COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PRACTICE BEFORE THE COMMISSION BY ATTORNEYS NON-LICENSED IN THE COMMONWEALTH OF KENTUCKY	)))	ADMINISTRATIVE ORDER No. 249

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In recent months the question has arisen as to the propriety of attorneys who are not licensed in the State of Kentucky to represent clients before the Public Service Commission. The purpose of this Order is to clarify the Commission's position on this matter.

The Supreme Court of Kentucky has defined the "practice of law" in Rule 3.020, which provides in relevant part, as follows:

> The practice of law is any service rendered involving legal knowledge or legal advice, whether of representation, counsel or advocacy in or out of court, rendered in respect to the rights, duties, obligations, liabilities, or business relations of one requiring the services. (Emphasis supplied.)

The Kentucky Bar Association has specifically defined representation of a client or employer before a state administrative agency as the "practice of law." 1/ Supreme Court Rule 3.030(2) further

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1/ KBA Opinion U-27, issued October, 1980.

states as follows:

> A person licensed to practice in another state, but not in this state, shall be permitted to practice a case in this state only if he subjects himself to the jurisdiction and Rules of the Court governing professional conduct and engages a member of the Association as co-counsel, whose presence shall be necessary at all trials and at other times when required by the court. (Emphasis supplied.)

Based upon the above-referenced Rules of the Supreme Court and the Opinion of the Kentucky Bar Association, the Commission HEREBY ORDERS that any attorney who is not licensed to practice in the State of Kentucky and who seeks to represent a client or employer before this Commission, must engage a member of the Kentucky Bar Association as co-counsel. Said co-counsel must appear with the non-resident attorney in any proceeding before this Commission.

Done at Frankfort, Kentucky this 15th day of June, 1981.

PUBLIC SERVICE COMMISSION

Martin M. Volz
CHAIRMAN

Katherine Randall
VICE CHAIRMAN

Don Clayegan
COMMISSIONER

ATTEST:

SECRETARY

278.040 Public Service Commission -- Jurisdiction -- Regulations.

(1) The Public Service Commission shall regulate utilities and enforce the provisions of this chapter. The commission shall be a body corporate, with power to sue and be sued in its corporate name. The commission may adopt a seal bearing the name "Public Service Commission of Kentucky," which seal shall be affixed to all writs and official documents, and to such other instruments as the commission directs, and all courts shall take judicial note of the seal.

(2) The jurisdiction of the commission shall extend to all utilities in this state. The commission shall have exclusive jurisdiction over the regulation of rates and service of utilities, but with that exception nothing in this chapter is intended to limit or restrict the police jurisdiction, contract rights or powers of cities or political subdivisions.

(3) The commission may adopt, in keeping with KRS Chapter 13A, reasonable regulations to implement the provisions of KRS Chapter 278 and investigate the methods and practices of utilities to require them to conform to the laws of this state, and to all reasonable rules, regulations and orders of the commission not contrary to law.

Effective: July 15, 1982

History: Amended 1982 Ky. Acts ch. 82, sec. 7, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 8, effective April 1, 1979. -- Amended 1976 Ky. Acts ch. 88, sec. 2, effective March 29, 1976. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 3952-2, 3952-12, 3952-13, 3952-27.

278.010 Definitions for KRS 278.010 to 278.450, 278.541 to 278.544, 278.546 to 278.5462, and 278.990.

As used in KRS 278.010 to 278.450, 278.541 to 278.544, 278.546 to 278.5462, and 278.990, unless the context otherwise requires:

(1) "Corporation" includes private, quasipublic, and public corporations, and all boards, agencies, and instrumentalities thereof, associations, joint-stock companies, and business trusts;

(2) "Person" includes natural persons, partnerships, corporations, and two (2) or more persons having a joint or common interest;

(3) "Utility" means any person except a regional wastewater commission established pursuant to KRS 65.8905 and, for purposes of paragraphs (a), (b), (c), (d), and (f) of this subsection, a city, who owns, controls, operates, or manages any facility used or to be used for or in connection with:

(a) The generation, production, transmission, or distribution of electricity to or for the public, for compensation, for lights, heat, power, or other uses;

(b) The production, manufacture, storage, distribution, sale, or furnishing of natural or manufactured gas, or a mixture of same, to or for the public, for compensation, for light, heat, power, or other uses;

(c) The transporting or conveying of gas, crude oil, or other fluid substance by pipeline to or for the public, for compensation;

(d) The diverting, developing, pumping, impounding, distributing, or furnishing of water to or for the public, for compensation;

(e) The transmission or conveyance over wire, in air, or otherwise, of any message by telephone or telegraph for the public, for compensation; or

(f) The collection, transmission, or treatment of sewage for the public, for compensation, if the facility is a subdivision collection, transmission, or treatment facility plant that is affixed to real property and is located in a county containing a city of the first class or is a sewage collection, transmission, or treatment facility that is affixed to real property, that is located in any other county, and that is not subject to regulation by a metropolitan sewer district or any sanitation district created pursuant to KRS Chapter 220;

(4) "Retail electric supplier" means any person, firm, corporation, association, or cooperative corporation, excluding municipal corporations, engaged in the furnishing of retail electric service;

(5) "Certified territory" shall mean the areas as certified by and pursuant to KRS 278.017;

(6) "Existing distribution line" shall mean an electric line which on June 16, 1972, is being or has been substantially used to supply retail electric service and includes all lines from the distribution substation to the electric consuming facility but does not include any transmission facilities used primarily to transfer energy in bulk;

(7) "Retail electric service" means electric service furnished to a consumer for ultimate

consumption, but does not include wholesale electric energy furnished by an electric supplier to another electric supplier for resale;

(8) "Electric-consuming facilities" means everything that utilizes electric energy from a central station source;

(9) "Generation and transmission cooperative" or "G&T" means a utility formed under KRS Chapter 279 that provides electric generation and transmission services;

(10) "Distribution cooperative" means a utility formed under KRS Chapter 279 that provides retail electric service;

(11) "Facility" includes all property, means, and instrumentalities owned, operated, leased, licensed, used, furnished, or supplied for, by, or in connection with the business of any utility;

(12) "Rate" means any individual or joint fare, toll, charge, rental, or other compensation for service rendered or to be rendered by any utility, and any rule, regulation, practice, act, requirement, or privilege in any way relating to such fare, toll, charge, rental, or other compensation, and any schedule or tariff or part of a schedule or tariff thereof;

(13) "Service" includes any practice or requirement in any way relating to the service of any utility, including the voltage of electricity, the heat units and pressure of gas, the purity, pressure, and quantity of water, and in general the quality, quantity, and pressure of any commodity or product used or to be used for or in connection with the business of any utility, but does not include Voice over Internet Protocol (VoIP) service;

(14) "Adequate service" means having sufficient capacity to meet the maximum estimated requirements of the customer to be served during the year following the commencement of permanent service and to meet the maximum estimated requirements of other actual customers to be supplied from the same lines or facilities during such year and to assure such customers of reasonable continuity of service;

(15) "Commission" means the Public Service Commission of Kentucky;

(16) "Commissioner" means one (1) of the members of the commission;

(17) "Demand-side management" means any conservation, load management, or other utility activity intended to influence the level or pattern of customer usage or demand, including home energy assistance programs;

(18) "Affiliate" means a person that controls or that is controlled by, or is under common control with, a utility;

(19) "Control" means the power to direct the management or policies of a person through ownership, by contract, or otherwise;

(20) "CAM" means a cost allocation manual which is an indexed compilation and documentation of a company's cost allocation policies and related procedures;

(21) "Nonregulated activity" means the provision of competitive retail gas or electric services or other products or services over which the commission exerts no regulatory authority;

(22) "Nonregulated" means that which is not subject to regulation by the commission;

(23) "Regulated activity" means a service provided by a utility or other person, the rates and charges of which are regulated by the commission;

(24) "USoA" means uniform system of accounts which is a system of accounts for public utilities established by the FERC and adopted by the commission;

(25) "Arm's length" means the standard of conduct under which unrelated parties, each party acting in its own best interest, would negotiate and carry out a particular transaction;

(26) "Subsidize" means the recovery of costs or the transfer of value from one (1) class of customer, activity, or business unit that is attributable to another;

(27) "Solicit" means to engage in or offer for sale a good or service, either directly or indirectly and irrespective of place or audience;

(28) "USDA" means the United States Department of Agriculture;

(29) "FERC" means the Federal Energy Regulatory Commission;

(30) "SEC" means the Securities and Exchange Commission;

(31) "Commercial mobile radio services" has the same meaning as in 47 C.F.R. sec. 20.3 and includes the term "wireless" and service provided by any wireless real time two (2) way voice communication device, including radio-telephone communications used in cellular telephone service, personal communications service, and the functional or competitive equivalent of a radio-telephone communications line used in cellular telephone service, a personal communications service, or a network radio access line; and

(32) "Voice over Internet Protocol" or "VoIP" has the same meaning as in federal law.

Effective: June 8, 2011

History: Amended 2011 Ky. Acts ch. 98, sec. 20, effective June 8, 2011. -- Amended 2006 Ky. Acts ch. 239, sec. 5, effective July 12, 2006. -- Amended 2005 Ky. Acts ch. 109, sec. 2, effective June 20, 2005. -- Amended 2002 Ky. Acts ch. 365, sec. 15, effective April 24 2002. -- Amended 2001 Ky. Acts ch. 11, sec. 1, effective June 21, 2001. -- Amended 2000 Ky. Acts ch. 101, sec. 5, effective July 14, 2000; ch. 118, sec. 1, effective July 14, 2000; and ch. 511, sec. 1, effective July 14, 2000. -- Amended 1998 Ky. Acts ch. 188, sec. 1, effective July 15, 1998. -- Amended 1994 Ky. Acts ch. 238, sec. 1, effective July 15, 1994. -- Amended 1982 Ky. Acts ch. 82, sec. 1, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 1, effective April 1, 1979. -- Amended 1974 Ky. Acts ch. 118, sec. 1. -- Amended 1972 Ky. Acts ch. 83, sec. 1. -- Amended 1964 Ky. Acts ch. 195, sec. 1. -- Amended 1960 Ky. Acts ch. 209, sec. 1. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-1.

278.030 Rates, classifications and service of utilities to be just and reasonable -- Service to be adequate -- Utilities prohibited from energizing power to electrical service where seal is not present.

(1) Every utility may demand, collect and receive fair, just and reasonable rates for the services rendered or to be rendered by it to any person.

(2) Every utility shall furnish adequate, efficient and reasonable service, and may establish reasonable rules governing the conduct of its business and the conditions under which it shall be required to render service.

(3) Every utility may employ in the conduct of its business suitable and reasonable classifications of its service, patrons and rates. The classifications may, in any proper case, take into account the nature of the use, the quality used, the quantity used, the time when used, the purpose for which used, and any other reasonable consideration.

(4) Notwithstanding the provisions of subsection (2) of this section, no utility shall energize power to an electrical service in a manufactured home or mobile home where the certified installer's seal is not present pursuant to KRS 227.570.

(5) Notwithstanding the provisions of subsection (2) of this section, no utility shall energize power to an electrical service in a previously owned manufactured home or previously owned mobile home where the Class B1 seal is not present pursuant to KRS 227.600.

Effective: January 1, 2009

History: Amended 2008 Ky. Acts ch. 118, sec. 3, effective January 1, 2009. -- Amended 1976 Ky. Acts ch. 88, sec. 1, effective March 29, 1976. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 3952-28, 3952-29.

278.160 Utilities to file and display general schedules of rates and conditions for service -- Adherence to schedules -- Exclusion from disclosure of confidential or proprietary provisions in special contracts.

(1) Under rules prescribed by the commission, each utility shall file with the commission, within such time and in such form as the commission designates, schedules showing all rates and conditions for service established by it and collected or enforced. The utility shall keep copies of its schedules open to public inspection under such rules as the commission prescribes.

(2) No utility shall charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered than that prescribed in its filed schedules, and no person shall receive any service from any utility for a compensation greater or less than that prescribed in such schedules.

(3) The provisions of this section do not require disclosure or publication of a provision of a special contract that contains rates and conditions of service not filed in a utility's general schedule if such provision would otherwise be entitled to be excluded from the application of KRS 61.870 to 61.884 under the provisions of KRS 61.878(1)(c)1.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 138, sec. 1, effective July 14, 2000. -- Amended 1986 Ky. Acts ch. 300, sec. 1, effective July 15, 1986. -- Amended 1982 Ky. Acts ch. 82, sec. 20, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 22, effective April 1, 1979. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 3952-30, 3952-31.

278.180 Changes in rates, how made.

(1) Except as provided in subsection (2) of this section, no change shall be made by any utility in any rate except upon thirty (30) days' notice to the commission, stating plainly the changes proposed to be made and the time when the changed rates will go into effect. However, the commission may, in its discretion, based upon a showing of good cause in any case, shorten the notice period from thirty (30) days to a period of not less than twenty (20) days. The commission may order a rate change only after giving an identical notice to the utility. The commission may order the utility to give notice of its proposed rate increase to that utility's customers in the manner set forth in its regulations.

(2) The commission, upon application of any utility, may prescribe a less time within which a reduction of rates may be made.

Effective: July 15, 1986

History: Amended 1986 Ky. Acts ch. 300, sec. 2, effective July 15, 1986. -- Amended 1982 Ky. Acts ch. 82, sec. 22, effective July 15, 1982; and ch. 242, sec. 1, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 24, effective April 1, 1979. -- Amended 1976 Ky. Acts ch. 88, sec. 12, effective March 29, 1976. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-15.

278.190 Procedure when new schedule of rates filed -- Suspension of new rate schedule -- Burden of proof -- Refunds.

(1) Whenever any utility files with the commission any schedule stating new rates, the commission may, upon its own motion, or upon complaint as provided in KRS 278.260, and upon reasonable notice, hold a hearing concerning the reasonableness of the new rates.

(2) Pending the hearing and the decision thereon, and after notice to the utility, the commission may, at any time before the schedule becomes effective, suspend the operation of the schedule and defer the use of the rate, charge, classification, or service, but not for a longer period than five (5) months beyond the time when it would otherwise go into effect if an historical test period is used, or longer than six (6) months if a forward-looking test period is used, pursuant to KRS 278.192; and after such hearing, either completed before or after the rate, charge, classification, or service goes into effect, the commission may make those orders with reference thereto as it deems proper in the matter. If the proceeding has not been concluded and an order made at the expiration of five (5) months, or six (6) months, as appropriate, the utility may place the proposed change of rate, charge, classification, or service in effect at the end of that period after notifying the commission, in writing, of its intention so to do. Where increased rates or charges are thus made effective, the commission may, by order, require the interested utility or utilities to maintain their records in a manner as will enable them, or the commission, or any of its customers, to determine the amounts to be refunded and to whom due in the event a refund is ordered, and upon completion of the hearing and decision may, by further order, require such utility or utilities to refund to the persons in whose behalf the amounts were paid that portion of the increased rates or charges as by its decision shall be found unreasonable. Provided, however, if the commission, at any time, during the suspension period, finds that the company's credit or operations will be materially impaired or damaged by the failure to permit the rates to become effective during the period, the commission may, after any hearing or hearings, permit all or a portion of the rates to become effective under terms and conditions as the commission may, by order, prescribe.

(3) At any hearing involving the rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the utility, and the commission shall give to the hearing and decision of such questions preference over other questions pending before it and decide the same as speedily as possible, and in any event not later than ten (10) months after the filing of such schedules.

(4) If the commission, by order, directs any utility to make a refund, as hereinabove provided, of all or any portion of the increased rates or charges, the utility shall make the refund within sixty (60) days after a final determination of the proceeding by an order of the court or commission with or without interest in the discretion of the commission. If the utility fails to make the refund within sixty (60) days after the final determination, any party entitled to a refund may, after ten (10) days' written demand, bring an action in any court of competent jurisdiction of this state,

and may recover, in addition to the amount of the refund due, legal interest, court costs, and reasonable attorney's fees. No such action may be maintained unless instituted within one (1) year after the final determination. Any number of persons entitled to refunds may join in as plaintiffs in a single action and the court shall render a judgment severally for each plaintiff as his interest may appear.

Effective: July 14, 1992

History: Amended 1992 Ky. Acts ch. 308, sec. 2, effective July 14, 1992. -- Amended 1984 Ky. Acts ch. 111, sec. 123, effective July 13, 1984. -- Amended 1982 Ky. Acts ch. 82, sec. 24, effective July 15, 1982; and ch. 242, sec. 2, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 26, effective April 1, 1979. -- Amended 1952 Ky. Acts ch. 46, sec. 2, effective March 5, 1952. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-16.

278.192 Test period for proposed rate increase.

(1) For the purpose of justifying the reasonableness of a proposed general increase in rates, the commission shall allow a utility to utilize either an historical test period of twelve (12) consecutive calendar months, or a forward-looking test period corresponding to the first twelve (12) consecutive calendar months the proposed increase would be in effect after the maximum suspension provided in KRS 278.190(2).

(2) (a) Any application utilizing a forward-looking test period shall include a base period to be filed with the application, which begins not more than nine (9) months prior to the date of filing, consisting of not less than six (6) months of actual historical data and not more than six (6) months of estimated data at the time of filing.

(b) Actual results for the estimated months of the base period shall be filed no later than forty-five (45) days after the last day of the base period.

(c) Upon the filing of an application for a proposed increase in rates based on either a historical or a forward-looking test period, any intervening party in opposition to such application shall have the right to examine all data, including individual invoices, which comprise the actual expenditures of the utility incurred for ratemaking purposes for the preceding twelve (12) month period immediately prior to the filing date.

Effective: July 14, 1992

History: Created 1992 Ky. Acts ch. 308, sec. 1, effective July 14, 1992.

807 KAR 5:011. Tariffs.

RELATES TO: KRS 65.810, Chapter 74, 278.010, 278.030, 278.160, 278.170, 278.180, 278.190, 369.102

STATUTORY AUTHORITY: KRS 278.160(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.160(1) requires the commission to promulgate an administrative regulation to establish requirements for each utility to file schedules showing all rates and conditions established by it and collected or enforced. This administrative regulation establishes requirements for utility tariffs.

Section 1. Definitions.

(1) "Commission" is defined by KRS 278.010(15).

(2) "Date of issue" means the date the tariff sheet is signed by the representative of the utility authorized to issue tariffs.

(3) "Electronic signature" is defined by KRS 369.102(8).

(4) "Nonrecurring charge" means a charge or fee assessed to a customer to recover the specific cost of an activity, which:

(a) Is due to a specific request for a service activity for which, once the activity is completed, additional charges are not incurred; and

(b) Is limited to recovery of an amount no greater than the cost of the specific service.

(5) "Person" is defined by KRS 278.010(2).

(6) "Rate" is defined by KRS 278.010(12).

(7) "Signature" means any manual, facsimile, conformed, or electronic signatures.

(8) "Statutory notice" means notice made in accordance with KRS 278.180.

(9) "Tariff" means the schedules of a utility's rates, charges, regulations, rules, tolls, terms, and conditions of service over which the commission has jurisdiction.

(10) "Tariff filing" means the revised or new tariff sheets and all supporting documents that a utility submits to revise its rate schedules.

(11) "Utility" is defined by KRS 278.010(3).

(12) "Utility's office or place of business" means a location at which the utility regularly employs and stations one (1) or more employees and is open to the public for customer service.

(13) "Water district" means a special district formed pursuant to KRS 65.810 and KRS Chapter 74.

(14) "Web site" means an identifiable site on the internet, including social media, which is accessible by the public.

Section 2. General.

(1) Each tariff sheet and supporting document filed with the commission shall be electronically submitted to the commission using the commission's electronic Tariff Filing System located at https://psc.ky.gov/psc_portal.

(2) Each utility shall maintain a complete tariff with the commission.

(3) A utility furnishing more than one (1) type of service (water and electricity for example) shall file a separate tariff for each type of service.

(4) A utility shall make available a paper or electronic copy of the utility's current tariff for public inspection in the utility's office or place of business.

(5) A utility that maintains a Web site for its utility operations shall:

(a) Make available on that Web site for public viewing and downloading a copy of the utility's current tariff for each type of service that it provides; or

(b) Place on that Web site a hyperlink to the location on the commission's Web site where the tariff has been posted.

Section 3. Format.

(1) A new tariff or revised sheet of an existing tariff filed with the commission shall be:
(a) Printed or typewritten;
(b) Eight and one-half (8 1/2) by eleven (11) inches in size; and
(c) In type no smaller than nine (9) point font, except headers and footers, which shall be in type no smaller than eight (8) point font.
(2) Tariff Form-1. The first sheet of a tariff shall be on Tariff Form-1, shall be used as the tariff's cover page, and shall contain:
(a) The utility's name, mailing address, street address of the utility's principal office if different from the mailing address, and Web site if applicable;
(b) In the upper right-hand corner, the commission tariff number and, if applicable, the cancelled commission tariff number (Example: PSC Tariff No. 2, Cancelling PSC Tariff No. 1);
(c) A statement of the type of service offered;
(d) A statement of the area served;
(e) The date of issue and date on which the tariff is to become effective;
(f) The signature of the representative of the utility authorized to issue tariffs; and
(g) The signatory's title or position.
(3) Tariff Form-2. With the exception of the first sheet of the tariff, which shall be on Tariff Form-1, all other tariff sheets shall be on Tariff Form-2 and shall contain:
(a) The utility's name and territory served;
(b) In the upper right-hand corner, the commission tariff number and, if applicable, the cancelled commission tariff number (Example: PSC Tariff No. 2, Cancelling PSC Tariff No. 1);
(c) In the upper right-hand corner, the tariff sheet number and, if applicable, the cancelled tariff sheet number (Example: First Revised Sheet No. 1, Cancelling Original Sheet No. 1);
(d) The date of issue and date on which the tariff is to become effective;
(e) The signature of the utility representative authorized to issue tariffs;
(f) The signatory's title or position; and
(g) If applicable, a statement that the tariff is "Issued by authority of an Order of the Public Service Commission in Case No. _____ Dated_____, 20____".
(4) Each tariff sheet shall contain a blank space at its bottom right corner that measures at least three and one-half (3.5) inches from the right of the tariff sheet by two and one-half (2.5) inches from the bottom of the tariff sheet to allow space for the commission to affix the commission's stamp.

Section 4. Contents of Schedules.
(1) In addition to a clear statement of all rates, each rate schedule shall state the city, town, village, or district in which rates are applicable.
(a) If a schedule is applicable in a large number of communities, the schedule shall be accompanied by an accurate index so that each community in which the rates are applicable may be readily ascertained.
(b) If a utility indicates the applicability of a schedule by reference to the index sheet, the utility shall use language indicating "Applicable within the corporate limits of the City of _____," or "see Tariff Sheet No. ____ for applicability."
(2) The following information shall be shown in each rate schedule, if applicable, under the following captions in the order listed:
(a) Applicable: show the territory covered;
(b) Availability of service: show the classification of customers affected;
(c) Rates: list all rates offered;
(d) Minimum charge: state the amount of the minimum charge, the quantity allowed (if volumetrically based), and if it is subject to a late payment charge;

(e) Late payment charge: state the amount or reference the tariff section containing the amount;

(f) Term: if a tariff provision or a contract will be effective for a limited period, state the term; and

(g) Special rules: list special rules or requirements that are in effect covering this tariff.

(3) Each rate schedule shall state the type or classification of service available pursuant to the stated rates, by using language similar to "available for residential lighting" or "available for all purposes."

(4) For a tariff in which a number of rate schedules are shown available for various uses, each rate schedule shall be identified either by:

(a) A number in the format "Schedule No. ___"; or

(b) A group of letters, with a designation indicating the type or classification of service for which the rate schedule is available. (Example: Tariff R.S. for residential service rates.)

(5) A tariff may be further divided into sections.

Section 5. Filing Requirements.

(1) Each tariff filing shall include a cover letter and conform to the requirements established in this subsection.

(a) With the exception of supporting documents, which may be submitted in an Excel spreadsheet in.xls format, each document shall be submitted in portable document format ("PDF") capable of being viewed with Adobe Acrobat Reader.

(b) Each document shall be search-capable and optimized for viewing over the internet.

(c) Each scanned document shall be scanned at a resolution of 300 dots per inch (dpi).

(d) A document may be bookmarked to distinguish different sections of the filing.

(2) A document shall be considered filed with the commission if it has:

(a) Been successfully transmitted using the commission's electronic tariff filing system; and

(b) Met all other requirements established in this administrative regulation.

Section 6. Tariff Addition, Revision, or Withdrawal.

(1) A tariff, tariff sheet, or tariff provision shall not be changed, cancelled, or withdrawn except as established by this section and Section 9 of this administrative regulation.

(2) A new tariff or revised sheet of an existing tariff shall be issued and placed into effect by:

(a) Order of the commission; or

(b) Issuing and filing with the commission a new tariff or revised sheet of an existing tariff and providing notice to the public in accordance with Section 8 of this administrative regulation and statutory notice to the commission.

(3) The following symbols shall be placed in the margin to indicate a change:

(a) "(D)" to signify deletion;

(b) "(I)" to signify increase;

(c) "(N)" to signify a new rate or requirement;

(d) "(R)" to signify reduction; or

(e) "(T)" to signify a change in text.

Section 7. Tariff Filings Pursuant to Orders. If the commission has ordered a change in the rates or rules of a utility, the utility shall file a new tariff or revised sheet of an existing tariff establishing:

(1) The revised rate, classification, charge, or rule;

(2) The applicable case number;

(3) The date of the commission order; and

(4) The margin symbols required by Section 6(3) of this administrative regulation.

Section 8. Notice. A utility shall provide notice if a charge, fee, condition of service, or rule regarding the provision of service is changed, revised, or initiated and the change will affect the amount that a customer pays for service or the quality, delivery, or rendering of a customer's service.

(1) Public postings.

(a) A utility shall post at its place of business a copy of the notice no later than the date the tariff filing is submitted to the commission.

(b) A utility that maintains a Web site shall, within five (5) business days of the date the tariff filing is submitted to the commission, post on its Web sites:

1. A copy of the public notice; and

2. A hyperlink to the location on the commission's Web site where the tariff filing is available.

(c) The information required in subsection (1)(a) and (b) of this section shall not be removed until the tariff filing has become effective or the commission issues a final decision on the tariff filing.

(2) Customer Notice.

(a) If a utility has twenty (20) or fewer customers, it shall mail a written notice to each customer no later than the date the tariff filing is submitted to the commission.

(b) If a utility has more than twenty (20) customers, it shall provide notice by:

1. Including notice with customer bills mailed no later than the date the tariff filing is submitted to the commission;

2. Mailing a written notice to each customer no later than the date the tariff filing is submitted to the commission;

3. Publishing notice once a week for three (3) consecutive weeks in a prominent manner in a newspaper of general circulation in the utility's service area, the first publication to be made no later than the date the tariff filing is submitted to the commission; or

4. Publishing notice in a trade publication or newsletter delivered to all customers no later than the date the tariff filing is submitted to the commission.

(c) A utility that provides service in more than one (1) county may use a combination of the notice methods established in paragraph (b) of this subsection.

(3) Proof of Notice. A utility shall file with the commission no later than forty-five (45) days from the date the tariff filing was initially submitted to the commission:

(a) If notice is mailed to its customers, an affidavit from an authorized representative of the utility verifying the contents of the notice, that notice was mailed to all customers, and the date of the mailing;

(b) If notice is published in a newspaper of general circulation in a utility's service area, an affidavit from the publisher verifying the contents of the notice, that the notice was published, and the dates of the notice's publication; or

(c) If notice is published in a trade publication or newsletter delivered to all customers, an affidavit from an authorized representative of the utility verifying the contents of the notice, the mailing of the trade publication or newsletter, that notice was included in the publication or newsletter, and the date of mailing.

(4) Notice Content. Each notice issued in accordance with this section shall contain:

(a) The proposed effective date and the date the proposed rates are expected to be filed with the commission;

(b) The present rates and proposed rates for each customer classification to which the proposed rates will apply;

(c) The amount of the change requested in both dollar amounts and percentage change for each customer classification to which the proposed rates will apply;

(d) The amount of the average usage and the effect upon the average bill for each customer classification to which the proposed rates will apply;
(e) A statement that a person may examine this tariff filing at the offices of (utility name) located at (utility address);
(f) A statement that a person may examine this tariff filing at the commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at http://psc.ky.gov;
(g) A statement that comments regarding this tariff filing may be submitted to the Public Service Commission through its Web site or by mail to Public Service Commission, Post Office Box 615, Frankfort, Kentucky 40602;
(h) A statement that the rates contained in this notice are the rates proposed by (utility name) but that the Public Service Commission may order rates to be charged that differ from the proposed rates contained in this notice;
(i) A statement that a person may submit a timely written request for intervention to the Public Service Commission, Post Office Box 615, Frankfort, Kentucky 40602, establishing the grounds for the request including the status and interest of the party; and
(j) A statement that if the commission does not receive a written request for intervention within thirty (30) days of the initial publication or mailing of the notice, the commission may take final action on the tariff filing.

(5) Compliance by electric utilities with rate schedule information required by 807 KAR 5:051. Notice given pursuant to subsection (2)(a) or (b) of this section shall substitute for the notice required by 807 KAR 5:051, Section 2, if the notice contained a clear and concise explanation of the proposed change in the rate schedule applicable to each customer.
(6) Periodic recalculation of a formulaic rate that does not involve a revision of the rate and that is performed in accordance with provisions of an effective rate schedule, special contract, or administrative regulation does not require notice in accordance with this section.

Section 9. Statutory Notice to the Commission.
(1) The proposed rates on a new tariff or revised sheet of an existing tariff shall become effective on the date stated on the tariff sheet if:
(a) Proper notice was provided to the public in accordance with Section 8 of this administrative regulation;
(b) Statutory notice was provided; and
(c) The commission does not suspend the proposed rates pursuant to KRS 278.190.
(2) All information and notices required by this administrative regulation shall be furnished to the commission with the filing of the proposed rate. If a substantial omission occurs, which is prejudicial to full consideration by the commission or to the public, the statutory notice period to the commission shall not commence until the omitted information and notice is filed.

Section 10. Nonrecurring Charges. A utility may revise a nonrecurring charge. The revision shall be performed pursuant to this section and Sections 6 and 9 of this administrative regulation.
(1) Each request to revise a current nonrecurring charge or to implement a new nonrecurring charge shall be accompanied by:
(a) A specific cost justification for the proposed nonrecurring charge, including all supporting documentation necessary to determine the reasonableness of the proposed non-recurring charge;
(b) A copy of the public notice of each requested nonrecurring charge and verification that it has been made pursuant to Section 8 of this administrative regulation;

(c) A detailed statement explaining why the proposed revisions were not included in the utility's most recent general rate case and why current conditions prevent deferring the proposed revisions until the next general rate case;
(d) A statement identifying each classification of potential or existing customers affected by the rate revision; and
(e) A copy of the utility's income statement and balance sheet for a recent twelve (12) month period or an affidavit from an authorized representative of the utility attesting that the utility's income statement and balance sheet are on file with the commission.
(2) The proposed rate shall relate directly to the service performed or action taken and shall yield only enough revenue to pay the expenses incurred in rendering the service.
(3)
(a) If the revenue to be generated from the proposed rate revision exceeds by five (5) percent the total revenues provided by all nonrecurring charges for a recent period of twelve (12) consecutive calendar months ending within ninety (90) days of submitting the tariff filing, the utility shall, in addition to the information established in subsection (1) of this section, file an absorption test.
(b) The absorption test shall show that the additional net income generated by the tariff filing shall not result in an increase in the rate of return (or other applicable valuation method) to a level greater than that allowed in the most recent general rate case.
(c) As part of the absorption test, a general rate increase received during the twelve (12) month period shall be annualized.
(4) Upon a utility submitting the tariff filing to the commission, the utility shall transmit by electronic mail a copy in PDF to rateintervention@ag.ky.gov or mail a paper copy to the Attorney General's Office of Rate Intervention, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601-8204.

Section 11. Adoption Notice.
(1) A utility shall file an adoption notice on Tariff Form-3 if:
(a) A change of ownership or control of a utility occurs;
(b) A utility or a part of its business is transferred from the operating control of one (1) company to that of another;
(c) A utility's name is changed; or
(d) A receiver or trustee assumes possession and operation of a utility.
(2) Unless otherwise authorized by the commission, the person operating the utility business going forward shall adopt, ratify, and make as its own the predecessor's rates, classifications, and requirements on file with the commission and effective at the time of the change of ownership or control.
(3) An adoption notice may be filed and made effective without previous notice.
(4) An adoption notice filed with the commission shall be in consecutive numerical order, beginning with Public Service Commission adoption notice No. 1.
(5) Within ten (10) days after the filing of an adoption notice by a utility that had no tariff on file with the commission, the utility shall issue and file in its own name the tariff of the predecessor utility then in effect and adopted by it, or a tariff it proposes to place into effect in lieu thereof, in the form established in Sections 2 through 4 of this administrative regulation with proper identifying designation.
(6) Within ten (10) days after the filing of an adoption notice by a utility that had other tariffs on file with the commission, the utility shall issue and file one (1) of the following:
(a) A complete reissue of its existing tariff that establishes the rates and requirements:
1. Of the predecessor utility then in effect and adopted by the successor utility; or
2. The utility proposes to place into effect for the customers served by the predecessor utility; or
(b) New or revised tariff sheets that establish the rates and requirements:

1. Of the predecessor utility then in effect and adopted by the successor utility; or
2. The utility proposes to place into effect for the customers served by the predecessor utility.

(7)
(a) If a new tariff or a revised sheet of an existing tariff states the rates and requirements of the predecessor utility without change, the successor utility shall not be required to provide notice of the filing.
(b) If a new tariff or a revised sheet of an existing tariff changes or amends the rates or requirements of the predecessor utility, the successor utility shall provide notice pursuant to KRS 278.180 and Section 8 of this administrative regulation.

Section 12. Posting Tariffs, Administrative Regulations, and Statutes.
(1) Each utility shall display a suitable placard, in large type, that states that the utility's tariff and the applicable administrative regulations and statutes are available for public inspection.
(2) Each utility shall provide a suitable table or desk in its office or place of business on which it shall make available for public viewing:
(a) A copy of all effective tariffs and supplements establishing its rates, classifications, charges, rules, and requirements, together with forms of contracts and applications applicable to the territory served from that office or place of business;
(b) A copy of all proposed tariff revisions that the utility has filed and are pending before the commission and all documents filed in a commission proceeding initiated to review the proposed tariff revisions;
(c) A copy of KRS Chapter 278; and
(d) A copy of 807 KAR Chapter 5.
(3) The information required in subsection (2) of this section shall be made available in an electronic or nonelectronic format.

Section 13. Special Contracts. Each utility shall file a copy of each special contract that establishes rates, charges, or conditions of service not contained in its tariff.

Section 14. Confidential Materials. A utility may request confidential treatment for materials filed pursuant to this administrative regulation. Requests for confidential treatment shall be made and reviewed in accordance with 807 KAR 5:001, Section 13(3).

Section 15. Deviations from Rules. In special cases, for good cause shown, the commission shall permit deviations from this administrative regulation.

Section 16. Incorporation by Reference.
(1) The following material is incorporated by reference:
(a) "Tariff Form-1", July 2013;
(b) "Tariff Form-2", July 2013; and
(c) "Tariff Form-3", Adoption Notice, July 2013.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at http://psc.ky.gov.

(8 Ky.R. 797; 1148; eff. 6-2-1982; 11 Ky.R. 69; eff. 8-4-1984; 39 Ky.R. 312; 1032; 1152; eff. 1-4-2013; 40 Ky.R. 447; 812; eff. 10-18-2013; 41 Ky.R. 143; 775; eff. 10-31-2014; Crt eff. 3-27-2019.)

807 KAR 5:001. Rules of procedure.

RELATES TO: KRS 61.870-884, 61.931-934, 65.810, Chapter 74, 278.010, 278.020(3), 278.100, 278.180, 278.300, 278.410, 322.340, 365.015, 369.102, 424.300, 45 C.F.R. 160.103, 47 C.F.R. 36, 20 U.S.C. 1232g

STATUTORY AUTHORITY: KRS 278.040(3), 278.260(2), 278.310

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) authorizes the commission to promulgate reasonable administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.310 requires that all hearings and investigations before the commission shall be governed by rules promulgated by the commission. This administrative regulation establishes requirements with respect to formal and informal proceedings before the commission.

Section 1. Definitions.

(1) "Affiliate" means an entity:
- (a) That is wholly owned by a utility;
- (b) In which a utility has a controlling interest;
- (c) That wholly owns a utility;
- (d) That has a controlling interest in a utility; or
- (e) That is under common control with the utility.

(2) "Case" means a matter coming formally before the commission.

(3) "Commission" is defined by KRS 278.010(15).

(4) "Controlling interest in" and "under common control with" mean a utility or other entity if the utility or entity:
- (a) Directly or indirectly has the power to direct, or to cause the direction of, the management or policies of another entity; and
- (b) Exercises that power:
  - 1. Alone or through one (1) or more intermediary companies;
  - 2. In conjunction with, or pursuant to an agreement;
  - 3. Through ownership of ten (10) percent or more of the voting securities;
  - 4. Through common directors, officers, stockholders, voting or holding trusts, or associated companies;
  - 5. By contract; or
  - 6. Through direct or indirect means.

(5) "Electronic mail" means an electronic message that is sent to an electronic mail address and transmitted between two (2) or more telecommunication devices, computers, or electronic devices capable of receiving electronic messages.

(6) "Electronic mail address" means a destination, commonly expressed as a string of characters, to which electronic mail can be sent or delivered, and consists of a user name or mailbox and a reference to an Internet domain.

(7) "Electronic signature" is defined by KRS 369.102(8).

(8) "Executive director" means the person appointed to the position established in KRS 278.100 or a person that he or she has designated to perform a duty or duties assigned to that position.

(9) "Paper" means, regardless of the medium on which it is recorded, an application, petition, or other initiating document, motion, complaint, answer, response, reply, notice, request for information, or other document that this administrative regulation or the commission directs or permits a party to file in a case.

