

**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	)	

**REPLY BRIEF OF JOINT INTERVENORS APPALACHIAN CITIZENS'  
LAW CENTER, KENTUCKIANS FOR THE COMMONWEALTH,  
KENTUCKY SOLAR ENERGY SOCIETY, AND MOUNTAIN  
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Dated: February 10, 2026

## I. Introduction

As stated in Joint Intervenor's initial brief:

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.<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup>

None of the parties to submit briefs dispute this fundamental assessment. As put by KIUC in their initial brief, under these circumstances even a settlement that would normally be "characterize[d] as ... a '*home run*'"<sup>4</sup> is instead at best a series of conditional possibilities of a "ray of hope."<sup>5</sup> JIs maintain even that is generous, and that the Commission should do more - nay, **Kentucky Power** must do more to give hope to its struggling customers. For while the heavy burden of determining fair, just, and reasonable rates lies with the Commission,<sup>6</sup> the *burden of proof* for supporting its application and the settlement lies with the Company<sup>7</sup> - a fact it glosses over, mentioning only once in its brief, and cursorily asserting it has met it.<sup>8</sup>

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<sup>1</sup> HVT Jan. 13, 2026 at 3:28 to 3:40 p.m.

<sup>2</sup> *Id.* at 1:59 to 2:00 p.m.

<sup>3</sup> Posthearing Brief Joint Intervenor Appalachian Citizens' Law Center, Kentuckians for the Commonwealth, Kentucky Solar Energy Society, and Mountain Association at 6 (Feb. 03, 2026) ("JI Brief"). The two previous footnotes are from the original brief, but additional support can be found in the briefs of other parties, as discussed below.

<sup>4</sup> Initial Brief of Kentucky Industrial Utility Customers, Inc. at 2 (Feb. 03, 2026) ("KIUC Brief")

<sup>5</sup> *Id.* at 6.

<sup>6</sup> *Ky. Indus. Util. Customers, Inc. v. Ky. Utils. Co.*, 983 S.W.2d 493, 501 (Ky. 1998) ("[t]he accountants for the Utility do not establish the rates for the consuming public. Only the regulatory commission has that responsibility.").

<sup>7</sup> KRS 278.190(3).

<sup>8</sup> See, e.g., Post-hearing Brief of Kentucky Power Company at 8 (Feb. 03, 2026) ("KPCo Brief").

## II. Reply to Kentucky Power Company

In describing the legal standard for evaluation of an application for the increase of rates, Kentucky Power Company cites many fundamental authorities for the law of the land in the Commonwealth. It fundamentally portrays the issue in a light most favorable to the applicant, itself, focusing on the “property rights of . . . corporations,”<sup>9</sup> but more egregiously it overlooks or ignores at least two fundamental aspects of the standard of review. First, with regard to the “balancing” that the Commission must do, it is a balance between those “property rights of . . . corporations,” *and the right of the ratepaying public against being subject to exploitative rates*,<sup>10</sup> one side of which is absent from the Company’s analysis. Second, as stated above, the burden is on the Company to show a change in rates is fair, just, and reasonable - i.e., is the lowest reasonable rate<sup>11</sup> - a burden which the Company has not met.

### A. A Balancing Act is Different from Kicking the Can

First, the Company conveniently neglects the impact of a change in rates on one side of the scales, while repeatedly discussing how failing to give it what it requests will hurt it.

The balance requires a finding of the *lowest reasonable rates*. As put by the Kentucky Supreme Court in a case cited, but not directly quoted, by the Company<sup>12</sup>:

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. *Federal Power Commission v. Hope Natural Gas Co.* 320 U.S. 591, 64 S. Ct. 281, 88 L. Ed. 333 (1943). By long standing

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<sup>9</sup> See *Id.* at 7.

<sup>10</sup> *Fed. Power Comm’n v. Memphis Light, Gas & Water Div.*, 411 U.S. 458, 465-66, 93 S.Ct. 1723, 1728 (1973) (citing *Fed. Power Com. v. Hope Nat. Gas Co.*, 320 U.S. 591, 603, 610 (1944)).

<sup>11</sup> *Commonwealth ex rel. Stephens v. S. Cent. Bell Tel. Co.*, 545 S.W.2d 927, 930-31 (Ky. 1976).

