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

POST-REHEARING BRIEF OF KENTUCKY POWER COMPANY

Kenneth J. Gish, Jr.
Harlee P. Havens
STITES & HARBISON PLLC
250 West Main Street, Suite 2300
Lexington, Kentucky 40507-1758
Telephone: (859) 226-2300
Fax: (859) 253-9144
kgish@stites.com
hhavens@stites.com

COUNSEL FOR KENTUCKY POWER COMPANY

Table of Contents

Page

I. EXECUTIVE SUMMARY 1

II. INTRODUCTION 1

III. LEGAL STANDARD 3

IV. ARGUMENT 6

A. The Commission's Changes to the Company's Vegetation Management Plan Result in Higher Annual Costs to Customers for Reduced Vegetation Management Work. 7

1. ***The Commission's Decision to Reclassify TOR Expenditures as Operating Expense Instead of Capitalization of those Costs Unequivocally Harms Customers.*** 8

2. ***The Commission has the Authority to Allow Capitalization of Vegetation Management Expenditures for Ratemaking Purposes.*** 10

3. ***If the Commission Fails to Reverse its Decision to Increase Annual Vegetation Management Costs to Customers and Limit the Effectiveness of the Vegetation Management Program, it Must Still Make Changes to the Original Order.*** 11

B. The Original Order's Reduction in the Company's Compensation Expense is Unreasonable and Unlawful. 13

1. ***The Commission's Removal of "Other" Compensation from the Company's Compensation Expense Conflicts with the Commission's Past Practice and is Inconsistent with its Treatment of Other Utilities.*** 14

2. ***The Commission's Removal of All Incentive Compensation Expense is Unreasonable and not Supported by the Record.*** 17

C. PJM LSE OATT Expense Adjustment. 21

1. ***The Commission's Rejection of the Company's PJM LSE OATT Expense is Unreasonable, not Supported by the Record, and Must be Reversed.*** 21

2. ***The Company's Decision not to Adjust PJM Transmission Owner Revenue is Reasonable.*** 23

D. The Original Order's Reduction in the Company's Rate Case Expense Unreasonably Prevents the Company from Recovering its Actual Rate Case Costs. 25

V. CONCLUSION 25

I. EXECUTIVE SUMMARY

Kentucky Power Company ("Kentucky Power" or "Company") appreciates the opportunity to provide additional evidence in this case on rehearing. This rehearing and the Company's continued offer to use deferred tax liability ("DTL") credits present an opportunity for the Commission to provide real benefits to customers and improve the financial health of the company. All of this can be accomplished without materially impacting rates. The Company, therefore, respectfully requests that the Commission issue an order amending the February 28, 2026 order ("Original Order") as described below.

II. INTRODUCTION

On April 9, 2026, the Public Service Commission of Kentucky ("Commission") issued an order ("Rehearing Order") granting limited rehearing of its Original Order. The Rehearing Order limited rehearing to the following five topics:

- reclassification of vegetation management expenditures,
- adjustment to "Other" compensation,
- adjustment to incentive compensation tied to reliability,
- transmission expense adjustment, and
- rate case expenses.[1]

Kentucky Power sought rehearing via motion filed on March 20, 2026. An informal conference was held on April 1, 2026, at which the Company explained the bases for rehearing and answered questions from Commission Staff and intervenors. During rehearing, the Company provided evidence in the form of responses to two sets of rehearing data requests and Company Witness

[1] Rehearing Order at 17.

Elliott's Rehearing Testimony. The evidence the Company produced during rehearing confirms that:

- The Commission's reclassification of vegetation management expenditures will result in higher annual costs to customers for less vegetation management investment;
- The Company's inclusion of "Other" compensation and incentive compensation tied to reliability was reasonable and provided benefits to customers;
- The Company's known and measurable adjustment to PJM Load Serving Entity Open Access Transmission Tariff ("LSE OATT") Expense was appropriate and consistent with past precedent; and
- The Company should be authorized to recover its full amount of reasonable rate case expense.

Based on this evidence, the Company respectfully requests that the Commission issue an order amending the Original Order that:

- Retains the Company's proposed treatment of vegetation management expense;
- Authorizes the recovery of "Other" compensation and incentive compensation tied to reliability;
- Includes the Company's proposed known and measurable adjustment to PJM LSE OATT Expense in the Company's revenue requirement or authorizes a tracking and recovery mechanism for such expense; and
- Authorizes the recovery of all reasonable rate case expense.

The Original Order dramatically impacted the Company's financial health by reducing the revenue requirement in a manner that only gave the Company an opportunity to earn, at best, a return of only approximately 7.8%. This outcome is nearly 200 basis points below the return of 9.75% deemed reasonable and ordered by the Commission itself in the Original Order. Given the record of evidence showing that, at a 9.75% authorized return on equity ("ROE"), Kentucky Power has been unable since its last rate case order in January 2024 to earn more than 5%, and that the

Company's earned ROE for the 12 months ended May 31, 2025, was 3.93%,[2] reducing the Company's authorized earnings opportunity by more than 2% renders the Commission's Original Order unlawful and unreasonable and produces confiscatory rates.[3]

In light of the impact the Original Order has on the Company's financial health and the fact that it prevents the Company from earning its authorized return on equity, the Company respectfully requests that the Commission enters the requested order no later than September 1, 2026. The failure to amend the Original Order or delay in doing so increases the likelihood that the Company will be required to file another rate case soon; an outcome that no party wants.

If the Original Order is amended to reflect the changes supported by the evidence on rehearing, the changes can be adopted with no material impact to customer bills. In line with its commitment to customers, Kentucky Power remains willing to apply up to $25 million in DTL credits in the first year, and $15 million in the second year, to offset rate increases. Thus, the Commission can mitigate financial harm to Kentucky Power by correcting several of its reductions to the revenue requirement and apply additional DTL credits to preserve the rate outcome of the Original Order.

III. LEGAL STANDARD

The Commission's jurisdiction extends to the "rates and service" of public utilities.[4] As the Kentucky Supreme Court has observed, "[t]he manifest purpose of the Public Service Commission is to require and insure fair and uniform rates, prevent unjust discrimination, and

---

[2] *See* Newcomb Direct Test. at 8, Fig. JDN-1.

[3] *See Ky. Power Co. v. Energy Regul. Comm'n of Ky.*, 623 S.W.2d 904 (Ky. 1981); *S. Cent. Bell Tel. Co. v. Util. Regul. Comm'n*, 637 S.W.2d 649 (Ky. 1982).