(10) "Party" means a person who:
- (a) Initiates action through the filing of a formal complaint, application, or petition;
- (b) Files a tariff or tariff sheet with the commission pursuant to KRS 278.180 and 807 KAR 5:011 that the commission has suspended and established a case to investigate or

review;
(c) Is named as a defendant in a formal complaint filed pursuant to Section 20 of this administrative regulation;
(d) Is granted leave to intervene pursuant to Section 4(11) of this administrative regulation; or
(e) Is joined to a commission proceeding.
(11) "Person" is defined by KRS 278.010(2).
(12) "Signature" means a manual, facsimile, conformed, or electronic signatures.
(13) "Tariff" means the schedules of a utility's rates, charges, regulations, rules, tolls, terms, and conditions of service over which the commission has jurisdiction.
(14) "Utility" is defined by KRS 278.010(3).
(15) "Water district" means a special district formed pursuant to KRS 65.810 and Chapter 74.
(16) "Web site" means an identifiable site on the internet, including social media, which is accessible to the public.

Section 2. Hearings. The commission shall provide notice of hearing in a case by order except if a hearing is not concluded on the designated day and the presiding officer verbally announces the date for continuation of the hearing. A verbal announcement made by the presiding officer shall be deemed proper notice of the continued hearing.

Section 3. Duties of Executive Director.
(1) Upon request, the executive director shall:
(a) Advise as to the form of a paper desired to be filed;
(b) Provide general information regarding the commission's procedures and practices; and
(c) Make available from the commission's files, upon request, a document or record pertinent to a matter before the commission unless KRS 61.878 expressly exempts the document or record from inspection or release.
(2) The executive director shall reject for filing a document that on its face does not comply with 807 KAR Chapter 5.

Section 4. General Matters Pertaining to All Cases.
(1) Address of the commission. All communications shall be addressed to: Public Service Commission, 211 Sower Boulevard, Post Office Box 615, Frankfort, Kentucky 40602.
(2) Case numbers and styles. Each case shall receive a number and a style descriptive of the subject matter. The number and style shall be placed on each subsequent paper filed in the case.
(3) Signing of papers.
(a) A paper shall be signed by the submitting party or attorney and shall include the name, address, telephone number, facsimile number, and electronic mail address, if any, of the attorney of record or submitting party.
(b) A paper shall be verified or under oath if required by statute, administrative regulation, or order of the commission.
(4) A person shall not file a paper on behalf of another person, or otherwise represent another person, unless the person is an attorney licensed to practice law in Kentucky or an attorney who has complied with SCR 3.030(2). An attorney who is not licensed to practice law in Kentucky shall present evidence of his or her compliance with SCR 3.030(2) if appearing before the commission.
(5) Amendments. Upon motion of a party and for good cause shown, the commission shall allow a complaint, application, answer, or other paper to be amended or corrected or an omission supplied. Unless the commission orders otherwise, the amendment shall not relate back to the date of the original paper.

(6) Witnesses and subpoenas.

(a) Upon the written request of a party to a proceeding or commission staff, subpoenas requiring the attendance of witnesses for the purpose of taking testimony may be signed and issued by a member of the commission.

(b) Subpoenas for the production of books, accounts, documents, or records (unless directed to issue by the commission on its own authority) may be issued by the commission or a commissioner, upon written request, stating as nearly as possible the books, accounts, documents, or records desired to be produced.

(c) A party shall submit a completed subpoena form with its written request as necessary.

(d) Every subpoena shall be served, in the manner prescribed by subsection (8) of this section, on a person whose information is being requested.

(e) Copies of all documents received in response to a subpoena shall be filed with the commission and furnished to all other parties to the case, except on motion and for good cause shown. Any other tangible evidence received in response to the subpoena shall be made available for inspection by the commission and all other parties to the action.

(7) Computation of time.

(a) In computing a period of time prescribed or allowed by order of the commission or by 807 KAR Chapter 5 or KRS Chapter 74 or 278, the day of the act, event, or default after which the designated period of time begins to run shall not be included.

(b) The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, a legal holiday, or other day commission offices are legally closed, in which event the period shall run until the end of the next day that is not a Saturday, a Sunday, a legal holiday, or other day commission offices are legally closed.

(8) Service.

(a) Unless the commission orders service upon a party and the party's attorney, service shall be made upon the party's attorney if the party is represented by an attorney.

(b) Service upon an attorney or upon a party by the commission shall be made by sending a copy by electronic mail to the electronic mail address listed on papers that the attorney or party has submitted in the case. A paper that is served via electronic mail shall comply with Section 8(4) of this administrative regulation and shall include the sending of an electronic mail message that contains an electronic version of the commission order or a hyperlink that enables the recipient to access, view, and download an electronic copy of the commission order from the commission's Web site.

(c) If good cause exists, and upon the filing of a motion by a party to excuse a party from receiving service by electronic mail from the commission, the commission shall order service of papers on the party to be made in accordance with paragraph (d)1. or 2. of this subsection.

(d) Service upon an attorney or upon a party by the parties in a case shall be made by:

1. Delivering a copy to the attorney or party;

2. Mailing a copy by United States mail or other recognized mail carrier to the attorney or party at the last known address; or

3. Sending a copy by electronic mail to the electronic mail address listed on papers that the attorney or party has submitted in the case. A paper that is served via electronic mail shall comply with Section 8(4) of this administrative regulation.

(e) Service shall be complete upon mailing or electronic transmission. If a serving party learns that the mailing or electronic transmission did not reach the person to be served, the serving party shall take reasonable steps to immediately re-serve the party to be served, unless service is refused, in which case the serving party shall not be required to take additional action.

(9) Filing.

(a) Unless electronic filing procedures established in Section 8 of this administrative regulation are used, a paper shall not be deemed filed with the commission until the paper:

1. Is physically received by the executive director at the commission's offices during the commission's official business hours; and

2. Meets all applicable requirements of KRS Chapter 278 and KAR Title 807.

(b) The executive director shall endorse upon each paper or document accepted for filing the date of its filing. The endorsement shall constitute the filing of the paper or document.

(10) Privacy protection for filings.

(a) If a person files a paper containing personal information, the person shall encrypt or redact the paper so that personal information cannot be read. Personal information shall include a business name; an individual's first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with one (1) or more of the following data elements:

1. The digits of a Social Security number or taxpayer identification number;

2. The month and date of an individual's birth;

3. The digits of an account number, credit card number, or debit card number that, in combination with any required security code, access code, or password, would permit access to an account;

4. A driver's license number, state identification card number, or other individual identification number issued by any agency;

5. A passport number or other identification number issued by the United States government;

6. "Individually identifiable health information" as defined by 45 C.F.R. 160.103, except for education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. 1232g; or

7. The address, phone number, or email address of an individual who is not a party and has not requested to be a party.

(b) To redact the paper, the filing party shall replace the identifiers with neutral placeholders or cover the identifiers with an indelible mark that so obscures the identifiers that the identifiers cannot be read.

(c) The responsibility to review for compliance with this section and redact a paper shall rest with the party that files the paper.

(11) Intervention and parties.

(a) A person who wishes to become a party to a case before the commission may, by timely motion, request leave to intervene.

1. The motion shall include the movant's full name, mailing address, and electronic mail address and shall state his or her interest in the case and how intervention is likely to present issues or develop facts that will assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings.

2. The motion may include a request by movant for delivery of commission orders by United States mail and shall state how good cause exists for that means of delivery to movant.

(b) The commission shall grant a person leave to intervene if the commission finds that he or she has made a timely motion for intervention and that he or she has a special interest in the case that is not otherwise adequately represented or that his or her intervention is likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings.

(c) Unless electronic filing procedures established in Section 8 of this administrative regulation are used in the case, a party shall serve a person granted leave to intervene

with all papers that the party submits in the case after the order granting intervention, but the party is not required to provide any papers submitted prior to the issuance of that order unless the commission otherwise orders.

(d) Unless the commission finds good cause to order otherwise, a person granted leave to intervene in a case shall, as a condition of his or her intervention, be subject to the procedural schedule in existence in that case when the order granting the person's intervention is issued.

(e) A person who the commission has not granted leave to intervene in a case may file written comments regarding the subject matter of the case.

1. These comments shall be filed in the case record.

2. A person filing written comments shall not be deemed a party to the proceeding and need not be named as a party to an appeal.

(12) Requests for information.

(a) If permitted by administrative regulation or by order of the commission, a party may in accordance with this section request information from another party to the case. The requesting party shall serve its request upon the party from which it seeks the requested information and shall also file its request with the commission.

(b) Commission staff, through the commission's executive director, may request information from any party to a case on the commission's behalf.

(c) Unless otherwise established in administrative regulation, the commission shall establish by order in a case the time for parties to issue and to respond to requests for information.

(d) Responses to requests for information.

1. Responses to requests for information shall be appropriately bound, tabbed, and indexed.

2. Each response shall:

a. Include the name of the witness responsible for responding to the questions related to the information provided; and

b. Be answered under oath or, for representatives of a public or private corporation, a partnership, an association, or a governmental agency, be accompanied by a signed certification of the preparer or person supervising the preparation of the response on behalf of the person that the response is true and accurate to the best of that person's knowledge, information, and belief formed after a reasonable inquiry.

3. If the requested information has previously been provided in the case, a responding party may, in lieu of providing the requested information, provide a reference to the specific location of the requested information in the case record.

4. A responding party shall make timely amendment to its prior response if the party obtains information that indicates that the response was incorrect when made or, though correct when made, is subsequently incorrect in any material respect.

5. If a party served with a request for information fails or refuses to furnish all or part of the requested information, the party shall provide a written explanation of the specific grounds for the failure to completely and precisely respond.

6. The responding party shall file with the commission the party's response to a request for information and shall serve it upon all parties to a case.

(e) A party shall compel compliance with the party's request for information by motion to the commission, which shall include:

1. A description of the information requested;

2. The reasons why it is relevant to the issues in the case; and

3. The efforts taken to resolve any disagreement over the production of the requested information.

(13) Each report, specification, drawing, and plan that a professional engineer or professional land surveyor prepared and that is filed with the commission shall contain the seal or stamp and signature of that professional engineer or land surveyor in accordance with KRS 322.340.

(14) Consolidation of cases.

(a) The commission may order two (2) or more proceedings involving a similar question of law or fact to be consolidated if rights of the parties or the public interest will not be prejudiced.

(b) Upon ordering the consolidation of cases, the commission shall specify into which case the other case shall be consolidated.

(c) All papers received after the order of consolidation has been issued shall be filed in the record of the designated case.

(d) Papers filed prior to the order of consolidation shall remain in their respective case files.

Section 5. Motion Practice.

(1) All requests for relief that are not required to be made in an application, petition, or written request shall be by motion. A motion shall state precisely the relief requested.

(2) Unless the commission orders otherwise, a party to a case shall file a response to a motion no later than seven (7) days from the date of filing of a motion.

(3) Unless the commission orders otherwise, a party shall file a reply no later than five (5) days of the filing of the most recent response to the party's motion. The reply shall be confined to points raised in the responses to which they are addressed, and shall not reiterate an argument already presented.

Section 6. Proof of Service.

(1) Except as provided in Section 8 of this administrative regulation, all papers filed in a case shall contain proof of the date and manner of service of the papers on all parties.

(2) Proof shall be made by certificate of the filer's attorney, by affidavit of the person who served the papers, or by a comparable proof.

(3) The certificate or affidavit shall identify by name the person served and the date and method of service.

(4) Proof of electronic service shall state the electronic notification address of the person served.

Section 7. Filing Procedures.

(1) Unless the commission orders otherwise or the electronic filing procedures established in Section 8 of this administrative regulation are used, if a paper is filed with the commission, an original unbound and ten (10) additional copies in paper medium shall be filed.

(2) Each paper filed with the commission shall conform to the requirements established in this subsection.

(a) Form. Each filing shall be printed or typewritten, double spaced, and on one (1) side of the page only.

(b) Size. Each filing shall be on eight and one-half (8 1/2) inches by eleven (11) inches paper.

(c) Font. Each filing shall be in type no smaller than twelve (12) point, except footnotes, which may be in type no smaller than ten (10) point.

(3) Except as provided for in Section 8 of this administrative regulation, a filing made with the commission outside its business hours shall be considered as filed on the commission's next business day.

(4) A paper submitted by facsimile transmission shall not be accepted.

Section 8. Electronic Filing Procedures.

(1) Upon an applicant's timely election of the use of electronic filing procedures or upon order of the commission in a case that the commission has initiated on its own motion, the procedures established in this section shall be used in lieu of other filing procedures established in this administrative regulation.

(2) At least seven (7) days prior to the submission of its application, an applicant shall:

(a) File with the commission written notice of its election to use electronic filing procedures using the Notice of Election of Use of Electronic Filing Procedures form; and

(b) If the applicant does not have an account for electronic filing with the commission, register for an account at http://psc.ky.gov/Account/Register.

(3) All papers shall be filed with the commission by uploading an electronic version using the commission's E-Filing System at http://psc.ky.gov. In addition, the filing party shall file one (1) copy in paper medium with the commission as required by subsection (12)(a)2. of this section.

(4)

(a) Audio or video files.

1. A file containing audio material shall be submitted in MP3 format.
2. A file containing video material shall be submitted in MPEG-4 format.

(b) Except as established in paragraph (a) of this subsection, each file in an electronic submission shall be:

1. In portable document format;
2. Search-capable;
3. Optimized for viewing over the Internet;
4. Bookmarked to distinguish sections of the paper, except that documents filed in response to requests for information need not be individually bookmarked; and
5. If scanned material, scanned at a resolution of 300 dots per inch.

(c) If, pursuant to Section 4(12) of this administrative regulation, a party is requested to provide information in the form of an electronic spreadsheet, the file containing the spreadsheet shall be submitted in an Excel spreadsheet format.

(5)

(a) Each electronic submission shall include an introductory file in portable document format that is named "Read1st" and that contains:

1. A general description of the filing;
2. A list of all material to be filed in paper or physical medium but not included in the electronic submission; and
3. A statement that the materials in the electronic submission are a true representation of the materials in paper medium.

(b) The "Read1st" file and any other material that normally contains a signature shall contain a signature in the electronically submitted document.

(c) The electronic version of the cover letter accompanying the paper medium filing may be substituted for a general description.

(6)

(a) An uploading session shall not exceed twenty (20) files or 100 megabytes.

(b) An individual file shall not exceed thirty (30) megabytes.

(c) If a submission exceeds the limitations established in paragraph (a) of this subsection, the filer shall make electronic submission in two (2) or more consecutive uploading sessions.

(7) If filing a paper with the commission, the filing party shall certify that:

(a) The electronic version of the paper is a true and accurate copy of each paper filed in paper medium;

(b) The electronic version of the paper has been submitted to the commission; and

(c) A copy of the paper in paper medium has been mailed to all parties that the commission has excused from electronic filing procedures.

(8)

(a) Upon completion of an uploading session, the commission shall notify all parties of record by electronic mail that an electronic submission has been made.

(b) Upon a party's receipt of this notification, each party shall be solely responsible for accessing the commission's Web site at http://psc.ky.gov to view or download the submission.

(9) Unless a party objects to the use of electronic filing procedures in the party's motion for intervention, the party shall:

(a) Be deemed to have consented to the use of electronic filing procedures and the service of all papers, including orders of the commission, by electronic means; and

(b) File with the commission within seven (7) days of the date of an order of the commission granting the party's intervention a written statement that the party, or the party's authorized agent, possesses the facilities to receive electronic transmissions.

(10) In cases in which the commission has ordered the use of electronic filing procedures on its own motion, unless a party files with the commission an objection to the use of electronic filing procedures within seven (7) days of issuance of the order directing the use of electronic filing procedures, the party shall:

(a) Be deemed to have consented to the use of electronic filing procedures and the service of all papers, including orders of the commission, by electronic means; and

(b) File with the commission within seven (7) days of the date of an order directing the use of electronic filing procedures a written statement that the party, or the party's authorized agent, possesses the facilities to receive electronic transmissions.

(11) If a party objects to the use of electronic filing procedures and good cause exists to excuse the party from the use of electronic filing procedures, service of papers on and by it shall be made by mailing a copy by United States mail or other recognized mail carrier to the attorney or party at the last known address.

(12)

(a) A paper shall be considered timely filed with the commission if:

1. It has been successfully transmitted in electronic medium to the commission within the time allowed for filing and meets all other requirements established in this administrative regulation and any order of the commission; and

2. The paper, in paper medium, is filed at the commission's offices no later than the second business day following the successful electronic transmission.

(b) Each party shall attach to the top of the paper medium submission a copy in paper medium of the electronic notification from the commission confirming receipt of its electronic submission.

(13) Except as established in this section, a party making a filing in accordance with the procedures established in this section shall not be required to comply with Section 4(8) of this administrative regulation.

Section 9. Hearings and Rehearings.

(1) Unless a hearing is not required by statute, is waived by the parties in the case, or is found by the commission to be unnecessary for protection of substantial rights or not in the public interest, the commission shall conduct a hearing if:

(a) An order to satisfy or answer a complaint has been made and the person complained of has not satisfied the complaint; or

(b) A request for hearing has been made.

(2) Publication of notice.

(a) Upon the filing of an application, the commission may order an applicant to give notice on all persons who may be affected by serving a copy of the application upon

those persons or by publishing notice of the filing.

1. The applicant shall bear the expense of providing the notice.

2. If the notice is provided by publication, the commission may designate the contents of the notice, the number of times and the time period in which the notice shall be published, and the newspaper in which the notice shall be published.

(b)

1. The commission may order an applicant to give notice to the public of any hearing on the applicant's application, and shall order an applicant for a general adjustment of rates or reduction or discontinuance of service to give notice of any hearing on its application.

2. If notice of a hearing is published by the applicant in a newspaper, it shall be published at least one (1) time and not less than seven (7) nor more than twenty-one (21) days prior to the hearing in a newspaper of general circulation in the areas that will be affected.

3. Notice by mail shall be mailed not less than fourteen (14) days nor more than twenty-one (21) days prior to the hearing.

4. Notice of hearing shall state the purpose, time, place, and date of hearing.

5. The applicant shall bear the expense of providing the notice.

6. Proof of publication shall be filed at or before the hearing.

(3) Investigation on commission's own motion.

(a) The commission may, on its own motion, conduct investigations and order hearings into any act or thing done or omitted to be done by a utility, which the commission believes is in violation of an order of the commission or KRS Chapters 74 or 278 or 807 KAR Chapter 5.

(b) The commission may, through its own experts, employees, or otherwise, obtain evidence the commission finds necessary or desirable in a formal proceeding in addition to the evidence presented by the parties.

(4) Conferences with commission staff. The commission, on its own motion, through its executive director or upon a motion of a party, may convene a conference in a case for the purpose of considering the possibility of settlement, the simplification or clarification of issues, or any other matter that may aid in the handling and disposition of the case. Unless the commission directs otherwise or the parties otherwise agree, participation in conferences with commission staff shall be limited to parties of the subject proceeding and their representatives.

(5) Conduct of hearings. Hearings shall be conducted before the commission or a commissioner or before a person designated by the commission to conduct a specific hearing.

(6) Stipulation of facts. By a stipulation in writing filed with the commission, the parties to a case may agree among themselves or with commission staff upon the facts or any portion of the facts involved in the controversy, which stipulation shall be regarded and used as evidence at the hearing.

(7) Testimony. All testimony given before the commission shall be given under oath or affirmation.

(8) Objections and exceptions. A party objecting to the admission or exclusion of evidence before the commission shall state the grounds for objection. Formal exceptions shall not be necessary and shall not be taken to rulings on objection.

(9) Record of evidence.

(a) The commission shall cause to be made a record of all hearings. Unless the commission orders otherwise, this record shall be a digital video recording.

1. A party to a case may, by motion made prior to the hearing, request that a stenographic transcript be made by a qualified reporter.

2. The commission shall grant the motion.

3. The requesting party shall bear the cost of the stenographic transcript and shall file a copy of the transcript with the commission within a reasonable time after completion of the hearing.

(b) The executive director shall cause to be made a written exhibit list, a written hearing log, and a written log listing the date and time of where each witness' testimony begins and ends on the digital video recording.

(c) If a party introduces an exhibit that is neither a document nor a photograph, the commission may direct a photograph of the exhibit be substituted for the exhibit.

Section 10. Briefs. Each brief shall be filed within the time fixed. A request for extension of time to file a brief shall be made to the commission by written motion.

Section 11. Documentary Evidence.

(1) If documentary evidence is offered, the commission, in lieu of requiring the originals to be filed, may accept certified or otherwise authenticated copies of the documents or relevant portions, or may require evidence to be entered as a part of the record.

(2)

(a) If relevant and material matter offered in evidence by any party is part of a book, paper, or document containing other matter not material or relevant, the party shall plainly designate the matter so offered.

(b) If immaterial matter unnecessarily encumbers the record, the book, paper, or document shall not be received in evidence, but may be described for identification, and if properly authenticated, the relevant and material matter may be read into the record.

(3)

(a) The sheets of each exhibit shall be numbered.

(b) If practical, the lines of each sheet shall also be numbered.

(c) If the exhibit consists of two (2) or more sheets, the first sheet or title page shall contain a brief statement of what the exhibit purports to show, with reference by sheet and line to illustrative or typical examples contained in the exhibit.

(d) Rate comparisons and other evidence shall be condensed into tables.

(4) Unless so ordered by the commission, the commission shall not receive in evidence or consider as a part of the record a book, paper, or other document for consideration in connection with the proceeding after the close of the testimony.

(5) Upon motion of a party to a proceeding, or upon the commission's own motion, the record of a case in the commission's files or any document on file with the commission may be made a part of the record by "reference only."

(a) The case or document made a part of the record by reference only shall not be physically incorporated into the record.

(b) Upon action in the Franklin Circuit Court, excerpts from the record of a case or part of a document may be made a part of the record before the court, at the request of a party.

Section 12. Financial Exhibit.

(1) If this administrative regulation requires that a financial exhibit be annexed to the application, the exhibit shall:

(a) For a utility that had $5,000,000 or more in gross annual revenue in the immediate past calendar year, cover operations for a twelve (12) month period, the period ending not more than ninety (90) days prior to the date the application is filed; or

(b) For a utility that had less than $5,000,000 in gross annual revenue in the immediate past calendar year, comply with paragraph (a) of this subsection or cover operations for the twelve (12) month period contained in the utility's most recent annual report on file with the commission, and contain a statement that:

1. Material changes have not occurred since the end of that twelve (12) month period; or

2. Identifies all material changes that have occurred since the end of that twelve (12) month period.

(2) The exhibit shall disclose the following information in the order indicated:

(a) The amount and kinds of stock authorized;

(b) The amount and kinds of stock issued and outstanding;

(c) Terms of preference of preferred stock, cumulative or participating, or on dividends or assets or otherwise;

(d) A brief description of each mortgage on property of applicant, giving date of execution, name of mortgagor, name of mortgagee or trustee, amount of indebtedness authorized to be secured, and the amount of indebtedness actually secured, together with sinking fund provisions, if applicable;

(e) The amount of bonds authorized and amount issued, giving the name of the public utility that issued the same, describing each class separately and giving the date of issue, face value, rate of interest, date of maturity, and how secured, together with amount of interest paid during the last fiscal year;

(f) Each note outstanding, giving date of issue, amount, date of maturity, rate of interest, in whose favor, together with amount of interest paid during the last fiscal year;

(g) Other indebtedness, giving same by classes and describing security, if any, with a brief statement of the devolution or assumption of a portion of the indebtedness upon or by person or corporation if the original liability has been transferred, together with amount of interest paid during the last fiscal year;

(h) The rate and amount of dividends paid during the five (5) previous fiscal years, and the amount of capital stock on which dividends were paid each year; and

(i) A detailed income statement and balance sheet.

Section 13. Confidential Material.

(1) All material on file with the commission shall be available for examination by the public unless the material is confidential.

(2) Procedure for determining confidentiality of material submitted in a case.

(a) A request for confidential treatment of material shall be made by motion that:

1. Establishes specific grounds pursuant to KRS 61.878 for classification of that material as confidential;

2. States the time period for the material to be treated as confidential and the reasons for this time period; and

3. Includes ten (10) copies of the material in paper medium with those portions redacted for which confidentiality is sought, and, in a separate sealed envelope marked confidential, one (1) copy of the material in paper medium which identifies by underscoring, highlighting with transparent ink, or other reasonable means only those portions that unless redacted would disclose confidential material.

a. Text pages or portions thereof that do not contain confidential material shall not be included in this identification.

b. If confidential treatment is sought for an entire document, written notification that the entire document is confidential may be filed with the document in lieu of the required highlighting.

(b) The motion and one (1) copy of the material in paper medium, with only those portions for which confidentiality is sought redacted, shall be served on all parties.

(c) The burden of proof to show that the material falls within the exclusions from disclosure requirements established in KRS 61.878 and to demonstrate the time period for the material to be considered as confidential shall be upon the moving party.

(d) Unless the commission orders otherwise, a party may respond to a motion for confidential treatment within seven (7) days after the motion is filed with the commission.

(e) If the case is being conducted using electronic filing procedures established in Section 8 of this administrative regulation, the parties shall comply with those procedures except that an unredacted copy of the material for which confidentiality is sought shall not be transmitted electronically.

(3) Procedure for determining confidentiality of material submitted outside of a case.

(a) A person who requests confidential treatment of material filed with the commission outside of a case shall submit a written request to the executive director that:

1. Establishes specific grounds pursuant to KRS 61.878 for classification of that material as confidential;

2. States the time period for the material to be treated as confidential and the reasons for this time period; and

3. Includes one (1) copy of the material in paper medium with those portions redacted for which confidentiality is sought, and, in a separate sealed envelope marked confidential, one (1) copy of the material in paper medium which identifies by underscoring, highlighting with transparent ink, or other reasonable means only those portions that unless redacted would disclose confidential material.

a. Text pages or portions thereof that do not contain confidential material shall not be included in this identification.

b. If confidential treatment is sought for an entire document, written notification that the entire document is confidential may be filed with the document in lieu of the required highlighting.

(b) The burden of proof to show that the material falls within the exclusions from disclosure requirements established in KRS 61.878 and to demonstrate the time period for the material to be considered as confidential shall be upon the person requesting confidential treatment.

(c) The executive director, as official custodian of the commission's records, shall determine if the material is within an exclusion established in KRS 61.878 and the time period for the material to be considered as confidential and shall advise the requestor of the determination by letter.

(d) A person whose request for confidential treatment is denied, in whole or in part, by the executive director may make application within twenty (20) days of the executive director's decision to the commission for confidential treatment of the material in accordance with the procedures established in subsection (2) of this section.

1. The commission shall establish a case and shall review the application without regard to the executive director's determination and in the same manner as it would review a motion for confidential treatment made pursuant to subsection (2) of this section.

2. The application shall comply with the requirements of subsection (2)(a) of this section.

(e) If the executive director denies a request for confidential treatment, the material for which confidential treatment was sought shall not be placed in the public record for twenty (20) days following the decision.

(4) Pending action by the commission on a motion for confidential treatment or by its executive director on a request for confidential treatment, the material specifically identified shall be accorded confidential treatment.

(5) If the motion for confidential treatment of material is denied, the material shall not be placed in the public record for the period permitted pursuant to KRS 278.410 to bring an action for review.

(6) Procedure for a party to request access to confidential material filed in a case.

(a) A party to a case before the commission shall not fail to respond to a request for information by the commission, commission staff, or another party on grounds of confidentiality.

1. A party seeking confidential treatment for its response to information requests shall follow the procedures for requesting confidentiality established in this administrative regulation.

2. A party's response to requests for information shall be served upon all parties, with only those portions for which confidential treatment is sought redacted.

(b) If the commission grants confidential protection to the responsive material and if parties have not entered into protective agreements, then a party may, by motion, request access to the material on the grounds that it is essential to the party's meaningful participation in the proceeding.

1. The motion shall include a description of efforts to enter into a protective agreement and unwillingness, if applicable, to enter into a protective agreement shall be fully explained.

2. A party may respond to the motion within seven (7) days after it is filed with the commission.

3. The commission shall determine if the movant is entitled to the material, and the manner and extent of the disclosure necessary to protect confidentiality.

(7) Requests for access to records pursuant to KRS 61.870 to 61.884.

(a) A time period prescribed in subsection (10)(a) of this section shall not limit the right of a person to request access to commission records pursuant to KRS 61.870 to 61.884.

(b) Upon a request filed pursuant to KRS 61.870 to 61.884, the commission shall respond in accordance with the procedure established in KRS 61.880.

(8) Procedure for request for access to confidential material. A person denied access to records requested pursuant to KRS 61.870 to 61.884 or to material deemed confidential by the commission in accordance with the procedures established in this section, may obtain this information only pursuant to KRS 61.870 to 61.884 and other applicable law.

(9) Use of confidential material.

(a) A person who files any paper that contains material that has previously been deemed confidential or for which a request or motion for confidential treatment is pending shall submit one (1) copy of the paper with the adjudged or alleged confidential material underscored or highlighted, and ten (10) copies of the paper with those portions redacted; and

1. If the confidential status of the material has been determined previously, a written notice identifying the person who originally submitted the material, the date on which a determination on the materials confidentiality was made and, if applicable, the case number in which the determination was made; or

2. If a request for confidential treatment of the material is pending, a written notice identifying the person who made the request and the date on which the request was submitted.

(b) Material deemed confidential by the commission may be addressed and relied upon during a formal hearing by the procedure established in this paragraph.

1. The party seeking to address the confidential material shall advise the commission prior to the use of the material.

2. A person other than commission employees not a party to a protective agreement related to the confidential material shall be excluded from the hearing room during testimony directly related to confidential material.

3. Any portion of the record directly related to the confidential material shall be sealed.

(10) Material granted confidentiality that later becomes publicly available or otherwise no longer warrants confidential treatment.

(a) Except as provided for in paragraphs (c) and (d) of this subsection, confidential treatment shall be afforded to material for the period specified in the commission's order or executive director's written decision.

1. At the end of this period, the material shall be placed in the public record without notice to the person who originally requested confidential treatment.

2. The person who sought confidential treatment for the material may request that the material continue to be treated as confidential but shall demonstrate that the material still falls within the exclusions from disclosure requirements established in KRS 61.878.

(b) The person who sought confidential protection shall inform the commission in writing if material granted confidentiality becomes publicly available.

(c) If the commission becomes aware that material granted confidentiality is publicly available or otherwise no longer qualifies for confidential treatment, it shall by order so advise the person who sought confidential protection, giving ten (10) days to respond. If that material has been disclosed by someone other than the person who requested confidential treatment, in violation of a protective agreement or commission order, the information shall not be deemed to be publicly available and shall not be placed in the public record.

(d) If a request to inspect material granted confidential treatment is made during the period specified in the commission's order or executive director's written decision, the commission shall notify in writing the person who originally sought confidential treatment for the material and direct that party to demonstrate within twenty (20) days of receipt of the notice that the material still falls within the exclusions from disclosure requirements established in KRS 61.878.

1. If the party is unable to make the demonstration, the commission shall make the requested materials available for public inspection; or

2. If the party is able to make the demonstration, the commission shall deny the request for inspection.

(e) The material shall not be placed in the public record for twenty (20) days following an order finding that the material no longer qualifies for confidential treatment to allow the petitioner to seek a remedy afforded by law.

Section 14. Applications.

(1) Each application shall state the full name, mailing address, and electronic mail address of the applicant, and shall contain fully the facts on which the application is based, with a request for the order, authorization, permission, or certificate desired and a reference to the particular law requiring or providing for the information.

(2) If a corporation, the applicant shall identify in the application the state in which it is incorporated and the date of its incorporation, attest that it is currently in good standing in the state in which it is incorporated, and, if it is not a Kentucky corporation, state if it is authorized to transact business in Kentucky.

(3) If a limited liability company, the applicant shall identify in the application the state in which it is organized and the date on which it was organized, attest that it is in good standing in the state in which it is organized, and, if it is not a Kentucky limited liability company, state if it is authorized to transact business in Kentucky.

(4) If the applicant is a limited partnership, a certified copy of its limited partnership agreement and all amendments, if any, shall be annexed to the application, or a written statement attesting that its partnership agreement and all amendments have been filed with the commission in a prior proceeding and referencing the case number of the prior proceeding.

Section 15. Applications for Certificates of Public Convenience and Necessity.

(1) Application to bid on a franchise pursuant to KRS 278.020(3).

(a) Upon application to the commission by the utility for a certificate of convenience and necessity authorizing the applicant to bid on a franchise, license, or permit offered by a governmental agency, the applicant shall submit with its application:

1. The information required pursuant to Section 14 of this administrative regulation;
2. The name of the governmental agency offering the franchise;
3. The type of franchise offered; and
4. A statement showing the need and demand for service.

(b) If an applicant is successful in acquiring the franchise, license, or permit, the applicant shall file a copy with the commission using the commission's electronic tariff filing system.

(2) New construction or extension. Upon application for a certificate that the present or future public convenience or necessity requires, or will require, the construction or extension of any plant, equipment, property, or facility, the applicant, in addition to complying with Section 14 of this administrative regulation, shall submit with its application:

(a) The facts relied upon to show that the proposed construction or extension is or will be required by public convenience or necessity;

(b) Copies of franchises or permits, if any, from the proper public authority for the proposed construction or extension, if not previously filed with the commission;

(c) A full description of the proposed location, route, or routes of the proposed construction or extension, including a description of the manner of the construction and the names of all public utilities, corporations, or persons with whom the proposed construction or extension is likely to compete;

(d) One (1) copy in portable document format on electronic storage medium and two (2) copies in paper medium of:

1. Maps to suitable scale showing the location or route of the proposed construction or extension, as well as the location to scale of like facilities owned by others located anywhere within the map area with adequate identification as to the ownership of the other facilities; and
2. Plans and specifications and drawings of the proposed plant, equipment, and facilities;

(e) The manner in detail in which the applicant proposes to finance the proposed construction or extension; and

(f) An estimated annual cost of operation after the proposed facilities are placed into service.

(3) Extensions in the ordinary course of business. A certificate of public convenience and necessity shall not be required for extensions that do not create wasteful duplication of plant, equipment, property, or facilities, or conflict with the existing certificates or service of other utilities operating in the same area and under the jurisdiction of the commission that are in the general or contiguous area in which the utility renders service, and that do not involve sufficient capital outlay to materially affect the existing financial condition of the utility involved, or will not result in increased charges to its customers.

(4) Renewal applications. An application for a renewal of a certificate of convenience and necessity shall be treated as an original application.

Section 16. Applications for General Adjustments of Existing Rates.

(1) Each application requesting a general adjustment of existing rates shall:

(a) Be supported by:

1. A twelve (12) month historical test period that may include adjustments for known and measurable changes; or

2. A fully forecasted test period; and

(b) Include:

1. A statement of the reason the adjustment is required;

2. A certified copy of a certificate of assumed name as required by KRS 365.015 or a statement that a certificate is not necessary;

3. New or revised tariff sheets, if applicable in a format that complies with 807 KAR 5:011 with an effective date not less than thirty (30) days from the date the application is filed;

4. New or revised tariff sheets, if applicable, identified in compliance with 807 KAR 5:011, shown either by providing:

a. The present and proposed tariffs in comparative form on the same sheet side by side or on facing sheets side by side; or

b. A copy of the present tariff indicating proposed additions by italicized inserts or underscoring and striking over proposed deletions; and

5. A statement that notice has been given in compliance with Section 17 of this administrative regulation with a copy of the notice.

(2) Notice of intent. A utility with gross annual revenues greater than $5,000,000 shall notify the commission in writing of its intent to file a rate application at least thirty (30) days, but not more than sixty (60) days, prior to filing its application.

(a) The notice of intent shall state if the rate application will be supported by a historical test period or a fully forecasted test period.

(b) Upon filing the notice of intent, an application may be made to the commission for permission to use an abbreviated form of newspaper notice of proposed rate increases provided the notice includes a coupon that may be used to obtain a copy from the applicant of the full schedule of increases or rate changes.

(c) Upon filing the notice of intent with the commission, the applicant shall mail to the Attorney General's Office of Rate Intervention a copy of the notice of intent or send by electronic mail in a portable document format, to rateintervention@ag.ky.gov.

(3) Notice given pursuant to Section 17 of this administrative regulation shall satisfy the requirements of 807 KAR 5:051, Section 2.

