COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

The 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 Approvals And Relief	)	Case No. 2025-00365

RESPONSE BRIEF OF KENTUCKY POWER COMPANY TO JOINT INTERVENORS' POST-HEARING BRIEF

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

I. INTRODUCTION

The record in this case demonstrates that Kentucky Power's proposed surcharge rates should be approved because they are reasonable and based on long-standing Commission precedent. The Joint Intervenors' additional proposals are not justified, nor supported by any authority. The Commission should approve the Company's proposed surcharge rates that will ultimately result in a rate decrease for Kentucky Power customers.

II. ARGUMENTS

A. The Commission Should Approve the Company's Proposed Surcharge Rates As Proposed Because They Are Reasonable.

The surcharge rates proposed by Kentucky Power should be approved because they are in line with Commission precedent. After excluding the rolled-over 2025 budget funds from the 2026 budget, the Company requests that the Commission approve the residential DSM factor at \$0.000437 per kWh and the commercial DSM factor at \$0.000453 per kWh.[1]

The Joint Intervenors' assertion that the proposed surcharge rates are "unlawful, unjust and unreasonable," is entirely off-base, considering they are in line with Commission precedent in force since at least 2018.[2] Moreover, the Commission's February 28, 2025, Order in Case No. 2024-00115 approved the Company's long-standing calculation of its DSM surcharge, inclusive of the calculation of lost revenues.[3] Joint Intervenors somehow try to find fault in the Company's reliance on this Commission's orders by stating that such reliance "falls flat."[4] To the contrary, the Commission's repeated approval of this mechanism demonstrates that it has been proven

---

[1] Company's response to KPSC PHDR-19; *see also* SNC-R1.
[2] Cobern Rebuttal Test. at R4; Order, *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. 2018-00377 (Ky. P.S.C. Dec. 21, 2018).
[3] Cobern Rebuttal Test. at R4.
[4] Joint Intervenors' Post-Hearing Brief at 12.

reasonable, and it has been meticulously considered by the Commission. Joint Intervenors' attempt to undermine the Commission's authority and review by equating it to a mere "this-is-what-we've-always-done" argument indeed, falls flat.

As noted in the Company's Post-Hearing Brief, the Company proposed in Case No. 2024-00115, where HEIP and CESP were first approved, and the calculations of net energy impact were most recently approved, that it would utilize the identified net energy savings until an evaluation, measurement, and verification ("EM&V") consultant was engaged and the savings were validated.[5] In the same case, the Company stated an RFP for an EM&V contractor would be issued in 2026, which it is on track to complete.[6] This Commission-approved process will provide the Company with data concerning actual lost revenues from installed measures, which at this point, are not currently available.

Currently, without a completed EM&V, the Company can only rely on forecasted lost revenues. These forecasts, however, are based on historical data and, therefore, reasonable for purposes of applying the surcharge, particularly where the DSM surcharge includes an over/under true-up. So, if there are any unused funds for the programs, customers are credited back those amounts, which accomplishes the goal of returning any excess benefit of these funds to customers.[7] Joint Intervenors also seem to presuppose, without evidence, that the forecasts based on historical

[5] Company's response to JI 1-56, *In the Matter of: Electronic Application Of Kentucky Power Company For: (1) Approval To Expand Its Targeted Energy Efficiency Program; (2) Approval Of 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. July 8, 2024).
[6] Company's response to JI 1-53, *In the Matter of: Electronic Application Of Kentucky Power Company For: (1) Approval To Expand Its Targeted Energy Efficiency Program; (2) Approval Of 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. July 8, 2024).
[7] Cobern Rebuttal Test. at R2.

savings inherently benefit Kentucky Power, where there is also a possibility that the forecasts under-estimate the lost revenues resulting from any implemented cost-saving measures. Notably, technologies continue to advance, suggesting that certain measures could be even more effective at saving energy, and thus result in higher lost revenues than the Company currently accounts for. Regardless, with the information currently available to the Company, these forecasts are a reasonable mechanism for accounting for lost revenues and are a mechanism that the Commission has approved.

B. The Company Should Not Be Required to Place Collected Funds Into an Interest-Bearing Account.

The Commission should disregard the Joint Intervenors' request to compel the Company to place funds collected through Tariff D.S.M.C. in an interest-bearing account because it is not supported by any Commission precedent and is not administratively feasible.

