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 Riders; (3) Approval Of Certain Regulatory And Accounting Treatments; and (4) All Other Required Approvals And Relief	))))))	Case No. 2025-00257

REPLY BRIEF OF KENTUCKY POWER COMPANY

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I. INTRODUCTION

While the Attorney General's brief may provide for interesting reading, it does little to advance legitimate arguments in this case that will actually help the people of eastern Kentucky. Notwithstanding the fact that much of the Office of the Attorney General's ("Attorney General") and Joint Intervenors' briefs serially mischaracterize the Company's proposals and testimony, and are wildly outside the scope of this rate case and the evidence presented within it, the Company nonetheless responds to the arguments made because Kentucky Power recognizes that there is more to this case than the numbers and dollars that make up the Company's Application. Indeed, Kentucky Power has recognized throughout this case that it is different, its customers are different, its service territory is different, and that is why it is doing things differently. The Attorney General, on the other hand, has seized the briefing portion of this proceeding to pad the record with untimely, unsupported, and illogical proposals that ultimately cannot help customers. The Attorney General's brief, while boisterous, lacks nuance, provides no substantive solutions, and only raises more questions. It instead engages in finger-pointing at Kentucky Power and the Commission, which ultimately distracts from the important work both are doing with respect to the real-world issues faced by customers and the Company.

Kentucky Power, on the other hand, takes action to improve customers' lives because a strong service territory and strong customer base benefits everyone, Kentucky Power included. Kentucky Power engages with its community, it is a leader in bringing economic development to reinvigorate local industry, it works constantly to reduce costs for customers, and tirelessly to improve service reliability. Kentucky Power directly supports the community, having made a charitable donation of $1 million through the Kentucky Power Foundation towards weatherization

assistance in eastern Kentucky, and having provided over $270,000 in housing assistance in 2025,[1] tens of thousands of dollars in donations for 2025 spring flood relief,[2] and tens of thousands of dollars supporting local food banks. All of these contributions are shareholders dollars and are not recovered through customer rates. Kentucky Power contributes more than just money; it also contributes its time and resources to eastern Kentucky. Company employees volunteer with organizations such as housing groups and food pantries, including hosting its own Power Up the Pantry event every year. It gives educational presentations at senior centers and civic organizations and participates in local fairs and festivals. It also restarted community listening sessions to engage directly with and hear from customer stakeholder groups. There are very few, if any, other businesses serving eastern Kentucky in this manner or magnitude.

That being said, Kentucky Power cannot solve the systemic issues plaguing eastern Kentucky on its own, nor is it charged as an electric utility to do so. It nonetheless does all it can to help because, as stated earlier, these efforts benefit everyone. Kentucky Power needs partners and not adversaries, whether at the Attorney General's office or in the General Assembly, who will work together to help bring such change.

At the same time, much like its customers', Kentucky Power's expenses are growing. Which leads to the crux of this case—Kentucky Power is actively working to find solutions to the problems it can solve. In the meantime, it is using every tool available to reduce the frequency and magnitude of rate increase requests, both before it even files a case and throughout the settlement process.

[1] Consisting of assistance to Habitat Big Sandy, West Care Pikeville Homeless Shelter, Appalachian Outreach in Martin County, Repair Fair for Boyd County, Repair Fair for City of Ashland, Housing Development Association,
[2] Consisting of assistance to Foundation for Appalachian Kentucky, Appalachian Service Project, Hazard Community Tech College, and Floyd County Homeless Shelter.

Kentucky Power worked diligently with the Signatory Parties to the Settlement Agreement to come up with the best deal possible for both sides. The Settlement Agreement ultimately results in a revenue requirement that is nearly half that requested by the Company in its Application, after application of revenue credits—another tool in the toolbox for reducing the rate increase. The Commission should see through the Attorney General's and Joint Intervenors' hollow and distracting arguments and focus instead on the important benefits to be gained through approval of the proposed Settlement Agreement.

II. NOTHING IN THE INTERVENORS' BRIEFS CHANGE THE CONCLUSION THAT THE SETTLEMENT AGREEMENT IS THE BEST OUTCOME FOR CUSTOMERS AND RESULTS IN FAIR, JUST, AND REASONABLE RATES.