(4) Each application supported by a historical test period shall include the following information or a statement explaining why the required information does not exist and is not applicable to the utility's application:

(a) A complete description and quantified explanation for all proposed adjustments with proper support for proposed changes in price or activity levels, if applicable, and other factors that may affect the adjustment;

(b) If the utility has gross annual revenues greater than $5,000,000, the written testimony of each witness the utility proposes to use to support its application;

(c) If the utility has gross annual revenues less than $5,000,000 the written testimony of each witness the utility proposes to use to support its application or a statement that the utility does not plan to submit written testimony;

(d) A statement estimating the effect that each new rate will have upon the revenues of the utility including, at minimum, the total amount of revenues resulting from the increase or decrease and the percentage of the increase or decrease;

(e) If the utility provides electric, gas, water, or sewer service, the effect upon the average bill for each customer classification to which the proposed rate change will apply;

(f) If the utility is an incumbent local exchange company, the effect upon the average bill for each customer class for the proposed rate change in basic local service;

(g) A detailed analysis of customers' bills whereby revenues from the present and proposed rates can be readily determined for each customer class;

(h) A summary of the utility's determination of its revenue requirements based on return on net investment rate base, return on capitalization, interest coverage, debt service coverage, or operating ratio, with supporting schedules;
(i) A reconciliation of the rate base and capital used to determine its revenue requirements;
(j) A current chart of accounts if more detailed than the Uniform System of Accounts;
(k) The independent auditor's annual opinion report, with written communication from the independent auditor to the utility, if applicable, which indicates the existence of a material weakness in the utility's internal controls;
(l) The most recent Federal Energy Regulatory Commission or Federal Communication Commission audit reports;
(m) The most recent FERC Financial Report FERC Form No.1, FERC Financial Report FERC Form No. 2, or Public Service Commission Form T (telephone);
(n) A summary of the utility's latest depreciation study with schedules by major plant accounts, except that telecommunications utilities that have adopted the commission's average depreciation rates shall provide a schedule that identifies the current and test period depreciation rates used by major plant accounts. If the required information has been filed in another commission case, a reference to that case's number shall be sufficient;
(o) A list of all commercially available or in-house developed computer software, programs, and models used in the development of the schedules and work papers associated with the filing of the utility's application. This list shall include:
1. Each software, program, or model;
2. What the software, program, or model was used for;
3. The supplier of each software, program, or model;
4. A brief description of the software, program, or model; and
5. The specifications for the computer hardware and the operating system required to run the program;
(p) Prospectuses of the most recent stock or bond offerings;
(q) The annual report to shareholders or members and statistical supplements covering the two (2) most recent years from the utility's application filing date;
(r) The monthly managerial reports providing financial results of operations for the twelve (12) months in the test period;
(s) A copy of the utility's annual report on Form 10-K as filed with the Securities and Exchange Commission for the most recent two (2) years, any Form 8-K issued during the past two (2) years, and any Form 10-Q issued during the past six (6) quarters updated as current information becomes available;
(t) If the utility had amounts charged or allocated to it by an affiliate or general or home office or paid monies to an affiliate or general or home office during the test period or during the previous three (3) calendar years, the utility shall file:
1. A detailed description of the method and amounts allocated or charged to the utility by the affiliate or general or home office for each charge allocation or payment;
2. An explanation of how the allocator for the test period was determined; and
3. All facts relied upon, including other regulatory approval, to demonstrate that each amount charged, allocated, or paid during the test period was reasonable;
(u) If the utility provides gas, electric, water, or sewage utility service and has annual gross revenues greater than $5,000,000, a cost of service study based on a methodology generally accepted within the industry and based on current and reliable data from a single time period; and
(v) Local exchange carriers with more than 50,000 access lines shall file:
1. A jurisdictional separations study consistent with 47 C.F.R. Part 36; and

2. Service specific cost studies to support the pricing of all services that generate annual revenue greater than $1,000,000 except local exchange access:

a. Based on current and reliable data from a single time period; and

b. Using generally recognized fully allocated, embedded, or incremental cost principles.

(5) Upon good cause shown, a utility may request pro forma adjustments for known and measurable changes to ensure fair, just, and reasonable rates based on the historical test period. The following information shall be filed with each application requesting pro forma adjustments or a statement explaining why the required information does not exist and is not applicable to the utility's application:

(a) A detailed income statement and balance sheet reflecting the impact of all proposed adjustments;

(b) The most recent capital construction budget containing at least the period of time as proposed for any pro forma adjustment for plant additions;

(c) For each proposed pro forma adjustment reflecting plant additions, the following information:

1. The starting date of the construction of each major component of plant;

2. The proposed in-service date;

3. The total estimated cost of construction at completion;

4. The amount contained in construction work in progress at the end of the test period;

5. A schedule containing a complete description of actual plant retirements and anticipated plant retirements related to the pro forma plant additions including the actual or anticipated date of retirement;

6. The original cost and the cost of removal and salvage for each component of plant to be retired during the period of the proposed pro forma adjustment for plant additions;

7. An explanation of differences, if applicable, in the amounts contained in the capital construction budget and the amounts of capital construction cost contained in the pro forma adjustment period; and

8. The impact on depreciation expense of all proposed pro forma adjustments for plant additions and retirements;

(d) The operating budget for each month of the period encompassing the pro forma adjustments; and

(e) The number of customers to be added to the test period end level of customers and the related revenue requirements impact for all pro forma adjustments with complete details and supporting work papers.

(6) All applications requesting a general adjustment in rates supported by a fully forecasted test period shall comply with the requirements established in this subsection.

(a) The financial data for the forecasted period shall be presented in the form of pro forma adjustments to the base period.

(b) Forecasted adjustments shall be limited to the twelve (12) months immediately following the suspension period.

(c) Capitalization and net investment rate base shall be based on a thirteen (13) month average for the forecasted period.

(d) After an application based on a forecasted test period is filed, there shall be no revisions to the forecast, except for the correction of mathematical errors, unless the revisions reflect statutory or regulatory enactments that could not, with reasonable diligence, have been included in the forecast on the date it was filed. There shall be no revisions filed within thirty (30) days of a scheduled hearing on the rate application.

(e) The commission may require the utility to prepare an alternative forecast based on a reasonable number of changes in the variables, assumptions, and other factors used as

the basis for the utility's forecast.

(f) The utility shall provide a reconciliation of the rate base and capital used to determine its revenue requirements.

(7) Each application requesting a general adjustment in rates supported by a fully forecasted test period shall include the following or a statement explaining why the required information does not exist and is not applicable to the utility's application:

(a) The written testimony of each witness the utility proposes to use to support its application, which shall include testimony from the utility's chief officer in charge of Kentucky operations on the existing programs to achieve improvements in efficiency and productivity, including an explanation of the purpose of the program;

(b) The utility's most recent capital construction budget containing at a minimum a three (3) year forecast of construction expenditures;

(c) A complete description, which may be filed in written testimony form, of all factors used in preparing the utility's forecast period. All econometric models, variables, assumptions, escalation factors, contingency provisions, and changes in activity levels shall be quantified, explained, and properly supported;

(d) The utility's annual and monthly budget for the twelve (12) months preceding the filing date, the base period, and forecasted period;

(e) A statement of attestation signed by the utility's chief officer in charge of Kentucky operations, which shall provide:

1. That the forecast is reasonable, reliable, made in good faith, and that all basic assumptions used in the forecast have been identified and justified;

2. That the forecast contains the same assumptions and methodologies as used in the forecast prepared for use by management, or an identification and explanation for differences that exist, if applicable; and

3. That productivity and efficiency gains are included in the forecast;

(f) For each major construction project that constitutes five (5) percent or more of the annual construction budget within the three (3) year forecast, the following information shall be filed:

1. The date the project was started or estimated starting date;

2. The estimated completion date;

3. The total estimated cost of construction by year exclusive and inclusive of allowance for funds used during construction ("AFUDC") or interest during construction credit; and

4. The most recent available total costs incurred exclusive and inclusive of AFUDC or interest during construction credit;

(g) For all construction projects that constitute less than five (5) percent of the annual construction budget within the three (3) year forecast, the utility shall file an aggregate of the information requested in paragraph (f)3 and 4 of this subsection;

(h) A financial forecast corresponding to each of the three (3) forecasted years included in the capital construction budget. The financial forecast shall be supported by the underlying assumptions made in projecting the results of operations and shall include the following information:

1. Operating income statement (exclusive of dividends per share or earnings per share);

2. Balance sheet;

3. Statement of cash flows;

4. Revenue requirements necessary to support the forecasted rate of return;

5. Load forecast including energy and demand (electric);

6. Access line forecast (telephone);

7. Mix of generation (electric);

8. Mix of gas supply (gas);

9. Employee level;
10. Labor cost changes;
11. Capital structure requirements;
12. Rate base;
13. Gallons of water projected to be sold (water);
14. Customer forecast (gas, water);
15. Sales volume forecasts in cubic feet (gas);
16. Toll and access forecast of number of calls and number of minutes (telephone); and
17. A detailed explanation of other information provided, if applicable;

(i) The most recent Federal Energy Regulatory Commission or Federal Communications Commission audit reports;

(j) The prospectuses of the most recent stock or bond offerings;

(k) The most recent FERC Financial Report FERC Form No.1, FERC Financial Report FERC Form No.2, or Public Service Commission Form T (telephone);

(l) The annual report to shareholders or members and the statistical supplements covering the most recent two (2) years from the application filing date;

(m) The current chart of accounts if more detailed than the Uniform System of Accounts chart;

(n) The latest twelve (12) months of the monthly managerial reports providing financial results of operations in comparison to the forecast;

(o) Complete monthly budget variance reports, with narrative explanations, for the twelve (12) months immediately prior to the base period, each month of the base period, and any subsequent months, as they become available;

(p) A copy of the utility's annual report on Form 10-K as filed with the Securities and Exchange Commission for the most recent two (2) years, and any Form 8-K issued during the past two (2) years, and any Form 10-Q issued during the past six (6) quarters;

(q) The independent auditor's annual opinion report, with any written communication from the independent auditor to the utility that indicates the existence of a material weakness in the utility's internal controls;

(r) The quarterly reports to the stockholders for the most recent five (5) quarters;

(s) The summary of the latest depreciation study with schedules itemized by major plant accounts, except that telecommunications utilities that have adopted the commission's average depreciation rates shall provide a schedule that identifies the current and base period depreciation rates used by major plant accounts. If the required information has been filed in another commission case, a reference to that case's number shall be sufficient;

(t) A list of all commercially available or in-house developed computer software, programs, and models used in the development of the schedules and work papers associated with the filing of the utility's application. This list shall include:
1. Each software, program, or model;
2. What the software, program, or model was used for;
3. The supplier of each software, program, or model;
4. A brief description of the software, program, or model; and
5. The specifications for the computer hardware and the operating system required to run the program;

(u) If the utility had amounts charged or allocated to it by an affiliate or a general or home office or paid monies to an affiliate or a general or home office during the base period or during the previous three (3) calendar years, the utility shall file:
1. A detailed description of the method and amounts allocated or charged to the utility by the affiliate or general or home office for each allocation or payment;

2. The method and amounts allocated during the base period and the method and estimated amounts to be allocated during the forecasted test period;

3. An explanation of how the allocator for both the base period and the forecasted test period were determined; and

4. All facts relied upon, including other regulatory approval, to demonstrate that each amount charged, allocated, or paid during the base period is reasonable;

(v) If the utility provides gas, electric, sewage, or water utility service and has annual gross revenues greater than $5,000,000 in the division for which a rate adjustment is sought, a cost of service study based on a methodology generally accepted within the industry and based on current and reliable data from a single time period; and

(w) Incumbent local exchange carriers with fewer than 50,000 access lines shall not be required to file cost of service studies, except as directed by the commission. Local exchange carriers with more than 50,000 access lines shall file:

1. A jurisdictional separations study consistent with 47 C.F.R. Part 36; and

2. Service specific cost studies to support the pricing of all services that generate annual revenue greater than $1,000,000 except local exchange access:

a. Based on current and reliable data from a single time period; and

b. Using generally recognized fully allocated, embedded, or incremental cost principles.

(8) Each application seeking a general adjustment in rates supported by a forecasted test period shall include:

(a) A jurisdictional financial summary for both the base period and the forecasted period that details how the utility derived the amount of the requested revenue increase;

(b) A jurisdictional rate base summary for both the base period and the forecasted period with supporting schedules, which include detailed analyses of each component of the rate base;

(c) A jurisdictional operating income summary for both the base period and the forecasted period with supporting schedules, which provide breakdowns by major account group and by individual account;

(d) A summary of jurisdictional adjustments to operating income by major account with supporting schedules for individual adjustments and jurisdictional factors;

(e) A jurisdictional federal and state income tax summary for both the base period and the forecasted period with all supporting schedules of the various components of jurisdictional income taxes;

(f) Summary schedules for both the base period and the forecasted period (the utility may also provide a summary segregating those items it proposes to recover in rates) of organization membership dues; initiation fees; expenditures at country clubs; charitable contributions; marketing, sales, and advertising expenditures; professional service expenses; civic and political activity expenses; expenditures for employee parties and outings; employee gift expenses; and rate case expenses;

(g) Analyses of payroll costs including schedules for wages and salaries, employee benefits, payroll taxes, straight time and overtime hours, and executive compensation by title;

(h) A computation of the gross revenue conversion factor for the forecasted period;

(i) Comparative income statements (exclusive of dividends per share or earnings per share), revenue statistics and sales statistics for the five (5) most recent calendar years from the application filing date, the base period, the forecasted period, and two (2) calendar years beyond the forecast period;

(j) A cost of capital summary for both the base period and forecasted period with supporting schedules providing details on each component of the capital structure;

(k) Comparative financial data and earnings measures for the ten (10) most recent calendar years, the base period, and the forecast period;
(l) A narrative description and explanation of all proposed tariff changes;
(m) A revenue summary for both the base period and forecasted period with supporting schedules, which provide detailed billing analyses for all customer classes; and
(n) A typical bill comparison under present and proposed rates for all customer classes.

(9) The commission shall notify the applicant of any deficiencies in the application within thirty (30) days of the application's submission. An application shall not be accepted for filing until the utility has cured all noted deficiencies.

(10) A request for a waiver from the requirements of this section shall include the specific reasons for the request. The commission shall grant the request upon good cause shown by the utility. In determining if good cause has been shown, the commission shall consider:
(a) If other information that the utility would provide if the waiver is granted is sufficient to allow the commission to effectively and efficiently review the rate application;
(b) If the information that is the subject of the waiver request is normally maintained by the utility or reasonably available to it from the information that it maintains; and
(c) The expense to the utility in providing the information that is the subject of the waiver request.

Section 17. Notice of General Rate Adjustment. Upon filing an application for a general rate adjustment, a utility shall provide notice as established in this section.

(1) Public postings.
(a) A utility shall post at its place of business a copy of the notice no later than the date the application is submitted to the commission.
(b) A utility that maintains a Web site shall, within five (5) business days of the date the application is submitted to the commission, post on its Web sites:
1. A copy of the public notice; and
2. A hyperlink to the location on the commission's Web site where the case documents are available.
(c) The information required in paragraphs (a) and (b) of this subsection shall not be removed until the commission issues a final decision on the application.

(2) Customer Notice.
(a) If a utility has twenty (20) or fewer customers, the utility shall mail a written notice to each customer no later than the date on which the application is submitted to the commission.
(b) If a utility has more than twenty (20) customers, it shall provide notice by:
1. Including notice with customer bills mailed no later than the date the application is submitted to the commission;
2. Mailing a written notice to each customer no later than the date the application is submitted to the commission;
3. Publishing notice once a week for three (3) consecutive weeks in a prominent manner in a newspaper of general circulation in the utility's service area, the first publication to be made no later than the date the application is submitted to the commission; or
4. Publishing notice in a trade publication or newsletter delivered to all customers no later than the date the application is submitted to the commission.
(c) A utility that provides service in more than one (1) county may use a combination of the notice methods listed in paragraph (b) of this subsection.

(3) Proof of Notice. A utility shall file with the commission no later than forty-five (45) days from the date the application was initially submitted to the commission:

(a) If notice is mailed to its customers, an affidavit from an authorized representative of the utility verifying the contents of the notice, that notice was mailed to all customers, and the date of the mailing;

(b) If notice is published in a newspaper of general circulation in the utility's service area, an affidavit from the publisher verifying the contents of the notice, that the notice was published, and the dates of the notice's publication; or

(c) If notice is published in a trade publication or newsletter delivered to all customers, an affidavit from an authorized representative of the utility verifying the contents of the notice, the mailing of the trade publication or newsletter, that notice was included in the publication or newsletter, and the date of mailing.

(4) Notice Content. Each notice issued in accordance with this section shall contain:

(a) The proposed effective date and the date the proposed rates are expected to be filed with the commission;

(b) The present rates and proposed rates for each customer classification to which the proposed rates will apply;

(c) The amount of the change requested in both dollar amounts and percentage change for each customer classification to which the proposed rates will apply;

(d) The amount of the average usage and the effect upon the average bill for each customer classification to which the proposed rates will apply, except for local exchange companies, which shall include the effect upon the average bill for each customer classification for the proposed rate change in basic local service;

(e) A statement that a person may examine this application at the offices of (utility name) located at (utility address);

(f) A statement that a person may examine this application at the commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at http://psc.ky.gov;

(g) A statement that comments regarding the application may be submitted to the Public Service Commission through its Web site or by mail to Public Service Commission, Post Office Box 615, Frankfort, Kentucky 40602;

(h) A statement that the rates contained in this notice are the rates proposed by (utility name) but that the Public Service Commission may order rates to be charged that differ from the proposed rates contained in this notice;

(i) A statement that a person may submit a timely written request for intervention to the Public Service Commission, Post Office Box 615, Frankfort, Kentucky 40602, establishing the grounds for the request including the status and interest of the party; and

(j) A statement that if the commission does not receive a written request for intervention within thirty (30) days of initial publication or mailing of the notice, the commission may take final action on the application.

(5) Abbreviated form of notice. Upon written request, the commission may grant a utility permission to use an abbreviated form of published notice of the proposed rates, provided the notice includes a coupon that may be used to obtain all of the required information.

Section 18. Application for Authority to Issue Securities, Notes, Bonds, Stocks, or Other Evidences of Indebtedness.

(1) An application for authority to issue securities, notes, bonds, stocks, or other evidences of indebtedness payable at periods of more than two (2) years from the date thereof shall contain:

(a) The information required by Section 14 of this administrative regulation;

(b) A general description of the applicant's property and the field of its operation, together with a statement of the original cost of the same and the cost to the applicant.

If it is impossible to state the original cost, the facts creating the impossibility shall be stated;

(c) The amount and kinds of stock, if any, which the applicant desires to issue, and, if preferred, the nature and extent of the preference; the amount of notes, bonds, or other evidences of indebtedness, if any, which the applicant desires to issue, with terms, rate of interest, and if and how to be secured;

(d) The use to be made of the proceeds of the issue of securities, notes, bonds, stocks, or other evidence of indebtedness with a statement indicating how much is to be used for the acquisition of property, the construction, completion, extension, or improvement of facilities, the improvement of service, the maintenance of service, and the discharge or refunding of obligations;

(e) The property in detail that is to be acquired, constructed, improved, or extended with its cost, a detailed description of the contemplated construction, completion, extension, or improvement of facilities established in a manner whereby an estimate of the cost may be made, a statement of the character of the improvement of service proposed, and of the reasons why the service should be maintained from its capital. If a contract has been made for the acquisition of property, or for construction, completion, extension, or improvement of facilities, or for the disposition of the securities, notes, bonds, stocks, or other evidence of indebtedness that it proposes to issue or the proceeds thereof and if a contract has been made, copies thereof shall be annexed to the application;

(f) If it is proposed to discharge or refund obligations, a statement of the nature and description of the obligations including their par value, the amount for which they were actually sold, the associated expenses, and the application of the proceeds from the sales. If notes are to be refunded, the application shall show the date, amount, time, rate of interest, and payee of each and the purpose for which their proceeds were expended; and

(g) If the applicant is a water district, a copy of the applicant's written notification to the state local debt officer regarding the proposed issuance.

(2) The following exhibits shall be filed with the application:

(a) Financial exhibit (see Section 12 of this administrative regulation);

(b) Copies of trust deeds or mortgages, if applicable, unless they have already been filed with the commission, in which case reference shall be made by case number to the proceeding in which the trust deeds or mortgages have been filed; and

(c) Maps and plans of the proposed property and constructions together with detailed estimates in a form that they can be reviewed by the commission's engineering division. Estimates shall be arranged according to the commission-prescribed uniform system of accounts for the various classes of utilities.

Section 19. Application for Declaratory Order.

(1) The commission may, upon application by a person substantially affected, issue a declaratory order with respect to the jurisdiction of the commission, the applicability to a person, property, or state of facts of an order or administrative regulation of the commission or provision of KRS Chapter 278, or with respect to the meaning and scope of an order or administrative regulation of the commission or provision of KRS Chapter 278.

(2) An application for declaratory order shall:

(a) Be in writing;

(b) Contain a complete, accurate, and concise statement of the facts upon which the application is based;

(c) Fully disclose the applicant's interest;

(d) Identify all statutes, administrative regulations, and orders to which the application relates; and

(e) State the applicant's proposed resolution or conclusion.

(3) The commission may direct that a copy of the application for a declaratory order be served on a person who may be affected by the application.

(4) Unless the commission orders otherwise, responses, if applicable, to an application for declaratory order shall be filed with the commission within twenty-one (21) days after the date on which the application was filed with the commission and shall be served upon the applicant.

(5) A reply to a response shall be filed with the commission within fourteen (14) days after service.

(6) Each application, response, and reply containing an allegation of fact shall be supported by affidavit or shall be verified.

(7) The commission may dispose of an application for a declaratory order solely on the basis of the written submissions filed.

(8) The commission may take any action necessary to ensure a complete record, to include holding oral arguments on the application and requiring the production of additional documents and materials, and may extend the time for the filing of a reply or response under this section.

Section 20. Formal Complaints.

(1) Contents of complaint. Each complaint shall be headed "Before the Public Service Commission," shall establish the names of the complainant and the defendant, and shall state:

(a) The full name and post office address of the complainant;

(b) The full name and post office address of the defendant;

(c) Fully, clearly, and with reasonable certainty, the act or omission, of which complaint is made, with a reference, if practicable, to the law, order, or administrative regulation, of which a failure to comply is alleged, and other matters, or facts, if any, as necessary to acquaint the commission fully with the details of the alleged failure; and

(d) The relief sought.

(2) Signature. The complainant or his or her attorney, if applicable, shall sign the complaint. A complaint by a corporation, association, or another organization with the right to file a complaint, shall be signed by its attorney.

(3) Number of copies required. Upon the filing of an original complaint, the complainant shall also file two (2) more copies than the number of persons to be served.

(4) Procedure on filing of complaint.

(a) Upon the filing of a complaint, the commission shall immediately examine the complaint to ascertain if it establishes a prima facie case and conforms to this administrative regulation.

1. If the commission finds that the complaint does not establish a prima facie case or does not conform to this administrative regulation, the commission shall notify the complainant and provide the complainant an opportunity to amend the complaint within a specified time.

2. If the complaint is not amended within the time or the extension as the commission, for good cause shown, shall grant, the complaint shall be dismissed.

(b) If the complaint, either as originally filed or as amended, establishes a prima facie case and conforms to this administrative regulation, the commission shall serve an order upon the person complained of, accompanied by a copy of the complaint, directed to the person complained of and requiring that the matter complained of be satisfied, or that the complaint be answered in writing within ten (10) days from the date of service of the order, provided that the commission may require the answer to be

filed within a shorter period if the complaint involves an emergency situation or otherwise would be detrimental to the public interest.

(5) Satisfaction of the complaint. If the defendant desires to satisfy the complaint, he or she shall submit to the commission, within the time allowed for satisfaction or answer, a statement of the relief that the defendant is willing to give. Upon the acceptance of this offer by the complainant and with the approval of the commission, the case shall be dismissed.

(6) Answer to complaint. If the complainant is not satisfied with the relief offered, the defendant shall file an answer to the complaint within the time specified in the order or the extension as the commission, for good cause shown, shall grant.

(a) The answer shall contain a specific denial of the material allegations of the complaint as controverted by the defendant and also a statement of any new matters constituting a defense.

(b) If the defendant does not have information sufficient to answer an allegation of the complaint, the defendant may so state in the answer and place the denial upon that ground.

Section 21. Informal Complaints.

(1) An informal complaint shall be made to the commission's division of consumer services in a manner that specifically states the complainant's concerns and identifies the utility.

(2) The commission's division of consumer services shall address by correspondence or other means the complaint.

(a) If an informal complaint is referred to a utility, the utility shall acknowledge to the commission's division of consumer services referral of the complaint and shall report on its efforts to contact the complainant within three (3) business days of the referral, or a lesser period if the complaint involves an emergency situation or otherwise would be detrimental to the public interest.

(b) If commission staff requires a period less than three (3) business days for a response, that period shall be reasonable under the circumstances.

(3) Upon resolution of the informal complaint, the utility shall notify the commission's division of consumer services.

(4) In the event of failure to bring about satisfaction of the complaint because of the inability of the parties to agree as to the facts involved, or from other causes, the proceeding shall be held to be without prejudice to the complainant's right to file and prosecute a formal complaint whereupon the informal proceedings shall be discontinued.

Section 22. Deviations from Rules. In special cases, for good cause shown, the commission may permit deviations from these rules.

Section 23. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "FERC Financial Report FERC Form No. 1", March 2007;

(b) "FERC Financial Report FERC Form No. 2", December 2007;

(c) "Notice of Election of Use of Electronic Filing Procedures", June 2014;

(d) "PSC Form-T (telephone)", August 2005;

(e) "Form 8-K", January 2012;

(f) "Form 10-K", January 2012;

(g) "Form 10-Q", January 2012; and

(h) "Subpoena Form", August 2013.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky

40601, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at http://psc.ky.gov.

(8 Ky.R. 786; eff. 4-7-1982; 10 Ky.R. 831; eff. 1-4-1984; 11 Ky.R. 1301; 12 Ky.R. 127; eff. 7-9-1985; 18 Ky.R. 191; 1025; eff. 9-24-1991; 19 Ky.R. 1142; 1604; 2044; eff. 3-12-1993; 39 Ky.R. 295; 995; 1117; eff. 1-4-2013; 40 Ky.R. 686; 1109; 1269; eff. 1-3-2014; 41 Ky.R. 131; 476; 763; 983; eff. 10-31-2014; Crt eff. 3-27-2019.)

RENDERED: MAY 17, 2019; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2018-CA-000559-MR

BULLITT UTILITIES, INC., BY
ROBERT W. KEATS, ITS CHAPTER 7 TRUSTEE APPELLANT

v.

APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE THOMAS D. WINGATE, JUDGE
ACTION NO. 17-CI-01160

KENTUCKY PUBLIC SERVICE COMMISSION;
ATTORNEY GENERAL OF THE
COMMONWEALTH OF KENTUCKY;
CITY OF HILLVIEW, KENTUCKY; AND
CITY OF HUNTERS HOLLOW, KENTUCKY APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: JONES, KRAMER, AND K. THOMPSON, JUDGES.

JONES, JUDGE: Bullitt Utilities, Inc., by Robert W. Keats, Its Chapter 7 Trustee, brings this appeal from an order of the Franklin Circuit Court affirming an order of the Kentucky Public Service Commission (the "Commission"), which determined that Bullitt Utilities, through its trustee, had no right to file an application for a

surcharge tariff under KRS[1] Chapter 278. Following review of the record and applicable law, we AFFIRM.

I. BACKGROUND

Bullitt Utilities previously operated a sewage collection and transmission facilities and a wastewater treatment plant in the City of Hunters Hollow, Kentucky (the "Hunters Hollow Plant"). In March of 2014, the steel aeration tank at the Hunters Hollow Plant experienced catastrophic failure. As a result of this failure, over 250,000 gallons of raw, untreated sewage were discharged into the public waterway. Because of the failure of the steel aeration tank, the wastewater treatment portion of the Hunters Hollow Plant closed and only the lines used to collect wastewater remained in operation. Thereafter, all wastewater collected by the Hunters Hollow Plant's collection system was redirected and treated by Bullitt County Sewer District ("BCSD"). Bullitt Utilities hired private contractors to help remedy the damage caused by the aeration tank's failure, which ultimately cost it in excess of $3.4 million dollars.

Bullitt Utilities was considered a "utility" as defined in KRS 278.010(3)(f) and, accordingly, its rates and services were regulated by the

[1] Kentucky Revised Statutes.

Commission.[2] In June of 2014, Bullitt Utilities filed an application for a Certificate of Public Convenience and Necessity and Surcharge with the Commission, seeking to recover costs incurred as a result of the aeration tank's failure and costs to build new facilities (the "First Surcharge Action"). While the First Surcharge Action was pending, on August 21, 2015, counsel for Bullitt Utilities sent a notice to the Commission advising that "Bullitt Utilities is surrendering this [the property of Bullitt Utilities] property to the Commission effective September 1, 2015." A.R.[3] 217. The Commission refused to allow Bullitt Utilities to abandon its property at that time; however, it treated the notice as an application to abandon the Hunters Hollow Plant under KRS 278.021 and opened an investigation into the application (the "Abandonment Action"). A hearing was held on August 27, 2015, at which Bullitt Utilities testified that:

> 1) [it] authorized Counsel for Bullitt Utilities to send the August 21, 2015 notice regarding abandonment to the Commission's Executive Director; 2) Bullitt Utilities unconditionally disclaims, renounces, relinquishes, or surrenders all property interests or all rights to utility property, real or personal, necessary to provide service; and 3) Bullitt Utilities authorized sending to the Commission the August 21, 2015 notice of intent to abandon the operation of the facilities used to provide service.

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[2] Whether Bullitt Utilities is currently considered a "utility" is disputed by the parties; however, there is no dispute that Bullitt Utilities was a "utility" in 2014.

[3] Citations to "A.R." refer to the record of the proceedings before the Commission. Citations to "R." refer to the record of the proceedings before the Franklin Circuit Court.

A.R. 221.

On August 21, 2015, the Commission entered an order finding that Bullitt Utilities had met the statutory requirements of KRS 278.021(2)(a) and (b), making it necessary for the Commission to make a finding of abandonment. However, because the residences that Bullitt Utilities serviced would likely be deemed uninhabitable if Bullitt Utilities immediately ceased providing services, the Commission ordered Bullitt Utilities to continue operating the Hunters Hollow Plant collection system for 30 days or until the Franklin Circuit Court entered an order attaching Bullitt Utilities' assets and placing them under the control and responsibility of a receiver.

The next day, the Commission filed a petition with the Franklin Circuit Court requesting that it attach Bullitt Utilities' assets and appoint BCSD as receiver for Bullitt Utilities, pursuant to KRS 287.021(1) (the "Receivership Action"). On September 23, 2015, the Franklin Circuit Court entered an order granting the relief requested by the Commission. That order indicated, in pertinent part, as follows:

> 2. BCSD is appointed receiver to take charge, preserve, operate, control, manage, maintain and care for Bullitt Utilities' sewage collection and treatment facilities; to collect all receivables and profits, and to exercise generally the powers conferred by this Court and such other powers that are usual and incidental to the management of a public utility providing sewage collection and treatment service to the public.

R. 173.

As Bullitt Utilities had abandoned its operations and BCSD had been appointed its receiver, the Commission determined that Bullitt Utilities no longer had any right to collect charges or rates from the customers served by the Hunters Hollow Plant or to bring or defend any action related to the assets and operations of the Hunters Hollow Plant. Accordingly, the Commission dismissed Bullitt Utilities from the First Surcharge Action and substituted BCSD in its place. On December 10, 2015, BCSD and the Attorney General of Kentucky, an intervenor in the First Surcharge Action, filed a joint motion to dismiss. The Commission dismissed the First Surcharge Action without prejudice on December 15, 2015.

On December 18, 2015, Bullitt Utilities' creditors filed an involuntary Chapter 7 Bankruptcy petition against it. The Bankruptcy Court appointed an interim trustee on December 29, 2015, to take title and possession of the property of Bullitt Utilities' bankruptcy estate. The order appointing the interim trustee specifically indicated that the trustee:

> shall have full authority and control over the surcharge claim and any related claims in the possession of the Alleged Debtor. The interim trustee shall promptly review the surcharge claim and the [First Surcharge Action], and then will make a determination regarding whether to reinstate the [First Surcharge Action], appeal the [First Surcharge Action], or reassert the [First Surcharge Action].

A.R. 36-37.

Based on the mandate in that order, on January 4, 2016, the Trustee filed a motion to intervene in the First Surcharge Action and moved for a rehearing on the Commission's order dismissing the First Surcharge Action without prejudice. The Commission granted the Trustee's motion for a rehearing for the limited purpose of determining "whether Bullitt Utilities now has any legal rights as a utility which can be asserted by the Trustee and whether the Commission can grant any relief absent modification or amendment of the Franklin Circuit Court's order appointing BCSD as receiver for the assets of Bullitt Utilities." A.R. 42.

Following briefing on those issues, the Commission entered an order denying the Trustee's motion to intervene and motion for a rehearing and dismissing the First Surcharge Action with prejudice. At the outset of its analysis, the Commission noted that the Trustee had acknowledged in his brief that he did not possess any greater rights than those held by Bullitt Utilities at the time that the Chapter 7 bankruptcy proceedings had commenced. Accordingly, the Commission considered the Trustee's motion for rehearing and motion to intervene in light of Bullitt Utilities' right to such relief. First addressing the Trustee's motion for a rehearing, the Commission concluded that KRS 278.400 limited the right to apply for a rehearing to "any party." Because Bullitt Utilities was no longer a party at the time the Commission dismissed the First Surcharge Action, the Commission

concluded that Bullitt Utilities—and by extension, the Trustee—was precluded from seeking a rehearing of the order of dismissal. Looking next to the Trustee's motion to intervene, the Commission found that the Trustee had not cited to any authority supporting his claim that he had a right to intervene in the First Surcharge Action.

The Commission acknowledged that the Bankruptcy Court's order had granted the Trustee "full authority and control over the surcharge claim and any related claims *in the possession of* the Alleged Debtor." A.R. 49. However, the Commission found that as of the date that the petition for involuntary Chapter 7 bankruptcy had been filed, Bullitt Utilities had already abandoned all interests in its utility assets. The Commission expressed confusion as to whether the Bankruptcy Court had appointed the Trustee to take control of the property of the estate that was currently in possession of BCSD as receiver and operate any business of Bullitt Utilities, or whether the authority of BCSD had been terminated by virtue of the appointment of the Trustee. The Commission urged the Trustee to seek clarification from the Bankruptcy Court as to whether BCSD had power to act with respect to the Hunters Hollow Plant.

The Trustee then filed a motion with the Bankruptcy Court seeking the clarification requested by the Commission. On September 1, 2016, the Bankruptcy Court entered an order declaring that: the Trustee was authorized to

act on behalf of Bullitt Utilities in all legal proceedings; all of Bullitt Utilities' assets, including its claim for a surcharge, were part of its bankruptcy estate and under the sole control and authority of the Trustee; and the Trustee was authorized to re-file a surcharge claim on behalf of Bullitt Utilities.

The Bankruptcy Court explained the reasoning behind its order in a separate memorandum opinion. Therein, the Bankruptcy Court first found that on the date that the involuntary petition was filed, it retained jurisdiction to determine which assets were property of the bankruptcy estate; that BCSD was considered a "custodian" within the meaning of 11 U.S.C.[4] § 101(11); and that 11 U.S.C. § 543 directs custodians of estate property to turn over that property to the bankruptcy trustee unless the creditors' interest would be better served by estate property remaining in the custodian's control.

The Bankruptcy Court next considered whether Bullitt Utilities' legal title to its assets was severed by virtue of the Abandonment Action. The Court concluded that the Abandonment Action clearly divested Bullitt Utilities of operational control of the Hunters Hollow Plant; however, it found nothing indicating that Bullitt Utilities' legal title to the Hunters Hollow Plant had been severed. Specifically, the Bankruptcy Court noted that there was no indication that Bullitt Utilities had voluntarily conveyed title of its assets to either the

[4] United States Code.

Commission or BCSD, that it had not been presented with any order of the Franklin Circuit Court severing Bullitt Utilities' title to its assets, and that the Commission lacked authority to sever Bullitt Utilities' title. Additionally, the Bankruptcy Court cited to a Commission staff opinion given in the First Surcharge Action, which concluded that BCSD had not become the owner of Bullitt Utilities' assets or the owner of the Hunters Hollow Plant despite the fact that BCSD controlled Bullitt Utilities' assets by virtue of the receivership.

Following entry of the September 1, 2016, Bankruptcy Court order, BCSD moved the Franklin Circuit Court to terminate its appointment as receiver and return all assets to Bullitt Utilities. On receipt of BCSD's motion, the Trustee filed an emergency motion with the Bankruptcy Court seeking enforcement of the automatic stay and an order requiring BCSD to continue providing utility services to Bullitt Utilities' customers. On September 26, 2016, the Bankruptcy Court entered an order clarifying that the Trustee held title to the property of Bullitt Utilities' bankruptcy estate and, therefore, had the right to assert control of Bullitt Utilities' surcharge claim, but that the receivership order of the Franklin Circuit Court was to otherwise remain in full force and effect, with BCSD having the right and authority to control and manage the cash and operations of Bullitt Utilities.

On November 30, 2016, the Trustee filed an application with the Commission requesting authority for Bullitt Utilities to implement a surcharge to

recover the costs incurred in responding to the March 2014 failure at the Hunters Hollow Plant (the "Second Surcharge Action"). The Trustee additionally moved to deviate from the Commission's rules regarding filings required when requesting a surcharge. The Commission entered an order on December 29, 2016, granting in part and denying in part the Trustee's request to deviate from the filing requirements. The order found numerous deficiencies in the Trustee's application, and specified which deficiencies must be cured before the application would be accepted as filed. Additionally, the Commission directed the Trustee to file a brief addressing Bullitt Utilities' status as a "utility," as defined in KRS 278.010(3)(f); Bullitt Utilities' legal authority to file a tariff with the Commission; and Bullitt Utilities' interest in the rates collected from, and obligations with respect to the service rendered to, the customers of the Hunters Hollow Plant under state law. A.R. 340.

The Trustee filed a brief on January 13, 2017, addressing the deficiencies and legal issues identified by the Commission. Therein, the Trustee acknowledged that a utility for which a receiver has been appointed would normally act only through the receiver; in this case, however, the Bankruptcy Court's orders established that the Trustee was authorized to act on Bullitt Utilities' behalf concerning anything related to Bullitt Utilities' claim for a surcharge. The Trustee argued that, despite abandonment, Bullitt Utilities

remained a "utility" for purposes of KRS 278.010(3)(f). In support of this contention, the Trustee directed the Commission's attention to an order it had recently rendered in a separate abandonment case.[5] In that case, Cedar Hills—the utility as issue—had filed an application to abandon and identified a proposed receiver. While the utility had been under the Commission's jurisdiction, the proposed receiver was not. Accordingly, a question arose as to how rates for the utility would be set while the utility was subject to the receivership. The Commission concluded that the receiver was merely acting as a caretaker for Cedar Hill's assets and, accordingly, that Cedar Hills remained a regulated utility subject to the Commission's jurisdiction for the duration of the receivership. The Trustee contended that the same analysis should apply in the instant case, *i.e.*, that the Commission should find that Bullitt Utilities remained a utility under its jurisdiction and, therefore, retained the right to file a surcharge claim. The Trustee's brief further informed the Commission that any surcharge collected from Bullitt Utilities' customers would be subject to distribution under the jurisdiction of the Bankruptcy Court. The Trustee expressed his belief that Bullitt Utilities was still under an obligation to provide services to its customers, but that BCSD was fulfilling that obligation on Bullitt Utilities' behalf.

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[5] *In re.: An Investigation of Cedar Hills Disposal Sanitation Corps. Notice of Intent to Abandon Serv.*, No. 2015-00100, 2016 WL 1545547 (Ky. P.S.C. Apr. 11, 2016).