[4] *See* KRS 278.040; *see also Pub. Serv. Comm'n v. Blue Grass Nat. Gas. Co.*, 197 S.W.2d 765, 768 (Ky. 1946) (citing *Smith v. S. Bell. Telephone & Telegraph Co.*, 104 S.W.2d 961 (Ky. 1937); *Benzinger v. Union Light, Heat & Power Co.*, 170 S.W.2d 38 (Ky. 1943); *Peoples Gas Co. of Ky. v. City of Barbourville*, 165 S.W.2d 567 (Ky. 1942)).

prevent ruinous competition."[5] In fact, the Commission itself states that its mission "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."[6] Furthermore, the regulation of public utilities "has a substantial relation to the public welfare, safety and health and, in a real degree, promotes these objects."[7]

Generally, utilities are entitled by law to recover from customers the utility's cost of providing service, plus the opportunity to earn a reasonable return.[8] When a utility files an application for an increase in rates, the utility necessarily asks the Commission to allow it to recover from customers, through a combination of base rates and riders, the utility's cost to provide that service plus a reasonable return. Utilities are empowered to use a historical 12-month "test year" to calculate the cost to provide service.[9] Kentucky law also allows utilities to propose adjustments to the costs incurred to provide service during the test year for "known and measurable" changes to test year costs (increases and decreases) that will more accurately reflect the cost of providing service going forward.[10] If the adjustments are known, measurable, and

---

[5] *Simpson Cnty. Water Dist. v. City of Franklin*, 872 S.W.2d 460, 464 (Ky. 1994) (citing *City of Olive Hill v. Pub. Serv. Comm'n*, 203 S.W.2d 68 (Ky. 1947)).

[6] *About the Public Service Commission*, KY. PUB. SERV. COMM'N, https://psc.ky.gov/Home/About#AbtComm.

[7] *City of Florence v. Owen Elec. Co-op, Inc.*, 832 S.W.2d 876, 882 (Ky. 1992).

[8] *See Commonwealth ex rel. Stephens v. S. Cent. Bell Tel. Co.*, 545 S.W.2d 927, 930–31 (Ky. 1976).

[9] 807 KAR 5:001, Section 16(1)(a)(1).

[10] 807 KAR 5:001, Section 16(5); *see Public Service Comm'n of Ky. v. Cont'l Tel. Co. of Ky.*, 692 S.W.2d 794, 799 (Ky. 1985).

reasonable, the Commission historically has approved the adjustments.[11] If the proposed rates, including adjustments, are fair, just, and reasonable, the Commission approves the rates.[12]

In setting utility rates, however, the Commission also is "dealing with property rights of . . . corporations."[13] The Commission may not act in a manner that is unlawful or unreasonable.[14] "Unreasonable has been construed in the rate-making sense to be the equivalent of confiscatory."[15] The Kentucky Supreme Court "has equated an unjust and unreasonable rate to the confiscation of utility property" and has "declared that rates established by a regulatory agency must enable the utility to operate successfully and maintain its financial integrity in order to meet the just and reasonable nonconfiscatory tests."[16]

In light of the constitutional and statutory limits on the Commission's authority, it is well-established that the Commission "has no authority to impose a new duty on utilities when that duty has no foundation in law. To do so is an unconstitutional legislative act."[17] In undertaking its

---

[11] *See* Order at 3–4, *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) Approval Of A Certificate Of Public Convenience And Necessity; And (5) All Other Required Approvals And Relief*, Case No. 2020-00174 (Ky. P.S.C. Jan. 13, 2021); *see also* Order at 7, *In The Matter Of: Electronic Application Of Kentucky Power Company For (1) A General Adjustment Of Its Rates For Electric Service; (2) An Order Approving Its 2017 Environmental Compliance Plan; (3) An Order Approving Its Tariffs And Riders; (4) An Order Approving Accounting Practices To Establish Regulatory Assets And Liabilities; And (5) An Order Granting All Other Required Approvals And Relief*, Case No. 2017-00179 (Ky. P.S.C. Jan. 18, 2018).

[12] KRS 278.030(1); *see also Ky. Pub. Serv. Comm'n v. Commonwealth ex rel. Conway,* 324 S.W.3d 373, 380–81 (Ky. 2010); Order at 111, ordering ¶ 2, *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) Approval Of A Certificate Of Public Convenience And Necessity; And (5) All Other Required Approvals And Relief*, Case No. 2020-00174 (Ky. P.S.C. Jan. 13, 2021).

[13] *Bobinchuck v. Levitch*, 380 S.W.2d 233, 236 (Ky. 1964).

[14] *See* KRS 278.340.

[15] *Pub. Serv. Comm'n v. Dewitt Water Dist.*, 720 S.W.2d 725, 730 (Ky. 1986) (citing *Commonwealth ex rel. Stephens v. S. Cent. Bell Tel. Co.*, 545 S.W.2d 927 (Ky. 1976)).

[16] *Id.*

[17] *Pub. Serv. Comm'n v. Jackson Cnty. Rural Elec. Co-op, Inc.*, 50 S.W.3d 764, 766 (Ky. App. 2000), *as modified* (July 21, 2000) (citing *Henry v. Parrish*, 211 S.W.2d 418 (Ky. 1948)).

work, the focus of the Commission's efforts are upon the outcome. As stated by the Kentucky Supreme Court: "[T]he Commission has discretion in working out the balance of interests necessarily involved and that it is not the method, but the result, which must be reasonable."[18] The Kentucky Court of Appeals offered this similar perspective:

> The teaching of these cases is straightforward. In reviewing a rate order courts must determine whether or not the end result of that order constitutes a reasonable balancing, based on factual findings, of the investor interest in maintaining financial integrity and access to capital markets and the consumer interest in being charged non-exploitative rates. . . . those choices must still add up to a reasonable result.[19]

In setting rates, "the future as well as the present must be considered."[20] Indeed, "rates are merely the means designed for achieving a predetermined objective, which in this instance is how much additional revenue should the Company be allowed to earn."[21] As the applicant, Kentucky Power bears the burden of proof to demonstrate that it is entitled to the relief which it seeks.[22] Kentucky Power has met that burden in this case.

IV. ARGUMENT

The evidence produced during the rehearing, combined with the evidence presented in the case before rehearing, requires that the Commission cure its unreasonable and unlawful Original Order.

---

[18] *Ky. Indus. Util. Customers, Inc. v. Ky. Utils. Co.*, 983 S.W.2d 493, 498 (Ky. 1998) (citing *Fed. Power Comm'n v. Hope Nat. Gas*, 320 U.S. 591 (1944)); *see also Nat'l-Southwire Aluminum Co. v. Big Rivers Elec. Corp.*, 785 S.W.2d 503, 515 (Ky. App. 1990) ("We are primarily concerned with the product and not with the motive or method which produced it." (citing *Louisville & Jefferson Cnty. Met. Sewer Dist. v. Joseph E. Seagram & Sons*, 211 S.W.2d 122 (Ky. 1948))).

[19] *Nat'l-Southwire*, 785 S.W.2d at 513 (citing *Jersey Cent. Power & Light Co. v. Fed. Energy Regul. Comm'n*, 810 F.2d 1168, 1177 (D.C. Cir. 1987)).

[20] *Dewitt Water Dist.*, 720 S.W.2d at 730 (citing *McCardle v. Indianapolis Water Co.*, 272 U.S. 400 (1926)).

[21] *Ky. Power Co. v. Energy Regul. Comm'n*, 623 S.W.2d 904, 908 (Ky. 1981).

