'l Southwire* decision, the Commission has approved at least one pilot program that allowed for payment based on a percentage of residential ratepayers' income, and to make payments towards existing arrearages with forgiveness after 36 months of payments, targeted at customers who qualify for Low Income Home Energy Assistance Program ("LIHEAP").⁵⁵

Ultimately, the cornerstone of reasonableness, and the Commission's power to make "suitable and reasonable classifications of ... rates" specifically provided for in KRS 278.030(3)" combined with the lack of any limiting language as to what classes of customers may receive reduced rates in KRS 278.170, allows the Commission broad discretion in setting or allowing discounted or variable rates for classes of customers, or even individual customers, including taking into consideration the economic health of those customers or classes of customers.⁵⁶

DISCUSSION

As discussed above in the Background section, the Company's financial position, and that of the economy in its area has been described as a "financial death spiral."⁵⁷ As reflected in discussion at hearing between Commissioner Wood and Company President and Chief Operating Officer Cynthia Wiseman, the Company faces continued population and economic decline, which leads to decreasing load, leading to spreading of fixed costs over fewer kilowatt-hours ("kWh") and fewer individual ratepayers.⁵⁸ The

⁵⁵ Case No. 94-179, *Notice of Adjustment of the Rates of Columbia Gas of Kentucky, Inc., on and After July 1, 1994*, Order at 2 (Nov. 01, 1994).

⁵⁶ *Ky. Pub. Serv. Comm'n. v. Commonwealth*, 320 S.W.3d at 668; *Nat'l Southwire Aluminum*, 785 S.W.2d at 514.

⁵⁷ HVT Jan. 13, 2026 at 3:35 to 3:28 to 3:40 p.m.

⁵⁸ HVT Jan. 13 at 12:20 to 12:23 p.m.

Company claims at this time that without a rate increase it cannot provide safe and reliable service in its territory.⁵⁹

Despite this claim, the Company already had the highest average residential rates of any investor-owned utility (“IOU”) regulated by the Commission in 2024,⁶⁰ and was only lower than one rural electric cooperative (“REC”) reporting to the Commission in that year.⁶¹ Furthermore, average usage by the Company’s residential ratepayers was higher than any Commission-regulated utility save for a different REC, which had lower rates.⁶²

In addition, after coming in with an application for a rate increase “as small as [they] could,” further reductions in the overall revenue requirement were found in the proposed settlement, and the Company complains that it would be “unfortunate” if it weren’t approved because their ratepayers “deserve to have reliable power,” and they would be unable to provide it.⁶³ Even the Company’s attempts to sell the gas it has purchased but can’t use seem to be losing them, or their ratepayers, money.⁶⁴ This, in a year in which their parent Company, AEP, reported a nearly \$1 billion profit in a single quarter multiple times, and plans to spend \$72 billion, including \$30 billion in transmission infrastructure over which KPCo apparently is unsure of its say, but certain it will be paying some portion.⁶⁵

⁵⁹ *Id.*

⁶⁰ AG Hearing Ex. 2,

⁶¹ AG Hearing Ex. 3.

⁶² AF Hearing Ex. 2 & 3.

⁶³ HVT Jan. 13 at 12:20 to 12:21 p.m.

⁶⁴ Direct Testimony of Tanner S. Wolffram on Behalf of Kentucky Power Company at 26-27 (Aug. 29, 2025) (“Wolffram Direct”); Company Response to Commission Staff’s Third Set of Data Requests, Response no. 1 (“PSC 3-1”).

⁶⁵ JI Hearing Ex. 1, HVT Jan. 13 at 10:41 to 10:47 a.m.

Yet, as further explained below, the “mitigation” offered by the Company in its Applied-for rates, and even the reduced settlement rates are at best bandages attempting to stanch the ever-increasing flow of money from Boyd, Breathitt, Carter, Clay, Elliott, Floyd, Greenup, Johnson, Knott, Lawrence, Leslie, Letcher, Lewis, Magoffin, Martin, Morgan, Owsley, Perry, Pike, and Rowan Counties.

I. The Company and Settling Parties Have Only Offered Partial and False Solutions

A. “Mitigation” measures in the application are either ineffective, delaying the inevitable, or counterproductive.

The “mitigation” measures the Company describes in its application are described in three categories: (1) “cost savings efforts implemented since the last base rate case,”⁶⁶ (2) “opportunities to advance its commitment to customers,”⁶⁷ and (3) “steps to reduce the size of the requested increase in revenue requirement.”⁶⁸

Cost saving measures listed by the Company since its last rate case include engaging in strategic hiring, implementing advanced metering infrastructure (“AMI”), and management of operation and maintenance (“O&M”) expenses.⁶⁹ The “advanced commitment to its customers” primarily relates to rate design, cost allocation, and programs outside of this case. Finally, the “steps to reduce the size of the requested increase in revenue requirement” at issue *in this case* amount to A capital structure with a reduced equity layer, a return on equity of 10% “at the lowest end of the range,” not

⁶⁶ Wiseman Direct at 6

⁶⁷ *Id.* at 11-12

⁶⁸ *Id.* at 13.