A. The Attorney General's argument that the Commission should deny Kentucky Power's request for a rate increase outright is not only contrary to its own witnesses' testimony, but also to the regulatory compact and Kentucky Power's right to recover prudently-incurred costs.

The Attorney General's argument that Kentucky Power should be denied any rate increase at all[3] is contrary to the evidence in this case, including the evidence provided by the Attorney General's own expert witnesses, and the law.

The Attorney General's expert witnesses performed in-depth analysis and provided testimony, both written and oral, regarding the reasonableness of Kentucky Power's proposals in this case.[4] Neither the Attorney General's experts, nor any other witnesses in this case, support a $0 rate increase for Kentucky Power. Rather, the Attorney General's own experts testified to and supported, based on their expert opinion and the evidence in this case, a $71.1 million annual increase. To quote Attorney General Witness Lane Kollen directly:

> I recommend the Commission approve a base revenue increase of no more than $52.603 million…[and] I recommend the Commission approve an initial revenue

[3] Attorney General's Post-Hearing Brief at 5–8.
[4] Kollen Hearing Test. at 925:3-928:23.

> requirement of no more than $18.516 million for recovery through the proposed Tariff G.R. . . . .[5]

Nowhere in Mr. Kollen's testimony nor in any other witnesses' testimony is it recommended or asserted that Kentucky Power receive no increase at all.

This is because to deny Kentucky Power any rate increase at all would be completely antithetical to the regulatory compact and the real-world fact that Kentucky Power provides a service for which it must be paid in order to continue providing that service. The Attorney General posits that just because Kentucky Power is not currently losing money, that it is not entitled to any increase.[6] In other words, it argues that Kentucky Power should not be granted a rate increase because Kentucky Power does not need to make a return. The evidence shows that Kentucky Power must recover its actual cost of doing business and earn a reasonable return so that it can attract capital and reduce its reliance on and cost of debt. Decades of state and federal law likewise confirm that in return for providing reasonable, safe, and reliable service, utilities must be afforded the ability to recover their costs to provide service, plus an opportunity to earn a reasonable return.[7] The Joint Intervenors recognize this legal requirement.[8] Kentucky Power also has already comprehensively addressed this issue in its initial Post-Hearing Brief and will not repeat those arguments here.[9]

The Attorney General then argues, without any evidentiary support, that Kentucky Power would still be able to provide safe and reliable service even if it were not granted a rate increase. It even goes so far as to claim that there is no evidence in the record that reliability would suffer if

[5] Kollen Direct Test. at 4.
[6] Attorney General's Post-Hearing Brief at 8.
[7] McKenzie Direct Test. at 5–6.
[8] *See* Post-Hearing Brief of Joint Intervenors at 7–8.
[9] Kentucky Power's Initial Post-Hearing Brief at 6–13, 25–27.

a rate increase is denied.[10] Both logic and the evidence prove otherwise. If Kentucky Power does not receive a rate increase, then Kentucky Power would not be able to maintain the level of service it currently provides, and in some instances it would have to scale back spending on important operations and maintenance expenses, reliability programs, and other capital investments. For example, Company Witness Wiseman testified at the hearing when asked by Commissioner Wood whether Kentucky Power would still be able to provide safe and reliable service if the Commission were to deny or materially reduce the request for a rate increase:

> A. [W]e would have to take some pretty drastic measures. It would certainly jeopardize [our] service.[11]

Company Witness Ross provided specifics of what could happen if such investments, like those for the trees outside right-of-way ("TOR") program, are not made:

> A. [T]he longer that we don't address trees outside right-of-way, the [more] damage incurred to our distribution facility, so it breaks poles, it breaks the wire. That's very costly. You're talking about, you know, equipment -- equipment cost, people cost. And so if we don't get control of the TOR, we'll cont -- our customers will continue to have to pay these high costs associated with the impacts to our system from TOR. So we can take a proactive approach and spend the dollars and be able to analyze each area and be prudent in how we're spending each dollar, or we can be reactive and have no control on what that spend could potentially be.[12]