[22] *See Energy Regul. Comm'n v. Ky. Power Co.*, 605 S.W.2d 46, 49 (Ky. App. 1980).

A. The Commission's Changes to the Company's Vegetation Management Plan Result in Higher Annual Costs to Customers for Reduced Vegetation Management Work.

As explained in the Company's March 20, 2026, Motion for Rehearing, the Commission took several unreasonable and unlawful actions with respect to the Company's vegetation management programs, both prospectively and retroactively, that will negatively impact Kentucky Power and its customers. The Company summarizes the actual effects of the Commission's holdings with respect to vegetation management below:

- The reclassification of trees outside the right-of-way ("TOR") expenditures from capital to expense means that customers would pay more annually even if the Company performs less vegetation management.
- The Commission's Original Order reduces the customer benefits from capitalizing TOR expenditures that take the form of reduced annual expenditures for significant reliability improvements.
- The removal of TOR capitalized expenses from rate base to a 30-year regulatory asset, without carrying costs, harms the Company economically by depriving the Company of the return it was, until now, entitled to recover on significant investments made to improve customer reliability.
- The Commission's Original Order did not address capitalized trees inside the right-of-way ("TIR") expenditures, which leaves the Company without guidance as to whether to continue capitalizing eligible TIR expenditures going forward. If the Commission intended to require the Company to expense those previously-capitalized expenditures, then the Original Order also unreasonably failed to authorize a level of such expense in base rates.
- The Commission ordered capital TOR expenditures to be reclassified as an expense to Federal Energy Regulatory Commission ("FERC") Account 571,[23] which is a transmission account.

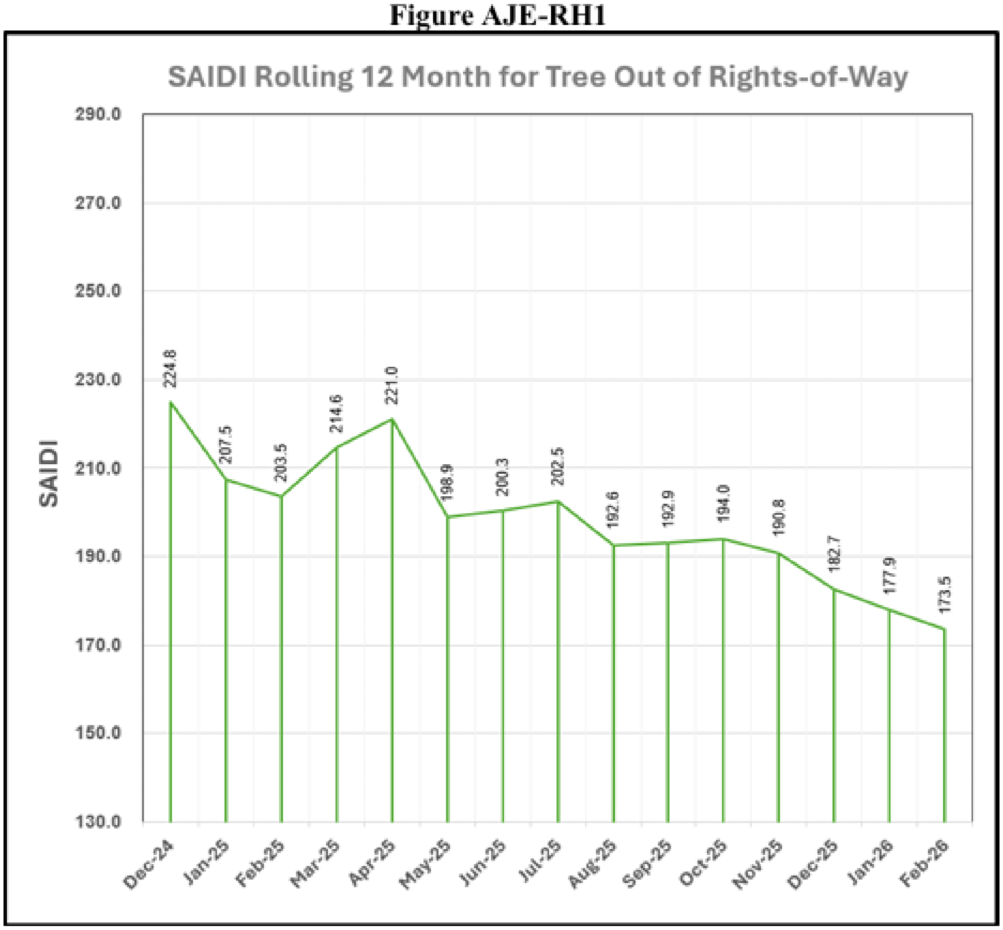
It is imperative to Kentucky Power's financial health, reliability outcomes, and customer rate impacts and satisfaction that the Commission amend its Original Order and reverse its decision to reclassify TOR Program expenditures from capital to expense.

[23] Kentucky Power believes the Commission intended to order reclassification to FERC Account 593.

1. *The Commission's Decision to Reclassify TOR Expenditures as Operating Expense Instead of Capitalization of those Costs Unequivocally Harms Customers.*

Capitalizing TOR costs for ratemaking purposes rather than treating them as an expense unequivocally benefits customers, while allowing Kentucky Power greater ability to make significant TOR investments that improves reliability and customer satisfaction. The TOR Program provides clear benefits to customers. Under the capital treatment of the TOR Program, the Company made significant reliability improvements by investing roughly $18 million of capital in 2025, which can be seen in Figure AJE-RH1 below.[24]

Figure AJE-RH1



[24] Elliott Rehearing Test. at RH6.

In just a 12-month period, the Company's capitalized TOR investments reduced System Average Incident Duration Index ("SAIDI") from outages caused by TOR by 51.3 minutes (a 33% improvement) over the 12-month period.[25]

The change in TOR expenditure treatment directed by the Original Order effectively sets the Company's ongoing budget for the TOR Program at $7.2 million per year. By now treating these costs as expenses, Kentucky Power cannot make incremental investments beyond the amount reflected in base rates without inflicting financial harm on itself. In fact, the impact of the Commission's change in approach is already being felt. Since the Original Order was issued, the Company has already changed its work plans for 2026 and has released 110 contractor jobs in its service territory because of the reduced scope of work as compared to the workplan the Company had before the Original Order.[26]

This change also negatively affects customers from a rate perspective. Classifying these expenditures as expense results in a dollar-for-dollar correlation between the amount actually collected in rates and the amount of work that is performed. Accordingly, if Kentucky Power spends $7.2 million per year on TOR that is classified as operations and maintenance expense ("O&M"), then ratepayers pay $7.2 million annually in rates to recover that $7.2 million spent. Conversely, if TOR expenditures are classified as capital, then customers pay only a fraction of the amount spent on TOR through the annual revenue requirement. This is because the amounts are capitalized and amortized over the life of the plant. Specifically, because removal of TOR benefits the distribution system, TOR capital generally has a 30-year depreciable life, such that customers only pay 1/30 of the investment plus a return at the Company's weighted average cost

[25] *Id.*

[26] *Id.* at RH5.

of capital each year.[27] Applying these principles, the approximately $7.2 million of TOR O&M the Commission approved in the Original Order produces a much smaller annual revenue requirement of approximately $933,000 if capitalized for ratemaking purposes.