The Attorney General and the City of Hillview, who had been granted leave to intervene in the Second Surcharge Action, each filed responses to the Trustee's brief. The Trustee was then granted leave to file a reply brief. On October 12, 2017, the Commission entered an order concluding that Bullitt Utilities no longer had the authority to seek a surcharge tariff. While the Commission did not dispute the fact that Bullitt Utilities remained the legal title holder of its assets, despite having abandoned those assets in the Abandonment Action, it concluded that Bullitt Utilities' status as legal title holder was irrelevant to whether it could pursue a surcharge claim. The Commission found that Bullitt Utilities' authority to file a request for a surcharge was derived from its meeting the definition of "utility" under KRS 278.010(3)(f), the fact that it provided a utility service, and the fact that it collected rates under a tariff for that service. Through the Abandonment Action, Bullitt Utilities had extinguished its obligation to provide utility services, thereby removing itself from the Commission's jurisdiction. The Commission concluded that, by virtue of the Abandonment Action, Bullitt Utilities no longer had any service obligation, and, accordingly, no longer met the definition of a "utility." Therefore, it had no authority to seek a surcharge tariff.

On November 8, 2017, the Trustee filed a petition on appeal in the Franklin Circuit Court pursuant to KRS 278.410. In the petition, the Trustee first

contended that the Commission had failed to render a decision on his application for a surcharge within the statutorily prescribed timeframe, which, in and of itself, demonstrated that the Commission's order was unlawful and unreasonable. Additionally, the Trustee contended that the Commission's delay in considering the application meant that the Commission had lost jurisdiction over the application and that the Commission was equitably estopped from rejecting it. The Trustee argued that the Commission's order was unlawful, as it ignored the impact of the Bankruptcy Court's orders and the Supremacy Clause of the United States Constitution. Further, the Trustee argued that the Commission had erroneously interpreted the statutory definition of "utility," erroneously analyzed the abandonment statute, and had reached a conclusion in conflict with its previous orders and staff opinions. The Trustee sought a judgment vacating the Commission's order and allowing him to impose the requested surcharge, as well as an injunction preventing the Commission from interfering with his ability to add the requested surcharge.

Following oral arguments and briefs from all interested parties, the circuit court entered an opinion and order on March 23, 2018, affirming the Commission's order rejecting Bullitt Utilities' surcharge application. The circuit court first addressed Bullitt Utilities' contention that the Commission had failed to render a decision on its application within the ten-month deadline imposed by KRS

278.190(3). The circuit court found that the Commission had not violated this deadline, as Bullitt Utilities' application had not been accepted as filed until January 13, 2017, and the Commission had issued its decision on October 12, 2017. In arguing that the Commission had violated KRS 278.190(3), Bullitt Utilities had contended that its application was filed on November 30, 2016, which would have made the Commission's decision untimely. However, the circuit court found that the Commission had the authority to adopt regulations related to filing surcharge applications. Because Bullitt Utilities had not complied with those regulations when it tendered its application in November of 2016, the circuit court concluded that the Commission was within its right to reject the application until Bullitt Utilities had cured the identified deficiencies. Further, the circuit court noted that even if the Commission had not acted timely in rendering its decision, Bullitt Utilities had not been without remedy. Per statute, Bullitt Utilities would have been permitted to begin charging the requested surcharge rate until the Commission reached a decision on the surcharge application.

The circuit court disagreed with Bullitt Utilities' contention that the Commission's order was in contravention of the Bankruptcy Court's orders and the Supremacy Clause, as it found that Bullitt Utilities' status as legal title holder of its property did not entitle it to file a claim for surcharge. The circuit court acknowledged that the definition of "utility" in KRS 278.010(3)(f) encompassed

"any person . . . who owns, controls, operates, or manages any facility used or to be used for or in connection with . . . the collection, transmission, or treatment of sewage for the public, for compensation . . . ." While Bullitt Utilities was still technically the owner of the Hunters Hollow Plant, the circuit court agreed with the Commission that, by virtue of the Abandonment Action, it had relinquished all ownership rights to the Hunters Hollow Plant for purposes of KRS Chapter 278.

The circuit court concluded, however, that even if Bullitt Utilities was still considered a "utility," it would have no right to pursue a surcharge claim. This conclusion was based on the circuit court's reasoning that the Commission had the exclusive authority to determine whether a utility could provide utility services and collect rates for those services. The circuit court reasoned that by virtue of that authority, the Commission had the right to prohibit an unauthorized utility—such as one that had voluntarily abandoned its right and obligation to provide utility services—from collecting rates. Further, the circuit court concluded that it would be unreasonable to allow a company that abandoned a utility to continue collecting rates from customers being serviced by a receiver.

The circuit court disagreed with Bullitt Utilities' contention that the Commission's order was inconsistent with its prior orders and staff opinions. Further, the circuit court found that equitable estoppel was inappropriate as Bullitt Utilities had not put forth any argument demonstrating that "gross inequity" had

occurred as a result of the Commission's actions or inactions. Finally, the circuit court concluded that, *in toto*, the Commission's order lawfully and reasonably applied KRS Chapter 278 and was not arbitrary.

This appeal followed.

II. STANDARD OF REVIEW

Judicial review of an order of the Commission is governed by KRS 278.410(1). Accordingly, a court may only vacate or set aside an order or determination of the Commission when the Commission's decision is "unlawful or unreasonable." KRS 278.410(1). The party seeking to set aside the Commission's order carries the burden of proving by clear and satisfactory evidence that the order is unreasonable or unlawful. KRS 278.430. "To be held unlawful, the order must violate a state or federal statute or constitutional provision, and an order is unreasonable if it is not supported by substantial evidence and the evidence leaves no room for a difference of opinion among reasonable minds." *National-Southwire Aluminum Co. v. Big Rivers Elec. Corp.*, 785 S.W.2d 503, 510 (Ky. App. 1990) (citing *Energy Regulatory Comm'n v. Kentucky Power Co.*, 605 S.W.2d 46 (Ky. App. 1980)).

"Although KRS Chapter 278 grants the Commission sweeping authority to regulate public utilities, the Commission is a creature of statute and its powers are purely statutory, having only such powers as conferred expressly, by

necessity, or by fair implication." *Kentucky Indus. Util. Customers, Inc. v. Kentucky Pub. Serv. Comm'n*, 504 S.W.3d 695, 705 (Ky. App. 2016) (citing *Croke v. Pub. Serv. Comm'n of Kentucky*, 573 S.W.2d 927 (Ky. App. 1978). "Whether the [Commission] exceeded the scope of its authority is a question of law that we scrutinize closely and review *de novo*." *Id.* (quoting *Cincinnati Bell Tel. Co. v. Kentucky Pub. Serv. Comm'n*, 223 S.W.3d 829, 836 (Ky. App. 2007)). "Finally, as always, we review questions of law *de novo*." *Id.* (citing *City of Greenup v. Pub. Serv. Comm'n*, 182 S.W.3d 535, 539 (Ky. App. 2005)).

III. ANALYSIS

On appeal, Bullitt Utilities alleges the following counts of error: (1) the Commission did not decide Bullitt Utilities' second surcharge application within the deadline required by KRS 278.190(3); (2) the Commission ignored the impact of the Bankruptcy Court's orders and the Supremacy Clause; (3) the Commission erroneously determined that Bullitt Utilities was not a utility and could not file a tariff; (4) the Commission's analysis of the abandonment statute is erroneous; (5) the Commission's efforts to distinguish its prior orders, staff opinion, and actions fail; and (6) the Commission's order is arbitrary and violates Section 2 of the Kentucky Constitution. We consider the arguments as necessary to resolve this appeal.

A. Timeliness of the Commission's October 12, 2017, Order

KRS 278.190(3) places the priority for applications for new rates or surcharges above all other matters before the Commission. The statute mandates that the Commission give applications for new rates "preference over other questions pending before it and decide the same as speedily as possible, and in any event not later than ten (10) months after the filing of such schedules." KRS 278.190(3).

Bullitt Utilities contends that the Commission's requiring an entity to comply with regulations it has promulgated before accepting an application for surcharge as filed impermissibly extends the ten-month deadline in KRS 278.190. Bullitt Utilities notes that KRS 278.190(3) does not contain any language indicating that an application must be *accepted* before the deadline clock begins running. Rather, it states that the Commission must make a decision on an application not later than ten months after the *filing* of a schedule of new rates. Bullitt Utilities interprets "filing" as the submission of a surcharge application to the Commission, regardless of whether that application complies with the Commission's regulations. Bullitt Utilities argues that any regulation that works to extend the deadline in KRS 278.190(3) cannot be applied.

KRS 13A.120(2)(i) prohibits an administrative body, such as the Commission, from promulgating administrative regulations "[t]hat modify or

vitiate a statute or its intent." Any regulation that violates this prohibition is "null, void, and unenforceable." KRS 13A.120(4). Further, administrative regulations must be "justified by, and . . . an implementation of, a statute expressly granting such authority." *Bowling v. Kentucky Dept. of Corr.*, 301 S.W.3d 478, 491 (Ky. 2009). Therefore, we must determine whether the Commission has the statutory authority to implement the regulations at issue and, if so, whether those regulations modify KRS 278.190(3) thereby making them unenforceable.

"An administrative body's powers are defined and limited by the agency's enabling statute." *Kentucky Real Estate Comm'n v. Milgrom*, 197 S.W.3d 552, 554 (Ky. App. 2005) (citing *Pub. Serv. Comm'n of Kentucky v. Att'y Gen. of the Commonwealth*, 860 S.W.2d 296 (Ky. App. 1993)). Per KRS 278.040, the Commission is granted broad power to regulate the utilities of the Commonwealth and enforce the provisions of KRS Chapter 278. Under KRS 278.040(3), the Commission is granted the power to adopt "reasonable regulations to implement the provisions of KRS Chapter 278 . . . ." KRS 278.160 provides that a utility must file schedules for rates "[u]nder the rules prescribed by the [C]ommission . . . within such time and in such form as the [C]omission designates." Thus, there does not seem to be any serious question that the Commission has the authority to promulgate rules concerning filings under KRS 278.190. The real issue is whether the Commission's position that compliance

with those rules is necessary before a schedule is deemed filed under KRS 278.190 modifies the intent of the statute. We cannot find that it does.

"In construing statutes, we must give effect to the intent of the General Assembly." *Johnson v. Commonwealth*, 449 S.W.3d 350, 353 (Ky. 2014) (citing *Maynes v. Commonwealth*, 361 S.W.3d 922, 924 (Ky. 2012)). "We derive that intent, if at all possible, from the language the General Assembly chose, either as defined by the General Assembly or as generally understood in the context of the matter under consideration." *Id.* (quoting *Maynes*, 361 S.W.3d at 924). "Statutes in pari materia or those which relate to the same person or thing, or to the same class of persons or things, or which have a common purpose, must be construed together and the legislative intention apparent from the whole enactment must be carried into effect." *Milner v. Gibson*, 249 Ky. 594, 61 S.W.2d 273, 277 (1933) (citations omitted).

KRS 278.160 gives the Commission express authority to prescribe rules concerning the form and timing of schedules filed by utilities and indicates that utilities must comply with those rules. Under the authority of KRS 278.160, the Commission promulgated rules with which a utility is required to comply—or be granted a deviation from—before an application for surcharge or new rates will be accepted for filing. *See generally* 807 KAR[6] Chapter 5. In light of KRS

[6] Kentucky Administrative Regulations.

278.160, we cannot find that the Commission's requiring utilities to comply with its rules before it will accept an application or schedule as filed vitiates the purpose of KRS 278.190(3). KRS 278.190(3) indicates that the Commission must render a decision on a surcharge application no later than ten months after that application is filed; under KRS 278.160 an application is not considered filed until the applicant has complied with the regulations in 807 KAR Chapter 5. The Commission is not modifying the statutory deadline by requiring that a party submit all required documents before its application is accepted as filed. If anything, the Commission is seeking to better effectuate KRS 278.190(3)'s mandate that rate applications be heard as quickly as possible by adopting filing regulations to ensure that it has all documents necessary to properly consider an application.

At the earliest, the Trustee did not file documents complying with the Commissions' regulations until January 13, 2017—accordingly, that is the earliest possible date on which the surcharge application could be accepted as filed. The Commission entered an order rejecting the Trustee's surcharge application on October 12, 2017, within the ten-month statutory deadline.

B. Effect of Bankruptcy Court Orders

Bullitt Utilities next argues that the Commission ignored the orders of the Bankruptcy Court when it concluded that the Trustee had no authority to file

the application for surcharge. Appellees contend that the Commission had no duty to heed the Bankruptcy Court's order indicating that the Trustee did, in fact, have authority to file the surcharge claim, as the Bankruptcy Court cannot interfere with the Commission's regulations regarding whom in the Commonwealth of Kentucky may provide utility services to the public. Additionally, Appellees contend that the Bankruptcy Court cannot vest the Trustee with greater rights than Bullitt Utilities had at the time the bankruptcy petition was filed. As Appellees posit that Bullitt Utilities lost its right to apply for a surcharge tariff following conclusion of the Abandonment Action, they contend that the Trustee has no right to do so.

i. Bankruptcy Court's Authority

"The [Bankruptcy] Court has exclusive jurisdiction over all property of the debtor as of the commencement of the case, as well as property of the estate, regardless of where the property is located." *In re Salander O'Reilly Galleries*, 453 B.R. 106, 114 (Bankr. S.D.N.Y 2011) (citing 28 U.S.C. § 1334(e)). "It follows that a determination of what constitutes property of the estate subject to [the Bankruptcy Court's] exclusive jurisdiction, also belongs to the Bankruptcy Court." *In re DeFlora Lake Dev. Assocs., Inc.*, 571 B.R. 587, 593 (Bankr. S.D.N.Y. 2017) (citing *In re McGuire*, 2015 WL 628284, at *12 (Bankr. W.D. Tenn. Jan. 14, 2015); *In re Brock*, 58 B.R. 797, 804 (Bankr. S.D. Ohio 1986); *In re Pruitt*, 401 B.R. 546, 553 (Bankr. D. Conn. 2009)). However, "[i]n the absence of

any controlling federal law, 'property' and 'interests in property' are creatures of state law." *Barnhill v. Johnson*, 503 U.S. 393, 398, 112 S.Ct. 1386, 1389, 118 L.Ed.2d 39 (1992) (citing *McKenzie v. Irving Trust Co.*, 323 U.S. 365, 370, 65 S.Ct. 405, 408, 89 L.Ed. 305 (1945); *Butner v. United States*, 440 U.S. 48, 54, 99 S.Ct. 914, 918, 59 L.Ed.2d 136 (1979)). "A bankruptcy estate succeeds only to 'legal or equitable interests of the debtor . . . as of the commencement of the case." *In re Majestic Star Casino, LLC*, 716 F.3d 736, 748 (3d. Cir. 2013) (quoting 11 U.S.C. § 541(a)(1)). "It is a given that '[t]he trustee . . . can assert no greater rights than the debtor himself had on the date the [bankruptcy] case was commenced.'" *Id.* (quoting *Guinn v. Lines (In re Trans-Lines West, Inc.*), 203 B.R. 653, 660 (Bankr. E.D. Tenn. 1996)).

"The Bankruptcy Code gives bankruptcy courts the power to 'issue any order, process, or judgment that is necessary or appropriate to carry out [its] provisions.'" *Id.* at 746 (quoting *Official Comm. of Unsecured Creditors of Cybergenics Corp. ex rel Cybergenics Corp. v. Chinery*, 330 F.3d 548, 567 (3d Cir. 2003); 11 U.S.C. § 105(a)). The Commission is subject to that power as an "entity," which is defined in the Bankruptcy Code to include a "governmental unit." *Id.* (citing 11 U.S.C. § 101(15)).

ii. Status of Bullitt Utilities' Assets

As noted above, the Bankruptcy Court concluded that—despite the Abandonment Action—Bullitt Utilities retained legal title to all of its assets as of the date that the bankruptcy petition was filed, therefore making those assets a part of its bankruptcy estate. The order and opinion of the Bankruptcy Court has not been appealed and, even if it had been, this Court would not have the jurisdiction to consider the appeal. Nonetheless, to provide greater clarity to this opinion, a brief synopsis of the status of Bullitt Utilities' assets at the time the bankruptcy petition was filed follows.

At common law, "[a]bandonment of personal property is defined as 'the relinquishment of a right or of property with the intention of not reclaiming it or reassuming its ownership or enjoyment.'" *Greer v. Arroz*, 330 S.W.3d 763, 765 (Ky. App. 2011) (quoting *Ellis v. Brown*, 177 F.2d 677, 679 (6th Cir. 1949)). "Under Kentucky law, the elements of abandonment are a voluntary relinquishment of possession and intent to repudiate ownership." *Id.* (citing *Ellis v. McCormack*, 309 Ky. 576, 218 S.W.2d 291, 392 (1949)). Personal "[p]roperty which is abandoned becomes subject to appropriation by the first taker or finder who reduces it to possession. Such person thereupon acquires absolute ownership in the property abandoned, as against both the former owner and any person upon

whose land it happens to have been left." 1 AM.JUR. 2D, *Abandoned, Lost, and Unclaimed Property* § 24 (2007) (citations omitted).

As noted by the Bankruptcy Court, title to real property "once acquired cannot be lost by abandonment." *Carlson v. Asher Coal Min. Co.*, 172 F.2d 243, 247 (6th Cir. 1949) (citing *Napier v. Baker*, 235 Ky. 724, 32 S.W.2d 49 (1930); *Duncan v. Mason*, 239 Ky. 570, 39 S.W.2d 1006 (1931); *Cox v. Colossal Cavern Co.*, 210 Ky. 612, 276 S.W. 540 (1925)). An interest in real property cannot be abandoned except by the execution of a written instrument. *Ellis v. Brown*, 177 F.2d 677, 679 (6th Cir. 1949) (citing *id.*). It is undisputed that no document has been executed severing Bullitt Utilities' legal title to its real property.

As to its personal property, while Bullitt Utilities has abandoned it under KRS Chapter 278, it cannot be said that it has abandoned it as understood at Kentucky common law. By abandoning its property under KRS 278.021(2)(a), Bullitt Utilities meets the first element of abandonment of property—the relinquishment of a right or of property. However, while KRS 278.021 expressly indicates that abandonment will be found if a utility "[d]isclaims, renounces, relinquishes, or surrenders all property interests or all rights to utility property, real or personal," it does not indicate that so doing represents an intention of not reclaiming that property. In fact, the language of the statute indicates that

ownership is *not* lost by abandonment and that possession and control of a utility's assets can be returned.

Under KRS 278.021, once a utility has been classified as "abandoned," its assets are placed under the sole control and responsibility of a receiver. Per KRS 278.021(7), the receiver then controls and manages those assets until "the Franklin Circuit Court, after reasonable notice and hearing, orders the receiver *to return control of those assets to the utility* or to liquidate those assets as provided by law." (Emphasis added). Accordingly, unless and until a utility's assets are liquidated, there remains a possibility that an abandoning utility's assets will be returned to it after a period of time. Thus, abandonment under KRS 278.021 does not have the same legal significance as abandonment under common law. Bullitt Utilities remains the legal owner of all of its assets; those assets are simply in the possession, and under the control, of the receiver.

BCSD, as receiver, is a "custodian" under the Bankruptcy Code. 11 U.S.C. § 101(11)(A) defines "custodian" as a "receiver or trustee of any property of the debtor, appointed in a case or proceeding not under this title." BCSD clearly falls within that definition. In an action separate from the bankruptcy proceedings—the Receivership Action—BCSD was appointed a receiver under KRS 278.021 to "control and manage the assets and operations of the utility," *i.e.*, Bullitt Utilities, after Bullitt Utilities had applied for abandonment.

11 U.S.C. § 543 governs the turnover of property by a custodian. "Through [11 U.S.C.] § 543, Congress has apparently authorized bankruptcy courts to review and conclude matters relating to a state court receivership." *In re Sundance Corp., Inc.*, 149 B.R. 641, 649-50 (Bankr. E.D. Wash. 1993). Because "receivership property becomes property of a bankruptcy estate upon the filing of a petition, control and decisions affecting the receivership assets which were formerly *in custodia legis* of the state court come under and become the domain of the bankruptcy court." *Id.* at 650. 11 U.S.C § 543 requires a custodian to deliver any property held by it to the bankruptcy trustee. 11 U.S.C. §543(b)(1). An exception to this rule exists if a bankruptcy court concludes that the creditor's interests are better served by permitting a custodian to continue in possession, custody, or control of the property. 11 U.S.C. § 543(d)(1). It is within the bankruptcy court's discretion whether to apply the exception of § 543(d). *In re Dill*, 163 B.R. 221, 225 (E.D.N.Y. 1994). Even if the bankruptcy court permits a custodian to remain in possession of the debtor's property, "the debtor's property remains subject to the bankruptcy court's jurisdiction." *In re 245 Assocs., LLC*, 188 B.R. 743, 749 (Bankr. S.D.N.Y. 1995).

None of the parties to this proceeding dispute that BCSD, by virtue of the receivership, has the authority to file a surcharge application for its services related to Bullitt Utilities. Under the authority of 11 U.S.C. § 543, the Bankruptcy

Court ordered BCSD turn over the right to file a surcharge claim to the Trustee. This was in the best interest of Bullitt Utilities' creditors, as BCSD refused to seek a surcharge that would allow for the creditors to receive the funds owed. The Bankruptcy Court made clear that the remaining assets controlled by BCSD would remain in its control after hearing testimony from the Trustee that he was incapable of operating the Hunters Hollow Plant and believed putting him in charge of doing so "would put at risk the health, welfare, and safety of the residents of Hunter [sic] Hollow[.]" A.R. 574.

Thus, at first blush, it would appear that the Commission is required to abide by the order of the Bankruptcy Court and allow the Trustee to file a surcharge application. We reiterate, however, that the Bankruptcy Court cannot bestow the Trustee with rights additional to those held by the debtor at the time of the commencement of bankruptcy. To understand what rights Bullitt Utilities had at the time the Chapter 7 petition was filed, it is imperative to consider the statutory scheme governing proceedings before the Commission.

iii. Bullitt Utilities' Rights Under KRS Chapter 278

KRS Chapter 278 indicates that only a "utility" has the right to apply for a surcharge. A "utility" is defined as one "who owns, controls, operates, or manages any facility used or to be used" in connection with the "collection, transmission, or treatment of sewage for the public . . . ." KRS 278.010(3)(f). As

noted above, Bullitt Utilities retains legal title to its property. This does not mean, however, that it is still considered an "owner" for purposes of KRS 278.010(3)(f). KRS 278.010 does not contain a definition for "owner;" however, in the Abandonment Action, Bullitt Utilities "unconditionally disclaim[ed], renounce[d], relinquishe[d], or surrender[ed] all property interests or all rights to utility property, real or personal, necessary to provide service." A.R. 221. In effect, Bullitt Utilities gave up its right to be considered an "owner," and in turn, a "utility," as those terms are understood in KRS Chapter 278. All rights incidental to having the status of a utility were likewise lost. This is consistent with KRS 278.030(2), which states that "[e]very utility shall furnish adequate, efficient and reasonable service . . . ." Bullitt Utilities is no longer providing service, having abandoned its facilities to the care of BCSD by virtue of the Abandonment Action and the Receivership Action. It no longer has any rights associated with being a utility. Bullitt Utilities' retention of legal title to its facilities is irrelevant for the Commission's purposes.

"We are not constrained to interpret statutes in such a manner as to render their application an absurdity." *Layne v. Newberg*, 841 S.W.2d 181, 183 (Ky. 1992) (citing *Overnite Transp. Co. v. Gaddis*, 793 S.W.2d 129 (Ky. App. 1990)). Allowing a person or entity who has abandoned its utility under KRS

278.021(2), but nonetheless retains legal title to utility property, to retain utility status and the right to file a surcharge application would create an absurd result.

KRS 278.021(2)—the abandonment statute—contemplates four situations which would cause the Commission to find that a utility has been abandoned. The ones at issue in this case, KRS 278.021(2)(a) and (b), concern those situations where a utility is voluntarily abandoned. However, KRS 278.021(2)(c) and (d) govern situations where a utility is involuntarily abandoned. No matter under what subsection a utility is found to abandoned, the end result is the same. The utility is considered abandoned, despite the fact that it may still hold legal title to its property. It would be absurd to conclude that the Commission could force a utility to abandon its operations due to inadequate service or noncompliance yet still allow that utility to collect rates for services it is not providing. Likewise, it would be absurd to allow two different entities—here, the legal owner of a utility and the entity operating that utility—to file and collect surcharges from the same customers based on the same utility services. A reasonable interpretation of the statutes is that an abandoned utility—while retaining legal title—has relinquished its ownership rights, is no longer considered a "utility" under KRS 278.010(3), and cannot file for a surcharge.

Such an interpretation is not inconsistent with prior orders of the Commission to which Bullitt Utilities directs our attention. In *Cedar Hills*, the

Commission did find that Cedar Hills, who had abandoned the operation of its facilities, was still a utility and subject to the Commission's jurisdiction. *Cedar Hills*, 2016 WL 1545547 at *5. However, this statement was made in response to a question as to what regulations the Regional Water Resource Agency ("RWRA"), the receiver for Cedar Hills, who was not under the Commission's jurisdiction, would be subject to. The Commission concluded that RWRA was required to abide by Commission regulations while it was acting as receiver for Cedar Hills because Cedar Hills was subject to the Commission's jurisdiction. *Id.*

We do not read *Cedar Hills* as holding that Cedar Hills retained the ability to file a surcharge application, or retained any other rights incidental with operating a utility. Rather, the Commission was clarifying that because RWRA was the receiver and was operating the utility, it stood in the place of Cedar Hills and was therefore regulated by the Commission. No order of the Commission in this case contradicts this principle. All parties agree that BCSD has the ability to file an application for a surcharge only by virtue of the fact that it is the receiver for Bullitt Utilities. Because Bullitt Utilities abandoned its facilities and BCSD has taken control of those facilities, BCSD now has the status of "utility"—for purposes of this action—and because of that status has the right to file for a surcharge.

KRS Chapter 278 indicates that the right to file an application for a surcharge is intrinsic to being a "utility." In ordering that the Trustee had the right to apply for a surcharge, but had no obligation take control of the management or operations of the Hunters Hollow Plant—*i.e.*, to function as a "utility" as defined in KRS 278.010(3)—the Bankruptcy Court granted the Trustee rights greater than those held by Bullitt Utilities at the time the bankruptcy proceedings were commenced. Had the Bankruptcy Court ordered that BCSD relinquish control and operations of the Hunters Hollow Plant to the Trustee, he would be considered a "utility" as an operator of the plant.[7] That, however, did not happen. Accordingly, the Commission need not consider the Trustee's application.

IV. CONCLUSION

In light of the foregoing, we affirm the order of the Franklin Circuit Court.

ALL CONCUR.

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[7] We are not suggesting that the Trustee should petition the Bankruptcy Court to order this. The Trustee has acknowledged that he is incapable of operating the Hunters Hollow Plant and believes that charging him with doing so "would put at risk the health, welfare, and safety of the residents of Hunter [sic] Hollow[.]" A.R. 574. If that is the case, ordering the Trustee take charge of operations of the Hunters Hollow Plant would be violative of *Midlantic National Bank v. New Jersey Department of Environmental Protection*, 474 U.S. 494, 106 S.Ct. 755, 88 L.Ed.2d 859 (1986).

BRIEFS FOR APPELLANT:

Holland N. McTyeire V
James R. Irving
Louisville, Kentucky

ORAL ARGUMENT FOR APPELLANT:

Holland N. McTyeire V
Louisville, Kentucky

BRIEF FOR APPELLEE, KENTUCKY PUBLIC SERVICE COMMISSION:

J.E.B. Pinney
Benjamin A. Bellamy
Frankfort, Kentucky

ORAL ARGUMENT FOR APPELLEE, KENTUCKY PUBLIC SERVICE COMMISSION:

Benjamin A. Bellamy
Frankfort, Kentucky

BRIEF FOR APPELLEE, ATTORNEY GENERAL OF THE COMMONWEALTH OF KENTUCKY:

Andy Beshear
Attorney General
Kent Chandler
Justin M. McNeil
Rebecca W. Goodman
Assistant Attorneys General
Frankfort, Kentucky

ORAL ARGUMENT FOR APPELLEE, ATTORNEY GENERAL OF THE COMMONWEALTH OF KENTUCKY:

Kent Chandler
Assistant Attorney General
Frankfort, Kentucky

BRIEF FOR APPELLEE, CITY OF HILLVIEW, KENTUCKY

Tammy R. Baker
Shepherdsville, Kentucky

BRIEF AND ORAL ARGUMENT FOR APPELLEE, CITY OF HUNTERS HOLLOW:

Mark E. Edison
Shepherdsville, Kentucky

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF COLUMBIA GAS OF KENTUCKY, INC. FOR AN ADJUSTMENT OF RATES; APPROVAL OF DEPRECIATION STUDY; APPROVAL OF TARIFF REVISIONS; AND OTHER RELIEF	)))))	CASE NO. 2024-00092

O R D E R

On May 23, 2024,[1] Columbia Gas of Kentucky, Inc (Columbia Kentucky) filed its application for, among other things, an adjustment of its gas rates based on a forecasted test period. The application proposed that new rates become effective on July 1, 2024.

Pursuant to KRS 278.180(1), changes to any rate by any utility is prohibited except upon 30 days' notice to the Commission. Having reviewed Columbia Kentucky's application, the Commission finds that an investigation is necessary to determine the reasonableness of the proposed rates, and that an investigation cannot be completed by July 1, 2024. Therefore, pursuant to KRS 278.190(2), the Commission will suspend the effective date of the proposed rates for six months, up to and including January 1, 2025.

The Commission, on its own motion, further finds that a procedural schedule should be established for the orderly processing of this case. The procedural schedule is attached as an Appendix to this Order.

[1] Columbia Kentucky tendered its application on May 16, 2024. By letter dated May 22, 2024, the Commission rejected the application for filing deficiencies. Columbia Kentucky, by letter, requested that the date the application be deemed filed be May 15, 2024. The letter cured deficiencies, and the application is deemed filed as on May 23, 2024.

Additionally, any hearing scheduled in this matter shall be held on the designated day or days and continued until called from the bench by the presiding officer. Pursuant to 807 KAR 5:001, Section 2, if the hearing is not concluded on the designated day, the hearing may be continued upon verbal announcement by the presiding officer. A verbal announcement made by the presiding officer shall be proper notice of the continued hearing. Hearings are held in the Richard Raff Hearing Room at the offices of the Public Service Commission at 211 Sower Boulevard, Frankfort, Kentucky. Witnesses who sponsor schedules, testimony, or responses to requests for information are expected to participate in person at a hearing.

IT IS THEREFORE ORDERED that:

1. Columbia Kentucky's proposed rates are suspended for six months, up to and including January 1, 2025.

2. The procedural schedule set forth in the Appendix to this Order shall be followed.

3. Columbia Kentucky shall respond to all requests for information propounded by Commission Staff, whether identified on the procedural schedule or otherwise, as provided in those requests.

4. Any party filing a paper with the Commission shall file an electronic copy in accordance with the electronic filing procedures set forth in 807 KAR 5:001, Section 8. Electronic documents shall be in portable document format (PDF), shall be searchable, and shall be appropriately bookmarked. The Commission directs the parties to the

Commission's July 22, 2021 Order in Case No. 2020-00085[2] regarding filings with the Commission.

5. As set forth in 807 KAR 5:001, Section 4(11)(a), a person requesting permissive intervention in a Commission proceeding is required to demonstrate either (1) a special interest in the proceeding that is not adequately represented in the case, or (2) that the person requesting permissive intervention is likely to present issues or develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings. Therefore, any person requesting to intervene in a Commission proceeding must state with specificity the person's special interest that is not otherwise adequately represented, or the issues and facts that the person will present that will assist the Commission in fully considering the matter. A mere recitation of the quantity of utility service consumed by the movant or a general statement regarding a potential impact of possible modification of rates will not be deemed sufficient to establish a special interest.

6. Any motion to intervene filed after the date established in the procedural schedule shall also show good cause for being untimely. If the untimely motion is granted, the movant shall accept and abide by the existing procedural schedule.

7. Columbia Kentucky shall give notice of any scheduled hearing in accordance with the provisions set forth in 807 KAR 5:001, Section 9(2). In addition, the notice of hearing shall include the following statements: "This hearing will be streamed live and may be viewed on the PSC website, psc.ky.gov" and "Public comments may be

[2] Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19* (Ky. PSC July 22, 2021), Order (in which the Commission ordered that for case filings made on and after March 16, 2020, filers are NOT required to file the original physical copies of the filings required by 807 KAR 5:001, Section 8).

made at the beginning of the hearing. Those wishing to make oral public comments may do so by following the instructions listing on the PSC website, psc.ky.gov." At the time publication is requested, Columbia Kentucky shall forward a duplicate of the notice and request to the Commission.

8. At any public hearing in this matter, neither opening statements nor summarization of direct testimonies shall be permitted.

9. Any hearing scheduled in this matter shall be held on the designated day or days and continued until called from the bench by the presiding officer. Pursuant to 807 KAR 5:001, Section 2, if the hearing is not concluded on the designated day, the hearing shall be continued upon verbal announcement by the presiding officer. A verbal announcement made by the presiding officer shall be proper notice of the continued hearing.

10. Witnesses who sponsor schedules, testimony, or responses to requests for information shall participate in person at any hearing scheduled in this matter.

11. Columbia Kentucky shall file a witness list at least seven days prior to the hearing date.

12. Pursuant to KRS 278.360 and 807 KAR 5:001, Section 9(9), a digital video recording shall be made of the hearing.

13. The Commission does not look favorably upon motions for continuance. Accordingly, motions for extensions of time with respect to the schedule herein shall be made in writing and will be granted only upon a showing of good cause.

14. The Commission does not look favorably upon motions to excuse witnesses from testifying at Commission hearings. Accordingly, motions to excuse a witness from

testifying at a Commission hearing or from testifying in person at a Commission hearing shall be made in writing and will be granted only upon a showing of good cause.

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PUBLIC SERVICE COMMISSION

Chairman

Vice Chairman

Commissioner

ENTERED

JUN 05 2024

rcs

KENTUCKY PUBLIC SERVICE COMMISSION

ATTEST:

Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2024-00092 DATED JUN 05 2024

Last day for intervention requests to be accepted..... 06/14/2024

All initial requests for information to Columbia Kentucky shall be filed no later than 06/21/2024

Columbia Kentucky shall file responses to initial requests for information no later than..... 07/10/2024

All supplemental requests for information to Columbia Kentucky shall be filed no later than 07/24/2024

Columbia Kentucky shall file responses to supplemental requests for information no later than 08/07/2024

Intervenor testimony, if any, in verified prepared form shall be filed no later than..... 08/14/2024

All requests for information to Intervenors shall be filed no later than..... 08/28/2024

Intervenors shall file responses to requests for information no later than..... 09/11/2024

Columbia Kentucky shall file, in verified form, its rebuttal testimony no later than..... 09/20/2024

Public Hearing to be held in the Richard Raff Hearing Room at 9 a.m. Eastern Standard Time at the offices of the Public Service Commission at 211 Sower Boulevard, Frankfort, Kentucky, for the purpose of cross-examination of witnesses of Columbia Kentucky and Intervenors .....To be determined

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278.016 Commonwealth to be divided into geographical service areas.

It is hereby declared to be in the public interest that, in order to encourage the orderly development of retail electric service, to avoid wasteful duplication of distribution facilities, to avoid unnecessary encumbering of the landscape of the Commonwealth of Kentucky, to prevent the waste of materials and natural resources, for the public convenience and necessity and to minimize disputes between retail electric suppliers which may result in inconvenience, diminished efficiency and higher costs in serving the consumer, the state be divided into geographical areas, establishing the areas within which each retail electric supplier is to provide the retail electric service as provided in KRS 278.016 to 278.020 and, except as otherwise provided, no retail electric supplier shall furnish retail electric service in the certified territory of another retail electric supplier.

History: Created 1972 Ky. Acts ch. 83, sec. 2.

278.017 Establishing boundaries of certified areas.

(1) Except as otherwise provided in this section, the boundaries of the certified territory of each retail electric supplier are hereby set as a line or lines substantially equidistant between its existing distribution lines and the nearest existing distribution lines of any other retail electric supplier in every direction, with the result that there is hereby certified to each retail electric supplier such area which in its entirety is located substantially in closer proximity to one of its existing distribution lines than to the nearest existing distribution line of any other retail electric supplier.

(2) On or before one hundred twenty (120) days after June 16, 1972, or, when requested in writing by a retail electric supplier and for good cause shown, such further time as the commission may fix by order, each retail electric supplier shall file with the commission a map or maps showing all of its existing distribution lines. The commission shall prepare or cause to be prepared within one hundred twenty (120) days thereafter a map or maps of uniform scale to show, accurately and clearly, the boundaries of the certified territory of each retail electric supplier as established under subsection (1) of this section, and shall issue such map or maps of certified territory to each retail electric supplier. Any retail electric supplier who feels itself aggrieved by reason of a certification of territory pursuant to this section may protest the certification of territory within a one hundred twenty day period after issuance of the map of certified territory by the commission; and the commission shall have the power, after hearing, to revise or vacate such certified territories or portions thereof.

(3) In such hearing, the commission shall be guided by the following conditions as they existed on June 16, 1972:

(a) The proximity of existing distribution lines to such certified territory.

(b) Which supplier was first furnishing retail electric service, and the age of existing facilities in the area.

(c) The adequacy and dependability of existing distribution lines to provide dependable, high quality retail electric service at reasonable costs.

(d) The elimination and prevention of duplication of electric lines and facilities supplying such territory. In its determination of such protest, the commission hearing shall be de novo; and neither supplier shall bear the burden of proof.

(4) In each area, where the commission shall determine that the existing distribution lines of two or more retail electric suppliers are so intertwined or located that subsection (1) of this section cannot reasonably be applied, the commission shall, after hearing, certify the service territory or territories for the retail electric suppliers under the provisions of subsection (3) of this section.