Ms. Ross also testified about the benefits of the inverse:

> A. So it is a positive for our customers from an affordability perspective. We're gaining control, we're being very prudent, we're being very analytical and strategic on how we're going to attack our number one cause of customer minutes of interrupted. So this will benefit our customers.[13]

These concepts apply to Kentucky Power's provision of electric service as a whole. It would stand to reason that if Kentucky Power is not granted a rate increase, then in addition to

[10] Attorney General's Post-Hearing Brief at 8.
[11] Wiseman Hearing Test. at 157:7-9.
[12] Ross Hearing Test. at 625:1-15.
[13] *Id.* at 630:7-13.

those rates being confiscatory, future projects and plans such as advanced metering infrastructure or building additional in-state generation would have to be re-evaluated in the context of Kentucky Power's financial position going forward and would undoubtedly be jeopardized.

The Commission should remain focused on the facts and evidence in this case, and how it can actually help ratepayers while also remaining fair to Kentucky Power and acting consistent with its statutory duties and its stated mission.[14] The facts and evidence, even those supplied by the Attorney General's own witnesses, recognize that some rate increase for Kentucky Power is necessary. The Settlement Agreement shaves the requested rate increase down as much as possible by accepting almost every single one of the Attorney General witnesses' proposals, and then provides additional and significant rate relief through the DTL rider revenue credits. The Attorney General's argument that Kentucky Power should receive no rate increase is completely unreasonable, unsupported by its own evidence, contrary to the law, and should be dismissed out of hand.

B. The Commission should accept the Settlement Agreement, which results in a revenue requirement $21.1 million less than that deemed reasonable by the Attorney General's expert witnesses, and should reject the Attorney General's last-ditch attempts to further cut reasonable and prudently-incurred expenses.

Knowing that a $0 rate increase would be both unreasonable and unlawful, the Attorney General proposed an alternative: to reduce the rate increase as much as possible.[15] Importantly, Kentucky Power and the Signatory Parties to the Settlement Agreement have already done that. The Settlement Agreement proposes a revenue requirement that is $21.1 million less than the Attorney General's position, after application of the DTL rider revenue credits, over the first three

[14] *About the Public Service Commission*, KY. PUB. SERV. COMM'N, https://psc.ky.gov/Home/About#AbtComm ("The mission of the Kentucky Public Service Commission is to foster the provision of safe and reliable service at a reasonable price to the customers of jurisdictional utilities while providing for the financial stability of those utilities by setting fair and just rates, and supporting their operational competence by overseeing regulated activities.").
[15] Attorney General's Post-Hearing Brief at 8.

years. In fact, if the Commission did what the Attorney General says ("if the Commission is inclined to increase rates, it should limit those increases to those specified by the experts sponsored by the Attorney General and KIUC"[16]), then the Commission would be approving the annual revenue requirement of $71.1 million recommended by the Attorney General's witnesses, instead of the $52.4 million first-year revenue requirement, after DTL rider revenue credits, proposed in the Settlement Agreement.

The Attorney General's brief is riddled with these kinds of illogical arguments and poorly-conceived concepts. For example, the Attorney General argues that the Commission should further reduce the Settlement Agreement by disallowing additional expenses for reasons that it raises for the first time on brief.[17] The Attorney General alleges that each of the additional disallowances are "supported by the record,"[18] but citations to that alleged support are conspicuously absent. Kentucky Power also has been unable to identify where in the record there is any support for these last-ditch assertions. The Attorney General apparently tries to save these tardy arguments from their obvious evidentiary deficiencies by insisting before providing them that the "analysis presented by [the Attorney General's] witnesses is incomplete," presumably in an attempt to legitimize raising them for the first time here. By doing so, however, the Attorney General admits that the record does not actually support them.