Thus, by switching the ratemaking treatment from capitalization to expense, on a going-forward basis, the Company can only recover costs associated with approximately $7.2 million in TOR work (approximately $11 million less than the proposed $18 million) while customers will pay greater than $6 million more annually ($7.2 million in O&M instead of $933,000 in capital revenue requirement). Interestingly, the Commission appeared concerned about approving the $18 million TOR budget for 2026 and $25 million budget for 2027, because it "runs the risk of spending more than double the previous average annual expense,"[28] but the solution required by the Original Order results in a higher rate impact.

2. *The Commission has the Authority to Allow Capitalization of Vegetation Management Expenditures for Ratemaking Purposes.*

Although a recent FERC audit report[29] led to the Company ceasing capitalization of TOR and TIR Program vegetation management costs for FERC ratemaking and reporting purposes beginning in 2026, Kentucky Power requests that the Commission maintain the Company's historical treatment of these costs for Kentucky retail ratemaking purposes, whether through (1) continued capitalization to plant that earns a return through its inclusion in retail rate base and is

[27] *See* Adjustment W50.

[28] Original Order at 47.

[29] On March 19, 2026, FERC issued its Audit Report in Docket No. FA24-2-000 to Kentucky Power's affiliate Southwestern Electric Power Company ("SWEPCO"), addressing the capitalization of vegetation management costs. See Letter Order to Southwestern Electric Power Company issuing Audit Report covering the period of 01/01/2021 through 12/31/2025 under FA24-2, Docket FA24-2-000 (FERC, March 19, 2026). In its filed response to the Audit Report, SWEPCO stated, "AEPSC accepts this finding and the related recommendations but maintains that its capitalization of the disputed vegetation costs was appropriate from both an accounting and ratemaking perspective. The capitalized vegetation management costs extend the lives and improve the efficiency of the transmission and distribution assets to which they relate. SWEPCO's capitalization of these costs also has resulted in lower historical customer rates than otherwise would have been charged has these costs been expensed."

recovered through depreciation expense included in rates over the useful life of the underlying distribution assets, or (2) deferral to a regulatory asset that earns a return through its inclusion in retail rate base and is recovered through amortization expense included in rates over the useful life of the underlying distribution assets. The retail ratemaking associated with distribution investments is wholly within the Commission's jurisdiction.[30]

3. *If the Commission Fails to Reverse its Decision to Increase Annual Vegetation Management Costs to Customers and Limit the Effectiveness of the Vegetation Management Program, it Must Still Make Changes to the Original Order.*

For the above reasons and in the March 20, 2026, Motion for Rehearing, the Commission should reverse its decision and allow the Company to capitalize TOR expense for the benefit of customers. However, if it elects not to, the following changes to the Original Order are still required.

First, the Original Order explicitly prohibits Kentucky Power from recovering carrying costs on the amounts removed from rate base to be collected instead through the regulatory asset. The Commission's Original Order fails to consider that Kentucky Power otherwise would have been able to recover a return on the amounts capitalized and included in rate base. The prohibition on recovering any carrying costs does not comport with the Commission's indication that "Kentucky Power should not be penalized by losing the principal balance of the capitalized amount as of the end of the test year for its interpretation of 18 C.F.R. §101, Electric Plant Instructions No.

[30] In *Ky. Pub. Serv. Comm'n v. Commonwealth ex rel. Conway*, 324 S.W.3d 373, 380 (Ky. 2010), the Kentucky Supreme Court affirmed that the Commission has broad ratemaking power to establish fair, just, and reasonable rates pursuant to KRS 278. KRS 278.220, Uniform system of accounts for utilities, provides the Commission with broad authority to establish its own system of accounts, and acknowledges that system may diverge from the system of accounts established by FERC: "The commission may establish a system of accounts to be kept by utilities subject to its jurisdiction, or may classify utilities and establish a system of accounts for each class, and may prescribe the manner in which such accounts shall be kept . . . the system established for . . . electric companies shall conform as nearly as practicable to the system adopted or approved by the Federal Energy Regulatory Commission."

8(A) prior to the *Pacific Gas and Electric Company* decision."[31] Nor is it constitutional. Left uncured, the Commission's removal of approximately $60 million of capital expense from rate base, combined with its deprivation of carrying costs, constitutes an unlawful taking without just compensation in violation of Section 13 of the Kentucky Constitution and the Takings Clause of the Fifth Amendment to the United States Constitution, which provide: "[N]or shall any man's property be taken or applied to public use without the consent of his representatives, and without just compensation being previously made to him." At the very least, if the Commission determines it is more appropriate to treat the TOR Program as an expense moving forward, the Company requests that the Commission apply this determination as effective from March 1, 2026, prospectively. This would allow the Company to continue to keep the capital placed in-service through February 28, 2026, in rate base.

Additionally, the Rehearing Order authorized the Company to "record a regulatory asset pending the final decision on this rehearing for TOR expenditures from the end of the test year of May 31, 2025, until the final Order was issued on February 28, 2026."[32] As described above, capitalizing TOR expenditures for ratemaking purposes instead of treating those expenditures as expenses allows the Company to continue the trajectory of reliability improvements that removing TOR has brought at a lower annual rate impact. However, to the extent that the Commission fails to correct this issue, the Company respectfully requests that the Commission expressly confirm that the Company is authorized to include the TOR expenditures from the end of the test year through the date of the Original Order in a regulatory asset, which would be presented for recovery in a future base rate proceeding.

---

[31] Original Order at 42.

[32] Rehearing Order at 10.

Finally, while the Commission expressly directed TOR to be treated as expense rather than capital, it was silent about the treatment of the portions of TIR that are capitalized. While a majority of the TIR work is expensed, there are certain portions (related to larger vegetation) that are, and have been, capitalized consistent with historical, Commission-approved practices.[33] Kentucky Power maintains that the capitalized TIR should remain in rate base for the same reasons that TOR should remain in rate base. Yet if the Commission intended for capitalized TIR to also be expensed, the Commission failed to provide a corresponding increase in expense in the Original Order. This unreasonably deprives the Company of the appropriate funding to continue certain meaningful portions of its regular TIR trim cycle. To resolve this issue, the Commission should increase the O&M expense by approximately $6.3 million[34] or make clear that the Company can continue to capitalize the unaddressed TIR costs.