⁶⁹ Wiseman Direct at 6, Ross Direct at 28-31, Direct Testimony of Robert A. Jessee on Behalf of Kentucky Power Company at 5-10 (Aug. 29, 2025) (“Jessee Direct”).

updating depreciation rates for the Mitchell Plant and seeking securitization of remaining net book value, and removal of storm expense from base rates⁷⁰

These “mitigation” measures are on the whole at best either (a) ineffective; (b) kicking the can down the road, so to speak; or (c) downright counterproductive.

In the first category, of the cost-savings measures supposedly implemented since the last rate case, each has apparently been utterly ineffective in preventing the need for another rate increase. The rate increase here was applied for before the rates from the last case were even fully put into effect. The Notice of Intent in this case was filed with the Commission on July 29, 2025, nearly three months *before* the Commission’s October 15, 2025 order in the Company’s previous rate case implementing the proposed surcharge to comply with the order of the Franklin Circuit Court. Taking just one of the specific measures, it is clear that any cost-savings related to O&M at Mitchell and Big Sandy have failed to bring down costs, as the combined annual non-labor O&M at the two plants in the base rates applied for in this case is more than \$1.3 million **greater** than that in the Company’s previous base rate case.⁷¹ Expenses not mentioned which appear to have grown **even more significantly** include distribution expense and transmission expense, which appear to have recently grown nearly \$3 million and over \$33 million year-over-year, respectively.⁷²

Other measures hardly seem to be sacrifices on the part of the Company, and equally ineffective. The reduced equity layer is appreciated, but since the Company is not earning even half its already-approved ROE it seems to hardly constitute a savings.

⁷⁰ *Id.* at 13-14, Direct Testimony of Franz D. Messner on Behalf of Kentucky Power Company at 4-10 (Aug. 29, 2025) (“Messner Direct”); Direct Testimony of Adrien M. McKenzie, CFA on Behalf of Kentucky Power Company (Aug. 29, 2025); Direct Testimony of John J. Spanos on Behalf of Kentucky Power Company at 9 (Aug. 29, 2025); Wolffram Direct at 18-25, 32-36.

⁷¹ Jessee Direct at 8, RAJ-3.

⁷² Application - Section II Filing Requirements, Exhibit O, Page 115-16 of 167.

The same could be said of the Company's proposed 10.0% ROE, as compared to other recently-proposed or Commission-approved ROEs. In two recently-approved rate increases, the Commission set ROEs for IOUs at 9.75% and 9.8%.⁷³ In a third case, a settlement agreement resulted in a proposed settlement ROE for LG&E and KU of 9.9%, *with* a "stay out" provision prohibiting base rate increases for two and a half years,⁷⁴ which could very well contribute to allowing a *higher* ROE than otherwise.⁷⁵

All in all, it does not seem any cost savings measures implemented by the Company have been effective at preventing further spiraling.

Second, another set of measures described are only delaying further collection of money from ratepayers. AMI, and storm expense deferred to a regulatory asset are both expenses that will only be collected at a later time. Largest of the delayed collections, however, is the proposal to create a generation rider to pull out expenses for the Mitchell Plant to later be potentially securitized, if legislation that does not yet exist materializes.

The proposed Generation Rider is intended to collect all capital plant costs (other than environmental) currently embedded in the base rates, and to include those costs incurred for the Mitchell Plant operation and maintenance beyond the end of 2028. It is

⁷³ Case No. 2024-00276, *Electronic Application of Atmos Energy Corporation for an Adjustment of Rates; Approval of Tariff Revisions; And Other General Relief*, Order at 36-38, Case No. 2024-00276 (Aug. 11, 2025); 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* at 16 (Dec. 23, 2025).

⁷⁴ Case No. 2025-00113, *Electronic Application of Kentucky Utilities Company for an Adjustment of Its Electric Rates and Approval of Certain Regulatory and Accounting Treatments*, and Case No. 2025-00114, *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*, Stipulation Testimony Exhibit 1: Stipulation and Recommendation at 1.1.

⁷⁵ HVT Jan. 15, 2026 at 4:21 to 4:22 p.m.

intended by the Company that those costs would be securitized under legislation that would be enacted by the 2026 General Assembly in Regular Session.

If such legislation comes about allowing securitization at a later date, it does nothing to affect rates today.⁷⁶ *If* securitization legislation were passed, and *if* the Commission approved a securitization financing order, the effect is to extend the payback period for depreciation of net book value of the Mitchell plant, albeit at a lower debt finance rate. *However*, this only effectively lowers rates if the plant does in fact depreciate over time. In fact, the current net book value of the Company's interest in the Mitchell plant is *greater* than the value when it first obtained its interest in the plant. In its Order authorizing that purchase in 2013, the Commission noted a projected net book value of \$536 million.⁷⁷ The remaining net book value of the Mitchell Plant now totals \$537 million.⁷⁸ Aside from the net book value, O&M at the plant appears to be increasing, generally, from below \$16 million in the Company's 2017 rate case to over \$20 million in the current application,⁷⁹ a result only to be expected from a plant at "the longer end of the current industry expectations" for life span,⁸⁰ a result of the "bathtub curve," wherein expenses for a plant drop off to a stable amount after the first couple of years, only to increase toward the end of its useful life.⁸¹

⁷⁶ Wolffram Direct at 23.