Effective: July 15, 1982

History: Amended 1982 Ky. Acts ch. 82, sec. 4, effective July 15,1982. -- Amended 1978 Ky. Acts ch. 379, sec. 4, effective April 1, 1979. -- Created 1972 Ky. Acts ch. 83, sec. 3.

278.018 Right to serve certified territory.

(1) Except as otherwise provided herein, each retail electric supplier shall have the exclusive right to furnish retail electric service to all electric-consuming facilities located within its certified territory, and shall not furnish, make available, render or extend its retail electric service to a consumer for use in electric-consuming facilities located within the certified territory of another retail electric supplier; provided that any retail electric supplier may extend its facilities through the certified territory of another retail electric supplier, if such extension is necessary for such supplier to connect any of its facilities or to serve its consumers within its own certified territory. In the event that a new electric-consuming facility should locate in two (2) or more adjacent certified territories, the commission shall determine which retail electric supplier shall serve said facility based on criteria in KRS 278.017(3).

(2) Except as provided in subsections (3) and (5) of this section, any new electric-consuming facility located in an area which has not as yet been included in a map issued by the commission, pursuant to KRS 278.017(2), or certified, pursuant to KRS 278.017(4), shall be furnished retail electric service by the retail electric supplier which has an existing distribution line in closer proximity to such electric-consuming facility than is the nearest existing distribution line of any other retail electric supplier. Any disputes under this subsection shall be resolved by the commission.

(3) The commission may, after a hearing had upon due notice, make such findings as may be supported by proof as to whether any retail electric supplier operating in a certified territory is rendering or proposes to render adequate service to an electric-consuming facility and in the event the commission finds that such retail electric supplier is not rendering or does not propose to render adequate service, the commission may enter an order specifying in what particulars such retail electric supplier has failed to render or propose to render adequate service and order that such failure be corrected within a reasonable time, such time to be fixed in such order. If the retail electric supplier so ordered to correct such failure fails to comply with such order, the commission may authorize another retail electric supplier to furnish retail electric service to such facility.

(4) Except as provided in subsection (3) of this section, no retail electric supplier shall furnish, make available, render or extend retail electric service to any electric-consuming facility to which such service is being lawfully furnished by another retail electric supplier on June 16, 1972, or to which retail electric service is lawfully commenced thereafter in accordance with this section by another retail electric supplier.

(5) The provisions of KRS 278.016 to 278.020 shall not preclude any retail electric supplier from extending its service after June 16, 1972, to property and facilities owned and operated by said retail electric supplier.

(6) Notwithstanding the effectuation of certified territories established by or pursuant to KRS 278.016 to 278.020, and the exclusive right to service within such territory, a retail electric supplier may contract with another retail electric supplier for the

purpose of allocating territories and consumers between such retail electric suppliers and designating which territories and consumers are to be served by which of said retail electric suppliers. Notwithstanding any other provisions of law, a contract between retail electric suppliers as herein provided when approved by the commission shall be valid and enforceable. The commission shall approve such a contract if it finds that the contract will promote the purposes of KRS 278.016 and will provide adequate and reasonable service to all areas and consumers affected thereby.

Effective: April 1, 1979

History: Amended 1978 Ky. Acts ch. 379, sec. 5, effective April 1, 1979. -- Created 1972 Ky. Acts ch. 83, sec. 4.

Kentucky's Electric Generation and Transmission Siting Process

For Merchant Facilities

A Guide to Public Participation

Kentucky State Board on Electric Generation and Transmission Siting

ABOUT THE SITING BOARD

The Kentucky State Board on Electric Generation and Transmission Siting (the Siting Board) was created in 2002 by an act of the Kentucky General Assembly. Its purpose is to review applications and, as appropriate, grant certificates for the construction of electric generating facilities and transmission lines that are not regulated by the Kentucky Public Service Commission.

Siting Board review focuses on three areas:

- Environmental matters not covered by permits issued by the Kentucky Department for Environmental Protection. The Department issues permits for air emissions, water withdrawals and discharges and solid waste disposal. (The Department processes are explained briefly later in this guide.) The Siting Board review covers matters such as noise and visual impacts, among others.
- Economic impacts.
- Impact of the proposed facility on Kentucky's electric transmission grid.

The generating facilities reviewed by the Siting Board sell power on the wholesale market and are commonly known as merchant power plants or independent power producers (IPPs). Siting Board approval is required for merchant plants with a generating capacity of 10 megawatts or more and for non-regulated transmission lines capable of carrying 69,000 volts or more.

The Siting Board is headquartered at the Kentucky Public Service Commission. The PSC staff also serves as staff to the Siting Board. The Siting Board's operations are funded through fees paid by applicants.

All documents submitted to the Siting Board are filed electronically and are available at the board's Web site:

http://psc.ky.gov/Home/EGTSB

Siting Board hearings and other proceedings may be viewed live.

The Siting Board review of applications is designed to include public participation throughout the process. The Siting Board welcomes and encourages public participation. This guide is intended to explain the siting process and the opportunities for public participation.

The Siting Board may be contacted at

Kentucky State Board on Electric

Generation and Transmission Siting

211 Sower Boulevard

P.O. Box 615

Frankfort, KY 40602

502-564-3940

Toll-free 1-800-772-4636

Fax (502) 564-3460

psc.ky.gov

MEMBERSHIP OF THE SITING BOARD

The Siting Board has five permanent *ex officio* members and two *ad hoc* members who are appointed by the Governor to review specific applications. The permanent *ex officio* members are:

- The three members of the Kentucky Public Service Commission. The chair- person of the PSC also chairs the Siting Board.
- The secretary of the Kentucky Energy and Environment Cabinet, or his designee
- The secretary of the Kentucky Cabinet for Economic Development, or his designee

The two *ad hoc* members of the board are appointed as follows:
If the facility is located within a single county, the *ad hoc* members shall be:

- The chairperson of the planning commission with jurisdiction over the pro- posed site. If no planning commission exists for the site, the Governor may name either the county judge/executive or, if the proposed facility is within the limits of a city, the mayor of the city.
- A resident of the county in which the facility is proposed to be located.

If the proposed site for the facility is located in more than one county, the *ad hoc* members shall be:

- The county judge/executive of one of the counties, chosen by a majority vote of the county judge/executives of all the counties in which the facility is pro- posed.
- A resident of a county in which the facility is proposed to be located.

The *ad hoc* members serve only for the duration of the case for which they were appointed.

THE SITING APPLICATION PROCESS

NOTICE OF INTENT

Anyone planning to apply for certification from the Siting Board must submit a Notice of Intent at least 30 days before submitting the application. The notice, which is made public, must include a brief description of the proposed facility and its location, and should disclose the identity of any consultants retained to conduct analyses for the applicant. It also must identify the Local Planning and Zoning Authority and provide notice of any requested deviations from state setback requirements. When a notice is deemed complete, the Siting Board contacts the Governor and the county and city governments where the proposed facility would be located. The *ad hoc* members of the Siting Board are to be appointed during the notice period. The Siting Board also will use the notice period to engage any consultants it may require to assist in evaluating the application.

APPLICATION

Application for a certificate from the Siting Board may be made 30 days after the filing of a completed Notice of Intent. The application must contain certain information, including:

- Evidence that public notice of the application has been made
- A report on public involvement activities conducted by the applicant
- A site assessment report containing a detailed description of the project and thorough analysis of the impacts to be considered by the Siting Board (visual impacts, traffic, property values, etc.)
- A statement of compliance with any local zoning regulations and noise control ordinances
- An analysis of the effects of the proposed facility on the electric transmission grid
- An analysis of the economic impacts of the proposed facility
- Disclosure of past environmental violations by the applicants

HEARINGS

Evidentiary hearing

An evidentiary hearing will be held upon the written request of a party to the case or on the motion of the Siting Board itself. It must be requested within 30 days of the filing of a completed application. The evidentiary hearing is a formal proceeding, with participation limited to the applicants and the parties to the case (intervenors). Testimony is taken under oath. It may be held in the county where the proposed facility would be located or in Frankfort at the Public Service Commission's offices.

Local public hearing

This is an informal proceeding held to give the general public an opportunity to be heard by the Siting Board. A local public hearing will be held if requested by a local government entity - city, county or planning and zoning authority – or by at least three residents of the city or county in which the proposed facility would be located. Requests must be made in the form of a letter to the Siting Board. The local public hearing must be re- quested within 30 days of the filing of a completed application. It must be held within 60 days of the filing date , with 20 days' advance notice given to the public of the date, time and location of the hearing. The local public hearing will be held within the county in which the facility is proposed. If the facility spans more than one county, the local public hearing will be held in the most populous county.

How to submit comments

There is no requirement to sign up in advance to speak at a local public hearing. However, those wishing to speak will be asked to sign up upon arrival at the hearing. The time allocated to each speaker may be limited in order to allow everyone who wishes to comment to be heard.

The most helpful comments are those which:

- Are clear, concise and to the point.
- Address matters under Siting Board jurisdiction, rather than those under the purview of the Kentucky Department for Environmental Protection.
- Address specific aspects of the proposed facility, rather than simply general support or opposition.
- Suggest ways to remedy any perceived shortcomings in the application.

Comments also may be submitted to the Siting Board in writing. People with extensive, detailed comments are encouraged to submit them in writing to:

Kentucky State Board on Electric Generation and Transmission Siting
211 Sower Boulevard
P.O. Box 615
Frankfort, KY 40602
Fax (502) 564-3460
psc.ky.gov

INTERVENORS

Any interested party may apply to the Siting Board to become an intervenor in the proceeding. The request must be made in writing within 30 days of the filing of a completed application. Intervenors can be, but are not limited to, residents of the city or county in which the proposed facility would be located. Intervenors have the right to participate fully in the board proceedings. This includes the right to file requests for information from the applicant or other parties and to cross-examine witnesses during formal proceedings of the Siting Board. Parties to a case before the Siting Board also have the right to appeal the Siting Board decision to the Circuit Court in the county in which the facility is proposed to be located.

THE SITING BOARD DECISION

The Siting Board is required to make its decision no later than 120 days after the submission of a complete application.

The Siting Board will consider information submitted by the applicant, evidence and public comments from the hearings, other public comments and reports submitted by consultants to the Siting Board. The Siting Board also may conduct its own inspection of the location for the proposed facility.

The Siting Board may accept or deny an application as submitted, order mitigation measures to reduce impacts and allow deviations from setback requirements. The Siting Board may not order relocation of a proposed facility.

THE SITING BOARD PROCESS

SUMMARY/TIMELINE

-30 DAYS	**NOTICE OF INTENT FILED**
	AD HOC BOARD MEMBERS, CONSULTANTS SELECTED
0 DAYS	**APPLICATION FILED**
	FILINGS FOR INTERVENORS
30 DAYS	**DEADLINE FOR REQUESTING HEARINGS**
	NOTICE OF PUBLIC HEARINGS
60 DAYS	**DEADLINE FOR PUBLIC HEARINGS**
	BOARD CONSULTANTS FILE REPORTS
120 DAYS	**BOARD DECISION DUE**
+30 DAYS	**DEADLINE FOR FILING APPEALS**

THE ROLE OF THE KENTUCKY DEPARTMENT FOR ENVIRONMENTAL PROTECTION

The law creating the Siting Board does not alter the role of Kentucky Department for Environmental Protection in granting permits for electric generating facilities. The required permits include those for:

- Air emissions
- Wastewater discharges
- Water withdrawal
- Solid waste disposal

It is likely that some or all of these permits may have been granted prior to application being made to the Siting Board. Therefore, members of the public interested in electric generation facility siting issues should not rely solely on the Siting Board process to gain notice of or comment upon such facilities.

The Department has its own procedures for gathering public input on pending permit applications. They are as described on the chart on the following page.

Similarly, the Siting Board does not have jurisdiction over matters that fall under the authority of other state or federal agencies. Such issues include, but are not limited to

- Endangered or threatened species
- Historic preservation
- Aviation safety

Public Input Opportunities for Each of the DEP Permits Typically Issued to Kentucky Power Plants

Type of Permit	**Public Comment Periods** (Opportunities to submit written comments)	**Public Hearing Opportunities** (Opportunities to present verbal comments)
Air Quality Permit	30 day public comment period on the draft permit	Members of the public can request a hearing during the public comment period. DEP may self-initiate a public hearing if there is significant public interest.
KPDES Permit for Wastewater Discharge	30 day public comment period on the draft permit	Members of the public can request a hearing during the public comment period or DEP may self-initiate a public hearing if there is significant public interest.
Special Waste Landfill Permit for Ash Management	30 day public comment period notice when application is administratively complete. 30 day public comment period on the draft permit.	Members of the public can request an informational hearing with the Department during the permit application public comment period. Members of the public can request a hearing with a Cabinet Hearing Officer during the draft permit public comment period.
Water Withdrawal Permit (Non-Utilities only)	30 day public comment period if there will be an inter-basin water transfer. (An inter-basin transfer is when water is withdrawn from one stream system and then discharged into a different stream system)	No public hearings

eec.ky.gov

807 KAR 5:110. Board proceedings.

RELATES TO: KRS 61.870-61.844, 278.702, 278.704, 278.706, 278.708, 278.710, 278.712, 278.714, 278.716

STATUTORY AUTHORITY: KRS 278.702(3), 278.706(2)(c), 278.712(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.702(3) authorizes the Kentucky State Board on Electric Generation and Transmission Siting. KRS 278.702(3) requires the board to promulgate administrative regulations to implement KRS 278.700 to 278.716. KRS 278.712(2) requires the board to promulgate administrative regulations governing a board hearing. KRS 278.706(2)(c) requires an applicant seeking to obtain a construction certificate from the board to give proper notice of his intention to the public. This administrative regulation establishes procedures related to applications, filings, notice requirements, hearings, and confidential material.

Section 1. General Matters Pertaining to All Formal Proceedings.

(1) Address of the board. Written communication shall be addressed to Kentucky State Board on Electric Generation and Transmission Siting, 211 Sower Boulevard, PO Box 615, Frankfort, Kentucky 40602-0615.

(2) Form of papers filed. A pleading in a formal proceeding shall be printed or typewritten on one (1) side of the paper only, and typewriting shall be double-spaced.

(3) Signing of pleadings. Every pleading of a party represented by an attorney shall be signed by at least one (1) attorney of record in his individual name and shall state his address.

(4) Service of process. If a party has appeared by attorney, service upon the attorney shall be deemed proper service upon the party.

Section 2. Notice of Intent to File Application.

(1) At least thirty (30) days but no more than six (6) months prior to filing an application to construct a carbon dioxide transmission pipeline, merchant electricity generating plant, or nonregulated electric transmission line, an applicant shall file at the offices of the Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40602, a Notice of Intent to File Application. If an applicant fails to file an application within six (6) months of the filing of the Notice of Intent to File Application, the Notice shall automatically expire without further notice to the applicant.

(2) A Notice of Intent to File Application shall include:

(a) The name, address, telephone number, and electronic mail address of the person who intends to file the application;

(b) A brief description of the proposed construction that will be the subject of the application;

(c) A description of the location of the proposed construction, including:

1. The name of the city and county in which the construction will be proposed;

2. The street address and latitude and longitude of the site of the construction to be proposed; and

3. If the proposed construction will be within the boundaries of a city;

(d) The address of the planning and zoning commission, if any, with jurisdiction over the site of the construction to be proposed;

(e) If applicable, a description of the setback requirements of the planning and zoning commission with jurisdiction over the site of the construction to be proposed; and

(f) If the planning commission's setback requirements are less stringent than those prescribed by statute, or if the planning commission with jurisdiction, if any, has not established setbacks, a statement as to if a deviation from the statutory setback requirements will be requested in the application.

Section 3. Board Applications and Subsequent Filings.

(1) An applicant shall file an original and ten (10) paper copies, and one (1) copy in electronic format, of its application at the offices of the Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40602.

(2) A paper copy of an application shall:

(a) Be in a bound volume with each document tabbed; and

(b) Contain a table of contents that lists, for each document enclosed,

1. The number of the tab behind which the document is located;

2. The statutory provision pursuant to which the document is submitted; and

3. The name of the person who will be responsible for responding to questions concerning information contained in the document.

(3) Administrative staff for the board shall determine if the application is administratively complete and shall inform the applicant of its determination by letter.

(4) The secretary shall reject for filing any document that does not comply with an administrative regulation in 807 KAR Chapter 5.

Section 4. Intervention and Parties.

(1) A person who wishes to become a party to the proceeding before the board may, by written motion filed no later than thirty (30) days after the application has been submitted, request leave to intervene.

(2) A motion to intervene shall be granted if the movant has shown:

(a) That he has a special interest in the proceeding; or

(b) That his participation in the proceeding will assist the board in reaching its decision and would not unduly interrupt the proceeding.

Section 5. Confidential Material.

(1) Material on file with the board shall be available for examination by the public unless the material is determined to be confidential pursuant to subsection (2) of this section.

(2) Procedure for determining confidentiality.

(a) A person requesting confidential treatment of material related to his application shall file a petition with the executive director. The petition shall:

1. In accordance with the Kentucky Open Records Act, KRS 61.870 to 61.884, establish each basis upon which the petitioner believes the material should be classified as confidential; and

2. Attach one (1) copy of the material that identifies, by underscoring, highlighting with transparent ink, or other comparable method, only the portion alleged to be confidential. A text page or portion thereof that does not contain confidential material shall not be included in the identification.

(b) The petition, one (1) copy of the material identified by underscoring or highlighting, and ten (10) copies of the material with the portion for which confidentiality is sought obscured, shall be filed with the board.

(c) The petition and a copy of the material, with only the portion for which confidentiality is sought obscured, shall be served on each party. The petition shall contain a certificate of service on each party.

(d) The burden of proof to show that the material is exempt from the disclosure requirements of the Kentucky Open Records Act, KRS 61.870 to 61.884, shall be upon the person requesting confidential treatment.

(e) A person may respond to the petition for confidential treatment. If a person responds to the petition, the person shall do so within five (5) days after it is filed with the board.

(3) Pending action on the petition, the material specifically identified shall be temporarily accorded confidential treatment.

(4) If the petition for confidential treatment of material is denied, the material shall not be placed in the public record for twenty (20) days to allow the petitioner to petition the board directly or to seek other remedy afforded by law.

(5) Procedure for requesting access to confidential material filed in a proceeding.

(a) A party to a proceeding before the board shall not cite confidentiality as a basis for failure to respond to a discovery request by the board or its staff or another party to the proceeding.

1. If a party responding to a discovery request seeks to have a portion or all of the response held confidential by the board, the party shall follow the procedure for determining confidentiality established in subsection (2) of this section.

2. A party's response to a discovery request shall be served upon each party, with only the portion for which confidential treatment is sought obscured.

(b) If confidential protection is granted and if each party has not entered into a protective agreement, then a party may petition the board requesting access to the material on the basis that it is essential to a meaningful participation in the proceeding.

1. The petition shall include a description of any effort made to enter into a protective agreement.

2. Unwillingness to enter into a protective agreement shall be fully explained.

3.

a. A party may respond to the petition.

b. If a person responds to the petition, the person shall do so within five (5) days after it is filed with the board.

4. The board shall determine if the petitioner is entitled to the material and the manner and extent of the disclosure necessary to protect confidentiality.

(6) Request for access to records pursuant to KRS 61.870-61.884. A time period prescribed in this section shall not limit the right of a person to request access to a board record pursuant to KRS 61.870-61.884. Upon a request filed pursuant to KRS 61.870-61.884, the board shall respond in accordance with the procedure prescribed in KRS 61.880.

(7) Procedure for requesting access to confidential material. A person denied access to a record requested pursuant to KRS 61.870-61.884 or to material deemed confidential by the board in accordance with the procedure established in this section, shall obtain the information only pursuant to KRS 61.870-61.884, and other applicable law.

(8) Use of confidential material during a formal proceeding. Material deemed confidential by the board may be addressed and relied upon during a formal hearing. If confidential material is considered during a formal hearing, it shall be considered as established in the following procedure:

(a) The person seeking to address the confidential material shall advise the board prior to the use of the material.

(b) Except for members of the board or its staff, a person not a party to a protective agreement related to the confidential material shall be excused from the hearing room during direct testimony and cross-examination directly related to confidential material.

(9) Material granted confidentiality that later becomes publicly available or otherwise shall no longer warrant confidential treatment.

(a) The petitioner who sought confidential protection shall inform the executive director in writing if material granted confidentiality becomes publicly available.

(b)

1. If the executive director becomes aware that material granted confidentiality is publicly available or otherwise no longer qualifies for confidential treatment, he shall by letter so advise the petitioner who sought confidential protection, giving the petitioner ten (10) days to respond.

2. If the executive director becomes aware that material has been disclosed by someone other than the person who requested confidential treatment, in violation of a protective agreement or board order, the information shall not be publicly available and shall not be placed in the public record.

(c) The material shall not be placed in the public record for twenty (20) days following an order finding that the material no longer qualifies for confidential treatment to allow the petitioner to seek any remedy afforded by law.

Section 6. Evidentiary Hearings.

(1) Upon its own motion or on written motion of a party to a case before it, filed no later than thirty (30) days after an application has been filed, the board shall schedule an evidentiary hearing.

(2) A party wishing to present an expert witness at an evidentiary hearing shall, no later than five (5) days prior to the hearing date, file with the board, with a copy to each party of record, the report prepared by the expert and a full description of the credentials qualifying the witness to testify as an expert on the subject matter for which he will testify.

(3) No later than five (5) days prior to an evidentiary hearing, a party to the case shall file the name of each witness he expects to present at the hearing, together with a brief statement of each matter regarding which the witness will testify.

(4) An evidentiary hearing shall be conducted before the board or before a person designated by the board to conduct a specific hearing.

(5) Testimony before the board shall be given under oath or affirmation.

(6) If an objection is made to the admission or exclusion of evidence before the board, the objecting party shall state briefly the basis for objection.

(7) The board shall cause to be made a record of an evidentiary hearing.

Section 7. Filing of Briefs. If applicable, a party of record shall file a brief no later than seven (7) days after the conclusion of the evidentiary hearing.

Section 8. Local Public Hearings and Local Public Information Meetings.

(1) A local public hearing or local public information meeting may be conducted before the board or before a person designated by the board to conduct a specific hearing;

(2) A request for a local public hearing or local public information meeting shall be made in writing and shall be filed no later than thirty (30) days after a complete application is filed.

(3) The board shall, at least fourteen (14) days before the hearing date, give notice of the hearing or local public information meeting to:

(a) All parties to the proceeding;

(b) The judge or executive of the county in which the construction of the facility is to be located;

(c) The mayor of the city in which the facility is to be located, if applicable; and

(d) The planning commission with jurisdiction over the area in which the facility is to be located, if applicable.

(4) The board or its designated hearing officer shall accept unsworn, oral comment from any member of the public who provides his name and address on a sign-in sheet to be provided at the hearing or local public information meeting.

(5) Within seven (7) calendar days after the local public hearing or local public information meeting, administrative staff for the board shall file in the official record of the case, with a copy to each party of record, a summary of public comments made at the local hearing or local public information meeting that:

(a) Identifies each person who made oral comments; and

(b) Summarizes the comments received.

Section 9. Notice Requirements.

(1) Notice of an evidentiary hearing. At least three (3) days before the hearing date, the applicant shall submit to the board proof that it has given notice of the hearing to each party and to the general public by publication in a newspaper of general circulation in the county or municipality in which the pipeline, plant, or transmission line is proposed to be located.

(2) Notice of a local public hearing or local public information meeting. At least three (3) days before the hearing date or local public information meeting date, the applicant shall submit to the board proof that the general public has been provided notice of the hearing or local public information meeting in a newspaper of general circulation in the county or municipality in which the pipeline, plant, or transmission lines is proposed to be located.

(3) An applicant giving public notice pursuant to KRS 278.706(2) shall include in the notice a statement that:

(a) A person who wishes to become a party to a proceeding before the board may, by written motion filed no later than thirty (30) days after the application has been submitted, request leave to intervene;

(b) A party may, upon written motion filed no later than thirty (30) days after an application has been filed, request the board to schedule an evidentiary hearing at the offices of the Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky; and

(c) A request for a local public hearing or local public information meeting shall be made by at least three (3) interested persons who reside in the county or municipal corporation in which the pipeline, plant, or transmission line is proposed to be located. The request shall be made in writing and shall be filed within thirty (30) days following the filing of a completed application.

(29 Ky.R. 611; 959; eff. 10-9-2002; 34 Ky.R. 110; eff. 10-5-2007; 38 Ky.R. 844; 1137; eff. 1-6-2012; 41 Ky.R. 160; 780; eff. 10-31-2014; Crt eff. 4-1-2019.)

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC JOINT APPLICATION OF KENTUCKY UTILITIES COMPANY AND LOUISVILLE GAS AND ELECTRIC COMPANY FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND SITE COMPATIBILITY CERTIFICATES AND APPROVAL OF A DEMAND SIDE MANAGEMENT PLAN AND APPROVAL OF FOSSIL FUEL-FIRED GENERATING UNIT RETIREMENTS	)	CASE NO. 2022-00402

O R D E R

On January 6, 2023,[1] Kentucky Utilities Company (KU) and Louisville Gas and Electric Company (LG&E) (jointly, LG&E/KU) filed a joint application requesting Commission approval of (1) Certificates of Public Convenience and Necessity (CPCN) to construct two natural gas combined cycle (NGCC) units and one solar generation facility and a battery storage facility, and to acquire a solar generation facility, pursuant to KRS 278.020, to replace certain generating facilities that LG&E/KU intended to retire; (2) site compatibility certificates for the NGCC units pursuant to KRS 278.216; (3) a declaratory order that four solar purchased power agreements (Solar PPA) do not require Commission approval under KRS 278.020 or KRS 278.300, and if Commission approval is required, that the Solar PPAs be approved, with recovery of the Solar PPA costs

[1] LG&E/KU submitted their application on December 15, 2022, along with a motion to deviate from certain filing requirements. By Order entered December 22, 2022, the Commission denied the motion and rejected the application for filing due to filing deficiencies regarding non-confidential exhibits to witness direct testimony (Exhibits). On December 27, 2022, LG&E/KU filed a joint motion to deviate from certain filing requirements regarding the Exhibits. On January 6, 2023, Commission entered an Order granting the motion and finding that the application was deemed filed as of January 6, 2023.

through the fuel adjustment clause (FAC);[2] (4) a regulatory asset; and (5) revisions to LG&E/KU's demand-side management and energy efficiency (DSM-EE) plans and tariff sheets.

Due to newly enacted statutes requiring prior Commission approval before retiring fossil fuel-fired generating facilities, on May 10, 2023, LG&E/KU filed a joint application in Case No. 2023-00122[3] requesting Commission approval, pursuant to KRS 278.264, to retire seven coal- or natural gas-fired units. Because issues presented in Case No. 2023-00122 were related to the subject matter at issue in this proceeding, Case No. 2023-00122 was physically consolidated into this proceeding by Order entered May 16, 2023, and subsequently closed by Order entered June 30, 2023.[4]

The following parties are Intervenors in this proceeding: (1) the Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention (Attorney General); (2) Kentucky Industrial Utility Customers, Inc. (KIUC); (3) Walmart, Inc. (Walmart); (4) Sierra Club; (5) Metropolitan Housing Coalition, Kentuckians for the Commonwealth, Kentucky Solar Energy Society, and Mountain Association (collectively, Joint Intervenors); (6) Louisville/Jefferson County Metropolitan Government (Louisville Metro); (7) Lexington-Fayette County Urban County Government (LFUCG); (8) Kentucky Coal Association, Inc. (Kentucky Coal Association); and (9) the Fiscal Court of Mercer County (Mercer County Government).

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[2] In their post-hearing brief, LG&E/KU revised its request to recovery the Solar PPA costs through a PPA rider mechanism. LG&E/KU's Post-Hearing Brief (filed Sept. 22, 2023) at 43–45.

[3] Case No. 2023-00122, *Electronic Joint Application of Kentucky Utilities Company and Louisville Gas and Electric Company for Approval of Fossil Fuel-Fired Generating Unit Retirements* (filed May 10, 2023).

[4] Case No. 2023-00122, Order (Ky. PSC May 16, 2023) and Order (Ky. PSC Jun. 30, 2023).

Pursuant to a procedural schedule established on January 6, 2023, and amended on May 16, 2023, LG&E/KU responded to multiple rounds of discovery requests from Commission Staff and the Intervenors. KIUC, Mercer County Government, Joint Intervenors, and Kentucky Coal Association respectively filed witness testimony; Sierra Club filed testimony from one witness jointly with Louisville Metro, and LFUCG, and was the sole sponsor of testimony from another witness. Intervenors that filed witness testimony responded to discovery requests. LG&E/KU filed rebuttal testimony. Public comment meetings were held on July 31, 2023, in Lexington, Kentucky; August 3, 2023, in Harlan, Kentucky; August 14, 2023, in Madisonville, Kentucky; August 15, 2023, in Louisville, Kentucky; and a virtual meeting was held on August 15, 2023. A formal hearing was held on August 22–29, 2023. LG&E/KU responded to post-hearing discovery requests from Commission Staff, Sierra Club, Joint Intervenors, KIUC, and Kentucky Coal Association. Mercer County Government filed its initial brief on September 19, 2023. LG&E/KU, LFUCG and Louisville Metro, the Attorney General, KIUC, Walmart, Kentucky Coal Association, Sierra Club, and Joint Intervenors filed their respective initial briefs on September 22, 2023. LG&E/KU, LFUCG and Louisville Metro, KIUC, Walmart, Kentucky Coal Association,[5] Sierra Club, and Joint Intervenors filed their respective response briefs on October 4, 2023.

On August 15, 2023, KU and Mercer County Government entered into the case record a stipulation and recommendation to sell property in Mercer County that LG&E/KU planned to use to construct a solar facility to be owned by LG&E/KU.

[5] Kentucky Coal Association refiled its brief on October 5, 2023, with enhanced redaction.

On September 1, 2023, LG&E/KU filed a motion for the Commission to take administrative notice of their Hearing Exhibit 1, Joint Comments of Electric Reliability Council of Texas, Inc. (ERCOT), Midcontinent Independent System Operator, Inc. (MISO), PJM Interconnection, L.L.C. (PJM), and Southwest Power Pool, Inc. (SPP) in U.S. Environmental Protection Agency (EPA) Docket No. EPA-HQ-OAR-2023-0072, New Source Performance Standards for Greenhouse Gas Emissions from New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions from Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule.

This matter stands submitted for a decision by the Commission.

ANALYSIS AND FINDINGS

The Commission notes that the evidentiary record developed in this case is voluminous, consisting of hundreds of thousands of pages of documents. In addition to initial modeling runs performed by LG&E/KU and filed into the case record, numerous modeling runs were performed at the request of Commission Staff to examine an array of scenarios. The intervening parties represent diverse interests and points of view, including residential, commercial and industrial customers, government, environmental organizations, and low-income residents. Having thoroughly reviewed the extensive evidentiary record and being otherwise sufficiently advised, the Commission made an independent analysis to determine the reasonableness of LG&E/KU's proposals, based on eventual impacts to rates and the reliability of the resulting grid. Given the significance of this matter, which includes a matter of first impression regarding the Commission's authority under the newly enacted KRS 278.264, and the short statutory timeframe to

reach a decision, the Commission retained an external consultant that assisted Commission Staff in propounding requests for information and developing the evidentiary record.

The Commission will first address the request to transfer property owned by LG&E/KU in Mercer County, Kentucky, to Mercer County Government and the city of Harrodsburg, and then address generation retirement, CPCNs for new facilities, the declaratory order for the Solar PPAs, the request for site compatibility certificates, the request for a regulatory asset, and the DSM-EE programs and tariff.

1. TRANSFER OF UTILITY ASSETS AND STIPULATION

LEGAL STANDARD

Under KRS 278.218, Commission approval is required for a change in ownership of assets owned by a jurisdictional utility. KRS 278.218(1)(a) provides that no person shall acquire any assets owned by a jurisdictional utility without prior approval of the Commission if the assets have an original book value of $1,000,000 or more and the assets are to be transferred by the utility for reasons other than obsolescence. Pursuant to KRS 278.218(2), the Commission shall grant its approval if the transaction is for a proper purpose and is consistent with the public interest.

STIPULATION AND PROPOSED TRANSFER OF UTILITY ASSETS

By Order entered August 30, 2023, the Commission granted KU's motion for leave to file a stipulation entered into by KU, Mercer County Government, and the city of Harrodsburg to sell property in Mercer County that KU had planned to use to construct a solar facility to be owned by LG&E/KU. As noted in the August 30, 2023 Order, the stipulation is subject to the Commission's approval, which is determined in this Order.

The property at issue is property that KU purchased with the intention of constructing a solar generating facility and upon which Mercer County Government planned to build an industrial park.[6] Mercer County Government sponsored the testimony of Mercer County Judge Executive Sarah Steele, who explained that an industrial park would create jobs and increased revenue that would benefit Mercer County.[7] Judge Steele further explained that potential industrial customers have discussed locating in an industrial park if it were built and have taken tours of the property.[8] Judge Steele stated that KU discussed with Mercer County Government how to accommodate the industrial park and the solar facility, and subsequently entered into an agreement on June 8, 2023, with the current property owner that would allow KU to relocate the solar facility to the northern end of the property, which would enable the industrial park to be constructed on the southern portion of the property.[9]

According to evidence filed in the record, the property at issue consists of 858 acres located near U.S. Highway 127 in Harrodsburg, Mercer County, Kentucky.[10] KU closed on the property on April 27, 2023, paying $20,820 per acre for 858 acres.[11]

According to the terms of the stipulation, KU proposed to sell 858 acres to Mercer County Government and the city of Harrodsburg for $20,820 per acre, subject to certain

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[6] Direct Testimony of Sarah Steele (Steele Direct Testimony) (filed July 14, 2023) at 2.

[7] Steele Direct Testimony at 3.

[8] Steele Direct Testimony at 3.

[9] Steele Direct Testimony at 3–4.

[10] LG&E/KU's Supplemental Response to Staff's Second Request for Information (Staff's Second Request) (filed June 9, 2023), Item 58.

[11] LG&E/KU's Supplemental Response to Staff's Second Request, Item 58.

contingencies: (1) KU acquiring 1,007 acres in Mercer County to use to construct a solar facility; (2) Commission approving a CPCN for Mercer County Solar Facility; (3) approval of sale under KRS 278.218; and (4) KU receiving a Site Compatibility Certificate per KRS 278.216.[12] Mercer County Government and the city of Harrodsburg will also have the option to purchase another 100 acres from KU.[13]

In its post-hearing brief, Mercer County Government explained that its goal in intervening in this proceeding was to acquire the land from KU for an industrial park, with the economic benefits that will accrue to Mercer County residents.

INTERVENORS' ARGUMENTS – STIPULATION AND TRANSFER OF ASSETS

No other party filed testimony regarding the stipulation and transfer of assets or addressed the issue in briefs.

DISCUSSION AND FINDINGS – STIPULATION AND TRANSFER OF ASSETS

Based upon evidence in the case record and being otherwise sufficiently advised, the Commission concludes that approval of the sale of the Mercer County property that KU requests to sell to Mercer County Government is subject to Commission approval under KRS 278.218. This is because the transaction results in a change in ownership of an asset owned by KU, a jurisdictional utility, to Mercer County Government. Additionally, the property has an original book value of $17,863,560, and thus exceeds the $1,000,000 statutory threshold.[14] Further, because the asset is being sold to Mercer County

[12] Stipulation and Recommendation (filed Aug. 15, 2023).

[13] Stipulation and Recommendation at 2.

[14] The sale price for the property itself was $17,863,560, representing 858 acres at $20,820 per acre = $17,863,560.

Government to construct an industrial park, the assets are being sold for reasons other than obsolescence.

Based upon the stipulation and case record, the Commission finds that because the property will be transferred and used by Mercer County Government for the economic benefit of the Mercer County community and the sale price per acre is the same price LG&E/KU paid per acre, the transaction is for a proper purpose and is consistent with the public interest. For the same reason, the Commission further finds that the asset transfer and corresponding stipulation should be approved.

2. RETIREMENT OF FOSSIL FUEL-FIRED ELECTRIC GENERATING FACILITIES AND CPCN FOR NEW ELECTRIC GENERATION

LEGAL STANDARD

Service Adequacy

KRS 278.030(2) requires every utility to furnish adequate, efficient and reasonable service to its customers.

KRS 278.010(14) provides the definition of "adequate service" as follows:

> "Adequate service" means having sufficient capacity to meet the maximum estimated requirements of the customer to be served during the year following the commencement of permanent service and to meet the maximum estimated requirements of other actual customers to be supplied from the same lines or facilities during such year and to assure such customers of reasonable continuity of service.

Retirement of Fossil Fuel-Fired Generation

A newly enacted law, codified as KRS 278.262 and KRS 278.264 became effective on March 29, 2023. Under KRS 278.264(1), a jurisdictional utility must obtain prior approval from the Commission before retiring an electric generating unit. KRS 278.264(1) authorizes the Commission to approve, approve with conditions, or deny the retirement

of an electric generating unit owned by a jurisdictional utility. KRS 278.264(2) creates a rebuttable presumption against the retirement of a fossil fuel-fired electric generating unit. To rebut the presumption, KRS 278.264(2) states that:

> [T]he Commission shall not approve the retirement of an electric generating unit, authorize a surcharge for the decommissioning of the unit, or take any other action which authorizes or allows for the recovery of costs for the retirement of an electric generating unit, including any stranded asset recovery, unless the presumption created by this section is rebutted by evidence sufficient for the commission to find that:
>
> (a) The utility will replace the retired electric generating unit with new electric generating capacity that:
>
> 1. Is dispatchable by either the utility or the regional transmission organization or independent system operator responsible for balancing load within the utility's service area;
>
> 2. Maintains or improves the reliability and resilience of the electric transmission grid; and
>
> 3. Maintains the minimum reserve capacity requirement established by the utility's reliability coordinator;
>
> (b) The retirement will not harm the utility's ratepayers by causing the utility to incur any net incremental costs to be recovered from ratepayers that could be avoided by continuing to operate the electric generating unit proposed for retirement in compliance with applicable law; and
>
> (c) The decision to retire the fossil fuel-fired electric generating unit is not the result of any financial incentives or benefits offered by any federal agency.
>
> (3) The utility shall at a minimum provide the commission with evidence of all known direct and indirect costs of retiring the electric generating unit and demonstrate that cost savings will result to customers as a result of the retirement of the electric generating unit.