B. The Original Order's Reduction in the Company's Compensation Expense is Unreasonable and Unlawful.

As part of the Settlement Agreement, Kentucky Power made meaningful concessions with respect to its compensation expense, which were negotiated as part of a comprehensive financial package mutually beneficial to the Company and customers alike. The Commission's Original Order in this case, however, upends that careful balance with material changes to compensation expense that is both unreasonable and unlawful. The Commission should amend the Original Order and approve the incentive compensation concessions in the Settlement Agreement by permitting recovery of "Other" pay expenses related to standard salaried compensation and non-financially based incentive compensation. Those expenses allow Kentucky Power to offer

[33] *See* Company's Response to KPSC RH 2-3.

[34] *See* Exhibit 1 to the Company's March 20, 2026 Motion for Rehearing.

competitive compensation so that it can retain or attract the specialized knowledge necessary to provide safe and reliable service to its customers.

1. *The Commission's Removal of "Other" Compensation from the Company's Compensation Expense Conflicts with the Commission's Past Practice and is Inconsistent with its Treatment of Other Utilities.*

The Commission's finding that denied recovery of $7,286,925 in "Other" compensation paid to its employees during the test year[35] is arbitrary, conflicts with the Commission's approval of payroll expense for Kentucky Power employees[36] and the test-year level of American Electric Power Service Corporation bill expense (of which "Other" compensation is already a component),[37] unreasonably runs counter to nearly a decade of precedent and is inconsistent with the Commission's treatment of other utilities.

The Commission's Original Order relies upon the Company's response to Staff's First Request for Information, Item 41, to support the Company's alleged lack of specificity. Item 41 is a standard data request from the Commission included in its first data requests that are propounded to all utilities before the utility files its application. Item 41 provides, in relevant part:

> 41. Provide, in the format provided in Schedule K, the following information for Kentucky Power's compensation and benefits, for the three most recent calendar years and the test year. Provide the information individually for each corporate officer and by category for Directors, Managers, Supervisors, Exempt, Non-Exempt, Union, and Non-Union Hourly. Provide the amounts, in gross dollars, separately for total company operations and jurisdictional operations.
>
> […]
>
> g. Other amounts paid and reported on the employees' W-2 (specify).

[35] Original Order at 63.

[36] *Id.* at Appendix A, Table 5 (Line Item W31); Application, Section V, Exhibit 2 at 32 of 64; KPSC 1_55_ Attachment 1_Ciborek WP1.

[37] Application, Section II, Exhibit T (detailing the test year level of expense incorporated in the Company's requested revenue requirements set forth in Section V, Exhibit 1).

The Commission's reliance on the Company's data response to support its payroll expense disallowance is misplaced because Item 41 sought different information than the level of payroll expense included in the Company's requested revenue requirement in this case and approved by the Commission.

Moreover, the "Other" compensation disallowance is unreasonably inconsistent with prior precedent. It has long been established that "radical departure from (past) administrative interpretation consistently followed cannot be made except for the most cogent reasons."[38] The Original Order, however, makes exactly such a departure. While the number of the request has changed from case to case, the Commission has propounded exactly the same data request as Item 41 since at least 2017. In its prior three rate cases, Kentucky Power responded to this request just as it did in this case.[39] In each case, the information provided by the Company was sufficient for the Commission to include "Other" compensation expense in its revenue requirement.[40] Moreover, other utilities in the Commonwealth have provided the same level of detail to the

---

[38] *S. Cent. Bell Tel. Co. v. Pub. Serv. Comm'n*, 702 S.W.2d 447, 451 (Ky. App. 1985).

[39] Company's response to KPSC 1-33 Attachment 1, *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 ("2023 Rate Case"); Company's response to KPSC 2-33, Attachment 1, *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) Approval of a Certificate of Public Convenience and Necessity; and (5) All Other Required Approvals and Relief*, Case No. 2020-00147 ("2020 Rate Case"); Company's response to KPSC 1-68, Attachment 1, *In the Matter of: Electronic Application of Kentucky Power Company for (1) a General Adjustment of its Rates for Electric Service; (2) an Order Approving its 2017 Environmental Compliance Plan; (3) an Order Approving its Tariffs and Riders; (4) an Order Approving Accounting Practices to Establish Regulatory Assets or Liabilities; and (5) an Order Granting All Other Required Approvals and Relief*, Case No. 2017-00179 ("2017 Rate Case").

[40] *See* Order, 2023 Rate Case (Ky. P.S.C. Jan. 19, 2024); Order, 2020 Rate Case (Ky. P.S.C. Jan. 13, 2021); Order, 2017 Rate Case (Ky. P.S.C. Jan. 18, 2018).

Commission's data request regarding "Other" compensation,[41] and the Commission has not denied recovery of their "Other" compensation expenses.[42]

The Commission has not provided a cogent reason for departing from a nearly-decade's long practice of accepting the specificity of "Other" compensation information provided in this case. Nonetheless, during rehearing, Kentucky Power provided more information to support the "Other" compensation amounts.[43] The Company's test-year "Other" compensation payroll data is substantially comprised of time entry codes other than "regular." This includes paid vacation time ("T/L-SAL-VACATION (SVC)" and "T/L-VACATION (VAC)"), holiday time ("T/L-SAL-HOLIDAY (SHL)" and "T/L Holiday (HOL)"), sick time ("T/L-SAL-SICK (SSK)" and "T/L-SICK-SCK)"), personal days off ("T/L-PERSONAL DAY OFF (PDO)" and "T/L-SAL-PERSONAL DAY OFF (SPD)"), and FMLA-related time.[44]

The costs included in the Company's "Other" compensation amounts are fundamentally a part of salaried compensation. The Commission's approval of test-year payroll expense already included approval of these amounts, which are part of employees' salaried compensation, as reasonable. The Commission should amend the Original Order to eliminate the inconsistent treatment of these expenses and reverse the removal of "Other" Compensation.

---

[41] Company's response to KPSC 1-68, Attachment 1, *In the Matter of: 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*, Case No. 2024-00354 ("2024 Duke Rate Case"); Company's response to KPSC 1-41, *In the Matter of: Electronic Application of East Kentucky Power Cooperative, Inc. for a General Adjustment of Rates, Approval of Depreciation Study, Amortization of Certain Regulatory Assets, and Other General Relief*, Case No. 2021-00103 ("2021 EKPC Rate Case").

[42] *See* Order, 2024 Duke Rate Case (Ky. P.S.C. Oct. 2, 2025); Order, 2021 EKPC Rate Case (Ky. P.S.C. Sept. 30, 2021).

[43] *See* Company's Responses to KPSC PHDR 1-11, PHDR 1-12, PHDR 1-14, PHDR 1-15, and PHDR 2-2.

[44] Company's Responses to KPSC RH 1-11, RH 1-12, RH 1-16, and RH 2-2.