⁷⁷ Case No. 2012-00578, *Application of Kentucky Power Company for (1) a Certificate of Public Convenience and Necessity Authorizing the Transfer to the Company of an Undivided Fifty Percent Interest in the Mitchell Generating Station and Associated Assets; (2) Approval of the Assumption by Kentucky Power Company of Certain Liabilities in Connection with the Transfer of the Mitchell Generating Station; (3) Declaratory Rulings; (4) Deferral of Costs Incurred in Connection with the Company's Efforts to Meet Federal Clean Air Act and Related Requirements; And (5) All Other Required Approvals and Relief*, Order at 9 (Oct. 07, 2013).

⁷⁸ Wolffram Direct at 18.

⁷⁹ Jessee Direct at 8, RAJ-3.

⁸⁰ Spanos Direct at 9.

⁸¹ HVT Jan. 14, 2026 at 5:20 to 5:21 p.m.

The use of a rider to recover the Mitchell plant costs rather than continuing to use base rates is of concern to Joint Intervenors because it reduces the ability of both the Commission and ratepayers to scrutinize which costs will be securitized, under what terms, and towards what end. It also reduces scrutiny of the reasonableness of actual costs incurred in maintaining Mitchell in operating condition and reduces any incentive to operate the facility in the most efficient manner and to spend prudently, allowing future costs to be included in the rider without the necessity of a rate case.

Securitization of ongoing utility operating expenses has no precedent in Kentucky, suggesting that more rather than less scrutiny and transparency is appropriate.

Joint Intervenors respectfully request that if the Generation Rider is approved, that approval and the ability of Kentucky Power to securitize the Rider expenses be conditioned:

1. On the filing of a plan detailing how AEP will manage Mitchell including the investment and maintenance schedule and retirement timetable;
2. That further resource planning for KPC not be conducted by AEP and that it be limited to PSC-authorized and overseen all-source RFPs for future generation. AEP can participate by presenting their final and best offer but not control the resource planning.

By including these conditions on approval of the Generation Rider, any securitization of expenses and costs allowed to be transferred and added to the Rider will be better assured to be prudent and in protective of the ratepayers who are involuntarily obligated to retire the securitized debt

The third and last set are measures which are potentially counterproductive. Among these is the Company's proposed prepayment "FlexPay" Program. The proposal purports to give ratepayers "enhanced options regarding the timing and method of their

electric service payments.”⁸² In reality, it does neither. Just as under the FlexPay Program ratepayers can already make multiple smaller payments over the course of a month.⁸³ There are also at least two downsides to the Company’s proposal for ratepayers. The first is that they *lose* the additional flexibility of catching up on payment after a notice of disconnection, over a period of “45 days plus” that the Company currently gives them.⁸⁴ Under the prepayment program that flexibility would be completely lost, as ratepayers would be immediately disconnected once their balance runs out, before even using an extra kWh before paying for it. Second, the very nature of *paying ahead* is in essence providing a sort of interest-free loan to the Company between the time when payment is made and energy is used, rather than the current structure which is the exact reverse. As summarized by Joint Intervenor witness Roger Colton in terms of the benefits to the Company, “prepayment meter customers impose fewer costs on a utility system, which limited costs should be reflected in lower rates. If nothing else, in addition to contributing to credit and collection expenses, by definition, customers using prepayment meters would impose fewer working capital expenses.”⁸⁵

The Company’s new residential rate design is the primary example in the category of harm, though. It is at best confusing, with even the Company’s President and COO struggling to define for whom rates would increase the most and least under the proposed rate design.⁸⁶ What is clear is that those who will benefit most are high usage customers, some of whom may even see an occasional bill decrease, while

⁸² Direct Testimony of Stevi N. Cobern on Behalf of Kentucky Power Company at 4 (Aug. 29, 2025) (“Cobern Direct”).

⁸³ KPCO’s Responses to Joint Intervenors’ September 29, 2025 Data Requests at Response 27 (“JI 1-27”); Rebuttal Testimony of Stevi N. Cobern on Behalf of Kentucky Power Company at R4 (Dec. 22, 2025) (“Cobern Rebuttal”).

⁸⁴ HVT Jan. 14, 2026 at 5:50 to 5:51 p.m.

⁸⁵ Colton Direct at 78.

⁸⁶ HVT Jan. 13, 2026 at 10:17 to 10:20 a.m.

average use customers would see a greater increase than even the average across the class.⁸⁷ For instance, under the settlement, a residential ratepayer using the average of 1,210 kWh would see an 8.2% increase in their bill in year 1, and a 12.3% increase after resolution of the “DRL Rider.”⁸⁸ This is higher than the average class RS increase of 7.0% in year one and 11.9% as advertised by the Signatory Parties.⁸⁹

This declining block rate also manifestly *disincentivizes* precisely the sort of energy conservation measures that could bring about meaningfully lower rates for such high usage customers. As Ms. Wiseman herself made clear, part of the problem is homeowners being charged to heat the ground beneath their home, or being forced to rely on inefficient space heating, instead of more efficient measures.⁹⁰ The Company claims that the \$14 jump in the basic service charge between 2,000 and 2,001 kWh in a single month is incentive enough to lower their usage.⁹¹ However, their own testimony belies that this is not within reach for the vast majority of users, with only 1.1% to 2.2% of ratepayers able to move between the two tiers.⁹² This new rate design, therefore, effectively does nothing to address the Commission’s directive that it “expects Kentucky Power to address the issue of low-income and residential customers [sic] energy usage during the winter months and ***find cost-effective measures to reduce demand.***”⁹³

⁸⁷ *Id.*

⁸⁸ Settlement Agreement Exhibit 2. The DTL Rider is discussed further in the next section.