As noted in the Company's Post-Hearing Brief, Joint Intervenors' misunderstand the Commission precedent cited (but not reviewed) by Joint Intervenor Witness Sherwood, that they claim supports their request. One of the orders cited was issued in a case opened by the Commission to monitor Southern Water & Sewer District's meter replacement surcharge.[8] The other related to the disposition of funds obtained by Big Rivers Electric Cooperative through financing. Neither of those cases concerned a rider mechanism with an over/under true up like exists in the Company's Tariff D.S.M.C.[9] There is no basis in the cases cited, but not reviewed, by Joint Intervenor Witness Sherwood for requiring Kentucky Power to place funds collected through the DSM surcharge into an interest-bearing account. To the contrary, this is not something that the Company can accomplish. Because the Company does not have any other riders or

---

[8] Order, *In the Matter of: Electronic Southern Water & Sewer District's Meter Replacement Surcharge Monitoring*, Case No. 2020-00121 (Ky. P.S.C. Apr. 8, 2020).

[9] Kentucky Power Company's Post-Hearing Brief at 14–15.

surcharge mechanisms that require funds to be held in an interest-bearing account, this is not a standard practice, and there is therefore an additional administrative cost that Ms. Sherwood did not contemplate in her testimony.[10] Specifically, the over- or under-recovered balance as it relates to the DSM program costs includes a variety of accruals, overheads, and allocations.[11] In other words, it is not simply cash that would be transferred to and from a bank account or used to pay program administrators.[12] Additionally, invoices and incentive payments for DSM programs are sporadic throughout the month, which would require frequent adjustments to available funds.[13] Moreover, the DSM surcharge includes an over/under true-up, so if there are any unused funds for the programs, customers are credited back those amounts, which accomplishes the goal of returning any excess benefit of these funds to customers.[14]

Because the surcharge utilizes a true-up mechanism, there is likely always a party making up "the difference," whether that be the Company making up any over-recovery, or the customers making up any under-recovery. The addition of the Company maintaining an interest-bearing account does not align with this principle, as the Company does not seek to collect interest on any under-recovered amounts; requiring interest to be applied to over-recovered amounts creates an imbalance that undermines the surcharge mechanism.

The Joint Intervenors' request that the Company place funds collected through the DSM surcharge into an interest-bearing account is not supported by precedent and creates greater administrative hurdles than any benefit, particularly where there is already an over-/under-recovery mechanism in place. Joint Intervenors' dissatisfaction with the Company's response to their

[10] Cobern Rebuttal Test. at R5.
[11] Company's response to KPSC PHDR-9.
[12] *Id.*
[13] Cobern Rebuttal Test. at R5.
[14] *Id.* at R2.

proposal does not mean the Company's response was inadequate. The Company has duly considered the administrative implications of establishing an interest-bearing account as described by the Joint Intervenors and explained in its briefing why such mechanism is not feasible. There is, therefore, nothing in the record to support their proposal, and it should be denied.

Moreover, the Company takes exception to the Joint Intervenors' implication that the Company is not "genuinely committed to minimizing the costs" to its customers.[15] To the contrary, the entire purpose of the Company's DSM programs—which it did not have to establish—is to offer assistance to customers that would ultimately minimize their usage and corresponding costs. This is precisely why the Company originally sought to rollover the unspent 2025 funds, to help *more* customers achieve cost-saving measures. To imply that the Company is not committed to helping customers in a case where that is the sole purpose of the Company's application is uncalled for and markedly false.

C. The Company's Original Request to Rollover Unspent 2025 Funds Was Not Unreasonable.

Despite the Company's updated proposal to exclude unspent 2025 funds from the 2026 budget, the Joint Intervenors still spend a significant portion of their Post-Hearing Brief claiming that the Company's original proposal was "unreasonable."[16] This point is ultimately moot, as the Company withdrew this proposal in light of the hearing and subsequent briefing for this matter taking place more than halfway through 2026, not leaving the Company sufficient time in 2026 to utilize those funds.

The Company, however, maintains that its original proposal was far from unreasonable, but rather represented an effort by the Company to fund the DSM programs with already-collected

[15] Joint Intervenors' Post-Hearing Brief at 9.
[16] *See id.* at 12.

money so that it could help more of its customers. The Joint Intervenors' claims that this was somehow unreasonable are untenable. To support this position, Joint Intervenors point to high program costs, which they then immediately admitted were normal for programs in their infancy.[17] They then claim that the Company's efforts, jointly with TRC, were insufficient to effectuate these programs.[18] Namely, the Joint Intervenors call into question what TRC and the Company were doing to establish HEIP and CESP in March through June 2025, leading up to the programs bring fully implemented in July 2025. TRC completed a number of operational, design, and technology-related tasks in those months, such as establishing a call center, drafting implementation procedures, creating the online EnergyAdvantage portal infrastructure, creating and effectuating a marketing plan, and identifying outreach targets, all while conducting consistent update meetings and check-ins to monitor progress. The dissonance between these two positions demonstrates that establishing DSM programs requires time and financial support, which is precisely what Kentucky Power sought to provide in its original application. It therefore does not follow that the Company's effort to further support the programs with unspent 2025 funds was unreasonable.