The Attorney General's suggested additional disallowances supplied on pages 9–11 of its brief are raised too late, and they are plainly unsupported by any record evidence. They are not even supported by the Attorney General's own witnesses. For example, the Attorney General argues that the ROE should be further reduced to 8.9%, when the Attorney General's own witness

[16] *Id.* at 8–9.
[17] *Id.* at 9–11.
[18] *Id.* at 9.

recommended 9.5% ("I recommend that the Kentucky Public Service Commission authorize a ROE for KPC's retail electric operations of 9.50%.").[19] Further, the Attorney General argues to modify the Company's proposed capital structure, when its own witness actually agreed with Kentucky Power's proposal ("I recommend that the Commission accept the Company's filed capital structures.").[20] The Attorney General advocates for a $1.88 million reduction to the base revenue increase related to incidental sales of gas and an additional $3.317 million reduction related to AFUDC related to CWIP,[21] even though none of the Attorney General's witnesses took issue with either of these adjustments. Finally, the Attorney General argues for the first time that "Kentucky Power should be restricted from filing to recover the $60.4 million of Mitchell catch-up costs for at least three years,"[22] after signing the Settlement Agreement in Case No. 2025-00175 as a non-opposing party, which expressly contemplated recovery of those costs in connection with the Company's next rate case, and which the Commission approved.[23]

The Attorney General's aforementioned disallowances[24] are supported, at best, only by inappropriate attempts to insert new evidence into the record through legal counsel and after the close of evidence. If the Commission were to consider them now, it would run afoul of its statutory duties to make findings of specific evidentiary fact based on substantial evidence of record.[25] Kentucky Power must also be afforded the reasonable opportunity to test that evidence by issuing

[19] Baudino Direct Test. at 3.
[20] *Id.*
[21] Attorney General's Post-Hearing Brief at 10.
[22] *Id.* at 15.
[23] Wolffram Settlement Test. at S4, *In The Matter Of: Electronic Application Of Kentucky Power Company For Approval Of (1) A Certificate Of Public 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*, Case No. 2025-00175 (Ky. P.S.C. Nov. 13, 2025); *id.* at TSW-S1 § 1(A)(iv); *id.* at Order at 44, 63 (Ky. P.S.C. Dec. 30, 2025).
[24] Attorney General's Post-Hearing Brief at 9–15.
[25] *Nat'l-Southwire Aluminum Corp. v. Big Rivers Elec. Corp.*, 785 S.W.2d 503, 510 (Ky. App. 1990).

discovery and cross-examining the witnesses supporting that evidence, if any such witnesses even exist, at hearing.[26]

The Attorney General's arguments to amend the Settlement Agreement, or that certain of its provisions are "unnecessary,"[27] are ironic and confounding and the Attorney General should be estopped from asserting them now. The Attorney General made very clear that it refused to participate in settlement discussions: "To be clear, the AG did not participate in settlement discussions in this matter. While invited to the initial settlement meeting, the Attorney General declined to participate in those discussions viewing settlement of this matter as inappropriate."[28] Despite the Attorney General's statutory directive that it "shall" appear before regulatory bodies "to represent and be heard on behalf of consumer interests,"[29] the Attorney General chose not to participate in settlement discussions that could have resulted in some of the very items it argues for now. If the Attorney General really wanted consumers to receive benefits that could have resulted from any of the proposals included in its brief, then it should have participated in those settlement discussions and advocated for them. Nonetheless, in spite of the Attorney General's intentional absence from that process, Kentucky Power strongly believes that ratepayers, and particularly residential ratepayers, will receive tremendous benefits from the Settlement Agreement.

Regardless, if the Commission entertains the Attorney General's and the Joint Intervenors' requests to modify the Settlement Agreement, Kentucky Power reiterates that any material modification will likely result in Kentucky Power having to withdraw from that agreement.[30] The

[26] *See Ky. Am. Water Co. v. Commonwealth ex rel. Cowan*, 847 S.W.2d 737, 741 (Ky. 1993); *Util. Regul. Comm'n v. Ky. Water Serv. Co.*, 642 S.W.2d 591, 593 (Ky. App. 1982).
[27] Attorney General's Post-Hearing Brief at 14.
[28] Attorney General's Response to Kentucky Power's Motion to Recess (filed Jan. 9, 2026).
[29] KRS 367.150(8).
[30] Wiseman Settlement Test. at S4.