<sup>12</sup> KPCo Brief at 6 n. 25.

usage in the field of rate regulation the "lowest reasonable rate" is one which is not confiscatory in the constitutional sense. Assuming that there is a zone of reasonableness within which the legislature or its designee is free to fix a rate varying in amount and higher than a confiscatory rate it is also free to decrease any rate which is not the "lowest reasonable rate".<sup>13</sup>

The Company claims it “puts its customers and affordability at the forefront of every decision it makes,”<sup>14</sup> but instead of addressing the impact on ratepayers head-on and finding solutions to high rates and usage, or the lack of planning as the Company as previously ordered,<sup>15</sup> the Company only offers a “middle ground”<sup>16</sup> that still results in a double-digit percent increase, and numerous ways to kick the can.

Proposals in the Company’s Application or proposed Settlement which only defer expenses, only to be collected later (generally with interest paid to the Company’s sole shareholder) include:

- Removal of depreciation expenses for the Big Sandy Plant,<sup>17</sup>
- Proposed Deferred Tax Liability (“DTL”) Rider, including deferral of short-term debt interest related to the cost of the Rider,<sup>18</sup>
- Deferral of non-environmental annual revenue requirement related to non-ELG investments at the Mitchell Plant,<sup>19</sup>
- Deferred collection of the trees outside of right-of-way (“TOR”) program,<sup>20</sup>
- Possible collection of the net operating loss carryforward (“NOLC”),<sup>21</sup>
- *Automatic* deferral of future storm deferral activity “while the Company works to create, evaluate, and implement more long-term solutions,”<sup>22</sup>

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<sup>13</sup> *Ex rel. Stephens*, 545 S.W.2d at 930-31.

<sup>14</sup> KPCo Brief at 1.

<sup>15</sup> 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); AG Brief at 4.

<sup>16</sup> KPCo Brief at 13.

<sup>17</sup> KPCo Brief at 15

<sup>18</sup> *Id.* at 16-17.

<sup>19</sup> *Id.* at 19.

<sup>20</sup> *Id.* at 22-23.

<sup>21</sup> *Id.* at 24-25.

<sup>22</sup> *Id.* at 27-28.

- The proposed Generation Rider and efforts to pursue securitization,<sup>23</sup>
- A residential rate that allocates more costs to other classes “*at this time*,”<sup>24</sup>
- Deferral of costs to set up the proposed prepayment program,<sup>25</sup>
- Deferral of losses on incidental sales of gas purchased but not used,<sup>26</sup>

As pointed out in Joint Intervenor’s initial brief, a whole other set of “mitigation measures” either aren’t effective or aren’t even at issue here.<sup>27</sup> The Company again relies on these to show some sort of “balance” in its brief - even going so far as to say it *needs* the additional money for future investments not even yet made.<sup>28</sup> To the extent any of the “mitigation” offered actually offers a “balance” it is between current and future collection, with interest gained. One begins to get the picture of a Tetris game with ill-fitting pieces stacking on top of each other at a faster and faster pace until the final “game over” screen is displayed.

In 2024 the Commission found:

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.***<sup>29</sup>

The Company now claims it has committed to investigate this underlying issue.<sup>30</sup> But as with everything the Company does<sup>31</sup> it seems too little too late. The Commission must hold the Company to account on this commitment, with enforceable obligations that the Company evaluate real alternatives and report back.<sup>32</sup>

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<sup>23</sup> *Id.* at 18-21.

<sup>24</sup> *Id.* at 33-34 (emphasis added).

<sup>25</sup> *Id.* at 38.

<sup>26</sup> *Id.* at 43.

<sup>27</sup> JI Brief at 13-15.

<sup>28</sup> KPCo Brief at 10.

<sup>29</sup> Case 2023-00159, Order at 69-70 (Jan. 19, 2024) (internal citations omitted, emphasis added).

<sup>30</sup> KPCo Brief at 36.

<sup>31</sup> See, e.g., Attorney General’s Post-Hearing Brief at 4.

<sup>32</sup> See JI Brief at 28-33.