⁸⁹ Settlement Agreement Exhibit 3. It isn’t clear why the DTL Rider appears to benefit the ratepayer with average usage greater than the overall Class RS average.

⁹⁰ HVT Jan. 13, 2026 at 3:28 to 3:40 p.m.

⁹¹ Wolffram Direct at 9.

⁹² HVT Jan. 15, 2026 at 9:41 to 9:42 a.m.

⁹³ Wolffram Direct at 11 (emphasis added), quoting Case No. 2023-00159, *In the Matter Of: 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 70 (Jan. 19, 2024).

The several measures described by the Company as mitigation that seem like positive steps in this regard are both not at issue in this case, and not fully (if at all) realized. AMI meters provide a real possibility to empower ratepayers with knowledge of their usage and the first step to additional tools to facilitate meaningful demand-side management programs. As stated by the Commission:

With AMI meters, programs such as Time of Use rates and prepay programs can be easily added as a rate option. Such rate options may contribute to lower peak demand and help avoid costly capital investments or free up power to be sold on the market for additional revenue. The Commission encourages Kentucky Power to learn from the new detailed, usage information and possibly creating time of use rate classes as well as DSM programs to maximize the AMI benefits. The Commission further urges Kentucky Power to study incentives or rebates as options to encourage meaningful consumption behavioral changes.⁹⁴

The next step, of course, is expanded DSM programs. Instead, in this case, the Company's only proposed use of AMI is the prepayment program, and increased ease of disconnection for traditional pay customers.⁹⁵ Expanded DSM remains on the Company's "long-term" list of opportunities, with no specific plans or steps described.⁹⁶ Meanwhile, the Company's rollout of recently approved DSM measures can be described as at best underwhelming.⁹⁷

B. The proposed settlement offers half steps the Commission could order independent of the agreement.

The settlement agreement offered by the Signatory Parties offers further partial solutions and much more deferral of expenses.

⁹⁴ Case No. 2024-00344, *Electronic Application of Kentucky Power Company for (1) a Certificate of Public Convenience and Necessity Authorizing the Deployment of Advanced Metering Infrastructure; (2) Request for Accounting Treatment; And (3) All Other Necessary Waivers, Approvals, and Relief*, Order at 15. The bulk of this was quoted by Ms. Cobern in her Rebuttal at R2.

⁹⁵ Wolffram Direct at 13-15.

⁹⁶ Wiseman Direct at 12.

⁹⁷ HVT Jan. 13 at 10:26 to 10:29 a.m.

Provisions such as those regarding the Deferred Tax Asset Federal NOL ADIT either offer a reduction that should be ordered as legally correct, or simply continue to defer repayment of a deferred asset. Similarly, the removal of the capital increase to TOR only defers continued expenses to a regulatory asset to collect later. Other provisions offer reductions that the Commission was likely to order in the first place, such as removal of Compensation Expense Tied to Financial Performance, and removal of terminal net salvage,⁹⁸ or the reduction in the ROE discussed above.

By far the single largest reduction in the revenue requirement contained in the proposed settlement is the Deferred Tax Liability (“DTL”) Rider.⁹⁹ As Joint Intervenors understand the proposal, the DTL Rider credits are created by accelerating the flow-through of federal tax credits that are owed to KPC’s customers. The proposal defers tax liabilities on the Company’s books, according to witness Hogsdon, but the amount of taxes that will be payable to the IRS in the future is unchanged.¹⁰⁰

The Joint Intervenors support the deferral of the tax liabilities, to the extent that such a deferral is permitted by law, but oppose rigorously the proposal that the Company earn any return. The proposal is that the Company would earn a return at the weighted average cost of capital (WACC) of 7.48%, yet Mr. Hodgson’s testimony indicated that the deferral is an “interest-free loan from the federal government,” making

⁹⁸ Case No. 2024-00354, *Electronic Application of Duke Energy Kentucky, Inc. For: 1) an Adjustment of the Electric Rates; 2) Approval of New Tariffs; 3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; And 4) All Other Required Approvals and Relief*, Order at 37-43 (Oct. 2, 2025); Case No. 2022-00372, *Electronic Application of Duke Energy Kentucky, Inc. For (1) an Adjustment of Electric Rates; (2) Approval of New Tariffs; (3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; And (4) All Other Required Approvals and Relief*, Order at 14 (Oct. 12, 2023)

⁹⁹ Settlement Agreement Exhibit 1.