concepts developed for the Settlement Agreement, particularly the DTL rider revenue credits that the Attorney General seeks to flippantly amend, were very carefully constructed to maximize benefits to customers up to the very point that Kentucky Power's financials could withstand. Importantly, the revenue requirement agreed to in the Settlement Agreement and the DTL rider revenue credits go hand-in-hand. Each one depends on the other, and any unbalanced change to either will negatively affect Kentucky Power's financial health and would result in unreasonable and confiscatory rates.[31] For example, if there is an increase in the DTL rider revenue credit, then it decreases Kentucky Power's cash flow. Holding all other things equal, lower cash from operations means lower funds from operations ("FFO")/debt ratio, which is a key ratio affecting credit metrics, ultimately affecting Kentucky Power's cost of debt and therefore the cost of service.[32] The same is true if there is a decrease in the settled-upon revenue requirement. The Commission explicitly directed the Company to ensure balance among these metrics in its last rate case:

> The Commission notes that Kentucky Power has control over its capital spending and is able to improve its funds from operations to debt credit metric, in part by adjusting its capital spending and debt levels. Additionally, Kentucky Power stated that a downgrade in its investment rating results in an increase in its borrowing costs which may negatively impact customers. The Commission expects Kentucky Power to find cost-effective measures to improve its current credit rating of Baa3 and corporate credit rating of BBB while keeping its capital structure reasonably balanced so that it does not over burden its ratepayers to the benefit of shareholders, but that Kentucky Power would nevertheless have the ability to reasonably attract capital.[33]

[31] *Id.*
[32] Newcomb Direct Test. at 14–15.
[33] Order at 50, *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*, Case No. 2023-00159 (Ky. P.S.C. Jan. 19, 2024).

For these reasons, the Commission should approve the Settlement Agreement as filed and without modification and disregard the Attorney General's and Joint Intervenors' arguments.[34]

C. The Attorney General's and Joint Intervenors' other arguments lack merit or are not relevant here.

1. Additional scrutiny of proposed residential rate design is not necessary.

The Attorney General urges the Commission to scrutinize the residential rate design, if approved, to limit unintended consequences.[35] The Company has already committed to investigate and study the cause of apparent higher usage by customers in the Company's service territory. Depending on the results of that investigation, the Company may propose to modify or supplement the residential rate design in future rate cases if doing so would provide additional benefits for customers or would better respond to the high-usage issue. What the residential rate design proposed in this case does is provide a tangible path for higher-usage customers now to reduce their energy costs, and therefore their bills.[36] And, the Company provided extensive evidence at hearing and in discovery that this is the best option at this time to address the high-usage issue without unreasonably prejudicing or disadvantaging customers within the residential rate class. Thus, the Company took into account the issues for which the Attorney General argues additional scrutiny is needed, and the Company will continue to do so within the context of the high usage analysis and if it proposes any different or new residential rate designs in the future.

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[34] The Joint Intervenors also argue that if the Commission approves the DTL rider revenue credits as part of the Settlement Agreement, then the Company should not be approved to recover the requisite WACC return as part of the proposal. Post-Hearing Brief of Joint Intervenors at 21–22. Company Witnesses Hodgson and Wolffram testified at the hearing why this return is neutral and necessary to maintain the status quo and ensure that neither the Company nor customers unfairly benefit from the expedited return of the DTLs. Hodgson Hearing Test. at 541:13-25, 542:1-7; Wolffram Hearing Test. at 359:20-25, 360:1-11.

[35] Attorney General's Post-Hearing Brief at 15–16.

[36] The Joint Intervenors' discussion of affordability, discrimination, and variable rates is, at best, an under-developed concept advanced for the first time in its brief. *See* Post-Hearing Brief of Joint Intervenors at 9–11. The Company is unclear what argument, if any, the Joint Intervenors are making. These discussions or arguments nonetheless should be disregarded because there are no facts in evidence to support them. The only rate design evidence in the case supports the Company's proposals.