2. *The Commission's Removal of All Incentive Compensation Expense is Unreasonable and not Supported by the Record.*

Incentive compensation is integral to the Company's market-competitive total compensation package. Without incentive compensation, the total compensation for many positions would fall below the market-competitive range.[45] Put another way, without incentive compensation, Kentucky Power would need to increase salaries and hourly wages to maintain the market-competitive total compensation package necessary to attract and retain key employees. As described by Company Witness Carlin, incentive compensation provides benefits to customers:

> The Company's Incentive Compensation is part of a competitive Total Compensation package, costing no more than providing market-competitive compensation with Base Pay alone. Incentive Compensation also helps maintain higher levels of employee and Company performance than would be achieved using Base Pay alone. <u>It does this by linking a portion of employees' total compensation opportunity to performance without increasing the Company's compensation expense</u>.[46]

Despite the importance of incentive compensation to the Company's market-competitive total compensation package and the benefits to customers that tying a portion of the total compensation package to performance provides, the Company agreed in the Settlement Agreement to remove from its revenue requirement that portion of the compensation expense relating to financial metrics.[47] The Commission, however, removed in the Original Order an additional $2,168,551 in compensation expense for incentive compensation tied to non-financial metrics, in particular reliability.[48] The Commission asserts that incentive compensation tied to reliability should be denied because the Company's reliability improvements do not meet the Commission's undefined threshold to provide benefits to customers.

---

[45] Carlin Direct Test. at 33-34, Figures ARC-5 through ARC-8, and Exhibits ARC-2 through ARC-5.

[46] Carlin Direct Testimony at 34 (emphasis added).

[47] *See* Settlement Agreement at Section 2.D.i.

[48] Original Order at 63.

The record is replete with evidence that because incentive compensation is not an additive to the Company's market-competitive total compensation package, the performance and customer benefit threshold for payment of incentive compensation should be the sole purview of the Company. As detailed by Company Witness Carlin, without incentive compensation, the Company would need to increase salary and wages to remain market-competitive, breaking the link between employee performance and total compensation to the detriment of its customers. Additionally, the Commission's reliance on the relative reliability metrics of other investor-owned utilities and "most of the electric cooperatives in the Commonwealth" ignores the well-documented, unique nature of Kentucky Power's service territory.

Kentucky Power's service territory presents unique reliability and operational challenges, primarily related to its terrain and vegetation density that makes comparison to the other investor-owned utilities in the Commonwealth unwarranted.[49] Company Witness Ross explained how the unique terrain (mountains with steep, rocky, and heavily-forested hillsides, along with narrow valleys), vegetation density, rainfall and soil topography found in the Company's service territory create operational challenges not experienced by more urban or flat-landed service territories of other investor-owned utilities in the Commonwealth.[50] Thus, comparison to the other investor-owned utilities[51] serves as an unreasonable basis for denying incentive compensation especially when it amounts to below-market compensation.

Similarly, comparing Kentucky Power's reliability metrics to electric cooperatives, as the Commission did in its Original Order,[52] also fails to account for the direct correlation between the

---

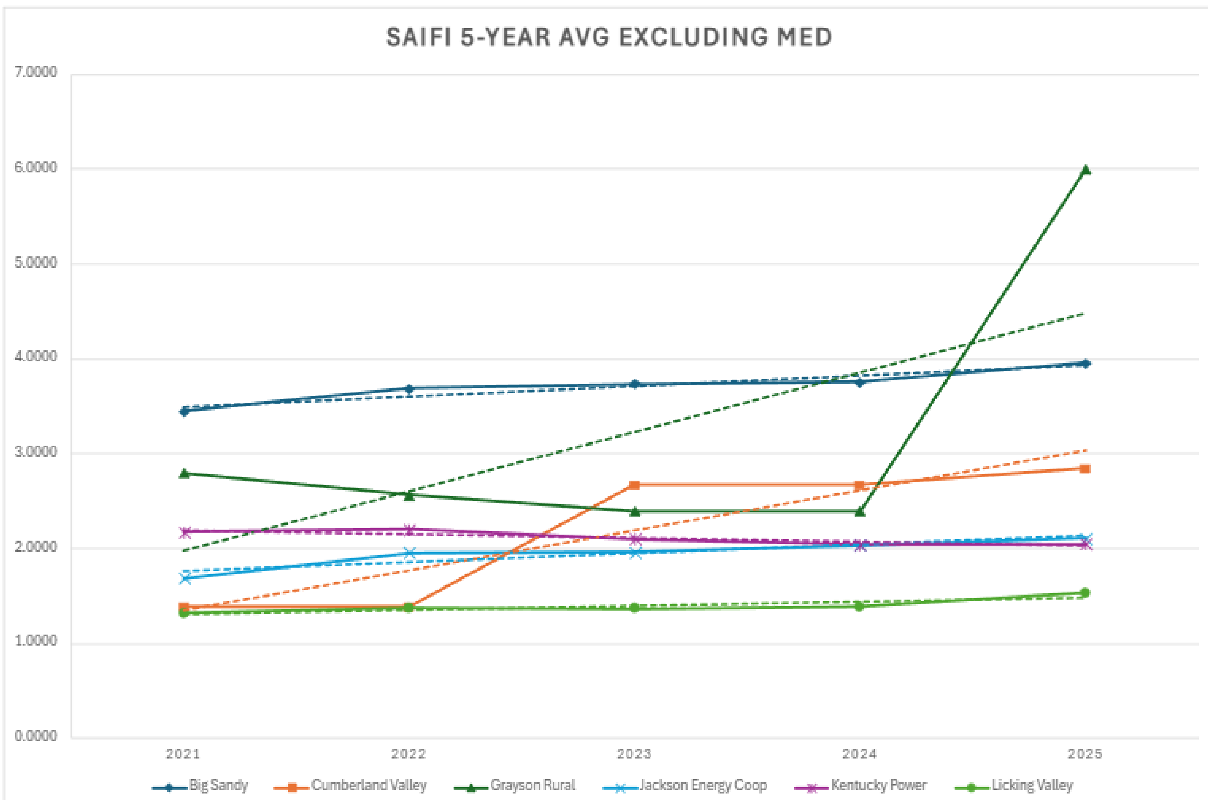
[49] Ross Direct Test.at 4-6.