KRS 278.262 defines “reliability” as “having adequate electric generation capacity to safely deliver electric energy in the quantity, with the quality, and at a time that the utility customers demand. KRS 278.262 defines "resilience" as “having the ability to quickly and effectively respond to and recover from events that compromise grid reliability.” Further, KRS 278.262 defines “retirement" or "retired" as “the closure or the complete and permanent cessation of operations at an electric generating unit.”

CPCNs for New Generation

The Commission's standard of review of a request for a CPCN is well settled. Under KRS 278.020(1), no utility may construct or acquire any facility to be used in providing utility service to the public until it has obtained a CPCN from this Commission. To obtain a CPCN, a utility must demonstrate a need for such facilities and an absence of wasteful duplication.[15]

"Need" requires:

> [A] showing of a substantial inadequacy of existing service, involving a consumer market sufficiently large to make it economically feasible for the new system or facility to be constructed or operated.
>
> [T]he inadequacy must be due either to a substantial deficiency of service facilities, beyond what could be supplied by normal improvements in the ordinary course of business; or to indifference, poor management or disregard of the rights of consumers, persisting over such a period of time as to establish an inability or unwillingness to render adequate service.[16]

[15] *Kentucky Utilities Co. v. Pub. Serv. Comm'n.*, 252 S.W.2d 885 (Ky. 1952).

[16] *Kentucky Utilities Co. v. Pub. Serv. Comm'n.*, 252 S.W.2d at 890.

"Wasteful duplication" is defined as "an excess of capacity over need" and "an excessive investment in relation to productivity or efficiency, and an unnecessary multiplicity of physical properties."[17] To demonstrate that a proposed facility does not result in wasteful duplication, we have held that the applicant must demonstrate that a thorough review of all reasonable alternatives has been performed.[18] The fundamental principle of reasonable least-cost alternative is embedded in such an analysis. Selection of a proposal that ultimately costs more than an alternative does not necessarily result in wasteful duplication.[19] All relevant factors must be balanced.[20]

A CPCN is not required for "ordinary extensions of existing systems in the usual course of business" under Commission regulation 807, KAR 5:001, Section 15(3), which states:

> A certificate of public convenience and necessity shall not be required for extensions that do not create wasteful duplication of plant, equipment, property, or facilities, or conflict with the existing certificates or service of other utilities operating in the same area . . . , and that do not involve sufficient capital outlay to materially affect the existing financial condition of the utility involved, or will not result in increased charges to its customers.

The Commission has interpreted 807 KAR 5:001, Section 15(3), as stating that no CPCN is required for extensions "that do not result in the wasteful duplication of utility

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[17] *Kentucky Utilities Co. v. Pub. Serv. Comm'n.*, 252 S.W.2d at 890.

[18] Case No. 2005-00142, *Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Certificate of Public Convenience and Necessity for the Construction of Transmission Facilities in Jefferson, Bullitt, Meade, and Hardin Counties, Kentucky* (Ky. PSC Sept. 8, 2005).

[19] *See Kentucky Utilities Co. v. Pub. Serv. Comm'n*, 390 S.W.2d 168, 175 (Ky. 1965). *See also* Case No. 2005-00089, *Application of East Kentucky Power Cooperative, Inc. for a Certificate of Public Convenience and Necessity for the Construction of a 138 kV Electric Transmission Line in Rowan County, Kentucky* (Ky. PSC Aug. 19, 2005).

[20] Case No. 2005-00089, Aug. 19, 2005 Order at 6.

plant, do not compete with the facilities of existing public utilities, and do not involve a sufficient capital outlay to materially affect the existing financial condition of the utility involved or to require an increase in utility rates."[21]

Under KRS 278.020(1)(e), unless a CPCN is exercised within one year from the date, the CPCN is granted by order, the authority conferred by the issuance of a CPCN is void. KRS 278.020(1)(e) further provides that the beginning of any new construction in good faith within the time prescribed by the Commission and the "prosecution" of the construction with "reasonable diligence" constitutes an exercise of authority under the CPCN.

LG&E/KU PROPOSED CPCNS AND GENERATING UNIT RETIREMENTS

LG&E/KU currently operates 11 coal units with a total summer net capacity of 4,867 MW (4,910 MW winter capacity), one NGCC unit with a net summer capacity of 662 MW (683 MW winter), 17 load-following natural gas simple cycle combustion turbine (SCCT) peaking units with a total net summer capacity of 2,054 MW (2,308 MW winter), renewable generation resources with total net summer capacity of 105 MW (72 MW winter). On a combined basis, LG&E/KU's current generation resources have a net summer capacity of 7,688 MW and a net winter capacity of 7,973 MW winter.[22]

LG&E/KU requested authority, pursuant to KRS 278.262 and KRS 278.264, to retire four of their 11 coal units and three of their 17 gas SCCT units. More specifically, their proposal is to retire coal units Mill Creek 1, Mill Creek 2, Brown 3, Ghent 2, and small

[21] Case No. 2000-00481, *Application of Northern Kentucky Water District (A) for Authority to Issue Parity Revenue Bonds in the Approximate Amount of $16,545,000; and (B) a Certificate of Convenience and Necessity for the Construction of Water Main Facilities* (Ky. PSC Aug. 30, 2001), Order at 4.

[22] *See* Direct Testimony of Stuart Wilson (Wilson Direct Testimony) (filed Dec. 15, 2022), Exhibit SAW-1 December 2022, Table 26, Table 27, and Table 29.

natural gas-fired units Haefling 1 and 2, and Paddy's Run 12. LG&E/KU described the units they proposed to retire as follows:[23]

Unit(s)	Fuel	Net Summer/Winter Capacity (MW)	Dispatchable Summer/Winter Range (MW)	In-Service Date
Mill Creek 1	Coal	300/300	Current: 185/185 w/SCR: 145/145	1972
Mill Creek 2	Coal	297/297	Current: 183/183 w/SCR: 145/145	1974
Brown 3	Coal	412/416	272/276	1971
Haefling 1-2; Paddy's Run 12	Gas	47/55	0/0	1970; 1968
Ghent 2	Coal	485/486	Current: 260/261 w/SCR: 256/257	1977

LG&E/KU stated that they plan to retire Mill Creek 1 by 2024, Mill Creek 2 by 2027, Ghent 2 by 2028, and Brown 3 in 2028.[24] LG&E/KU proposed to retire Brown 3 due to $26 million in major maintenance required in 2027 that LG&E/KU argued is not cost-effective given the overall inefficiency of the unit.[25] LG&E/KU's stated that they explained the basis for updating the retirement date of Brown 3 in their 2020 rate cases.[26] LG&E/KU

[23] Direct Testimony of Stuart A. Wilson in Case No. 2023-00122 (Wilson 2023-00122 Testimony), Exhibit SB4-1 at 8, Table 2.

[24] Direct Testimony of Lonnie E. Bellar in Case No. 2023-00122 (Bellar 2023-00122 Testimony) at 3-7.

[25] Wilson Direct Testimony at 4, 14.

[26] *See* Case No. 2020-00349, *Electronic Application of Kentucky Utilities Company for an Adjustment of Its Electric Rates, a Certificate of Public Convenience and Necessity to Deploy Advanced Metering Infrastructure, Approval of Certain Regulatory and Accounting Treatments, and Establishment of a One-Year Surcredit* (Ky. PSC June 30, 2021); Case No. 2020-00350, *Electronic Application of Louisville Gas and Electric Company for an Adjustment of Its Electric and Gas Rates, a Certificate of Public*

stated that their analysis in this matter confirmed that updating the retirement date of Brown 3 from its previous expected retirement date is economically optimal.[27]

LG&E/KU stated that proposed amendments to the U. S. Environmental Protection Agency's (EPA) Cross State Air Pollution Rule, the Good Neighbor Plan, if enacted, will effectively require non-SCR (Selective Catalytic Reduction) equipped coal units to cease operating or operate only at very minimal levels during each year's ozone season beginning in 2026.[28] Mill Creek 1, Mill Creek 2, and Ghent 2 are not currently equipped with SCR,[29] and LG&E/KU concluded that it was economical to retire Mill Creek 2 and Ghent 2 rather than equipping them with SCR or operating the plants only outside of the ozone season.[30]

When LG&E/KU filed Case No. 2022-00402, they planned to retire Mill Creek 1 in 2024 and three existing gas SCCT units—Paddy's Run 12 and Haefling 1 and 2—in 2025 based on previous analyses. Following the enactment of Senate Bill 4, codified in KRS 278.262 and KRS 278.264, LG&E/KU explained that they planned to retire Mill Creek 1 in 2024 because operation beyond 2024 would require ELG retrofits, operation beyond 2027 would require a cooling tower, and operation beyond 2027 in ozone season would require the addition of an SCR due to the Good Neighbor Plan, which LG&E/KU indicated

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Convenience and Necessity to Deploy Advanced Metering Infrastructure, Approval of Certain Regulatory and Accounting Treatments, and Establishment of a One-Year Surcredit (Ky. PSC June 30, 2021).

[27] Wilson Direct Testimony, Exhibit SAW-1 December 2022 at 22-23.

[28] Wilson Direct Testimony, Exhibit SAW-1 December 2022 at 4; Direct Testimony of Philip A. Imber (Imber Direct Testimony) at 3-5 (filed Dec. 23, 2023).

[29] Wilson Direct Testimony, Exhibit SAW-1 December 2022 at 4.

[30] Wilson Direct Testimony, Exhibit SAW-1 December 2022 at 22-23.

makes Mill Creek 1 uneconomical to operate.[31] LG&E/KU explained that they plan to retire the three SCCTs, which together only account for about 47 MW of capacity in the summer and 55 MW of capacity in the winter, because it would be uneconomical to repair any major mechanical issues and they anticipate mechanical failures will require retirement by 2025 based on their age and experience with other similar units.[32]

LG&E/KU stated that they used PLEXOS, PROSYM, an Excel Financial Model, and SERVM to find an "economically optimized" portfolio that could serve their forecasted load and maintain what they determined to be their minimum reserve margin.[33] LG&E/KU indicated that they conducted their evaluation of resource options in "three stages," with multiple steps in each stage. LG&E/KU indicated that Stage One sought to identify economically optimal portfolios across six fuel price scenarios that assured minimum reliability by meeting economic reserve margin and Good Neighbor Plan compliance; Stage Two compared the economically optimal portfolio selected in Stage One to other portfolios across six fuel price scenarios and three CO_2 price scenarios; and Stage Three sought to account for the risk that the Solar PPAs would not be built, consider "reliability enhancements" in the form of dispatchable DSM, battery energy storage systems, and gas SCCT capacity, and consider the effects of retiring the Ohio Valley Electric Corp.'s (OVEC) coal units early.[34]

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[31] Wilson 2023-00122 Testimony, Exhibit SB4-1 at 3.

[32] Wilson 2023-00122 Testimony, Exhibit SB4-1 at 4, 6.

[33] Wilson Direct Testimony, Exhibit SAW-1 December 2022 at 16-18.

[34] Wilson Direct Testimony, Exhibit SAW-1 December 2022 at 16-18.

LG&E/KU indicated that their initial Stage One analysis, which assumed the retirement of Mill Creek 1, Paddy's Run 12 and Haefling 1-2 in all scenarios, produced the following least-cost resource portfolios in the various fuel price scenarios:[35]

	Least-Cost Resource Portfolio	
Fuel Price Scenario (Gas, CTG Price Ratio)	Dispatchable Resources	Solar Resources
Low Gas, Mid (expected) CTG Ratio	Replace MC2, GH2, BR3 w/ MC5 and BR12*	104 Solar
Mid Gas, Mid (expected) CTG Ratio	Replace MC2, GH2, BR3 w/ MC5 and BR12	637 Solar
High Gas, Mid (expected) CTG Ratio	Replace MC2, GH2, BR3 w/ MC5 and BR12	2,322 Solar
Average Low, Mid, High Gas, Mid CTG Ratio	Replace MC2, GH2, BR3 w/ MC5 and BR12	637 Solar
Low Gas, High CTG Ratio	Replace MC2, GH2, BR3 w/ MC5 and BR12	104 Solar
High Gas, Low CTG Ratio	Replace MC2, BR3 w/ MC5; Add SCR at GH2	2,222 Solar
High Gas, "Current" CTG Ratio	Replace MC2, GH2, BR3 w/ MC5 and BR12	2,322 Solar
Average Excluding High Gas, Current CTG Ratio	Replace MC2, GH2, BR3 w/ MC5 and BR12	637 Solar
Average All Fuel Prices	Replace MC2, GH2, BR3 w/ MC5 and BR12	1,322 Solar

LG&E/KU noted that a portfolio that kept Ghent 2, the most efficient coal unit they proposed to retire, open with SCR was only cost-effective in the High Gas, Low CTG Ratio scenarios and then only with a retirement date beyond 2049.[36] Based on the results of the model and its subsequent analysis of the results discussed above, LG&E/KU proposed to construct two NGCC units, one at Mill Creek (Mill Creek 5) and one at E.W.

[35] Wilson Direct Testimony, Exhibit SAW-1 December 2022 at 25.

[36] Wilson Direct Testimony, Exhibit SAW-1 December 2022 at 26-27.

Brown (Brown 12), to be online by the summers of 2027 and 2028, respectively, and proposed to enter into four Solar PPAs totaling 637 MW.[37]

However, LG&E/KU argued that there is a risk that some of their Solar PPAs will not be built, as they experienced with two solar PPAs they executed in 2019 and 2021, Rhudes Creek and Ragland, respectively, which LG&E/KU indicated have not received all necessary approvals, have not begun construction, and are not likely to proceed any time soon due to issues with financing.[38] To mitigate that risk, LG&E/KU proposed to self-build one solar facility, the 120 MW Mercer County Solar Facility, and purchase another solar facility built specifically for LG&E/KU, the 120 MW Marion County Solar Facility.

LG&E/KU performed production cost and financial modeling to estimate the present value revenue requirement (PVRR) effect of adding the Mercer Solar Facility and the Marion Solar Facility in the six fuel cost scenarios, three carbon cost scenarios, and 3 renewable energy credit (REC) price scenarios. LG&E/KU indicated that the solar facilities were cost-effective in three of the fuel price scenarios even with no carbon costs or a value to the RECs, and that modeling some cost of Greenhouse Gas regulation in the future made the solar facilities cost-effective most scenarios.[39] LG&E/KU stated that, based on the PVRR results and given the uncertainties concerning the solar industry, gas prices, and future Greenhouse Gas regulations, they concluded that the Mercer Solar

[37] Wilson Direct Testimony, Exhibit SAW-1 December 2022 at 25-26.

[38] Wilson Direct Testimony, Exhibit SAW-1 December 2022 at 34.

[39] Wilson Direct Testimony, Exhibit SAW-1 December 2022 at 35-36.

Facility and the Marion Solar Facility, along with the Solar PPAs, are a reasonable hedge against market uncertainties going forward.[40]

LG&E/KU indicated that they next looked at additional options to enhance reliability, including gas SCCTs and battery storage. LG&E/KU argued that the proposed Brown battery energy storage system (BESS) enhances reliability in scenarios both with and without solar but they acknowledged that Brown BESS was not the most cost-effective means to enhance reliability.[41] LG&E/KU argued that Brown BESS's primary benefit would be to provide them valuable operational experience with a technology at utility scale that will likely be vital to ensuring the reliability of the grid in the future, including effectively integrating large amounts of renewable generation reliably in the future.[42]

LG&E/KU asserted that the retirements in the plan they originally proposed in Case No. 2022-00402 satisfy the requirements of KRS 278.262 and KRS 278.264 (Senate Bill 4). LG&E/KU argued that their resource assessment established that the proposed plan is the most reasonable, least-cost method to serve load for the reasons discussed above. LG&E/KU also noted that they performed additional PVRR calculations, which included costs for Mill Creek 1 and Haefling 1-2 and Paddy's Run 12. LG&E/KU argued that the updated PVRR analysis demonstrated that their proposed portfolio "will not harm customers; rather, including all known direct and indirect costs that affect revenue

[40] Wilson Direct Testimony, Exhibit SAW-1 December 2022 at 35-36.

[41] Wilson Direct Testimony, Exhibit SAW-1 December 2022 at 38.

[42] Wilson Direct Testimony, Exhibit SAW-1 December 2022 at 38-39.

requirements (and therefore customers' bills), it will likely result in substantial PVRR benefits to customers."[43]

LG&E/KU also asserted that their proposed CPCNs for replacement generation satisfy the reliability and resilience requirements of KRS 278.264. LG&E/KU argued that any plan that has a loss-of-load expectation (LOLE) that is lower than the LOLE aligned with their minimum economic reserve margin—3.57 days every 10 years—maintains adequate reliability and meets the requirements of KRS 278.264(2)(a)(2).[44] LG&E/KU indicated that they used the SERVM model to calculate seasonal and total LOLE for a number of portfolios and that a portfolio that included only their DSM programs and their dispatchable generation had an annual LOLE of 0.77 days every 10 years.[45] Thus, LG&E/KU argued that their proposed plan maintains or improves reliability as required by KRS 278.264(2)(a)(2).

LG&E/KU stated that they looked at generating unit start-up times, ramp rates, and range of dispatchable capacity to evaluate whether their proposed plan maintains or improves resilience as required by KRS 278.264(2)(a)(2). LG&E/KU argued that these are objective, established metrics that can be used to determine responsiveness to events affecting load.[46] LG&E/KU argued that proposed NGCC units have faster start-up times and ramp rates than each unit they proposed to retire.[47] LG&E/KU also argued that the proposed NGCC units, owned solar, and Brown BESS collectively have a broader

[43] Wilson 2023-00122 Testimony, Exhibit SB4-1 at 19.

[44] Wilson 2023-00122 Testimony, Exhibit SB4-1 at 13-14.

[45] Wilson 2023-00122 Testimony, Exhibit SB4-1 at 14-15.

[46] Wilson 2023-00122 Testimony, Exhibit SB4-1 at 15-16.

[47] Wilson 2023-00122 Testimony, Exhibit SB4-1 at 15-16.

range of dispatchable capacity (i.e., the difference between dispatchable minimum and maximum capacity) than the combined dispatchable capacity of the retiring units.[48] Thus, LG&E/KU argued that their proposed plan maintains or improves resiliency as required by KRS 278.264(2)(a)2.[49]

LG&E/KU asserted that they have contracted with the Tennessee Valley Authority (TVA) to act as their reliability coordinator since they exited MISO, but that TVA does not have the contractual obligation or authority to prescribe a reserve margin requirement for LG&E/KU.[50] Rather, LG&E/KU stated that they establish their own reserve margins and that they are meeting those required margins.[51] Thus, LG&E/KU argued that their proposed plan maintains the minimum reserve capacity requirement established by their reliability coordinator.

INTERVENORS' ARUGMENTS – PROPOSED CPCNS AND GENERATION RETIREMENTS

Attorney General

The Attorney General argued that the Good Neighbor Plan is currently stayed in Kentucky and unlikely to survive legal challenge based on the EPA's recent track record. Specifically, the Attorney General noted that there are currently stays in five U.S. Circuit Courts of Appeals covering ten states.[52] The Attorney General also argued that the EPA experienced a major curtailment of its authority in *West Virginia v. EPA* and that the EPA

[48] Wilson 2023-00122 Testimony, Exhibit SB4-1 at 15-16.

[49] Wilson 2023-00122 Testimony, Exhibit SB4-1 at 15-16.

[50] Wilson 2023-00122 Testimony, Exhibit SB4-1 at 16-17

[51] Wilson 2023-00122 Testimony, Exhibit SB4-1 at 16-17.

[52] Attorney General's Post-Hearing Brief (filed Sept. 22, 2023) at 24-25.

was recently enjoined from its attempt to alter the Waters of United States rule.[53] The Attorney General asserted that "it would foolish for the Companies or the Commission to make any decision based on the Good Neighbor Rule or any other proposed EPA rule given the Biden EPA's poor record in the courts."[54]

The Attorney General asserted that renewable resources have become more cost-competitive due to heavy subsidization and the lack of onerous up-front environmental compliance. However, the Attorney General argued that the trend has halted and is reversing itself and that wind and solar are becoming more expensive.[55] The Attorney General provided an example of a solar a battery facility being more expensive than expected due to the rising cost of components and because the utility was forced to purchase power at higher market rates until the solar facilities were constructed.[56] The Attorney General also argued that the higher cost of renewables is evident, because rates have increased as renewable penetration has increased.[57]

The Attorney General stated that "Kentucky does not need to acquiesce to EPA's war on coal."[58] The Attorney General noted that with the enactment of Senate Bill 4, the General Assembly sent a clear message not to "surrender our coal plants."[59] The Attorney General stated that once a coal plant is retired, the options to retain and provide

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[53] Attorney General's Post-Hearing Brief at 24-25.

[54] Attorney General's Post-Hearing Brief at 25.

[55] Attorney General's Post-Hearing Brief at 26.

[56] Attorney General's Post-Hearing Brief at 26.

[57] Attorney General's Post-Hearing Brief at 27.

[58] Attorney General's Post-Hearing Brief at 30.

[59] Attorney General's Post-Hearing Brief at 30.

dispatchable and reliable electricity become severely limited. The Attorney General argued that it would be imprudent for the Commission to limit Kentucky's options in the current energy environment.[60]

The Attorney General argued that LG&E/KU's plan to retire four coal units will result in a weaker less reliable electrical grid prone to prolonged outages.[61] The Attorney General stated that coal-fired electric generation plants have been "providing safe, reliable largely base-load power during all weather conditions, 24-hours per day, 365 days per year, year-in and year-out" for over a century.[62] The Attorney General stated that "[t]he predictable start-up times and trustworthiness of these dispatchable plants allow utilities and grid operators to meet the needs of the grid and energy markets," while renewable generation lacks reliability and is subject to constantly changing weather.[63] The Attorney General also indicated that dispatchable, turbine-driven, synchronous generation resources such as coal-fired plants provide a natural inertia that forces the flow of electrons down the wires in a way that helps to regulate electric frequency and retard its decay.[64] The Attorney General stated that "thermal generation—coal, natural gas, and nuclear—are necessary today, tomorrow and will continue to be well into the future."[65]

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[60] Attorney General's Post-Hearing Brief at 30.

[61] Attorney General's Post-Hearing Brief at 14.

[62] Attorney General's Post-Hearing Brief at 13.

[63] Attorney General's Post-Hearing Brief at 13.

[64] Attorney General's Post-Hearing Brief at 13.

[65] Attorney General's Post-Hearing Brief at 14.

The Attorney General stated that "Kentucky experienced what may have been its first reliability crisis" in December 2022 when a frozen valve on a gas transportation pipeline caused LG&E/KU to back down several gas-fired units tied to the affected gas transportation main.[66] The Attorney General asserted that coal-fired plants are capable of maintaining a thirty-to-sixty day supply of coal in a stockpile immediately adjacent to the plant's boiler, minimizing chances for a fuel supply interruption.[67] Thus, the Attorney general argued that coal-fired plants provide an essential part of Kentucky's grid reliability such that retiring Mill Creek 1 and 2, Ghent 2, and Brown 2 would not be wise.[68]

The Attorney General also argued that LG&E/KU failed to meet the requirements of KRS 278.264(2)(b). Specifically, the Attorney General argued that:

> [T]he mandate of KRS 278.264 (2)(b), that the proposed retirement of a fossil fuel plant must not: ". . . harm the utility's ratepayers by causing the utility to incur any net incremental costs to be recovered from ratepayers that could be avoided by continuing to operate the electric generating unit proposed for retirement in compliance with applicable law," cannot be satisfied if ratepayers are saddled with stranded costs arising from the premature retirement of the four subject coal-fired units.[69]

The Attorney General argued that "[k]eeping the coal plants operating gives flexibility and opportunity for the Companies."[70] The Attorney General stated that other utilities in the Commonwealth, such as Kentucky Power Company, face a capacity shortage in a few years and argued that Ghent 2, if fitted with SCR, could make a

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[66] Attorney General's Post-Hearing Brief at 20.

[67] Attorney General's Post-Hearing Brief at 20.

[68] Attorney General's Post-Hearing Brief at 20-21.

[69] Attorney General's Post-Hearing Brief at 22-23.

[70] Attorney General's Post-Hearing Brief at 30.

significant dent in the coming capacity shortfall. The Attorney General argued that energy from Ghent 2 could be sold on the open market to the benefit of LG&E/KU's ratepayers but that closing Ghent 2 would foreclose the possibility of such sales.[71] The Attorney General asserted that "coal plants may become more valuable as their numbers decline because of their ability to deliver dispatchable power."[72]

The Attorney General noted that LG&E/KU's annual studies regarding the costs and benefits of joining a regional transmission organization (RTO) have consistently shown that RTO membership is not beneficial to customers at this time. The Attorney General also noted that LG&E/KU have a limited ability to import power from neighboring regions. The Attorney General argued that the Commission should reject any recommendation that LG&E/KU be required to join an RTO.[73] The Attorney General also argued that the Commission should reject LG&E/KU's Brown BESS because it is not generation, is inefficient, and is an experiment to gain experience and data.[74]

KIUC

KIUC noted that Kentucky's legislature expressed a clear preference for coal-fired generation through KRS 278.278.264 but that the EPA, among other things, is proposing a plan that will limit coal generation to only the seven non-ozone months unless SCRs for nitrogen oxides (NOx) control are installed.[75] KIUC asserted that the generation portfolio proposed by the LG&E/KU reasonably balances conflicting state and federal directives in

[71] Attorney General's Post-Hearing Brief at 30.

[72] Attorney General's Post-Hearing Brief at 30.

[73] Attorney General's Post-Hearing Brief at 33-35.

[74] Attorney General's Post-Hearing Brief at 36-37.

[75] KIUC's Post-Hearing Brief (filed Sept. 22, 2023) at 1.

a way that is realistic, flexible, reliable, and least-cost under a wide range of reasonable assumptions.[76] Thus, KIUC argued that LG&E/KU's proposed portfolio should be approved with some limited exceptions, including that the proposed retirement of Ghent 2 and the proposed CPCN for Brown BESS be denied.[77]

KIUC asserted that NGCC technology is highly efficient and highly reliable. KIUC stated that the heat rate (conversion efficiency of fossil fuel to electricity) for Mill Creek 5 will be approximately 6,200 Btu/Kwh, versus the coal units slated for retirement at over 10,000 Btu/Kwh; the average forced outage rate from 2018 to 2022 for LG&E/KU's current NGCC unit, Cane Run 7, was only 1.8 percent compared to Brown 3's forced outage rate over the same period of 6.06 percent; the ramp rate and load following capability of NGCC generation is superior to coal generation; and NGCC generation provides greater resilience by ramping at 80 MW per minute versus 10 MW per minute for coal.[78] KIUC also asserted that delays in procuring new NGCC units may make them difficult to obtain or run the risk that firm gas transportation becomes unavailable.[79]

KIUC also argued that NGCC units perform reasonably well under the EPA's proposed 111(b) and 111(d) Greenhouse Gas Rules.[80] KIUC noted that Mill Creek Unit 5 will emit 65 percent less carbon dioxide (CO2) per MWh than a coal unit, and that under

[76] KIUC's Post-Hearing Brief at 1-2.

[77] KIUC's Post-Hearing Brief at 1-2.

[78] KIUC's Post-Hearing Brief at 3.

[79] KIUC's Post-Hearing Brief at 3.

[80] KIUC's Post-Hearing Brief at 3.

a worst-case scenario, LG&E/KU could comply with 111(b) by electing intermediate load operations and restricting NGCC capacity factors to 50 percent.[81]

KIUC indicated that Mill Creek 1 has been scheduled for retirement in 2024 since 2020. KIUC stated that Mill Creek 1 would require process water equipment for Effluent Limitation Guidelines (ELG) compliance to operate beyond 2024, a cooling tower to comply with Clean Water Act 316(b) regulations to operate beyond 2027, and an SCR prior to the 2027 ozone season to operate year-round in compliance with the Good Neighbor Plan.[82] KIUC argued that Mill Creek 1 will have reached the end of its economic life in 2024.[83]

KIUC asserted that a $110 million SCR for controlling NOx emissions would probably be required under existing environmental rules to continue operating Mill Creek 2 even if the Good Neighbor Plan does not go into effect, because the greater Louisville attainment area in which Mill Creek is located is in non-attainment for ozone purposes and Mill Creek 2 is the largest source of NOx in the greater Louisville attainment area.[84] KIUC noted that LG&E/KU previously entered into an Agreed Order at Mill Creek to not exceed 15 tons of NOx on a daily basis from May through October (6 months) in support of local attainment to the ozone national ambient air quality standards (NAAQS), which limits LG&E/KU's ability to operate both units at that time.[85] KIUC argued that these operating restrictions, which would not apply to Mill Creek 5, significantly reduce the

[81] KIUC's Post-Hearing Brief at 4.

[82] KIUC's Post-Hearing Brief at 6.

[83] KIUC's Post-Hearing Brief at 6.

[84] KIUC's Post-Hearing Brief at 6.

[85] KIUC's Post-Hearing Brief at 6-7.

economic, reliability, and resilience attributes of Mill Creek 1 and 2 for purposes of newly enacted KRS 278.264.[86] KIUC stated that if Mill Creek 1 and 2 are not retired, then LG&E/KU's application for an air permit for Mill Creek 5 would have to be restarted and likely would not be approved.[87]

KIUC argued that the Commission should approve the retirement of Mill Creek 1 and 2 for the reasons discussed above. However, KIUC noted that if Mill Creek 5 ultimately cannot be built for permitting or other reasons, then the capacity at Mill Creek 1 and 2 would be needed. Thus, KIUC argued that the retirement of Mill Creek 1 and 2 should be contingent on LG&E/KU receiving a permit for Mill Creek 5.[88]

KIUC also argued that LG&E/KU's proposed retirement of Brown 3 should be approved, because Brown 3 is LG&E/KU's least efficient and highest cost coal unit and the air permit process for Brown 12 would have to start over if Brown 3 is not retired, which would likely delay the construction of the NGCC unit and increase costs.[89] However, as with Mill Creek 1 and 2, KIUC argued that the retirement of Brown 3 should be contingent on LG&E/KU receiving a permit for Brown 12.[90]

KIUC questioned whether LG&E/KU's proposed utility-owned solar would be dispatchable as that term is used in KRS 278.264. However, KIUC supported approving

[86] KIUC's Post-Hearing Brief at 7.

[87] KIUC's Post-Hearing Brief at 5, 7.

[88] KIUC's Post-Hearing Brief at 8.

[89] KIUC's Post-Hearing Brief at 8.

[90] KIUC's Post-Hearing Brief at 8.

the CPCNs for the utility-owned solar projects based on the testimony of KIUC's witness, Lane Kollen.[91]

KIUC stated that Brown BESS is not cost-effective even with very favorable investment tax credits. KIUC noted that the present value cost to consumers from the Brown BESS ranges from a low of $78 million to a high of $130 million.[92] KIUC argued that the operational experience that would be gained from Brown BESS is not worth the significant added cost to consumers.[93] KIUC also stated that the after-tax cost of Brown BESS is $113 million whereas an SCR on Ghent 2 would cost $126 million and that adding an SCR to Ghent 2 would be more consistent with the legislative policy behind SB4.[94]

KIUC asserted that the retirement of Ghent 2 would violate the requirement in KRS 278.264(2)(b) that the retirement "not harm the utility's ratepayers by causing the utility to incur any net incremental costs" and the requirement in KRS 278.264(3) that the retirement result in cost savings.[95] KUIC asserted that Ghent 2 is the most efficient and reliable of the units LG&E/KU propose to retire. KIUC noted that Ghent 2 currently operates year-round.[96]

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[91] KIUC's Post-Hearing Brief at 10.

[92] KIUC's Post-Hearing Brief at 10.

[93] KIUC's Post-Hearing Brief at 10-11; *See also* Direct Testimony of Lane Kollen (Kollen Direct Testimony) at 15–18.

[94] KIUC's Post-Hearing Brief at 11.

[95] KIUC's Post-Hearing Brief at 12-13.

[96] KIUC's Post-Hearing Brief at 12-13.

KIUC asserted that keeping Ghent 2 open will not affect the air-permitting process for either proposed NGCC unit. KIUC further asserted that keeping Ghent 2 open would provide LG&E/KU with more options in the future. KIUC argued that LG&E/KU could continue to operate Ghent 2 year-round with an SCR at a cost of $126 million if the EPA continues to pursue the Good Neighbor Plan or similar NOx reductions in Kentucky. KIUC also argued that LG&E/KU could continue operate Ghent 2 during non-ozone season if the EPA continues to pursue NOx reductions at an annual incremental cost of about $6.5 million.[97]

KIUC argued that if Ghent 2 remained open and was operated in non-ozone season, then the annual incremental costs of operating it could be more than offset by earning from off system sales of the energy generated.[98] KIUC stated that Ghent 2 could also be part of a least-cost solution for Kentucky Power's ratepayers. KIUC maintained that LG&E/KU failed to look at off-system sales for Ghent 2 or provide evidence regarding how the value of Ghent 2 could be maximized. KIUC argued that LG&E/KU assumed that if they no longer needed Ghent 2, then it did not have value.[99]

Although KIUC argued that recovery of the costs of the Solar PPAs should be through a new Solar PPA rider as opposed to the FAC proposed by LG&E/KU, KIUC did not oppose the proposed Solar PPAs. Specifically, KIUC stated that Exhibit DSS-2 to David S. Sinclair's Rebuttal Testimony demonstrated that at the current prices the four

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[97] KIUC's Post-Hearing Brief at 13-15.

[98] KIUC's Post-Hearing Brief at 14-15.

[99] KIUC's Post-Hearing Brief at 14-15; *see also* KIUC's Post-Hearing Reply Brief at 1-3; Kollen Testimony at 10-15.

Solar PPAs will lower costs for consumers over five of six fuel cost scenarios.[100] KIUC noted that based on Lonnie Bellar's Rebuttal Testimony, the Solar PPAs are a supplement to, not a replacement of, the retiring coal plants.[101]

KIUC argued that Sierra Club's conclusion that joining PJM Interconnection, LLC (PJM) would save LG&E/KU $125 to $140 million annually is unreliable due to three significant errors. Specifically, KIUC asserted that Sierra Club's PJM analysis does not include any cost of joining PJM; assumes that LG&E/KU will have 6,790 MW of generation in 2028 (without adding any new NGCC capacity) and that virtually all of that same capacity (6,647 MW) will still be in operation 32 years later in 2050 despite evidence to the contrary; and Sierra Club makes unrealistic assumptions about the cost of market-based generation capacity in PJM.[102]

Sierra Club

In witness testimony and briefing, Sierra Club argued that maintaining both Mill Creek 1 and 2, Ghent 2, and Brown 3 was not "economically or legally viable."[103] Consequently, Sierra Club argued that LG&E/KU established the requisite statutory elements of KRS 278.264 to retire all the coal-fired units at issue in this proceeding. In doing so, Sierra Club stated that KRS 278.264 requires utilities to demonstrate that generating units will be replaced with new electric generating capacity.[104] Sierra Club argued that the plain language of the statute does not require "megawatt for megawatt"

[100] KIUC's Post-Hearing Brief at 16-17.

[101] KIUC's Post-Hearing Brief at 16-17.

[102] KIUC's Post-Hearing Reply Brief at 4-5.

[103] Sierra Club's Post-Hearing Brief at 34.

[104] Sierra Club's Post-Hearing Brief at 12.

replacement generation and does not require utilities to replace each retired electric generating unit with a new generating unit.[105]

In arguing that LG&E/KU met its burden under KRS 278.264 and KRS 278.020 to retire the relevant electric generating facilities, Sierra Club noted that the EPA's Good Neighbor Plan would effectively require both Mill Creek 1 and 2, and Ghent 2 to cease operating during the ozone season beginning in 2026, because installing SCRs at those units, which would allow them to continue operating, would carry significant capital costs, including an estimated $110 million for each Mill Creek unit and $126 million for the unit at Ghent 2.[106] Sierra Club also noted that while Brown 3 did not require an SCR, it was nonetheless the most expensive unit for LG&E/KU to operate and was also slated for major overhaul repairs in 2027.[107] Sierra Club argued that those costs, as modeled by LG&E/KU, made the units uneconomical to operate in all but one of the one of the scenarios evaluated by LG&E/KU. Moreover, Sierra Club stated that even in the "high gas, zero CO2 price" model, only Ghent 2 remained marginally economical.[108]

While Sierra Club noted that the Good Neighbor Plan is currently being litigated, Sierra Club argued that the EPA's approach to regulating interstate ozone emissions is long standing and that their prior iterations have been upheld by the United States Supreme Court.[109] Sierra Club noted that the judicial challenges in Kentucky would be unlikely to result in a wholesale invalidation of the rule, because the contribution threshold

[105] Sierra Club's Post-Hearing Brief at 12.

[106] Sierra Club's Post-Hearing Brief at 34.

[107] Sierra Club's Post-Hearing Brief at 34.

[108] Sierra Club's Post-Hearing Brief at 34.

[109] Sierra Club's Post-Hearing Brief at 35.

being challenged by Kentucky was previously upheld by the United States Supreme Court.[110] Moreover, Sierra Club argued that even in the unlikely event that the Good Neighbor Plan was invalidated, Mill Creek 1 and 2 and Ghent 2 face independent regulatory pressures likely to result in higher compliance costs for NOx emissions.

Relying in part on LG&E/KU's witness Philip Imber's hearing testimony, Sierra Club argued that under Section 126 of the Clean Air Act, LG&E/KU could be required to install SCRs on Mill Creek 1 and 2, and Ghent 2. In fact, Sierra Club noted that several states had already filed Section 126 actions alleging that Kentucky sources, including those units, interfere with those states' ability to comply with EPA's air quality standards.[111] Additionally, Sierra Club argued that the current iteration of the Clean Air Act's "reasonably available control technology" provisions could provide the EPA with the authority to require those units to install SCR technology if LG&E/KU wished to continue operating them.[112]

Sierra Club stated that Mill Creek 1 and 2, Ghent 2, and Brown 3 were likely to face future regulatory challenges independent of the NOx emissions regulations discussed above. Specifically, Sierra Club noted that in May 2023, the EPA proposed CO2 emissions limits for new and existing electric generating units. Those regulations, colloquially known as 111(d) regulations, establish four subcategories of emission limitations, known as the "best system of emissions reductions," which are based on the

[110] Sierra Club's Post-Hearing Brief at 40.