**B. The Burden of Proof is on the Applicant, the Subsidiary of a Multi-Billion Parent Conglomerate, not the Joint Intervenors, Attorney General, or Anyone Else.**

The Company further only once acknowledges that the burden is on *it* to show that its requested rates are the lowest reasonable, and cursorily asserts it has met it.<sup>33</sup> On the other hand, it repeatedly states that “the only witnesses to provide testimony regarding the Company’s propose revenue requirement were witnesses jointly sponsored by the Attorney General and KIUC,”<sup>34</sup> apparently ignoring the voluminous record put forward both by its own witnesses in the record developed by all parties, as well as the testimony of Joint Intervenor Witness Colton regarding the impacts of the requested increase on residential ratepayers<sup>35</sup> (that pesky other side of the balance). The Company also asserts that it “entered into a Settlement Agreement that resolves all of the issues, satisfies the interests of the parties to the agreement (and other parties that are not signatories . . . ” again apparently ignoring the vast record of evidence before the Commission, including the testimony of the Joint Intervenors’ witness, and the several items from the Attorney General-KIUC witnesses the Company itself acknowledges are not resolved in the settlement.<sup>36</sup>

Many of the assertions the Company makes in its brief lack support in the record. For instance, the Company claims that no party “dispute[s] that the Company’s vegetation management, generation, and other investments since its last base case

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<sup>33</sup> KPCo Brief at 8.

<sup>34</sup> *Id.* at 4; *see also* at 13

<sup>35</sup> 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 (Nov. 17, 2025).

<sup>36</sup> KPCo Brief at 14-15 for a summary comparison, and Sections V.E.-F. for detailed discussion of two examples. The Attorney General’s Post-Hearing Brief (Feb. 03, 2026), containing further discussion of its testimony, and several instances where the record may support additional reductions, is discussed further below.

were prudently made....”<sup>37</sup> With due respect, Joint Intervenors hope that they will be given the chance to decide what they dispute in briefing and argument prior to being told by the Company what they believe or argue. In fact, argument was provided by Joint Intervenors, as well as the Attorney General, that many investments may not have in fact been prudently made. For instance, Joint Intervenors point to the spiraling investments at Mitchell as well as on transmission and distribution upgrades.<sup>38</sup> The Attorney General offers an entire list of suggested revenue adjustments both to the Company’s original application and the settlement agreement.<sup>39</sup>

Similarly, the Company argues that because “[n]o intervenor in this case provides any evidence that the revised special charges are calculated incorrectly,” they should be approved.<sup>40</sup> The record created through discovery and hearing is as much for intervenors to use as the Company, though, no matter which side offers evidence. And the Company apparently believes that it gets to decide alone that a Commission order to set costs at the marginal rate should be ignored, and replaced with its own evaluation of how costs should be set.<sup>41</sup>

The Company also argues that its losses in sales of gas it can’t use should be covered by its ratepayers, even though it offers no cost savings to them.<sup>42</sup> Indeed, the Company appears not to even have evaluated whether the forward purchasing of gas provides an overall benefit to its ratepayers, with Witness Wolfram stating “I don’t know if we could provide it or calculate like a benefit directly associated with it.”<sup>43</sup>

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<sup>37</sup> KPCo Brief at 9.

<sup>38</sup> JI Brief at 14.

<sup>39</sup> AG Brief at 9-11, 13-15.

<sup>40</sup> *Id.* at 43-44.

<sup>41</sup> Direct Testimony of Tanner Wolfram at 11-14, HVT Jan. 13, 2026 at 4:52 - 5:00 p.m.

<sup>42</sup> KPCo Brief at 42.

<sup>43</sup> HVT Jan. 13, 2026 at 4:46-4:47 p.m.

As to the Company's new residential rate design, it agrees it is aimed at benefiting extremely high usage ratepayers.<sup>44</sup> It even goes so far as to point out that the highest of usages will see a rate *decrease*.<sup>45</sup> But it fails to explain why the average user should subsidize a rate decrease for extremely high usage, when the Commission has *explicitly* ordered that the Company find solutions to high usage rather than masking it. This is yet just one more example of failing to adequately meet its burden of proof to show that its rates, including design, are fair, just, and reasonable.

It also provides no support for legal assertions such as claiming that the DTL Rider provides benefits that the Commission could not order if the Company did not agree to it. The Company claims that "[i]n order to realize those benefits [of the DTL Rider], however, the Settlement Agreement must be approved without modification. The Company cannot issue the DTL revenue credits without the agreed-upon revenue requirement."<sup>46</sup> The only support offered is the testimony of Witness Wiseman at hearing that

I think it would be very difficult for us to, if – if a rate increase is not granted, it would be very difficult for us to continue operations at the level. I mean, we – I don't know what those – exactly those changes would be, but it would be detrimental to the Company, and it would have a huge impact on customers as well.