[50] *Id.*

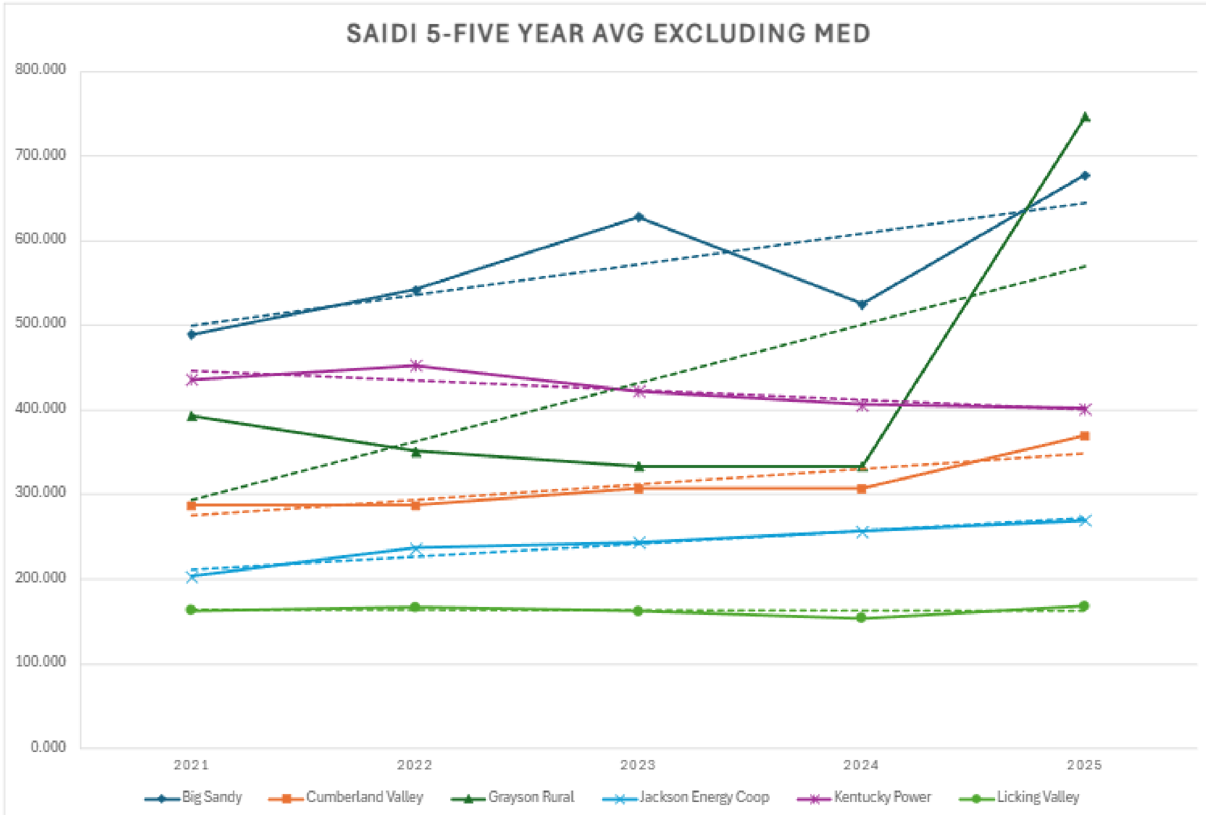
[51] *See* Original Order at 61.

[52] *Id*.

terrain and vegetation density in the electric cooperative's service territory. An electric cooperative operating in the relatively flat farmland of western Kentucky would not face the same reliability challenges that Kentucky Power faces in the forested mountains of eastern Kentucky. In Case No. 2021-00370, Company Witness Shlatz provided a comparison of peer utilities reliability metrics. The Kentucky electric cooperatives in that peer group included Big Sandy RECC, Grayson RECC, Cumberland Valley Electric, Jackson Energy Cooperative and Licking Valley RECC. During rehearing, the Company provided evidence of the trends in SAIDI and SAIFI for these cooperatives and the Company.[53] This information is reproduced below:



[53] *See* Company's response to KPSC RH2-1.



Contrary to the Commission's rationale for denying the non-financially based incentive compensation, Kentucky Power is the only entity in this group with SAIFI and SAIDI metrics trending downward.

The Commission's reliance on vague and undefined thresholds for demonstrating customer benefits to deny all the Company's incentive compensation expense is unreasonable and unsupported by the evidence. The Commission should amend the Original Order to allow Kentucky Power recovery of its incentive compensation expense related to non-financial metrics.

C. PJM LSE OATT Expense Adjustment.

The Commission denied the Company's proposed annual $9,981,873 pro forma adjustment to its PJM LSE OATT Expense on the grounds that the proposed adjustment was not fixed, known, and measurable.[54] The Commission held:

> In light of those actual LSE OATT charges from January 2025 through December 2025, which come from Kentucky Power's own income statement, the Commission is not able to find that Kentucky Power met its burden of establishing a known and measurable change to its LSE OATT expense that justifies its proposed pro forma adjustment, and therefore, finds that the proposed pro forma adjustment to LSE OATT expense should be denied.[55]

In short, the Commission held that the proposed pro forma adjustment to LSE OATT expense was neither fixed, known, nor measurable because Kentucky Power's actual 2025 LSE OATT expenses, through December 2025, turned out to be less than the proposed adjustment.[56]

1. *The Commission's Rejection of the Company's PJM LSE OATT Expense is Unreasonable, not Supported by the Record, and Must be Reversed.*

The Commission's denial of the proposed pro forma adjustment to LSE OATT expense has the effect of arbitrarily using the Company's actual, calendar year 2025 expenses as a benchmark to set prospective base rates. The Commission's Original Order unreasonably makes unsupported assumptions that the Company's LSE OATT costs will remain the same as or decrease from test-year expenses to justify the denial of the proposed pro forma adjustment.[57] There is no evidence of record to support the Commission's assumptions. In fact, the Company's expected 2026 LSE OATT costs, based on 2026 rates in effect, have increased over 2025 expenses such that the amount currently approved by the Commission to be recovered through base rates (the test-year amount) is already estimated to result in a recovery deficiency of approximately $11

[54] Original Order at 83-84, 85.

[55] *Id*.

[56] *Id.* at 84.

[57] *See id.* at 83-85.

million or an estimated 100 basis point reduction in ROE. Evidence produced during rehearing demonstrated that the variance between the pro forma adjustment amount and the actual costs incurred was a function of true-ups from prior years, not inaccuracies in the adjusted going-level transmission expense.[58] Kentucky Power cannot predict the timing and amount of true-ups that occur on a two-year lag and, therefore, such true-ups cannot be known and measurable.[59]

Moreover, the Commission's denial of the proposed pro forma adjustment again unreasonably denies, or traps, recovery of actual transmission costs deemed reasonable and recoverable by FERC, the agency with exclusive jurisdiction over those costs. The Franklin Circuit Court recently struck down the very same practice by the Commission in Kentucky Power's last base rate case, where the Commission, as here, approved test-year LSE OATT expenses but denied the Company's proposed pro forma adjustment.[60] In that appeal, the Franklin Circuit Court held that "[w]holesale transmission costs are FERC-regulated and, because of this, the Commission does not have the jurisdiction to unilaterally reduce the level of Transmission Expense that Kentucky Power may recover from customers."[61] The Court correctly recognized that "Transmission Expense is a FERC-jurisdictional cost and its reasonableness is not subject to the Commission's jurisdiction. Once approved by FERC, Transmission Expense cannot be reduced or disallowed by the Commission under the Supremacy Clause of the United States Constitution."[62]

---

[58] *See* Company's response to KPSC RH 1-2, 2-5, and 2-10.

[59] *See* Company's response to KPSC RH 2-5.

[60] *See* Order, *Ky. Power Co. v. Pub. Serv. Comm'n*, No. 24-CI-00160 (Franklin Cir. Ct. Jan. 22, 2025); Order at 4, *Ky. Power Co. v. Pub. Serv. Comm'n*, No. 25-CI-00310 (Franklin Cir. Ct. Sept. 15, 2025).