¹⁰⁰ Testimony of David Hodgson on Behalf of Kentucky Power Company in Support of the Settlement Agreement at 7 (Jan. 09, 2026).

any return to the company on an “interest-free loan” to ratepayers with respect to future tax liabilities, questionable.

While characterized as a “loan” from the federal government, the federal government is not lending money to the company, but instead the company is accelerating credits owned by the customers and deferring when the debt must be paid by those customers. If it could be characterized as an interest-free loan, and the ratepayers are the ones who will pay the liability ultimately, then it is a loan from the government to the ratepayers and not from or to the shareholders, so that no return should be paid to shareholders.

C. The Commission Should Require That Any Approved Tariffs Contain Language Preserving All Rights Of Action Existing Under Law

This Section of the Post-Hearing Brief presents legal argument that requires no witness testimony by Joint Intervenors and no evidence to support the Commission's ultimate disposition of the tariff provisions filed by Kentucky Power in this case. The Commission may deny inclusion of or amend the tariff provisions based exclusively on the application of applicable law.

The “jural rights” doctrine provides that the General Assembly is without the authority, by virtue of Sections 14, 54, and 341 of the Kentucky Constitution, to extinguish or dilute the rights of citizens to recovery for damages for personal injuries, property damage, and death.¹⁰¹ It is axiomatic that the General Assembly, lacking the constitutional authority to abridge jural rights such as the common law action for negligence, cannot delegate to an agency of the Executive Branch of state government the power to abridge jural rights or to authorize regulated utilities to do so.

¹⁰¹ *Williams v. Wilson*, 972 S.W.2d 260, 265 (Ky. 1998); *Ludwig v. Johnson*, 243 Ky. 533, 49 S.W.2d 347, 351 (1932).

Because of this, and for the reasons stated below, Joint Intervenors respectfully request that any Order approving the proposed tariffs require that Kentucky Power modify the tariffs to remove language that appears to restrict the common law rights and remedies available to ratepayers whose person or property is injured by virtue of the purchase of electricity from Kentucky Power.

While it is well-recognized at law that a party possessing the legal power to do so, may engage in a contractual relationship by which that party voluntarily agrees for consideration, to take or refrain from activity, and to surrender or forfeit certain rights of action, the relationship between a ratepayer and the retail electric supplier possessing the geographic monopoly on provision of retail electric service for that area, is not one in which the ratepayer has equal bargaining power or freedom. By virtue of the exclusive right to serve certified territory under KRS 278.018, and the inability of most ratepayers to choose a retail electric supplier, the ratepayers are “captive” to the incumbent electric utility. As such, the ratepayers look to the Commission to assure that utility services are provided at rates that are fair, just, and reasonable, KRS 278.030(1) and that the service is adequate, efficient, and reasonable. KRS 278.030(2).

The captive nature of the relationship between the electric service provider and the customer likewise requires that the Commission assure that the customer, who has no practical or legal “choice” regarding the terms of service, is protected from overreach in the tariff provisions establishing the terms of service. For while the question does not appear to have been presented to Kentucky’s highest court whether a tariff term abridging customer’s constitutional rights would be shielded from collateral challenge by that customer, even the possibility of such insulation under the filed tariff- doctrine

suggests that the Commission should take particular care not to approve a utility-proposed tariff that could overreach and impair or extinguish jural rights of action available to the customer under Sections 14, 54, and 241 of Kentucky's Constitution.

In this instance, the Terms of Service in the proposed Tariff, are found at Application Section II Filing Requirements Section D, Section 1 – Terms and Conditions Sheets 2-1 thru 2-26. (“Terms of Service”) In pertinent part, the proposed Tariff at Sheets 2-6 and 2-7 contain the “Company’s Liability” and provides that:

The Company will use reasonable diligence in furnishing a regular and uninterrupted supply of energy, but does not guarantee uninterrupted service. The Company shall not be liable for damages in case such supply should be interrupted or fail by reason of an event of Force Majeure. Force Majeure consists of an event or circumstance which prevents Company from providing service, which event or circumstance was not anticipated, which is not in the reasonable control of, or the result of negligence of, the Company, and which, by the exercise of due diligence, Company is unable to overcome or avoid or cause to be avoided. Force Majeure events includes acts of God, the public enemy, accidents, labor disputes, orders or acts of civil or military authority, breakdowns or injury to the machinery, transmission lines, distribution lines or other facilities of the Company, or extraordinary repairs.

Unless otherwise provided in a contract between the Company and Customer, the point at which service is delivered by Company to Customer, to be known as “delivery point,” shall be the point at which the Customer’s facilities are connected to the Company’s facilities. The metering device is the property of the Company. The meter base, connection, grounds and all associated internal parts inside the meter base are customer owned and are the responsibility of the customer to install and maintain. The Company shall not be liable for any loss, injury, or damage resulting from the Customer’s use of their equipment or occasioned by the energy furnished by the Company beyond the delivery point.

Any new installation, upgrade or other modification of an existing meter installation shall be made using only Company supplied or Company-approved meter bases. A list of Company-approved meter bases and specifications can be found on the Company’s website at: www.kentuckypower.com.