D. The Commission Should Maintain the Current DSM-Related Timelines, Not Implement Differing Checkpoints.

Joint Intervenors request that the Commission implement timelines for future updates and proposals related to DSM programs. Such timeline, however, already exists. In a year when there are no DSM program evaluations or proposed expanded or new DSM programs filed with the Commission, Kentucky Power must file the following by November 15 using the Commission's electronic Tariff Filing System:

[17] *Id.* at 13 ("To some extent, [] disproportionate spending on program administration and marketing reflects the reality of reintroducing DSM programs . . . .").
[18] *See id.* at 13–14.

- A revised tariff sheet showing the proposed DSM factors that are to be effective for the first billing cycle for the revenue month of January for the next year.
- All necessary supporting documentation to support the true-up of the proposed DSM factor(s) including: (1) a Status Report for each program of the prior year actual and year-to-date actual as of June 30 in a Portable Document Format (PDF) document; and (2) the current Exhibit C in an Excel document with all formulas intact and cells unprotected, along with all supporting documentation for the recovery of program costs, lost revenues, and incentives, that are used in determining the true-up of the proposed DSM factor(s).[19]

Considering that their Witness cited to Commission Orders in her testimony without reviewing them, it is unsurprising that Joint Intervenors ignore (either intentionally or unintentionally) the timeline established by the Commission in prior cases.

Because no new or expanded programs were proposed in this case, the Company properly filed its application and necessary supporting documents by the November 15 deadline. To achieve this routine filing deadline each year, it takes approximately a month and a half to collect the data necessary for the report, update trackers, prepare rate calculations, and to draft testimony to support the filing. The data necessary to provide this information is not available until the actual costs are available to the Company following the end of September. Filing the DSM surcharge updates when the Company does allows it to use as much actual (as opposed to forecasted) data as possible to complete the calculations.

Despite the Company's compliance with the deadline already set forth by the Commission, the Joint Intervenors still unnecessarily take shots at the Company, asserting that it filed this routine case "on an emergency or after-the-fact basis."[20] Throughout their briefing, Joint Intervenors have

---

[19] Order at 24–25, *In the Matter of: Application Of Kentucky Power Company To Amend Its Demand-Side Management Program And For Authority To Implement A Tariff To Recover Costs And Net Lost Revenues, And To Receive Incentives Associated With The Implementation Of The Programs*, Case No. 2012-00367 (Ky. P.S.C. Feb. 22, 2013). Joint Intervenors curiously made a specific request that the Commission require the Company to "file any proposed modifications to program budgets, targets, or design . . . no later than a date certain each year," despite the already-existing annual deadline that controlled the timing of the filing at issue here. Joint Intervenors' Post-Hearing Brief at 18.

[20] Joint Intervenors' Post-Hearing Brief at 18.

continued to intentionally use inflammatory language and imply that the Company's actions are nefarious, and intended to short-change its customers. It is unclear who the audience for Joint Intervenors' vitriol is; the Commission knows the timelines for updates established in its precedent. What is clear is that this case was not filed as an "emergency" nor with the intention that the Commission be "rushed to [a] decision."[21] Instead, the Company filed this case with a proposal intended to further support its new DSM programs with available funds, and it did so by the deadline set by the Commission, and in a routine filing that has historically been uncontentious. The Company proposed to use the funds in 2026, relying on its previous experience that such case would be resolved in sufficient time to carry out the proposal. Joint Intervenors refer to themselves as "eager partners,"[22] but continue to make under-handed digs at the Company after years of purporting to want to collaborate with it, thus acting as its adversary instead.

The Company unequivocally denies that this case was an attempt to rush any decision through the regulatory process. Plainly, the Company has complied with the deadlines put in place by this Commission and will continue to do so. As such, there is no need for further or different deadlines.

III. CONCLUSION

For the reasons stated above, the Joint Intervenors' proposals should be rejected, and Kentucky Power Company's proposed updates should be approved in their entirety, with the exception of excluding the unused 2025 funds from the 2026 budget.

---

[21] *Id.*
[22] *Id.* at 19.

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