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If the – I mean, if the settlement was rejected, is that what you're asking, and the – and the DTLs weren't used, you know, if that was just taken out of the case – I mean, any modification of the settlement would be harmful to us and to what we would be able to do to serve customers.<sup>47</sup>

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<sup>44</sup> KPCo Brief at 36.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at 18.

<sup>47</sup> Wiseman Hearing Testimony at 168:18-169:4, 204:4-10; *cited by* KPCo Brief at 18 n. 81.

This seems hardly enough support to meet the Company's burden to show settlement rates are the lowest reasonable, especially given it turns out the full value of the deferred tax liability on the Company's books is at least \$35 million greater than that being offered in settlement.<sup>48</sup>

Of similar nature, the Company offers no sensible justification for *adding* expenses for storm restoration in the settlement.<sup>49</sup> The only explanation given here is that somehow the recent *denials* of creation of regulatory assets for incremental storm expenses somehow instead means that the Company should include them in base rates here, in spite of, or somehow because of, that denial.<sup>50</sup> Furthermore, the increase requested in the proposed settlement agreement goes beyond the rate request of the application, and should be denied for that reason alone.

Also contradictorily, the Company argues that increasing its rates is somehow paradoxically the only way to provide service as required by law "at the lowest cost possible."<sup>51</sup> Regarding the capital structure of the Company, it claims that it "proposed a capital structure that reduces the Company's equity layer," in order to reduce rates,<sup>52</sup> in direct contradiction to its own witness's testimony that "the revenue requirement and WACC in this case would increase as a result of a higher ratio of common equity in the Company's capital structure,"<sup>53</sup> as well as its own argument mere pages later that "[i]ncreased reliance on debt both results in additional interest expense, which is costly to customers, and also impact the Company's ability to attract low-cost capital...."<sup>54</sup> The

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<sup>48</sup> Kentucky Power Company Response to Attorney General's Post-Hearing Data Requests, Response No. 1.b.

<sup>49</sup> KPCo Brief at 27-29.

<sup>50</sup> *Id.* at 29.

<sup>51</sup> *Id.* at 3.

<sup>52</sup> *Id.* at 2.

<sup>53</sup> Direct Testimony of Jeffrey D. Newcomb at 16.

<sup>54</sup> KPCo Brief at 11.

Company also contradictorily claims that securitization would be a cost-saving measure for ratepayers,<sup>55</sup> but that somehow the previous issuance of “securitization bonds in June 2025 also drives the need to reflect an updated capital structure and cost of capital, which ultimately is a driver of rates.”<sup>56</sup>

The one thing that again becomes clear amidst all these conflicting arguments and balances that, aside from not meeting its burden on any number of issues,<sup>57</sup> the Company really has no clear long-term plan to address underlying issues. The Company itself acknowledges the issues, and the downward spiral it finds itself in.<sup>58</sup> Yet it only twice discusses long-term plan outside of its own capital and investment needs.<sup>59</sup> In both instances it states that it will at some point in an undefined future period do that long-term planning.<sup>60</sup>

The burden is on the Company to not only justify its requested increase as the lowest reasonable rate, but to do fundamentally *better* by the people of Eastern Kentucky. The Commission should hold them to their commitments, with real, enforceable measures, as described in the Joint Intervenors’ initial brief.

### **III. Reply to Kentucky Industrial Utility Customers**

The Joint Intervenors generally appreciate the hard-fought specific reductions in the rate increase won by KIUC. Each reduction was well-justified, and took digging through mounds of evidence to find. While the *reductions* in the settlement agreement

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<sup>55</sup> *Id.* at 18-21.

<sup>56</sup> *Id.* at 11.

<sup>57</sup> Joint Intervenors also note that sufficient evidence on at least one topic is apparently still lacking, as the Commission recently issued a *further* request for information and additional opportunity for briefing. Order (Feb. 06, 2026). Any argument on those topics is reserved for later briefing by the Joint Intervenors prior to the Commission’s deadline.

<sup>58</sup> *See, e.g.*, KPCo Brief at 12-13.

<sup>59</sup> *See, e.g., Id.* at 10, 12, for examples of discussion of long-term need for capital for itself.