The Customer shall provide and maintain suitable protective devices on their equipment to prevent any loss, injury or damage that might result from single phasing conditions or any other fluctuation or irregularity in the supply of energy. The Company shall not be liable for any loss, injury or damage resulting from a single phasing condition or any other fluctuation or irregularity in the supply of energy which could have been prevented by the use of such protective devices. The Company shall not be liable for any damages, whether direct, incidental or consequential, including, without limitation, loss of profits, loss of revenue, or loss of production capacity occasioned by interruptions, fluctuations, or irregularity in the supply of energy.

The Company is not responsible for loss or damage caused by the disconnection or reconnection of its facilities. The Company is not responsible for loss or damages caused by the theft or destruction of Company facilities by a third party.

The Company will provide and maintain the necessary line or service connections, transformers (when same are required by conditions of contract between the parties thereto), meters and other apparatus, which may be required for the proper measurement of and protection to its service. All such apparatus shall be and remain the property of the Company.¹⁰²

At several points in the proposed “Company’s Liability” terms, there is a lack of clarity concerning whether the language is intended, by overt statement or by implication, to constrain or extinguish customer rights of action for personal injury or property damage.

For example, the statement that the Company “shall not be liable for damages in case such supply should be interrupted or fail by reason of an event of Force Majeure,” begs the question of whether the Company, under the terms of the tariff, would be liable for damages due to interruption or failure not due to a force majeure event, or where there was a failure of the “reasonable diligence” that the company agrees to in the preceding sentence (“The Company will use reasonable diligence in furnishing a regular and uninterrupted supply of energy...”).

¹⁰² Terms of Service, at Sheets 2-6, 7.

Similarly, the language concerning company liability for property loss or injury at a home or business due to the furnishing of energy is unclear and internally inconsistent. At one point, the proposed tariff states that “[t]he Company shall not be liable for any loss, injury, or damage resulting from the Customer’s use of their equipment or occasioned by the energy furnished by the Company beyond the delivery point.” (Emphasis added). Yet later in the same section, it is stated that:

The Customer shall provide and maintain suitable protective devices on their equipment to prevent any loss, injury or damage that might result from single phasing conditions or any other fluctuation or irregularity in the supply of energy. The Company shall not be liable for any loss, injury or damage resulting from a single phasing condition or any other fluctuation or irregularity in the supply of energy which could have been prevented by the use of such protective devices.

The clear implication of these two sentences is that if loss, injury, or damage results from a single phasing condition or other fluctuation or irregularity in the supply of energy that could not have been prevented by the use of such protective devices, then the company would or could be liable.

Yet the very next sentence proposes a categorical exclusion for any such damages, providing that “[t]he Company shall not be liable for any damages, whether direct, incidental or consequential, including, without limitation, loss of profits, loss of revenue, or loss of production capacity occasioned by interruptions, fluctuations, or irregularity in the supply of energy.”

Finally, with respect to disconnection and reconnection of the company’s facilities, the proposed tariff provides generally with respect to its equipment and delivery of electricity that:

The Company shall not be liable for any loss, injury, or damage resulting from the Customer's use of their equipment or occasioned by the energy furnished by the Company *beyond the delivery point*.¹⁰³

This provision implies that the company may be liable for loss, injury, or damage occasioned by the energy furnished by the Company before or at the delivery point, yet later in the proposed terms of service the tariff provides that “[t]he Company is not responsible for loss or damage caused by the disconnection or reconnection of its facilities.”

In sum, at numerous junctures in the proposed Tariff terms of service, there are statements that are both internally contradictory concerning the scope of liability of the utility for the furnishing of energy, and which appear to attempt to extinguish constitutionally protected jural rights of action for damage or injury. The Commission is as lacking in the authority to approve a tariff so limiting jural rights, as the General Assembly that delegated to the Commission the authority and duty to regulate electric utilities. It is respectfully requested that the Commission deny the proposed tariff language concerning “company liability” at Sheets 2-6 and 2-7, and to require the revision of the tariff terms and conditions to (a) fully protect and preserve all causes of action and jural rights of customers taking service under the tariffs with respect to personal injury and property loss existing at common law (including but not limited to negligence); and (b) clarifying that claims of injury or property damage associated with the provision of energy are to be remedied in the appropriate court rather than before the Commission. Inasmuch as the Commission lacks the authority to award damages, jurisdiction to adjudicate such claims should rest in the courts of justice.

¹⁰³ *Id.* (emphasis added).

II. A Long-Term Solution Is Needed for KPCo Ratepayers

In place of half steps and bandages, a holistic review and approach to address the issue of low-income and residential customers' energy usage during the winter months and ***find cost-effective measures to reduce demand.***

A. The Commission should order the Companies to study and propose an appropriate Arrearage Management Program

For those who have already fallen behind on bills, the first step is to ensure a way out of the hole. An appropriately-structured Arrearage Management Program (“AMP”) could be beneficial to both ratepayers and the Company, and is within the Commission’s authority to authorize. The Commission should, therefore, at a minimum require the Companies to study the potential for such a program and either propose an AMP or explain why one is neither necessary nor beneficial.