[111] Sierra Club's Post-Hearing Brief at 44.

[112] Sierra Club's Post-Hearing Brief at 45-48.

anticipated retirement date of the unit in question.[113] Under the proposed rule, Sierra Club argued that if LG&E/KU's coal units continued to operate beyond 2032, it would incur significant compliance costs, in the form of either extraordinarily low capacity factors or hundreds of millions in capital investments to retrofit those units with carbon capture and sequestration technology.[114] Relying on the EPA's cost estimates, Sierra Club also stated that the cost of installing and operating carbon capture and storage system (CCS) would likely be between $26 and $35 per ton removed even with the Inflation Reduction Act's 45Q $85 per ton tax credit.[115] However, Sierra Club noted, based in part on Mr. Imber's testimony, that the cost of installing and operating CCS could be significantly higher.[116]

Sierra Club also argued that the forced outages experienced during Winter Strom Elliot demonstrated that coal-fired generation is not fully reliable.[117] Sierra Club asserted that, during the winter storm, roughly 18 percent of LG&E/KU's coal-fired generation was unavailable during peak demand periods.[118] Sierra Club stated that LG&E/KU were forced to shed 317 MW of load and that 390 MW of LG&E/KU's coal-fired generation was unavailable directly because of the storm, though it noted that, for various reasons, a total of 887 to 986 MW of coal-fired generation was unavailable to LG&E/KU during the period

[113] Sierra Club's Post-Hearing Brief at 63.

[114] Sierra Club's Post-Hearing Brief at 63.

[115] Sierra Club's Post-Hearing Brief at 65.

[116] Sierra Club's Post-Hearing Brief at 67-68.

[117] Sierra Club's Post-Hearing Brief at 70.

[118] Sierra Club's Post-Hearing Brief at 71.

in which it was forced to shed load.[119] Sierra Club stated that LG&E/KU failed to add up the relevant megawatts of coal outages correctly in their after-action report, which underrepresented its contribution to the outage.[120] Sierra Club argued for an effective load-carrying capability (ELCC) type of analysis that accounts for coal and gas reliability failures.[121]

Relying, at least in part, on the events of the winter storm, Sierra Club also argued that LG&E/KU would benefit from joining an RTO, such as PJM, because the larger system would provide LG&E/KU with geographic and fuel diversity.[122] Moreover, Sierra Club continued to argue that being a member of an RTO during periods of load scarcity would allow LG&E/KU greater access to generation they cannot as easily obtain now as they are isolated from those resources.[123]

Relying on its witness, Andrew Levitt, Sierra Club argued that there were serious flaws in the methodology used by LG&E/KU when they calculated the costs and benefits of joining an RTO. Those apparent flaws included the fact that the model used by LG&E/KU treated retiring existing generation as a fixed input, instead of being allowed to optimally add or retire those resources and that the model's net present value analysis also only represented 15 years of annualized capital costs.[124] Sierra Club also disagreed with LG&E/KU's assertions that PJM has a greater reliability problem than LG&E/KU,

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[119] Sierra Club's Post-Hearing Brief at 72.

[120] Sierra Club's Post-Hearing Brief at 76–78.

[121] Sierra Club Post-Hearing Brief at 81–83.

[122] Sierra Club's Post-Hearing Brief at 96.

[123] Sierra Club's Post-Hearing Brief at 97–98.

[124] Sierra Club's Post-Hearing Brief at 99–100.

arguing that PJM did not experience rolling blackouts during the winter storm and reiterating that the PJM resource portfolio was more diverse than LG&E/KU's portfolio.[125]

Regarding the proposed CPCNs at issue in these proceedings, Sierra Club contended that LG&E/KU met the CPCN standard for the approval of the solar facilities and Brown BESS. However, Sierra Club argued that LG&E/KU did not satisfy the CPCN standard for approval of the two proposed NGCC units. Sierra Club argued that the Commission should, at a minimum, deny one NGCC unit outright because building two generating units is an extreme overbuild that amounts to approximately five times LG&E/KU's energy needs.[126] Sierra Club argued that the Commission should deny the second NGCC because LG&E/KU failed to adequately explore reasonable alternatives, such as joining PJM.[127]

Specifically, Sierra Club argued that LG&E/KU's own modeling showed that if they retired all of the units LG&E/KU proposed, but built no new generation, they would have a 1,733 GWh shortfall in 2028. However, Sierra Club noted, if both NGCC units were built under the same portfolio, those units would generate a combined 8,567 GWh of energy in 2028. Consequently, each NGCC unit would produce roughly 4,250 GWh of energy that year, more than twice the shortfall produced by the retirements.[128]

By contrast, Sierra Club stated that the owned solar project, the Solar PPAs, and the Brown BESS satisfied KRS 278.020 and that the Commission should approve those

[125] Sierra Club's Post-Hearing Brief at 102–103.

[126] Sierra Club's Post-Hearing Brief at 107.

[127] Sierra Club's Post-Hearing Brief at 108.

[128] Sierra Club's Post-Hearing Brief at 110.

CPCNs. Sierra Club argued that the renewable resources would bring diversity to LG&E/KU's generation portfolio and that LG&E/KU underestimated the value of solar by nearly 200 MW because LG&E/KU assigned solar a zero MW value during the winter months in their models.[129] Finally, regarding the Brown BESS, Sierra Club stated that stored power was important as the grid transitioned and that gaining this technology was important to LG&E/KU's resiliency moving forward.[130]

Louisville Metro and LFUGC

In witness testimony jointly sponsored with Sierra Club and in briefing, Louisville Metro and LFUCG argued in favor of LG&E/KU's plan to retire each of the fossil fuel-fired generating facilities. In support, Louisville Metro and LFUCG pointed to Louisville Metro Legislative Council's Resolution No. 0009, Series 2020, which supported a 100 percent clean, renewable energy goal for Louisville Metro by 2040. The Resolution also supported revising building codes to require energy efficiency, conservation, and renewable energy applications to attain a net zero goal for Louisville Metro.[131]

Louisville Metro and LFUCG also pointed to the Louisville Metro Air Pollution Control District (LMAPCD), which must meet the air quality standards established by the EPA. Louisville Metro and LFUCG argued that the margins to meet those air quality standards are "razor thin," and that in the January 2021 to August 9, 2023 period, Louisville metropolitan statistical area's (MSA) 8-hour ozone concentration was 72 parts

[129] Sierra Club's Post-Hearing Brief at 109-110.

[130] Sierra Club's Post-Hearing Brief at 109.

[131] Louisville Metro and LFUCG's Post-Hearing Brief at 3.

per billion (ppb), more than the 70-ppb standard set by the EPA.[132] Additionally, Louisville Metro and LFUCG noted that even in areas where the LMAPCD was in attainment, it was only succeeding marginally. For example, Louisville Metro and LFUCG argued that the current EPA standard for particulate matter with diameters 2.5 micrometers and smaller (PM2.5) is 12 micro grams per cubic meter (µg/m3), and that the latest data showed a measurement of 11.2 µg/m3. Louisville Metro and LFUCG argued that this data was concerning because the EPA has proposed new standards for PM2.5 with a range of 9-10 µg/m3, which is lower than LMAPCD can currently meet. By not being in attainment, Louisville Metro and LFUCG argued, LMAPCD would be required to prepare a compliance plan "indicating means and methods to get back into attainment."[133] In that circumstance, Louisville Metro and LFUCG argued, LMAPCD would be required to look to point sources of emissions to find avenues of enforceable reductions. Given that Mill Creek 1 and 2 are LMAPCD's largest emitters of relevant pollutants, closing those units would be crucial to Louisville MSA's quest for attainment.[134]

In contrast to their support for closure of the fossil fuel-fired units, Louisville Metro and LFUCG argued against LG&E/KU's proposal to build two new NGCC units. In support of their position, Louisville Metro and LFUCG made the following arguments: (1) that LG&E/KU had overestimated their capacity needs by undervaluing the contribution of imports; (2) that LG&E/KU understated the reliability of renewable and storage resources; (3) that LG&E/KU had overstated the capacity contributions of gas generation,

[132] Louisville Metro and LFUCG's Post-Hearing Brief at 4.

[133] Louisville Metro and LFUCG's Post-Hearing Brief at 5.

[134] Louisville Metro and LFUCG's Post-Hearing Brief at 5.

citing the rolling blackouts during the 2022 winter storm; (4) that LG&E/KU overstated the need for additional capacity by assuming unreasonably high costs associated with generation shortages in their modeling; and (5) that BESS provided better flexible capacity as compared to NGCC units.[135]

Instead, Louisville Metro and LFUCG argued that LG&E/KU should join an RTO, such as PJM. Doing so, they argued, would reduce LG&E/KU's capacity requirements by at least 900 MW as it would allow LG&E/KU to have greater regional diversity of demand patterns as well as being able to utilize lower installed reserve margins.[136] Additionally, Louisville Metro and LFUCG argued that the avoided capacity costs realized by joining PJM would save customers more than $125 million per year, on top of the additional annual production cost benefits of up to $66 million.[137] Finally, Louisville Metro and LFUCG noted that joining PJM would also give LG&E/KU better access to low-cost renewable energy.[138] In the alternative, Louisville Metro and LFUCG argued that the Commission should order LG&E/KU to perform and submit a comprehensive analysis focused on joining PJM.[139]

Regarding LG&E/KU's proposals to acquire the Marion County Solar facility, building a solar facility in Mercer County, and constructing the Brown BESS, Louisville Metro and LFUCG stated their support for each. Louisville Metro and LFUCG argued that the owned solar projects were cost-effective and would serve to "modernize"

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[135] Louisville Metro and LFUCG's Post-Hearing Brief at 6.

[136] Louisville Metro and LFUCG's Post-Hearing Brief at 6.

[137] Louisville Metro and LFUCG's Post-Hearing Brief at 6-7.

[138] Louisville Metro and LFUCG's Post-Hearing Brief at 6-7.

[139] Louisville Metro and LFUCG's Post-Hearing Brief at 7.

LG&E/KU's generation sources.[140] Louisville Metro and LFUCG noted that while the proposed Brown BESS was not the most economical due to its estimated capital costs, it nonetheless represented a useful means by which LG&E/KU could manage its operating reserve requirements as the BESS has the ability to instantly respond to generation needs.[141] This quick response, Louisville Metro and LFUCG argued, would improve the reliability and dispatchability of LG&E/KU's existing and proposed generation fleet. Louisville Metro and LFUCG also recommended that LG&E/KU be required to file a report detailing the operational, reliability, and dispatchability benefits associated with the Brown BESS.[142]

Walmart

Walmart did not file witness testimony. In briefing, Walmart noted that, regarding LG&E/KU's application to close the seven fossil fuel-fired electric generating units, only two parties, KIUC and Kentucky Coal Association, opposed closing those units. KIUC opposed only the Ghent 2 EGU and Kentucky Coal Association opposed closing all fossil fuel-fired units on the grounds that LG&E/KU's application was premature and that it could not therefore satisfy the requirements KRS 278.264.[143]

Utilizing its own analysis, Walmart argued that the evidence presented by LG&E/KU satisfied their burden to close at least six of the proposed fossil fuel-fired generating units: Mill Creek 1 and 2, Brown 3, Haefling 1 and 2, and Paddy's Run 12.

[140] Louisville Metro and LFUCG's Post-Hearing Brief at 7.

[141] Louisville Metro and LFUCG's Post-Hearing Brief at 7-8.

[142] Louisville Metro and LFUCG's Post-Hearing Brief at 7-8.

[143] Walmart's Post-Hearing Brief at 5-6.

Walmart disagreed that the Ghent 2 unit should be retired. Additionally, Walmart argued that LG&E/KU's proposal to build two NGCC units should be approved.[144]

Regarding LG&E/KU's specific justifications on which they relied to retire the fossil fuel-fired generating units, Walmart disagreed with Kentucky Coal Association's assertion that the status of the Good Neighbor Plan was dispositive and required denying LG&E/KU's application to close the fossil fuel-fired units. In support of its contention, Walmart noted that the Good Neighbor Plan was not the only regulatory scheme weighing on the units and that those other federal regulations would nonetheless likely require the installation of selective catalytic reduction (SCR) technology on any units lacking the technology currently.[145] Moreover, Walmart argued that even if Kentucky's federal litigation pertaining to EPA denial of Kentucky's NAAQS state implemental plan was ultimately successful, based on Walmart's understanding of the federal litigation, the most likely outcome was that Kentucky would be allowed to redraft a State Implementation Plan, which would not invalidate the EPAs actions.[146]

Walmart also argued that LG&E/KU's proposal to place the NGCC units at Brown and Mill Creek was in the best interest of customers. Walmart stated that placing the new NGCC units at these sites would allow LG&E/KU to take advantage of the "netting" process and avoid significant environmental regulations, which would otherwise have been present if "greenfield" sites were chosen.[147] However, Walmart noted that by

[144] Walmart's Post-Hearing Brief at 7.

[145] Walmart's Post-Hearing Brief at 7-8.

[146] Walmart's Post-Hearing Brief at 8.

[147] Walmart's Post-Hearing Brief at 8.

placing the units at Mill Creek and Brown, LG&E/KU could not also operate the coal-fired units without incurring substantial additional costs.[148]

Regarding whether the new NGCC units satisfied the strictures of KRS 278.264, Walmart argued that LG&E/KU had adequately demonstrated that their application met the novel statutory requirements. In support, Walmart disagreed with Kentucky Coal Association's position that the NGCC units were not as dispatchable as the coal units because there would be no on-site storage of fuel at the facilities. Walmart argued that constructing the NGCC units at the two sites would create a diverse gas supply, making the proposed units more reliable and resilient to service interruptions.[149]

Additionally, regarding the net incremental costs associated with closing the units and building new NGCC units, Walmart argued that LG&E/KU's 30-year net present value analysis should be accepted, as opposed to the 10-year residential rate impact analysis proposed by the Kentucky Coal Association. In support, Walmart argued that it was undisputed that the proposal would result in higher rates during the first 10 years, but that over the course of the 30-year horizon, there would be a more than $600 million benefit to ratepayers.[150]

Turning to the Brown BESS, Walmart stated that it supported granting a CPCN for the battery system. Walmart noted that while it agreed with KIUC regarding the cost of Brown BESS, Walmart concluded that the operational experience gained and that the BESS would improve reliability favored granting the CPCN. However, Walmart argued

[148] Walmart's Post-Hearing Brief at 8.

[149] Walmart's Post-Hearing Brief at 12.

[150] Walmart's Post-Hearing Brief at 13–14.

that LG&E/KU should be required to provide contemporaneous updates concerning their experiences with Brown BESS, including "lessons learned, reliability impacts, cost savings, peak demand impacts, and emissions reductions, as well as any other metrics the Commission may deem worthy of tracking."[151]

Walmart also supported LG&E/KU's application for CPCNs for the owned solar projects in Mercer and Marion counties. Walmart stated that the only party opposing the owned solar projects was the Kentucky Coal Association and argued that it had no specific objections to the projects, and instead opposed any change in the generation mix of LG&E/KU. Walmart further argued that the owned solar projects would diversify LG&E/KU's generation mix at the lowest cost to ratepayers.[152]

Walmart stated its general position is in support of RTO membership given the potential for decreased utility costs, greater access to renewable generation facilities, and improved grid reliability. However, Walmart recognized the conflicting testimony in these proceedings and argued that the Commission did not need to decide the RTO membership in this case. Instead, Walmart suggested that it was sufficient for the Commission to require LG&E/KU to consider and evaluate membership as part of its Integrated Resource Plan (IRP) and at every new CPCN application.[153]

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[151] Walmart's Post-Hearing Brief at 15.

[152] Walmart's Post-Hearing Brief at 16.

[153] Walmart's Post-Hearing Brief at 20.

Joint Intervenors

In witness testimony and briefing, Joint Intervenors argued that LG&E/KU's proposal to retire Haefling 1 and 2, Paddy's Run 12, Mill Creek 1 and 2, Brown 3, and Ghent 2 was justified and that the Commission should approve the retirements.[154]

Regarding the retirements of the gas SCCTs at Haefling 1 and 2 and Paddy's Run 12 by 2025, Joint Intervenors argued that once major mechanical repairs were required, the cost of those repairs would exceed their reliability value to LG&E/KU as secondary peaking units.[155] Joint Intervenors argued that this position was reflected in LG&E/KU's modeling as each portfolio independently chose to retire those units. Moreover, Joint Intervenors noted that given the low efficiency of the units coupled with the high costs of maintaining them the modeling did not show that those units would contribute to the need of securing replacement generation.[156]

Joint Intervenors stated that replacement of those specific generation sources was not required under KRS 278.264 because the statute, in their view, does not require a one-to-one replacement of resources as EGUs are retired.[157] Moreover, given the fact that the units did not materially impact the reliability, resilience, and reserve margin, Joint Intervenors argued that replacing the units with new generation would not survive scrutiny under KRS 278.020 because LG&E/KU would be unable to demonstrate need and lack of wasteful duplication. Additionally, Joint Intervenors noted that LG&E/KU had retired

[154] Joint Intervenors' Post-Hearing Brief at 58.

[155] Joint Intervenors' Post-Hearing Brief at 61.

[156] Joint Intervenors' Post-Hearing Brief at 61.

[157] Joint Intervenors' Post-Hearing Brief at 47.

four other similar units in the past ten years, demonstrating that retirement was done in the ordinary course of business.[158] Finally, Joint Intervenors noted that no party in these proceedings has contested the units' retirement or requested direct replacement for those units.[159]

Regarding Mill Creek Units 1 and 2, Joint Intervenors stated that LG&E/KU's proposal to retire the units was consistent with the Commission's prior Order in Case No. 2020-00061.[160] Joint Intervenors noted that in Case No. 2020-00061, LG&E/KU demonstrated that Mill Creek Unit 1 would require additional wastewater treatment equipment by 2024 to comply with Effluent Limitations Guidelines, and that the unit would also require a cooling tower by 2027 in order to comply with Section 316(b) of the Clean Water Act. Joint Intervenors argued that those expected regulatory costs were still required and made any additional investment in Mill Creek 1 not cost-effective.[161] Additionally, Joint Intervenors stated that LG&E/KU signed an agreement with the LMAPCD barring LG&E/KU from operating Mill Creek 1 and 2 simultaneously during the ozone season.[162] Finally, Joint Intervenors noted that LG&E/KU's application assumed that Mill Creek 1 would be retired in every portfolio, and that retirement of Mill Creek 1 would not require any direct replacement generation.[163]

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[158] Joint Intervenors' Post-Hearing Brief at 62.

[159] Joint Intervenors' Post-Hearing Brief at 62.

[160] *See* Case No. 2020-00061, *Electronic Application of Louisville Gas and Electric Company for Approval of an Amended Environmental Compliance Plan and Revised Environmental Surcharge* (Ky. PSC Sept. 29, 2020), Order.

[161] Joint Intervenors' Post-Hearing Brief at 63-64.

[162] Joint Intervenors' Post-Hearing Brief at 64-65.

[163] Joint Intervenors' Post-Hearing Brief at 65.

While subject to many of the same rationales for retirement as Mill Creek 1, Joint Intervenors provided several additional considerations regarding Mill Creek 2. Joint Intervenors stated that LG&E/KU estimated a cost of $110 million to install an SCR on Mill Creek 2 for LG&E/KU to operate the unit during the ozone season starting in 2027. Moreover, LG&E/KU's modeling showed that there was only a 0.53 increase in full-year LOLE, which was offset by more cost-effective resources in LG&E/KU's proposed replacement portfolio, such as LG&E/KU owned solar facilities, and the Solar PPAs.[164]

These were not the only concerns involving the Mill Creek units, Joint Intervenors argued, because it is likely that Mill Creek 1 and 2 will be subject to further environmental regulations moving forward. Joint Intervenors asserted that the Good Neighbor Plan would require LG&E/KU to install SCRs at Mill Creek 1 and 2, and the Regional Haze Rule and proposed Greenhouse Gas Rule were likely to impose even further burdens.[165] Joint Intervenors further asserted that the Greenhouse Gas Rules, as proposed by the EPA, "would require 40 percent natural gas co-firing for existing coal units retiring between January 2032 and January 2040 and 90 percent carbon capture and sequestration for any existing coal units operating beyond January 2040."[166]

Relying on LG&E/KU's testimony, Joint Intervenors argued that retiring Brown Unit 3 by 2027 would avoid $27 million in costs and that while the unit was already equipped with an SCR, the unit was nonetheless subject to additional regulatory hurdles,

[164] Joint Intervenors' Post-Hearing Brief at 67-68.

[165] Joint Intervenors' Post-Hearing Brief at 65.

[166] Joint Intervenors' Post-Hearing Brief at 65.

much as the Mill Creek units.[167] Joint Intervenors asserted that, as with the Mill Creek units, Brown 3 would still be subject to independent environmental regulations decoupled from the Good Neighbor Plan. Those regulations included, Joint Intervenors argued, requiring additional wastewater treatment equipment and the risk of facing requirements for natural gas co-firing or CCS technology.[168] However, Joint Intervenors acknowledged that Brown 3 was not evaluated for retirement independent of replacing resources, though Joint Intervenors noted that in the modeling portfolios that building Brown 12, the proposed NGCC unit, reduced full year LOLE by 0.28 and significantly reduced PVRR.[169] Joint Intervenors argued that their witness Anna Sommer's alternative portfolio, which included only a single new NGCC unit produced an LOLE of 0.91 and an NPVRR difference in the capital cost sensitivity of $81,887,968.[170] For these reasons, Joint Intervenors stated their support for retiring Brown 3 conditional on LG&E/KU's CPCN approvals.[171]

Regarding the retirement of Ghent 2, Joint Intervenors again noted that the unit would likely face all the current and future environmental concerns that the other units faced and have been discussed above. Additionally, Joint Intervenors stated that only in a single scenario (High Gas/Low CTG) did the model give a "slight preference" to operating Ghent 2 with a $7 million PVRR difference if the unit remained operational

[167] Joint Intervenors' Post-Hearing Brief at 68.

[168] Joint Intervenors' Post-Hearing Brief at 68.

[169] Joint Intervenors' Post-Hearing Brief at 69.

[170] Joint Intervenors' Post-Hearing Brief at 69.

[171] Joint Intervenors' Post-Hearing Brief at 69.

during the non-ozone season without installing the SCR.[172] Notably, Joint Intervenors disputed KIUC's position that continuing operating Ghent 2 may be economic. In support, Joint Intervenors stated that KIUC's witness Mr. Kollen did not dispute that retiring Ghent 2 was a lower-cost option, and that the witness in fact agreed that operating Ghent 2 would result in a $71 million to $77 million PVRR penalty in which LG&E/KU add an SCR; and a $117 million to $218 million PVRR penalty in which the unit only operated during the non-ozone season without an SCR.[173]

Additionally, Joint Intervenors argued that KIUC's argument in favor of keeping Ghent 2 open to provide LG&E/KU with the opportunity to sell excess energy was "speculative" and unsupported by the record.[174] Joint Intervenors pointed to LG&E/KU witness Mr. Bellar's testimony, which stated that "there is no reason to take on such a risk that could adversely affect all customers."[175] Joint Intervenors argued that these factors taken together were sufficient to justify the position that Ghent 2's retirement should be approved by the Commission "subject to the Companies submitting sufficient CPCN requests for replacement resources."[176]

Turning to the question of approving the CPCNs for the two NGCC units proposed by LG&E/KU, Joint Intervenors argued that the Commission should deny the proposed units. As support for their position, Joint Intervenors stated that LG&E/KU's load forecast overstated future energy and capacity needs as LG&E/KU had "unreasonably low

[172] Joint Intervenors' Post-Hearing Brief at 70.

[173] Joint Intervenors' Post-Hearing Brief at 71.

[174] Joint Intervenors' Post-Hearing Brief at 72.

[175] Joint Intervenors' Post-Hearing Brief at 72.

[176] Joint Intervenors' Post-Hearing Brief at 73.

projections of energy savings" which could be achieved either through DSM-EE or DER programs.[177] Specifically, Joint Intervenors argued that there was a significant discrepancy in the provided data, stating that:

> Compared to the 2,612 GWh of cumulative economic savings potential by 2043 (or 3,199 GWh of cumulative economic savings potential by 2035/2038) identified in Table 1 of Ex. LI-1, the proposed DSM-EE plan's cumulative savings do not come close, remaining below 1,000 GWh of energy savings.[178]

Additionally, Joint Intervenors argued that LG&E/KU's load forecast exaggerated the forecasted capacity need. Joint Intervenors argued that LG&E/KU's incorporation of distributed energy resources (DER) was unreasonable because LG&E/KU assumed zero behind the meter storage, an inconsistency with LG&E/KU's 2021 IRP,[179] and that the data used did not reflect the actual adoption rates experienced by LG&E/KU from 2010 to 2021.[180] Moreover, Joint Intervenors argued, LG&E/KU only provided their models with four thermal options from which to choose.[181]

Joint Intervenors also found fault with LG&E/KU's continued use of the PROSYM cost modeling software. Joint Intervenors argued that PROSYM was outdated, as the software developer hasn't provided an update since 2019.[182] Instead, Joint Intervenors stated that LG&E/KU should rely on alternative modeling software, such as PLEXOS.[183]

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[177] Joint Intervenors' Post-Hearing Brief at 79.

[178] Joint Intervenors' Post-Hearing Brief at 81.

[179] Joint Intervenors' Post-Hearing Brief at 82-83.

[180] Joint Intervenors' Post-Hearing Brief at 85.

[181] Joint Intervenors' Post-Hearing Brief at 89.

[182] Joint Intervenors' Post-Hearing Brief at 93.

[183] Joint Intervenors' Post-Hearing Brief at 95.

Moving to the likely capital costs of the NGCC units proposed by LG&E/KU, Joint Intervenors argued that LG&E/KU underestimated the likely costs involved. Joint Intervenors stated that for much of these proceedings the only direct price of gas builds was based on the HDR Engineering's 2022, and that new evidence stemming from engineering, procurement and construction bids submitted in response to a request for proposal (RFP) showed that the estimates were "unreasonably low."[184] Joint Intervenors also argued that LG&E/KU failed to accurately analyze future regulatory costs, such as those stemming from the EPA's proposed Greenhouse Gas rules.[185]

Joint Intervenors opposed the Brown BESS, asserting that the data did not support a finding that the BESS was not the least-cost battery storage option.[186] Joint Intervenors took issue with LG&E/KU's justification that the self-build battery storage was required for LG&E/KU to gain operational experience. Joint Intervenors countered that instead of owning the resource, LG&E/KU could include structured roles for their employees in a third-party owned BESS at a lower cost.[187] Moreover, Joint Intervenors argued, the evidence showed that operating the Brown BESS would increase emission from fossil fuel generating units.[188] Joint Intervenors stated that they would support LG&E/KU issuing a new RFP seeking more storage proposals and allowing bidders the option to utilize LG&E/KU's facilities.[189]

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[184] Joint Intervenors' Post-Hearing Brief at 96.

[185] Joint Intervenors' Post-Hearing Brief at 100.

[186] Joint Intervenors' Post-Hearing Brief at 105.

[187] Joint Intervenors' Post-Hearing Brief at 105.

[188] Joint Intervenors' Post-Hearing Brief at 105-106.

[189] Joint Intervenors' Post-Hearing Brief at 107.

Kentucky Coal Association

Kentucky Coal Association maintained that KRS 278.264(2)(a)(2) requires LG&E/KU to establish that they will replace an electric generating unit to be retired with generating capacity that is dispatchable and maintains or improves the reliability and resilience of the grid. Kentucky Coal Association indicated that the statute, in requiring that the replacement generation maintain or improve the reliability and resilience of grid, requires that the grid be as reliable as it was with the generation to be retired.[190] Kentucky Coal Association asserted that the common meaning of "dispatchable," which controls, is a source of electricity that is available for use on demand and that can be dispatched upon request of a power grid operator.[191] Kentucky Coal Association argued that LG&E/KU seek to have the Commission adopt a self-serving definition of dispatchable that is inconsistent with both industry norms and the legislative purpose of the statute.[192]

Kentucky Coal Association maintained that dispatchable generation includes resources like coal, gas, and nuclear, whereas non-dispatchable generation includes resources such as solar and wind.[193] Kentucky Coal Association asserted that DSM-EE programs are not "dispatchable," because they do not generate power and are not controlled.[194] Kentucky Coal Association argued that a significant portion of LG&E/KU's proposed new electric capacity is non-dispatchable or non-generating. Kentucky Coal Association stated that the "inclusion of such a significant amount of non-dispatchable

[190] Kentucky Coal Association's Post-Hearing Brief (filed Sept. 22, 2023) at 8-9.

[191] Kentucky Coal Association's Post-Hearing Brief at 4-6.

[192] Kentucky Coal Association's Post-Hearing Brief at 4-6.

[193] Kentucky Coal Association's Post-Hearing Brief at 4.

[194] Kentucky Coal Association's Post-Hearing Brief at 4-6.

and non-generating capacity in the proposed portfolio, fails to satisfy the reliability and resiliency requirements of [KRS 278.264] necessary to overcome the presumption against retiring the four (4) coal fired plants at issue."[195]

Kentucky Coal Association criticized the use of LOLE to assess the reliability of the system, though Kentucky Coal Association indicated that the LOLEs reported by LG&E/KU supported a finding that LG&E/KU's proposed portfolio does not maintain or improve reliability and resiliency of the grid as required by KRS 278.264.[196] Kentucky Coal Association stated that LG&E/KU reported that the LOLE for the existing portfolio of fossil fuel-powered plants is 0.45.[197] Conversely, Kentucky Coal Association noted that LG&E/KU indicated that the LOLE for a portfolio with the proposed retirements, NGCC units, owned solar, and DSM programs would be 0.77, which is less reliable and not consistent with KRS 278.264 requirements.[198] Kentucky Coal Association stated that if owned solar and DSM-EE programs are removed from the reliability analysis, which Kentucky Coal Association argued is required by KRS 278.264, then the LOLE would increase even further.[199]

Kentucky Coal Association stated that the unreliability of non-dispatchable and non-generating assets in conjunction with gas-fired plants was highlighted by the experience faced during Winter Storm Elliott. Kentucky Coal Association asserted that LG&E/KU's existing gas plant at Cane Run and Trimble County received inadequate

[195] Kentucky Coal Association's Post-Hearing Brief at 6-7.

[196] Kentucky Coal Association's Post-Hearing Brief at 8.

[197] Kentucky Coal Association's Post-Hearing Brief at 8.

[198] Kentucky Coal Association's Post-Hearing Brief at 8.

[199] Kentucky Coal Association's Post-Hearing Brief at 8–9.

pipeline pressure from Texas Gas Transmission, which contributed to rolling black outs.[200] Conversely, Kentucky Coal Association claimed that the operational coal plants operating during Winter Strom Elliott ran at an extremely high-capacity factor and on-site fuel storage of coal eliminated the same inability of the natural gas plants to effectively respond to the events that compromised the electric grid's reliability.[201]

Kentucky Coal Association noted that LG&E/KU indicated that dual fuel for the NGCC units could address the issue of the loss of pressure on the gas line, but noted that LG&E/KU could not identify the cost of such a dual fuel option. Kentucky Coal Association stated that LG&E/KU instead sought to address the issue by pointing to a letter from the Texas Gas listing proposed system improvements. Kentucky Coal Association argued that those proposals, while likely well-intentioned, do not provide an objective basis for the Commission to currently evaluate the statutory reliability and resiliency requirements for purposes of proposed replacement capacity under KRS 278.264.[202] Kentucky Coal Association asserted that all that can be gleaned objectively is that NGCC units have a potential Achilles heel in obtaining fuel in extreme cold, and therefore providing electricity as needed, as compared to coal.[203] Thus, Kentucky Coal Association argued that replacing coal-fired plants with NGCC units fails to improve resiliency or reliability as required by KRS § 278.264(2).[204]

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[200] Kentucky Coal Association's Post-Hearing Brief at 9.

[201] Kentucky Coal Association's Post-Hearing Brief at 9.

[202] Kentucky Coal Association's Post-Hearing Brief at 10-11.

[203] Kentucky Coal Association's Post-Hearing Brief at 11.

[204] Kentucky Coal Association's Post-Hearing Brief at 11.

Kentucky Coal Association next argued that LG&E/KU failed to establish that the new electric generating capacity will maintain the minimum reserve capacity requirement established by the utility's reliability coordinator as required by KRS 278.264(2)(a)3. Kentucky Coal Association noted that LG&E/KU have contracted with TVA to be their reliability coordinator but asserted that LG&E/KU failed to provide any evidence of the minimum reserve capacity established by TVA. Thus, Kentucky Coal Association argued that there is insufficient evidence to establish that the requirement has been met.[205] Further, Kentucky Coal Association noted that given the planned retirement of Mill Creek Unit 1 in 2024, if approved as proposed, such retirement could create a scenario by which LG&E/KU would fall below the minimum reserve capacity determined by TVA.[206]

Kentucky Coal Association next argued that LG&E/KU failed to establish that the proposed retirements will not harm ratepayers by causing LG&E/KU to incur any net incremental costs to be recovered from ratepayers that could be avoided by continuing to operate the electric generating unit proposed for retirement in compliance with applicable law as required by KRS 278.264(2)(b). Kentucky Coal Association argued that LG&E/KU failed to satisfy this requirement because they could retrofit the coal plants with SCRs, there is undepreciated capital for the coal plants at the time of the proposed accelerated depreciation, and that those costs will be paid by ratepayers, which will result in harm to the ratepayers.[207]

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[205] Kentucky Coal Association's Post-Hearing Brief at 11.

[206] Kentucky Coal Association's Post-Hearing Brief at 11.

[207] Kentucky Coal Association's Post-Hearing Brief at 12.

Kentucky Coal Association noted that LG&E/KU used PVRR to assess the relative costs of various portfolios. Kentucky Coal Association asserted that PVRR uses levelized costs as opposed to straight-line depreciation, which serves to underestimate near term costs. Kentucky Coal Association noted that if LG&E/KU looked at the costs over the first ten years, then LG&E/KU's proposal would be more costly even based on their own standard.[208] Kentucky Coal Association also claimed that PVRR improperly ignores stranded costs by counting them on both sides of the equation as costs that will be incurred regardless of whether a plant is retired.[209] Kentucky Coal Association also argued that KRS 278.264(2)(b) required a rate impact analysis, which LG&E/KU failed or refused to perform.

Kentucky Coal Association stated that LG&E/KU included the benefit of federal tax credits in their financial modeling.[210] Kentucky Coal Association noted that LG&E/KU indicated that it would be unreasonable and unfair to customers to have such benefits eliminated from consideration when evaluating generation units but asserted that the legislature thought otherwise. Kentucky Coal Association argued that the exclusion of federal incentives from the PVRR analysis materially impacts the viability of the CPCN proposal and LG&E/KU's ability to satisfy the requirements of KRS 278.264.[211]

Kentucky Coal Association next asserted that LG&E/KU failed to provide the Commission with evidence of all the known direct and indirect costs of retiring the electric

[208] Kentucky Coal Association's Post-Hearing Brief at 13.

[209] Kentucky Coal Association's Post-Hearing Brief at 13-14.

[210] Kentucky Coal Association's Post-Hearing Brief at 17.

[211] Kentucky Coal Association's Post-Hearing Brief at 17.

generating unit and demonstrate that cost savings will result to customers as a result of the retirement of the electric generating unit as required by KRS 278.264(3). Kentucky Coal Association asserted that LG&E/KU's presentation of costs was limited to costs that affect customer rates (e.g., capital costs, environmental compliance, etc.) and nothing else. Kentucky Coal Association argued that KRS 278.264(3) required LG&E/KU to consider costs other than those that affected customer rates such as the loss of tax base, jobs at suppliers of the plants, and other local and state economic losses. Kentucky Coal Association acknowledged that "[i]ndirect costs of retiring the fossil fuel fired plants may or may not impact customers" but argued that they "remain part of the overall analysis for the Commission to consider in determining compliance with SB4."[212]

Kentucky Coal Association also raised objections to certain cost assumptions LG&E/KU included in their financial modeling. Kentucky Coal Association noted that LG&E/KU projected coal prices using a coal-to-gas price ratio that LG&E/KU developed by looking at the historical relationship of coal and gas prices and assuming that they would follow similar trends.[213] Kentucky Coal Association's witness Emily Medine testified that this is a non-standard method for projecting coal prices, that it is unreasonable, and that it should not be relied on. Ms. Medine asserted that the assumption that pricing will follow similar trends flies in the face of common sense and recent trends.[214]

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[212] Kentucky Coal Association's Post-Hearing Brief at 18.

[213] Kentucky Coal Association's Post-Hearing Brief at 24.

[214] Direct Testimony of Emily S. Medine (Medine Direct Testimony) (filed July 14, 2023) at 37-49.

Kentucky Coal Association asserted that many coal-fired plants have closed in the last decade, which reduced demand for coal. Conversely, Kentucky Coal Association argued that based on LG&E/KU's own assumptions, the demand for gas is likely to increase while the demand for coal is likely to fall. Kentucky Coal Association also asserted that LG&E/KU failed to produce a contract or information regarding the predicted cost of firm transportation.[215] Kentucky Coal Association argued that the Commission must know this information before approving the CPCNs for the proposed NGCC units.[216]

Kentucky Coal Association also argued that LG&E/KU failed to obtain updated bids prior to the hearing and that updated bids indicated that the expected cost of the NGCC units increased substantially, which reduced the overall benefit of LG&E/KU's proposed plan.[217] Kentucky Coal Association noted that LG&E/KU argued that the increase in costs is a reason to move forward with the proposal quickly while also suggesting that the prices are not final and could potentially be negotiated down. Kentucky Coal Association asserted that based on the current inflationary and labor constrained atmosphere, a downward negotiation seemed unlikely.[218] However, Kentucky Coal Association also argued that costs are likely to go down over time.[219]

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[215] Kentucky Coal Association's Post-Hearing Brief at 24–26; *see also* Kentucky Coal Association's Post-Hearing Reply Brief (filed Oct. 5) at 15–17.