Finally, the Attorney General proposes that the Company offer budget billing plans "that smooth the ratepayer's bill over the course of the year."[37] Kentucky Power agrees with this proposal and refers the Attorney General to the Company's currently-existing Equal Payment Plan (Budget) and Average Monthly Payment Plan, which do precisely that.[38]

2. DSM benefits customers and should not be eliminated.

The Attorney General also inexplicably advocates against the Company's demand-side management ("DSM") programs.[39] The argument has not only been improperly raised in this proceeding, it also ignores the customer benefits that are driven by these programs. Customers, and particularly low-income customers, benefit from the Company's DSM programs because these programs are aimed at increasing efficiency and reducing usage, which ultimately saves customers money. Specifically, the Targeted Energy Efficiency ("TEE") Program has been approved since 1996 and targets low-income residential customers to provide supplemental funding to the Department of Energy's Weatherization Assistance Program. In 2023, the DSM charge to support the TEE Program cost the average residential customer $0.19 per month.[40] In any event, the Commission recently approved the Company's two new DSM programs for a three-year pilot based on the full evidentiary record in Case No. 2024-00115.[41] Even with the addition of those new programs, the DSM charge to support all three programs in 2025 cost the average residential

[37] Attorney General's Post-Hearing Brief at 16.
[38] *See* P.S.C. Ky. No. 13 Original Sheet No. 2-3, Section 5.A and Sheet No. 2-4, Section 5.B.
[39] Attorney General's Post-Hearing Brief at 17.
[40] Direct Test. of Scott E. Bishop at 9, *In The Matter Of: Electronic Application Of Kentucky Power Company For: (1) Approval Of Continuation Of Its Targeted Energy Efficiency Program; (2) Authority To Recover Costs And Net Lost Revenues, And To Receive Incentives Associated With The Implementation Of Its Demand-Side Management Programs; (3) Acceptance Of Its Annual DSM Status Report; And (4) All Other Required Approvals And Relief*, Case No. 2023-00362 (Nov. 15, 2023).
[41] Order at 13–14, *In The Matter Of: 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 Demand-Side 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*, Case No. 2024-00115 (Ky. P.S.C. Feb. 28, 2025).

customer $0.76 per month.[42] Importantly, the Attorney General did not intervene in that case, despite his statutory duty to appear before regulatory bodies "to represent and be heard on behalf of consumer interests."[43] Nor did the Attorney General intervene in the currently-pending DSM case, where these arguments could have been more appropriately and timely made. The Company would also point out that the Joint Intervenors have regularly argued for and continue to argue for the exact opposite. The Attorney General's proposal to eliminate the Company's Commission-approved DSM program is yet another ill-conceived proposal that ultimately would harm the customers who benefit from the Company's DSM programs.

3. The Company does not oppose an impartial independent management audit, so long as the Commission deems the costs of doing so reasonable and does not seek to re-litigate decades of past Commission approvals.

The Attorney General's brief continues its practice of inserting unsupported topics completely unrelated to this rate case by advocating for an "independent management audit."[44] The Attorney General does not identify under which Kentucky law the Commission should initiate an "independent management audit." Rather, the Attorney General cites only to press releases related to past audits.[45] Kentucky Power assumes the Attorney General is referring to the Commission's ability to institute a management and operation audit under KRS 278.255 and 807 KAR 5:013. Importantly, that statute requires that the cost of any audit performed by an audit firm

[42] Direct Test. of Stevi N. Cobern at 11, *In The Matter Of: Electronic Application Of Kentucky Power Company For (1) Approval Of Continuation Of Its Demand-Side Management Programs; (2) Authority To Recover Costs And Net Lost Revenues, And To Receive Incentives Associated With The Implementation Of Its Demand-Side Management Programs; (3) Acceptance Of Its Annual DSM Status Report; And (4) All Other Required Approval And Relief*, Case No. 2025-00365 (Nov. 17, 2025).
[43] *See generally In The Matter Of: 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 Demand-Side 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*, Case No. 2024-00115 (Ky. P.S.C. Feb. 28, 2025).
[44] Attorney General's Post-Hearing Brief at 17.
[45] *Id.* at 17 n.30.

be included in the utility's cost of service, and therefore, would be passed on to customers if conducted.[46] Moreover, Kentucky Power posits that the Commission's review in this rate case accomplishes the same objectives, if not more, as this case requires Kentucky Power to completely open up its books and subject itself and its management team to cross-examination by the intervenors and the Commission. Nonetheless, if the Commission finds this to be a worthwhile exercise, including the cost of doing so, then Kentucky Power does not oppose the suggestion, so long as the audit is truly independent, does not seek to relitigate decades-old decisions approved by the Commission, and is limited to those items permitted by KRS 278.255 and 807 KAR 5:013. The Attorney General's suggested "audit topics" are patently biased and assume facts not in evidence (in any record), and the Commission should disregard them in favor of an impartial exercise if an audit is initiated.