As explained by Mr. Colton in his testimony, an AMP essentially allows qualified low-income ratepayers to “reduce pre-program arrears over an extended period of time in exchange for a customer’s continuing payment of bills for current service.”¹⁰⁴ Mr. Colton extensively describes a suggested Program structure,¹⁰⁵ however the essential components are:

- Arrears are to be retired through pro rata credits over a two-year period, with 1/24th of the pre-existing balance forgiven for each complete payment;
- Customers are to make minimum, but meaningful, copayments toward their arrears (\$7.50/month);
- One implication of a \$7.50/month copayment is that only customers with a pre-existing arrearage balance exceeding \$180 will be eligible to receive arrearage forgiveness.

¹⁰⁴ Colton Direct at 84.

¹⁰⁵ *Id.* at 84-101.

- No pre-condition is established for participation in the arrearage management program component. The arrearage management program should be made available both to customers who are active and to customers who have had service disconnected and are currently off-system;
- Arrearage management credits are to be made for each full and timely payment made toward a current bill. *In addition*, retroactive credits should be made in the instance of a missed or incomplete payment when participant bill balances are brought current;
- The appropriate response to continuing nonpayment is to place the program participant in the same collection process as any other residential customer; and
- Program participants are not removed from the program as a consequence of nonpayment. Instead, program participants are subject to the same collection interventions as any other residential customer would be subject to.¹⁰⁶

Benefits for ratepayers include reducing bills to sustainably payable levels.¹⁰⁷ The Companies would also benefit, however, through tangible improvement in bill collectability with associated reductions in collection expenses, working capital, uncollectibles, and continuing revenue streams from ratepayers who would otherwise not be making payments, and may otherwise be disconnected.¹⁰⁸

Such a program would be well within the Commission's authority to approve. As laid out above in the *Legal Standard*, the cornerstone of reasonableness, and the Commission's power to make "suitable and reasonable classifications of ... rates" specifically provided for in KRS 278.030(3) combined with the lack of any limiting language as to what classes of customers may receive reduced rates in KRS 278.170, allows the Commission broad discretion in setting or allowing discounted or variable rates for classes of customers, or even individual customers, including taking into

¹⁰⁶ *Id.* at 89-90.

¹⁰⁷ *Id.* at 85.

¹⁰⁸ *Id.*

consideration the economic health of those customers or classes of customers.¹⁰⁹

Furthermore, the Commission has approved a program very similar to that proposed by Mr. Colton previously.¹¹⁰

The Company claims that an AMP would not be allowed because “such a program as it is inconsistent with the principles of cost causation discussed throughout this case, and likely results in preferential treatment to certain customers, which again raises rate discrimination concerns.”¹¹¹ However, the claim that the Commission lack authority to discriminate in setting rates is both wrong and in apropos of the AMP proposal Mr. Colton makes. First, the Company is prohibited only from offering any *unreasonable* preference or advantage in its rates.¹¹² Second, Mr. Colton does not propose creation of a separate rate for any class or within any class - rather he proposes essentially a low-income assistance program. Indeed, were the Company’s claim to be true, many of their existing assistance programs would be disallowed, such as the Companies’ Residential Energy Assistance (“REA”) programs, which collects a \$0.40 charge per month from all residential customers to provide assistance to low-income ratepayers.¹¹³

The Commission has ample authority and supporting empirical evidence to order *at a minimum* investigation on the design of an appropriate AMP, and should Order the Company to do so, and order the Company to report within 12 months.

¹⁰⁹ *Pub. Serv. Comm’n of Ky. v. Commonwealth*, 320 S.W.3d 660, 668 (Ky. 2010); *Nat’l-Southwire Aluminum Co. v. Big Rivers Elec. Corp.*, 785 S.W.2d 503, 514 (Ky. App. 1990).

¹¹⁰ Case No. 94-179, *Notice of Adjustment of the Rates of Columbia Gas of Kentucky, Inc., on and After July 1, 1994*, Order at 2 (Nov. 01, 1994).

¹¹¹ Rebuttal Testimony of Tanner S. Wolffram on Behalf of Kentucky Power Company at 20 (Dec. 22, 2025) (“Wolffram Rebuttal”).

¹¹² KRS 278.170(1).

¹¹³ Cobern Direct at 18.

A. The Commission should continue to Order the Company to find cost-effective measures to reduce demand

As laid out by the Commission in the Company's last rate case, the solution to high usage is not lower rates for extreme usage, but measures to reduce usage in the first place:

The Commission is concerned about the usage of customers during the winter, and their impact on Kentucky Power's aggregate demand; therefore, the Commission is not persuaded by Kentucky Power's argument that the seasonal optional provision will not deter energy conservation since it only applies to the winter months and is designed to better align distribution cost recovery across the seasons. The Commission notes that Kentucky Power is currently a winter peaking utility. The Commission is concerned that the seasonal optional provision would increase the winter peak usage given the lower rate, which in turn would have potentially perverse effects by requiring Kentucky Power to need even more winter-available generation (or in the Kentucky Power has demonstrated that the average Low-Income Heating Energy Assistance Program (LIHEAP) customers have an approximately 900 kWh to 1,000 kWh higher peak usage in the winter months than the average residential service customer for the past three years. The Commission is concerned about the usage of customers during the winter, and their impact on Kentucky Power's aggregate demand; therefore, the Commission is not persuaded by Kentucky Power's argument that the seasonal optional provision will not deter energy conservation since it only applies to the winter months and is designed to better align distribution cost recovery across the seasons. The Commission notes that Kentucky Power is currently a winter peaking utility. The Commission is concerned that the seasonal optional provision would increase the winter peak usage given the lower rate, which in turn would have potentially perverse effects by requiring Kentucky Power to need even more winter-available generation (or in the absence of that generation, depend on the PJM market for energy), in turn increasing costs for Kentucky Power.