<sup>60</sup> *Id.* at 27-28, 36.

should be approved, at a minimum, it should not be up to any ratepayer - residential, industrial, or otherwise - to have to look for, find, and demand specific reductions in the Company's requested increase *that have already been ordered before*.<sup>61</sup> Anything more than an initial application that represents the actual lowest reasonable cost simply results in gamesmanship, with a higher request submitted in anticipation of potential settlement.

Joint Intervenors' also note that, as with the Company, KIUC claims that "[t]he Settlement therefore approximates the testimony position of intervenors with respect to a fair, just, and reasonable revenue requirement for the Company."<sup>62</sup> While not as egregious as the Company's claim that no one else submitted testimony on the revenue requirement, the claim still at least minimizes the importance of testimony such as that of JI Witness Colton regarding the *impact* of the requested revenue requirement on ratepayers, that other side of the balancing scale.

#### **IV. Reply to Kentucky Solar Energy Industries Association**

The Joint Intervenors support the provisions related to the COGEN/SPP tariff included in the Settlement and argued for the KYSEIA, with two exceptions. First, KYSEIA and the Company support a provision that "Kentucky Power will implement an application fee for customers seeking to connect distributed energy resources to its system that is calculated as follows: \$100 + \$1/kW of the proposed resource."<sup>63</sup> Joint Intervenors believe from context this is intended to apply to customers seeking to connect resources to the Company's system *pursuant to the COGEN/SPP tariff*. However, the final tariffs should be sure to reflect this. Any change to application fees

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<sup>61</sup> See JI Brief at 13-15.

<sup>62</sup> KIUC Brief at 4.

<sup>63</sup> KYSEIA Brief at 4; Settlement ¶6.E.

for distributed energy resources under the NMS-II tariff would go beyond the scope of the Application,<sup>64</sup> and should not be approved.

## V. Reply to the Attorney General

Joint Intervenors agree with the Attorney General that rates must be, (but the Company's are not), fair, just, and reasonable *for ratepayers*.<sup>65</sup>

The Attorney General makes many interesting proposals for potential additional rate reductions.<sup>66</sup> Joint Intervenors don't take a position here on any specific proposal in the Attorney General's lists, but note agreement that intervenor testimony is not the only way to develop a record.

Joint Intervenors do take issue with one very specific proposal of the Attorney General, however. After noting several times the issue of high usage in the Company's territory,<sup>67</sup> he then suggests cutting the only potential solution.<sup>68</sup> Joint Intervenors fundamentally disagree that demand-side management ("DSM") programs should be cut. Such programs do not "unreasonably pick winners and losers," but should be offered to all - but most especially those most in need. Furthermore, properly designed DSM programs do not in fact increase costs as claimed,<sup>69</sup> but bring down rates for all.<sup>70</sup> In fact, the Commission is explicitly required by law to "assign the cost of demand-side

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<sup>64</sup> Application, Section II, Exhibit E, page 122 of 199.

<sup>65</sup> AG Brief at 1.

<sup>66</sup> *Id.* at 9-15.

<sup>67</sup> *Id.* at 6, 16.

<sup>68</sup> *Id.* at 17.

<sup>69</sup> *Id.* at 17.

<sup>70</sup> Case No. 2024-00115, *Electronic Application Of Kentucky Power Company For: (1) Approval To Expand Its Targeted Energy Efficiency Program; (2) Approval Of A Home Energy Improvement Program And A Commercial Energy Solutions Program; (3) Authority To Recover Costs And Net Lost Revenues, And To Receive Incentives Associated With The Implementation Of Its DemandSide Management/Energy Efficiency Programs; (4) Approval Of Revised Tariff D.S.M.C.; (5) Acceptance Of Its Annual DSM Status Report; And (6) All Other Required Approvals And Relief*, Direct Testimony Barrett L. Nolen at 22:19-27 (describing the "Total Resource Cost Test" as "measur[ing] the net costs of a demand-side management program as a resource option based on the total costs of the program, including both the participants' and the utility's costs), and exhibit BLN-1 at 25 (explaining that each measure evaluated for inclusion was measured under the Total Resource Cost Test);

management programs only to the class or classes of customers which benefit from the programs.”<sup>71</sup>

## **VI. Conclusion**

Wherefore, Joint Intervenors respectfully request the Commission adopt their recommendations from their initial brief.<sup>72</sup>

[SIGNATURES ON FOLLOWING PAGE]

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<sup>71</sup> KRS 278.285(3).

<sup>72</sup> JI Brief at 33-34.

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 10, 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.



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Byron L. Gary