[61] Order at 8, *Ky. Power Co. v. Pub. Serv. Comm'n*, No. 24-CI-00160 (Franklin Cir. Ct. Jan. 22, 2025).

[62] *Id*.

The Commission's denial of the proposed pro forma adjustment here is no different. Whatever the Commission's reasoning for the denial, FERC still maintains exclusive jurisdiction over these costs, and the Commission cannot take any action that has the effect of preventing Kentucky Power from recovering them.[63] The Original Order has that prohibited effect.

For these reasons, the Commission should amend the Original Order and approve Kentucky Power's proposed pro forma adjustment for LSE OATT expenses.[64]

2. *The Company's Decision not to Adjust PJM Transmission Owner Revenue is Reasonable.*

In the Rehearing Order, the Commission discusses the Company's decision not to adjust the going-level amount of PJM Transmission Owner ("TO") Revenue:

> Thus, in granting rehearing to obtain additional information regarding the PJM LSE OATT expense adjustment, the Commission finds that it is also necessary to consider the prospect of a transmission revenue adjustment and any other potentially interconnected transmission adjustments, and therefore, the Commission notes that the grant of rehearing on the transmission expense issue to obtain additional information should also be construed as reopening such interconnected issues discussed in the final Original Order.[65]

During rehearing, the Company provided substantial evidence in support of its position that while an adjustment to the Company's PJM LSE OATT Expense is reasonable and necessary, an adjustment to the Company's PJM TO Revenue is not.

---

[63] *Nantahala Power & Light Co. v. Thornburg*, 476 U.S. 953 (1986); *Miss. P. & L. Co. v. Miss. ex rel. Moore*, 487 U.S. 354 (1988).

[64] If the Commission is concerned that the pro forma adjustment does not reflect actuals for a given year, it could address this concern by authorizing the Company to track and recover actual LSE OATT expense going forward. Generally, a tracker would allow the Company to track its actual LSE OATT expense in a year and then recover those expenses (either in total or above or below a base amount) in the next year. The amount recovered in the next year would include a true up for over- or under-recovery in the prior year. The Company has tracked these actual LSE OATT expenses in the past, and tracking would be appropriate because these amounts are significant, volatile, and largely outside the Company's control. Implementing a tracking and recovery mechanism would ensure that the Company is not recovering more than the actual cost.

[65] Rehearing Order at 12.

The Company's PJM TO Revenues are one of three components in the Company's retail rates relating to transmission service:

- Component 1 – The Company's Transmission Cost of Service reflects the return on and of the Company's owned transmission assets and the associated operating expenses (operation and maintenance expense, property taxes, administrative and general expenses, etc.). The Company's Transmission Cost of Service is included in the Company's base rates.

- Component 2 – The Company's PJM TO Revenues are the wholesale revenues paid to the Company by PJM based on Kentucky Power's annual wholesale revenue requirement. The Company's PJM TO Revenues are based on a formula rate cost of service that is approved by FERC. PJM TO Revenues are reflected in the Company's base rates as a credit to the cost of service. The Company's PJM TO Revenues are based on the Company's Transmission Cost of Service. Or said another way, the Company's PJM TO Revenues reflects the FERC-approved rates compensating the Company for the Transmission Cost of Service.

- Component 3 – The Company's PJM LSE OATT Expense is the sum of the charges assessed to the Company's retail load for wholesale transmission service in the PJM. The PJM LSE OATT Expense is the charge to the Company for the use of the PJM transmission system to serve its load. The rates underlying these charges are set by FERC and the Company recovers the PJM LSE OATT Expense in base rates.[66]

The Company's PJM TO Revenues are inextricably linked to its Transmission Cost of Service such that an adjustment to the Company's PJM TO Revenues require a corresponding adjustment to the Transmission Cost of Service. The Company provided an example in Attachment 1 to its response to Commission Staff's rehearing data request 2-11 which demonstrates that if an adjustment is made to the Company's PJM TO Revenues without a corresponding adjustment to the Transmission Cost of Service, rates would be set too low to allow the Company to recover the cost of providing transmission service to its customers. The Company has not historically made adjustments to PJM TO Revenues and corresponding adjustments to the Company's Transmission Cost of Service. This is because, at the time of filings, adjustments for the PJM LSE OATT

[66] *See* Company's response to KPSC RH 2-11.

Expense and the PJM TO Revenues can be derived from publicly available materials from PJM based on FERC-approved tariffs, while adjusting the Transmission Cost of Service would require a cost of service study based on forecasted data.[67]

For these reasons, the Company correctly decided not to adjust its PJM TO Revenue. It would be an error for the Commission to do so now.

D. The Original Order's Reduction in the Company's Rate Case Expense Unreasonably Prevents the Company from Recovering its Actual Rate Case Costs.

The Commission's Rehearing Order acknowledged that the Commission's Original Order omitted the Company's actual rate case expense incurred between December 2025 and February 2026.[68] During rehearing, the Company provided an updated calculation of rate case expense. The updated, actual costs paid by Kentucky Power for rate case-related expenses is \$1,206,219. This update results in a difference between estimated rate case expense (\$1,393,500) and actual rate case expense of \$187,281. Amortized over three years the difference is \$62,427 and increases annual amortization of rate case expense by \$179,512, instead of \$74,830 as prescribed in the Original Order.

The Commission should amend its Original Order to reflect the actual rate case expense incurred by the Company.

V. CONCLUSION

Based on the evidence presented in rehearing and in the Company's initial filing, the Company respectfully requests that the Commission issue an order no later than September 1, 2026, amending the February 28, 2026 Original Order in this case to:

---

[67] *See* Company's response to KPSC RH 2-11.

[68] Rehearing Order at 13.

1. Allow the Company to continue its practice of classifying TOR expenditures and certain TIR expenditures as capital for ratemaking purposes; or in the alternative, (i) allow Kentucky Power to recover carrying costs on the regulatory asset(s) comprised of capitalized vegetation management expenditures previously contained in rate base, in an amount appropriate to make Kentucky Power whole had those amounts continued to be included in rate base; and (ii) properly account for capitalized TIR expenditures in the allowed level of ongoing vegetation management O&M expense in base rates.

2. Approve recovery of the Company's test-year incentive compensation expense not otherwise reduced by the Settlement Agreement and "Other" compensation expense.

3. Approve the Company's proposed LSE OATT expense adjustment (W16) as fixed, known, measurable, and reasonable.

4. Approve the Company's updated actual rate case expense incurred through February 28, 2026, as recoverable, and increase annual amortization of rate case expense by $179,512.

Kentucky Power reiterates its willingness to apply up to $25 million in DTL credits in the first year, and $15 million in the second year, to offset rate increases.

Respectfully submitted,

____

Kenneth J. Gish, Jr.
Harlee P. Havens
STITES & HARBISON PLLC
250 West Main Street, Suite 2300
Lexington, Kentucky 40507-1758
Telephone: (859) 226-2300
Fax: (859) 253-9144
kgish@stites.com
hhavens@stites.com

COUNSEL FOR KENTUCKY POWER COMPANY