4. The Generation Rider would actually allow for more Commission review and oversight, not less.

The Joint Intervenors argue against the Generation Rider, insisting that the rider would reduce the Commission's ability to scrutinize generation costs.[47] The complete opposite is true. The Generation Rider actually gives the Commission greater ability to scrutinize generation costs because all costs will be included in the proposed annual review filing. Currently, generation costs (other than those recovered through the environmental surcharge) are only scrutinized by the Commission in rate cases, unless they require a separate certificate of public convenience and necessity to be filed. The Generation Rider gives the Commission more oversight, and if a review proceeding is opened, the intervenors also have additional opportunity to take evidence supporting any such costs.

[46] KRS 278.255(3).
[47] Post-Hearing Brief of Joint Intervenors at 17.

5. The remainder of the Joint Intervenors' arguments should be dismissed.

The remainder of the Joint Intervenors' arguments can be dismissed out of hand as already being addressed, being too costly, and/or lacking any evidence supporting their benefit. Interestingly, the Joint Intervenors scrutinize and advocate vehemently against any unnecessary cost, when many of their proposals would be costly to implement and would necessarily increase the cost of service to customers without any demonstrated benefit.

D. The Joint Intervenors' unsupported and woefully-late argument regarding the Company's terms and conditions of service should be rejected for several reasons.

The Joint Intervenors argue that the Commission should modify the portion of Kentucky Power's tariff that limits its liability because of the "jural rights doctrine."[48] This argument should be rejected, and it ultimately lacks merit, for several reasons.

As an initial matter, Kentucky Power's tariff has contained and the Commission has approved these provisions limiting liability since at least 2006.[49] The provisions have not materially changed in the last 20 years, and Kentucky Power does not seek to modify them in any way in this proceeding. The period to appeal the Commission's approval of these provisions has long since passed.[50] No intervenor or Commission Staff raised this issue once throughout the case in the hundreds of data requests propounded or during the three-day hearing. Other utilities' tariffs contain similar provisions limiting liability.[51] The Commission should not disturb its decades-long approval of these provisions in this case for several reasons.

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[48] *Id.* at 22–27.
[49] *See* Ky. P.S.C. No. 8, Original Sheet No. 2-4 and 2-5, eff. for service rendered March 30, 2006, cancelled Jun. 29, 2010.
[50] *See* KRS 278.410(1).
[51] Kentucky Utilities Tariff, P.S.C. No. 20, Original Sheet No. 97.2; Louisville Gas & Electric Tariff, P.S.C. Electric No. 13, Original No. 98.1.

First, and fatal to the Joint Intervenors' argument, the Commission lacks jurisdiction to consider and decide this issue. The jural rights doctrine is a constitutional doctrine arising out of Sections 14, 54, and 241 of the Kentucky Constitution, and "an administrative agency," like the Commission, "cannot decide constitutional issues."[52] Thus, the Commission does not have jurisdiction to decide whether the limitation of liability portions of the Company's tariff are or are not constitutional. The Joint Intervenors' argument should be rejected on this basis alone.

Second, even if the Commission determines it has authority to decide the issue (and it does not), it should still reject the argument because the jural rights doctrine is inapplicable to the Company's tariff. Under the jural rights doctrine, Sections 14, 54, and 241 of the Kentucky Constitution prohibit "any legislation that impairs a right of action in negligence that was recognized at common law prior to the adoption of the . . . Constitution."[53] The rule's prohibition on such legislation makes sense, as the constitutional provisions supporting it were born out of concern that special legislation from the General Assembly could eviscerate common law tort actions.[54] That is clearly not the case here.