Therefore, the Commission finds that the seasonal optional provision should be denied. Additionally, ***the Commission expects Kentucky Power to address the issue of low-income and residential customers energy usage during the winter months and find cost-effective measures to reduce demand, rather than mask that winter demand with arbitrary rate reductions.***¹¹⁴

¹¹⁴ Case 2023-00159, Order at 69-70 (Jan. 19, 2024) (internal citations omitted, emphasis added).

Rather than take the Commission's expectation to heart, the Company has come with a different approach to masking demand with arbitrary rate reductions. Several options were highlighted at hearing, along with the Company's ignorance of them.¹¹⁵ Programs include those offered by the Company's self-proclaimed peers, such as Green Mountain Power and even Duke Energy Kentucky. Green Mountain Power, for instance, offers programs including Heat pump rebates of \$2,000 or more, a bring your own device program offering rebates up to \$10,500 for backup devices, backup device leasing,¹¹⁶ and a zero outages initiative.¹¹⁷ Here in Kentucky, Duke Energy has an "Income Qualified Neighborhood Energy Saver Program" aimed at neighborhoods with greater than 50% of households under 200% of the federal poverty level, successfully serving hundreds of households per year.¹¹⁸

The Commission should again order real investigation of demand-side alternatives to reduce demand, with meaningful deadlines for reporting on such investigation.

B. Meaningful engagement with the Communities on how to pull out of the financial death spiral

The Company has recently taken positive steps at community engagement, as highlighted by Ms. Wiseman. Recent community meetings to receive feedback appear to have garnered much participation, and helpful feedback that the Company should heed, including improving weatherization and overall housing stock, and education and

¹¹⁵ HVT Jan. 14, 2026 at 9:39 to 9:44.

¹¹⁶ <https://greenmountainpower.com/rebates-programs/>.

¹¹⁷ <https://greenmountainpower.com/news/green-mountain-power-launches-first-in-nation-2030-zero-outages-initiative/>.

¹¹⁸ Case No. 2025-00359, *Electronic Annual Cost Recovery Filing for Demand Side Management by Duke Energy Kentucky, Inc.*, Filing of the Annual Status Report, Adjustment of the DSM Cost Recovery Mechanism, and Amended Tariff Sheets for Gas Rider DSMR (Sheet No. 62) and Electric Rider DSMR(Sheet No. 78) at 33-35 (Nov. 03, 2025).

transparency around rate structures.¹¹⁹ At hearing Ms. Wiseman agreed the Company should continue regular meetings with community stakeholders, a commitment to which the Commission should hold the Company.¹²⁰ The Commission should Order the Company to host regular sessions, with input on agenda items, and report back on ideas suggested to the Commission on a semi-annual basis.

CONCLUSION AND RECOMMENDATIONS

Wherefore, Joint Intervenors, by and through counsel, make the following recommendations to the Commission:

- Evaluate the application of the Company with an eye to the balance of affordability for ratepayers and return for the Company that ensures the lowest reasonable rates.
- Approve the reductions in the revenue requirement recommended in the stipulation, with the exception of the return on the deferred tax liability.
- Disapprove the adjustment for incidental sales of gas as not constituting a fair, just, and reasonable expense.
- Disapprove adjustments to special charges, at least until AMI is fully rolled out and available to all customers.
- Approve the Generation Rider only if additional conditions as recommended above are added.
- Disapprove changes to the residential rate design, including the declining block rate and two-tiered customer charge.
- Disapprove the FlexPay Program and require the Company propose adjusted rates and programs to utilize AMI to the full benefit of customers in conjunction with any future proposal.
- Consider each of the affordability programs proposed by witness Colton and require investigation or pilot programs at a minimum for each.
- Require investigation and reporting on DSM programs offered by “peer” utilities, and implementation of any that are found to be practicable and cost-effective.

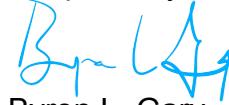
¹¹⁹ JI 1-3.e., HVT Jan. 13 at 10:29 to 10:38 a.m.

¹²⁰ HVT Jan. 13 at 10:38 to 10:39 a.m.

- Require regular meetings on at least a semi-annual basis with community stakeholders to investigate solutions to the financial situation of the Company, and reporting to the Commission.

The above recommendations are not intended to be comprehensive, but highlight some of the concerns raised throughout testimony and at hearing in this matter. Joint Intervenors appreciate the opportunity to participate, and the Commission's consideration.

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 February 03, 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