Third, even if the Commission wrongly determines it has authority to decide the issue, the Joint Intervenors' argument should be rejected because it raises claims that are entirely hypothetical and therefore are not ripe. They request that the Commission "require revision of the tariff . . . [to] preserve all causes of action and jural rights of customers taking service under the tariffs."[55] Importantly, the Joint Intervenors do not argue that any customer's rights have actually been abridged by the tariff provisions. Nor do they argue any customer will imminently suffer

[52] *Com. v. DLX, Inc.*, 42 S.W.3d 624, 626 (Ky. 2001).
[53] *Waugh v. Parker*, 584 S.W.3d 748, 754 (Ky. 2019) (emphasis added).
[54] *Williams v. Wilson*, 972 S.W.2d 260, 266 (Ky. 1998) ("[I]f the Legislature could immunize certain classes of public officers, it could exempt all public officers and employees from liability, and if logically extended, could immunize private groups the Legislature determined to be entitled to immunity.").
[55] Post-Hearing Brief of Joint Intervenors at 27.

such a deprivation of rights. In the absence of some real dispute, their argument should also be disregarded on ripeness grounds.[56]

Fourth, the Joint Intervenors' argument is also procedurally barred because it is raised for the first time in their post-hearing brief after evidence has closed and is otherwise completely unsupported by any record evidence. It is telling that the first thing the Joint Intervenors allege in support of this argument is that the Commission may modify Kentucky Power's tariff, and therefore the terms and conditions under which Kentucky Power provides service to customers, with "no witness testimony" and "no evidence" because it is a "legal argument."[57] The Joint Intervenors are wrong. Any Commission action modifying Kentucky Power's tariff requires the same fact-finding and evidentiary support as any other issue, including tariff modifications, decided by the Commission.[58] This requirement applies whether that change is proposed by the Company, an intervenor, or raised by the Commission itself. The fact that this would be a constitutional issue does not relieve the Commission of its fact-finding duties. Actually, that fact robs the Commission of its jurisdiction to decide the issue at all, as explained above.

Notwithstanding, whether to modify the limitation of liability provisions does require fact-finding as to whether the modification would result in fair, just, and reasonable rates. For example, greater exposure to liability would increase Kentucky Power's cost of service, which could be passed on to customers through increased insurance costs and/or higher cost of debt. Exactly how recission of the liability limitations provisions of the Company's tariff would affect the cost of service, and therefore customer rates, must be analyzed through the provision of evidence before the Commission can approve any modifications. For this reason, the Joint Intervenors argument

[56] *Doe v. Golden & Walters, PLLC*, 173 S . W.3d 260, 270 (Ky. App. 2005) ("Questions that *may never arise* or are *purely advisory* or *hypothetical* do not establish a justiciable controversy." (emphasis added)).
[57] Post-Hearing Brief of Joint Intervenors at 22.
[58] *Nat'l-Southwire*, 785 S.W.2d at 510; *Ky. State Racing Comm'n v. Fuller*, 481 S.W.2d 298, 308 (Ky. 1972).

would be procedurally barred because an argument that requires additional discovery or other fact-finding cannot be raised after the deadline for discovery has passed.[59]

The Joint Intervenors' argument is unsound and should be rejected for any one of the reasons provided above.

III. CONCLUSION

The Attorney General and Joint Intervenors raise many arguments and issues that have little or nothing to do with the issues actually under review in this case and that only distract from the meaningful and creative solutions that Kentucky Power and the Signatory Parties to the Settlement Agreement have proposed for the Commission's consideration. Kentucky Power urges the Commission to continue to focus on the case before it and review Kentucky Power's proposals and the evidence related to those proposals in this case. Kentucky Power will continue to focus on customers and how it can help solve the issues in the service territory that affect both customers and the Company. Nothing in the intervenors' briefs change the conclusion that the Settlement Agreement is the best outcome for both the Company and customers, and the Commission should approve it without modification.

[59] *See, e.g.*, *State Contracting & Stone Co. v. Walker*, 294 S.W.2d 931 (Ky. 1956) (holding that amendment to pleading was not permitted after the close of evidence).

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