[216] Kentucky Coal Association's Post-Hearing Brief at 25–26; Kentucky Coal Association's Post-Hearing Reply Brief at 11–12.

[217] Kentucky Coal Association's Post-Hearing Reply Brief at 10–11.

[218] Kentucky Coal Association's Post-Hearing Reply Brief at 11.

[219] Kentucky Coal Association's Post-Hearing Reply Brief at 11.

Kentucky Coal Association objected to the "strained assumption that forecasted demand will be effectively stagnant from 2027 through 2050."[220] Kentucky Coal Association appeared to assert that this assumption is unreasonable because it does not account for any economic growth from 2027 to 2050.[221] Kentucky Coal Association asserted that the assumption "helps support the closure of coal units" in LG/KU's analysis.[222]

Kentucky Coal Association argued that LG&E/KU's flawed assumptions are the result of bias against coal-fired generation arising from incentive packages paid by LG&E/KU's parent company for the closure of coal-fired generation.[223] Kentucky Coal Association asserted that additional costs would also be necessary for the proposed NGCC units to comply with the zero emissions plan of LG&E/KU's parent company.[224]

Kentucky Coal Association alleged that LG&E/KU failed to clearly demonstrate cost savings as a result proposed plan. Kentucky Coal Association asserted that Greenhouse Gas rules proposed by the EPA during the pendency of this case affect the economics of the proposed NGCC units. Kentucky Coal Association, like the Attorney General, also noted that Good Neighbor Rule, which is the basis of the LG&E/KU's assertion that certain coal units are no longer economic to operate, has been stayed in Kentucky. Given the uncertainty surrounding the Greenhouse Gas Rule and Good

[220] Kentucky Coal Association's Post-Hearing Brief at 23.

[221] Kentucky Coal Association's Post-Hearing Reply Brief at 20–21.

[222] Kentucky Coal Association's Post-Hearing Reply Brief at 23.

[223] Kentucky Coal Association's Post-Hearing Brief at 22–23.

[224] Kentucky Coal Association's Post-Hearing Brief at 26.

Neighbor Rule, Kentucky Coal Association argued that the proposed CPCN is premature.[225]

Kentucky Coal Association specifically argued that the Commission should not approve the approximately $270 million, or $135 million assuming the benefit of a federal subsidy, Brown BESS. Kentucky Coal Association noted that LG&E/KU stated that the BESS is not a generating resource and that LG&E/KU acknowledged that they are merely requesting the money for the purpose of gaining operational knowledge that will benefit LG&E/KU in the future in their ability to serve its customers. However, Kentucky Coal Association noted that the cost of the battery exceeds the cost of almost two SCRs that could allow existing coal plants to operate in non-ozone season. Kentucky Coal Association stated that the proposed battery further highlights the financial motives of LG&E/KU to promote shareholder and executive compensation over pragmatic decisions to utilize existing coal plants. Kentucky Coal Association asserted that if the Commission approves the battery project that LG&E/KU should not receive a return on the capital costs for the battery.[226]

Mercer County Government

Mercer County Government intervened for the sole purpose of addressing the Mercer County property that is the subject of the stipulation discussed above. Mercer County Government took no position on this issue.

[225] Kentucky Coal Association's Post-Hearing Brief at 21.

[226] Kentucky Coal Association's Post-Hearing Brief at 27.

LG&E/KU'S RESPONSE TO INTERVENOR ARGUMENTS – PROPOSED CPCNS AND GENERATION RETIREMENTS

LG&E/KU argued that the briefs of other parties confirm the prudence of LG&E/KU's proposed supply and demand-side resource portfolio. LG&E/KU asserted that the parties fall into three categories—the status quo parties, like Kentucky Coal Association; the anti-fossil fuel parties; and parties that generally support LG&E/KU's proposal. LG&E/KU argued that Kentucky Coal Association and the anti-fossil parties have interests other than providing adequate service to customers at the lowest possible cost. Conversely, LG&E/KU noted that the parties that generally support their proposed plan consist of KIUC, which represents large industrial customers, and Walmart, which is one of LG&E/KU's largest commercial customers.[227]

LG&E/KU noted that KIUC acknowledged that keeping Ghent 2 open along with the other proposed resources would increase costs to customers. However, LG&E/KU acknowledged that the Commission must weigh that benefit against ensuring sufficient capacity resources to provide reliability to their current and future customers in the light of KRS 278.264, economic development, and public reaction to Winter Storm Elliot.[228]

LG&E/KU also argued that notwithstanding KIUC's economic based concerns, Brown BESS satisfies the CPCN requirements. LG&E/KU asserted that they have established that the system is not wastefully duplicative given its unique operating characteristics (near instant dispatch), helps with compliance with proposed EPA Greenhouse Gas regulations by enabling additional renewable energy penetrations while

[227] LG&E/KU's Post-Hearing Reply Brief at 2–7.

[228] LG&E/KU's Post-Hearing Reply Brief at 7–8.

ensuring reliability, and has the potential to gain invaluable experience with utility-scale battery storage by building and then dispatching the system along with the rest of its generating portfolio. LG&E/KU argued that these factors support the Commission approving Brown BESS.[229]

LG&E/KU disagreed with Joint Intervenors assertion that LG&E/KU's preferred two-NGCC unit portfolio was never compared to any other significantly different plan on the basis of cost and reliability once identified in the Stage One analysis. LG&E/KU argued that they compared their Stage One optimal replacement resource portfolio to nine other portfolios on the basis of reliability (reserve margins), then to eight of those portfolios on the basis of cost across 18 different combinations of fuel and Greenhouse Gas cost scenarios.

DISCUSSION AND FINDINGS – PROPOSED CPCNS AND GENERATION RETIREMENTS

Based upon the case record, the Commission concludes that the methodology used by LG&E/KU to make resource decisions, broadly speaking, was reasonable and consistent with Kentucky law. Assuming the validity of various assumptions and proper implementation, LG&E/KU's methodology would produce a reasonable, least-cost plan to satisfy their expected resource requirements. However, based on the evidence presented, the Commission disagrees with some of the assumptions used by LG&E/KU as discussed below. Thus, as discussed in more detail below, the Commission finds that LG&E/KU's requests for CPCNs and retirement approval for the fossil fuel-fired generating facilities should be granted in part, with conditions, and denied in part.

[229] LG&E/KU's Post-Hearing Reply Brief at 8–9.

Need for Proposed Generation Resources

KRS 278.030(2) requires every utility to furnish adequate, efficient and reasonable service to its customers. KRS 278.010(14) provides the definition of "adequate service" as follows:

> "Adequate service" means having sufficient capacity to meet the maximum estimated requirements of the customer to be served during the year following the commencement of permanent service and to meet the maximum estimated requirements of other actual customers to be supplied from the same lines or facilities during such year and to assure such customers of reasonable continuity of service.

When conducting resource planning to determine whether and the extent to which additional resources are needed to provide adequate service, electric utilities forecast their projected loads during the planning periods and seek to ensure that they have resources available to serve their projected load and meet reserve margin requirements.[230]

New generation resources may be needed if a utility is experiencing load growth that prevents it from providing adequate service with existing resources or if existing resources are being taken out of service.[231] LG&E/KU primarily justified their need for the resources proposed in this case based on the planned retirement of a number of existing resources due to the cost of generation upgrades, related primarily to proposed environmental regulations, that they alleged made the continued operation of the units

[230] *See* 807 KAR 5:058.

[231] *See* Wilson Direct Testimony at 2-5 (discussing the effect of load on a utilities need generally and explaining that the immediate need is driven by planned retirements); *see also* Direct Testimony of Tim A. Jones Testimony (Jones Direct Testimony) at 14-15 (discussing the effect of BlueOval on LG&E/KU's load).

uneconomic.[232] However, LG&E/KU's projected load and their planning reserve margin are potentially still relevant to determine whether and the extent to which new generation capacity is needed to replace the generating units LG&E/KU are proposing to retire.

Kentucky Coal Association and Joint Intervenors have taken opposing positions and asserted that LG&E/KU projected its load unreasonably low and unreasonably high, respectively. Kentucky Coal Association asserted that LG&E/KU's load forecast is unreasonable, because it is based on the strained assumption that demand will be effectively stagnant from 2027 through 2050.[233] While its argument on this point is limited, Kentucky Coal Association appeared to assert that this assumption is unreasonable because it does not account for any economic growth from 2027 to 2050.[234] Joint Intervenors argued that LG&E/KU's load forecast is unreasonable, because LG&E/KU underestimated future energy efficiency savings, including potential DSM-EE savings, and DER adoption. Joint Intervenors and Sierra Club also argued that LG&E/KU overestimated its minimum economic reserve margin, which LG&E/KU used to determine the amount of resources necessary to serve load. Thus, Kentucky Coal Association and Joint Intervenors, along with Sierra Club, argued, respectively, that LG&E/KU underestimated and overestimated its need for generation.

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[232] *See* Wilson Direct Testimony at 4-5 (discussing the impetus for the resource assessment); Wilson Direct Testimony, Exhibit SAW-1 December 2022 at 16-40 (discussing LG&E/KU's modeling process and indicating that a portfolio that retires Mill Creek 1 and 2, Ghent 2, Brown 3, Haefling 1 and 2, and Paddy's Run 12 and replaces them with the proposed NGCC units and 627 MWs of solar PPAs is more economic than upgrading existing resources to comply with the Good Neighbor Plan).

[233] Kentucky Coal Association's Post-Hearing Brief at 23.

[234] Kentucky Coal Association's Reply Brief at 20-21.

LG&E/KU asserted that no other party produced a load forecast; that their load forecast witness explained that the forecast is reasonable and that the methodology is consistent with previous forecasts; and that the parties objecting to the load forecast have interests other than the provision of "adequate, efficient and reasonable service" that are consistent with the opposing positions they take with respect to LG&E/KU's load forecast.[235] LG&E/KU's Manager of Sales Analysis and Forecasting explained that his team projected load by using historical data to develop models that relate electricity usage, demand, sales, and number of customers by rate classes to exogenous factors such as economic activity, appliance efficiencies and adoption, demographic trends, and weather conditions.[236] He acknowledged both high-side and low-side risks to the forecast but indicated that he and his team sought to present what they concluded is the most reasonable load forecast.[237]

The Commission finds that LG&E/KU's treatment of economic growth in this load forecast is reasonable despite certain risks acknowledged by LG&E/KU. Contrary to Kentucky Coal Association's assertion, LG&E/KU's load forecast does account for economic growth. LG&E/KU projected load for most customer classes using econometric models that considered, among other things, national and local economic projections and demographic trends.[238] LG&E/KU also projected load for its largest customers based, in part, on information obtained from discussions with those customers regarding future

[235] LG&E/KU Post-Hearing Reply Brief at 17-18.

[236] Jones Direct Testimony at 3.

[237] Aug. 24, 2023 Hearing Video Transcript (HVT) at 13:48:30-13:50:18.

[238] *See* Jones Direct Testimony, Exhibit TAJ-2 at 7-13; Jones Direct Testimony at 14.

plans and their expected usage and demand.[239] However, growth in load is partially offset by increased efficiency, which results in very low aggregate load growth between 2027 and 2050.[240]

As acknowledged by LG&E/KU, there is a possibility that an entirely new facility or industry like BlueOval will move to LG&E/KU's service territory and that such an addition might not be captured in LG&E/KU's econometric modeling or discussions with existing large customers.[241] However, LG&E/KU's witness Tim Jones argued that such a risk is at least partially balanced by the downside risk that customers will leave LG&E/KU's service territory,[242] and there are other downside risks to the load forecast as raised by Joint Intervenors and discussed below. In fact, the evidence indicates that LG&E/KU's weather normalized load was decreasing slightly from 2010 to 2022,[243] which would indicate that the addition of single customers with significant demand are not a regular occurrence (or that the load of such new customers is being balanced by decreases elsewhere). Thus, while the Commission does ultimately agree with Kentucky Coal Association that there is a high-side "risk" to the load associated with unexpected economic growth, the Commission finds that such a risk does not render LG&E/KU's load forecast unreasonable.

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[239] Jones Direct Testimony, Exhibit TAJ-2 at 9; Aug. 24, 2023 HVT at 13:51:00-13:51:37.

[240] *See* Aug. 24, 2023 HVT at 13:48:30-13:51:37; *see also* Jones Direct Testimony, Exhibit TAJ-2 at 18 (discussing how the positive and negative energy impacts of the IRA and DSM-EE on load are nearly offsetting from an energy prospective but not necessary from a peak demand prospective).

[241] *See* Aug. 24, 2023 HVT at 13:48:30-13:50:18

[242] *See* Aug. 24, 2023 HVT at 13:48:30-13:50:18.

[243] Jones Direct Testimony at 6. Kentucky Coal Association also acknowledged that LG&E/KU and other electric utilities have been experiencing stagnant demand since 2008. *See* Kentucky Coal Association's Post-Hearing Brief at 26.

As discussed in the DSM-EE section, LG&E/KU has improved their DSM-EE methodology by, among other things, adopting several of the recommendations in Commission Staff's report regarding its most recent IRP, but there is room to improve its methodology. LG&E/KU has similarly improved their projection of the effects of DERs on load, and additional improvements are possible. However, the Commission does not conclude that the low-side risks raised with respect to LG&E/KU's load forecast or its minimum reserve margin analysis materially affected LG&E/KU's need in this matter.

First, as noted above with respect to Kentucky Coal Association's argument, there are corresponding high-side risks with respect to LG&E/KU's load forecast, and the Commission, if anything, would prefer that utilities err on the high side to ensure that they have sufficient reliability to serve load. Further, as discussed below, the Commission has found that there is not currently a need to construct Brown 12 or take action with respect to Ghent 2 and Brown 3, but expects the status of those generating units to come up again in the near future when LG&E/KU have a better idea of what the Greenhouse Gas rules will look like and when they will be implemented. Such a delay will also provide additional time to see the effects of additional DSM-EE and DERs on load and whether there is additional offsetting economic development. This additional information and experience will help inform future resource decisions and help alleviate many of the concerns expressed in this matter on the subject. By not making so many generation decisions based on a single, contentious, load forecast, the Commission hopes to mitigate the risk of overbuilding to the detriment of customers' rates, or underbuilding to the detriment of the Commonwealth's energy adequacy. However, the Commission finds

that those potential effects will not materially affect the need for Mill Creek 5 or some alternative generation in 2027.

When LG&E/KU filed their application, they alleged that EPA's Good Neighbor Plan, as proposed, would effectively require Mill Creek 1 and 2 and Ghent 2 to cease operating during the ozone season (May through September) each year beginning in 2026, unless LG&E/KU install SCR equipment at each of the units or obtain sufficient NOx emission credits to reduce their emissions by approximately 80 percent,[244] though LG&E/KU assumed as part of their resource planning that the Good Neighbor Plan would allow them to continue operating a non-SCR equipped unit if the unit was replaced by the 2028 ozone season.[245] During the pendency of this case, the EPA published the final Good Neighbor Plan, and LG&E/KU indicated that it did not materially change from the proposed plan and that it would require SCRs for coal units to continue operating during ozone season.[246]

Among other things, LG&E/KU stated that the final Good Neighbor Plan:

1. Adjusted the 2026 control period allocations to be based on state-of-the-art combustion control limit for half of the ozone season and SCR control limit for half of the ozone season,[247] whereas the proposed rule set the control period allocations in 2026 based on the stricter SCR control limit alone;[248]

[244] Wilson Direct Testimony, Exhibit SAW-1 December 2022 at 4. In the initial filing, LG&E/KU indicated that Mill Creek 2 and Ghent 2 would require SCRs to continue operating, because it was assuming Mill Creek Unit 1 would be retired based on a previous analysis. However, Mill Creek 1 is not equipped with an SCR, so following the passage of Senate Bill 4, LG&E/KU indicated that an SCR would need to be added to Mill Creek 1 for it to continue operating.

[245] Wilson Direct Testimony, Exhibit SAW-1 December 2022 at 18.

[246] Imber Rebuttal Testimony at 3.

[247] LG&E/KU Response to Attorney General's Second Request, Item 4.

[248] *See* Imber Direct Testimony at 3.

2. Imposed a backstop limit to be applicable no later than the 2030 ozone season whereas the proposed rule applied the backstop limit beginning in the 2027 ozone season;

3. Exempted 50 tons of NOx from a unit with existing SCR controls prior to implementing a 3-for-1 allowance surrender ratio for backstop limit emissions exceedances, which LG&E/KU indicated would allow non-SCR units self-compliant ozone season operation for approximately 25 days (150/6) from 2026-2029 and approximately 8 days in 2030 based on the allocations available to non-SCR units; and

4. Set a target percentage of 21 percent of the sum of the state budgets for the 2024-2029 control periods as part of the allowance bank recalibration process.[249]

LG&E/KU indicated that non-SCR equipped unit availability will be severely impacted by the State Budget, Unit Allocations, and Bank Recalibration aspects of the final rule. LG&E/KU provided tables showing the expected NOx emissions at Mill Creek 2, Ghent 2, and Brown 3 in various fuel price scenarios as compared to projected NOx allocations under the final rule, and stated that LG&E/KU will have to start relying on the allocations market in 2027 to continue operating the units during ozone season. However, LG&E/KU indicated that they expected a shortage of allowances in the timeframe of 2026, 2027, or 2028 that supports the retirement or idling of non-SCR equipped units and the resulting need for lower-emitting replacement generation as posed in the CPCN filing.[250] Further, LG&E/KU indicated that the backstop rule in the Good Neighbor Plan would effectively prohibit Mill Creek 1 and 2 and Ghent 2 from operating beyond 2030.[251]

[249] LG&E/KU Response to Attorney General's Second Request, Item 4.

[250] LG&E/KU Response to Attorney General's Second Request, Item 4.

[251] Aug. 22, 2023 HVT at 19:25:35-19:27:00.

The Commission finds LG&E/KU's evidence regarding the manner in which the Good Neighbor Plan will function to be credible. LG&E/KU's description of the Good Neighbor Plan is consistent with the final rule published by the EPA,[252] and their assumptions regarding unit emissions are based on the projected operating characteristics of its actual units in the fuel price scenarios modeled in this matter.[253] Further, most other parties to this case agree with LG&E/KU's assessment of the effect of the Good Neighbor Plan.[254] Kentucky Coal Association, through its witness, alleged that the Good Neighbor Plan, as modified after comments, was materially different from the plan initially proposed such that it created uncertainty regarding the need for LG&E/KU's proposed plan,[255] but neither Kentucky Coal Association nor its witness identified any specific changes that would eliminate the need for LG&E/KU to significantly limit the operation of non-SCR units in ozone season. Thus, the Commission finds that the final Good Neighbor Plan would impose significant limits on the operation of non-SCR units in ozone season.

Without the addition of SCRs on at least some of the non-SCR units or the addition of new resources, LG&E/KU would be unable to provide adequate service. For instance,

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[252] Final Federal "Good Neighbor Plan" for the 2015 Ozone National Ambient Air Quality Standards, 88 FR 36654 (June 5, 2023).

[253] *See* LG&E/KU Response to Attorney General's Second Request, Item 4.

[254] See Joint Intervenors' Post-Hearing Brief at 65-69 (discussing the effect of the Good Neighbor Plan on Mill Creek Unit 1 and 2 and Ghent Unit 2); KIUC's Post-Hearing Brief at 5-7 (discussing the effect of Good Neighbor Plan with respect to Mill Creek Unit 1 and 2); *see also* Walmart's Post Hearing Brief at 7-8 ("First, while it is true that the GNR is not a final and enforceable regulation, the evidence in the record established conclusively that numerous other, entirely independent EPA regulations exist that would impose similar obligations on the Companies to address emissions at the Fossil Fuel Electric Generating Units, nearly all of which would require the installation of [SCR] technology on units lacking such technology.").

[255] Medine Direct Testimony at 5.

assuming no generation is added or retired and SCRs are not built on Mill Creek 1 and 2 and Ghent 2 (and allowances are not available in any market), LG&E/KU projected an LOLE of 35.15,[256] which would mean that LG&E/KU would expect to have a loss of load event 35.15 days out of every ten years. Notably, while some parties have questioned the analysis LG&E/KU used to develop their minimum economic reserve margin, an LOLE of 35.15 is as much as 10 times higher than the LOLEs of portfolios that meet LG&E/KU's economic reserve margin,[257] and it is over 35 times higher than the standard 1-in-10 reliability target used by a number of RTOs and others for planning purposes.[258] Such a large LOLE indicates an inability to provide adequate service.

As noted by both the Attorney General and Kentucky Coal Association, implementation of the final Good Neighbor Plan is currently stayed in the state of Kentucky as well as several other states. If the stay remains in place or the Good Neighbor Plan otherwise does not apply in Kentucky, then it would affect LG&E/KU's claimed need in this matter because LG&E/KU likely could provide adequate service with its existing resources if they are not limited as they would be by the Good Neighbor Plan.[259] However, while the Commission agrees that the stay creates uncertainty as to the implementation of the Good Neighbor Plan, or similar standards based on the 2015

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[256] LG&E/KU's Response to Staff's Second Request, Item 50.

[257] *See* Wilson Direct Testimony, Exhibit SAW-1 December 2022 at 13.

[258] *See* Sommer Direct Testimony at 25 (noting that she sought to develop plans based on a 1 in 10 LOLE, which she described as a typical reliability planning target); PJM Manual 20: PJM Adequacy Analysis, Revision 12, Section 1.2-1.5, pgs. 11-14 4 (dated August 25, 2021) (indicating that PJM establishes its reserve margin requirement based on capacity percent above the forecasted peak load required to satisfy a loss of load expectation of, on average, 1 day every 10 years).

[259] *See* LG&E/KU's Response to Staff's Post-Hearing Request, Item 20 (indicating the LOLE, LOLH, and EUE of LG&E/KU's existing system with SCRs added to Mill Creek Units 1 and 2, and Ghent Unit 2, which would be at least as good as the same units without SCRs if SCRs were not required).

NAAQS, the Commission does conclude that the Good Neighbor Plan or a similar standard will ultimately be implemented in Kentucky.

The stay of the Good Neighbor Plan in Kentucky pertained to the disapproval of the State Implementation Plan for the 2015 NAAQS standards and was based primarily on due process considerations.[260] Since disapproval of the State Implementation Plan was necessary for the EPA to adopt the Federal Implementation Plan, i.e. the Good Neighbor Plan, the EPA is not enforcing the Good Neighbor Plan in Kentucky due to the stay of the action disapproving the State Implementation Plan.[261] However, as noted by LG&E/KU and many of the Intervenors, the EPA has a long history of regulating ozone through NOx emission standards[262] that has been upheld by the U.S. Supreme Court.[263] In fact, LG&E/KU's Director of Environmental and Federal Regulatory Compliance testified that regulation of NOx through trading programs is not novel and that "there is no question" that the EPA will continue to regulate NOx emissions from major sources that contribute to downwind nonattainment.[264] Further, in testimony before the Sixth Circuit Court of Appeals, the EPA indicated its continued intention of enforcing that Good Neighbor Plan or similar rules based on the 2015 NAAQS in Kentucky.[265] Thus, while there is a possibility that the U.S. Supreme Court will reverse itself with respect to NOx

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[260] Aug. 25, 2023 HVT at 11:44:50-11:47:30; *see also Commonwealth of Kentucky et al. v. EPA*, Cir. Nos. 23-3216, 23-3225 (Doc. 39-2) (6th Cir., July 25, 2023); Imber Rebuttal Testimony at 7-8

[261] Imber Rebuttal Testimony at 4-5 (acknowledging the stay of the Good Neighbor Plan pending resolution of the litigation pertaining to the State Implementation Plan).

[262] Aug. 25, 2023 HVT at 11:51:06-11:52:00 (indicating that there have Cross State Air Pollution Rules limiting NOx emissions, of which the Good Neighbor Plan is the latest iteration, since the 1990s).

[263] *See EPA v. EME Homer City Generation, L.P.*, 572 U.S. 489 (2014)

[264] Aug. 25, 2023 HVT at 11:52:00-11:52:32.

[265] Imber Rebuttal Testimony at 6.

regulation, the Commission does not think that it would be reasonable to conduct resource planning based on that remote assumption, and therefore, finds that it is reasonable to assume that the Good Neighbor Plan or a similar standard implementing the 2015 NAAQS for ozone will ultimately be applied (and the EPA will then start work to implement to 2020 NAAQS).[266]

The Commission does agree with the Attorney General's position in the underlying litigation opposing the Good Neighbor Plan that the EPA should afford Kentucky the process it is entitled to by law, and questions LG&E/KU's assumption that the stay will have no effect on the timing of the Good Neighbor Plan or another similar plan implementing the 2015 NAAQS for ozone in Kentucky. The Commission also notes, as discussed in more detail below, that there is uncertainty regarding what the proposed Greenhouse Gas rule and other regulations will look like when finalized that could affect the cost of and need for various resource options. While there are cost risks to waiting to construct the proposed NGCC units, there are also risks associated with spending money to comply with one expected regulation only to have the value of that investment affected by the significant cost of a subsequent regulation. To minimize that risk, the Commission concludes that resource decisions such as whether to upgrade existing units to comply with environmental regulations or replace them with new units should be delayed to the extent practical to obtain more clarity regarding final environmental rules.

LG&E/KU asserted that it would take three years to plan, obtain approvals for, and construct SCRs on Mill Creek 1 and 2 and Ghent 2. For that reasons, LG&E/KU argued

[266] Imber Rebuttal Testimony at 4-8 (discussing the stay and the likelihood that the Good Neighbor Rule or a similar standard will likely be implemented).

that they would need to act now to replace or upgrade those units to ensure they have the necessary capacity to serve load when the Good Neighbor Plan or a similar standard implementing the 2015 NAAQS for ozone is ultimately be implemented. The Commission agrees, in part, that it would be a risk to wait on the outcome of litigation pertaining to the Good Neighbor Plan, but does not agree that the risk justifies taking immediate action with respect to all of the coal units at issue in this case.

As noted above, LG&E/KU will experience significant reliability issues if they are not able to operate Mill Creek 1 and 2 and Ghent 2 during ozone season in 2028 or do not have replacement generation. Further, the EPA included short timelines in the final Good Neighbor Plan, and as noted by LG&E/KU, the EPA indicated a commitment to reducing NOx emissions from sources in Kentucky in testimony and argument before the Sixth Circuit Court of Appeals,[267] so it is unfortunately difficult to imagine the EPA giving LG&E/KU significant additional time, if any, to comply following litigation, which could jeopardize LG&E/KU's ability to operate the non-SCR equipped units in ozone season, materially impacting reliability. More importantly, given the even longer construction timelines for new plants, potentially more than a decade for a nuclear resource, a utility would also often be locked into simply upgrading existing units if it did not plan based on environmental regulations or standards until they are final with all litigation complete. Thus, because the Commission concludes that the Good Neighbor Plan or a similar standard implementing the 2015 NAAQS will ultimately be implemented, the Commission finds that there is a need that must be addressed now to ensure there is time to implement a reasonable, least-cost plan to serve LG&E/KU's load.

[267] Imber Rebuttal Testimony at 5-6.

However, there is not an immediate need with respect to all of LG&E/KU's non-SCR units. Specifically, if LG&E/KU did not retire or construct any of the units at issue in this case and added SCRs to Mill Creek 1 and 2 but not Ghent 2, then LG&E/KU would have a summer reserve margin of 20.0 percent if all resources are included, and a summer reserve margin of 12.8 percent if intermittent and limited duration resources are excluded,[268] which LG&E/KU indicated would be sufficient to reliably serve load in the summer.[269] If Mill Creek 5 were substituted for Mill Creek 1 and 2, then the resulting portfolio would similarly meet the minimum reserve margin requirements established by LG&E/KU because Mill Creek 5 would be larger than Mill Creek 1 and 2 combined.[270] Thus, it would be possible to delay taking action on Ghent 2 without jeopardizing reliability to obtain more clarity on the proposed environmental rules, and therefore, the need is not immediate with respect to Ghent 2 if action is taken with respect to the Mill Creek 1 and 2.[271]

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[268] Wilson Direct Testimony, Exhibit SAW-1 December 2022 at 45, Table 26 (showing LG&E/KU's projected peak load in the summer of 2028 as 6,319 MW and its total available resources in the summer of 2028, without any of the proposed retirements, as 7,721 MW, including 456 MW of intermittent/limited duration resources); Wilson Direct Testimony, Exhibit SAW-1 December 2022 at 50, Table 29 (indicating that the max summer capacity of Ghent Unit 2 is 485 MW). The available capacity values in Table 26 do not include Mill Creek Unit 1 or the small CTs at issue in this case, because Mill Creek Unit 1 cannot be operated with Unit 2 due to NOx emissions limitations and LG&E/KU did not believe the small CTs would be available. To calculate the summer reserve margins with the assumption that Mill Creek Units 1 and 2 had SCRs but Ghent Unit 2 did not, the Commission added 300 MW to the available capacity to account for both Mill Creek 1 and 2 becoming available, added 47 MW to account of the availability of the small CTs, and then removed 485 MW to account for Ghent Unit 2 being unavailable. For instance, the calculation without intermittent resources is as follows: Available Resources = 7,265 MW + 300 MW (Mill Creek 1) + 47 MW (Small CTs) – 485 MW = 7,127 MW; Reserve Margin = 808 MW / 6,319 = 12.8 percent.

[269] Wilson Direct Testimony, Exhibit SAW-1 December 2022 at 10.

[270] *See also* LG&E/KU Response to Post-Hearing Request, Item 22 (indicating that a portfolio with Mill Creek Unit 5, Ghent Unit 2 in non-ozone season only, Brown Unit 3, and the proposed solar PPAs have an LOLE of 0.62 days every 10 years)

[271] The Commission is not necessarily finding that meeting LG&E/KU's minimum reserve margin is sufficient to reliably serve load in the long term. However, if LG&E/KU can meet its minimum reserve

The need to take action with respect to Mill Creek 1 and 2 is much more immediate. Most urgently, Mill Creek 1 is not able to operate beyond 2024 without ELG retrofits and operation beyond 2027 would require a cooling tower.[272] In fact, LG&E/KU have planned to retire Mill Creek 1 at the end of 2024 since 2020 based on an analysis in a 2020 update to its Environmental Compliance Plan that found that ELG retrofits were not cost-effective as a result of LG&E/KU's expected load and limitations on Mill Creek 1's ability to operate with Mill Creek 2,[273] which is why Mill Creek 1 would now need urgent upgrades to continue operating. Further, as noted above, the ability to delay action on Ghent 2 without risking reliability is premised on ensuring that Mill Creek 1 and 2 or some replacement generation will be available because LG&E/KU could not reliably serve load if Mill Creek 1 and 2 and Ghent 2 were unavailable in ozone season. LG&E/KU would also not meet its minimum summer reserve margins in 2028 if SCRs were added to Ghent 2 alone and no other resources were added.[274] Further, the continued operation of Mill Creek 1 and

margins without an SCR on Ghent Unit 2, then the risk that the EPA will quickly implement the Good Neighbor Plan following the litigation is somewhat mitigated.

[272] Direct Testimony of Lonnie E. Bellar (Bellar May 10, 2023 Direct Testimony) (filed May 10, 2023) at 4.

[273] *See* Case No. 2020-00061, *Electronic Application of Louisville Gas and Electric Company for Approval of an Amended Environmental Compliance Plan and Revised Environmental Surcharge* (Ky. PSC Sept. 29, 2020), Order.

[274] *See* Wilson Direct Testimony, Exhibit SAW-1 December 2022 at 45, Table 26 (showing LG&E/KU's projected peak load in the summer of 2028 as 6,319 MW and its total available resources in the summer of 2028, without any of the proposed retirements, as 7,721 MW, including 456 MW of intermittent/limited duration resources); Wilson Direct Testimony, Exhibit SAW-1 December 2022 at 50, Table 29 (indicating that the max summer capacity of Mill Creek 2 is 297 MW). As noted above, the available capacity values in Table 26 do not include Mill Creek Unit 1 or the small CTs, because Mill Creek Unit 1 cannot be operated with Unit 2 due to NOx emissions limitations and LG&E/KU did not believe the small CTs would be available. The calculation of the reserve margin without intermittent resources was completed as follows: Available Resources = 7,265 MW + 47 MW (Small CTs) – 297 MW = 7,015 MW; Reserve Margin = 696 MW / 6,319 = 11.0 percent.

2 could also affect LG&E/KU's ability to obtain a permit for a new NGCC unit at that site,[275] whereas the continued operation of Ghent 2 would not have that effect. Thus, the Commission finds that it would be unreasonable to wait to address compliance with respect to Mill Creek 1 and 2, and therefore, finds that there is a current need that must be addressed with respect to Mill Creek 1 and 2 to ensure LG&E/KU's ability to continue to reliably serve load.

The Commission notes that this finding is further supported by other regulatory risks at Mill Creek that will likely require additional compliance measures such as the addition of SCRs even in the absence of the Good Neighbor Plan. For instance, the 2015 NAAQS established a threshold of 70 ppb for NAAQS for ozone as measured over the highest 8-hour average for each day.[276] In the most recent three-year range of 2020–2022, the Louisville Metropolitan Statistical Area (Louisville MSA) registered 70 ppb—i.e., the highest level it can be before Louisville is considered to be in nonattainment.[277] However, LG&E/KU and Louisville Metro noted that the Louisville MSA has historically been in nonattainment of NAAQS for ozone, and based on the 2021 through 2023 data, as of the date of the hearing, the Louisville MSA was not in attainment.[278] Further, the EPA reviews NAAQS every 5 years,[279] and the Clean Air Scientific Advisory Committee,

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[275] *See* Aug. 25, 2023 HVT at 11:27:35 (explaining the permitting process).

[276] Aug. 25, 2023 HVT at 10:52:19-10:52:45.

[277] Aug. 25, 2023 HVT at 10:55:30-10:56:36; Louisville Metro Hearing Exhibit 1 at 4; *see also* Aug. 25, 2023 HVT at 10:40:50-10:43:44 (generally discussing LMAPDC's obligation to monitor ambient air quality and to ensure that federal standards are met in the Louisville MSA); Aug. 25, 2023 HVT at 10:43:44-10:48:44 (discussing what is represented Louisville Metro Hearing Exhibit 1).

[278] Aug. 25, 2023 HVT at 10:55:40-10:56:36.

[279] Aug. 25, 2023 HVT at 11:00:30.

which provides technical advice to the EPA administrator, has recommended the standard be lowered to 55–60 ppb.[280]

Mill Creek 1 and 2 are located in Louisville and are the largest emitters of NOx in that area,[281] so Louisville's nonattainment of NAAQS for ozone likely would subject Mill Creek 1 and 2 to additional limits on NOx emissions even in the absence of the Good Neighbor Plan. In fact, due to Louisville's previous nonattainment of NAAQS for ozone, NOx emissions limits were placed on Mill Creek that prevent LG&E/KU from operating Mill Creek 1 and 2 at the same time.[282] Despite that limitation, Louisville has generally still failed to achieve attainment of NAAQS for ozone. Given the current five-year review of the NAAQS for ozone, Mill Creek's contribution to Louisville's historic nonattainment, and Louisville's nonattainment despite limits that prevent Mill Creek 1 and 2 from operating at the same time, it is likely that local nonattainment of NAAQS for ozone will result in additional limits being placed on Mill Creek 1 and 2 that will require additional controls even if not required by the Good Neighbor Plan. Thus, again, the Commission finds that it would not be prudent to wait to address compliance with respect to Mill Creek 1 and 2.[283]

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[280] Aug. 25, 2023 HVT at 10:58:00-10:58:58.

[281] Aug. 25, 2023 HVT at 10:58:58-11:00:00.

[282] *See* Aug. 22, 2023 HVT at 19:24:25-19:25:35 (indicating that except in the case of emergencies the total Mill Creek station is currently prohibited from emitting more than 15 tons of NOx a day, which requires LG&E/KU to limit the operation of either Mill Creek 1 or 2 during ozone season if it is also operating Mill Creek 3 and 4).

[283] In Case No. 2020-00061, the Commission approved an environmental compliance plan that anticipated the retirement of Mill Creek Unit 1 in 2025 due to the necessary ELG upgrades and LG&E/KU's inability to operate Mill Creek Units 1 and 2 at the same time due to NOx emissions limitations, among other things. *See* Case No. 2020-00061, *Electronic Application of Louisville Gas and Electric Company for Approval of an Amended Environmental Compliance Plan and Revised Environmental Surcharge* (Ky. PSC Sept. 29, 2020), Order.

LG&E/KU are proposing to retire Brown 3 based on the assertion that it is not economic. Given the alleged economics of Brown 3, LG&E/KU argued that it would be cost-effective to retire that unit in 2028 and replace it and other units with the full portfolio proposed in this matter. However, Brown 3 notably is equipped with SCRs such that it could operate in compliance with the Good Neighbor Plan without any necessary upgrades. Thus, the need to comply with the Good Neighbor Plan is not driving the timing or the economics of the Brown 3 retirement.

Rather, LG&E/KU indicated that when they filed their application in this matter, the timing of the Brown 3 retirement was driven by a major, and expensive, overhaul planned in 2028. However, LG&E/KU's witness acknowledged at the hearing that it would be possible to delay the planned overhaul of Brown 3 for a couple years.[284] Further, as discussed above, the Commission believes that it would be possible for LG&E/KU to reliably serve load with Ghent 2 and Brown 3 while they wait for more certainty with respect to the Good Neighbor Plan and other environmental regulations. Thus, in light of the current regulatory environment and LG&E/KU's ability to delay the major upgrades on Brown 3, the Commission finds that there is not an immediate need that justifies the construction of replacement generation with respect to Brown 3.

LG&E/KU indicated a preference to constructing Mill Creek 5 in the event they were only approved to construct a single NGCC unit. Further, among other things, LG&E/KU indicated that it would affect their ability to obtain permitting for Brown 12 if Brown 3 remained in operation, that it would affect their ability to obtain permitting for Mill Creek 5 at a later date if they retired Mill Creek 1 and 2 without constructing Mill Creek 5,

[284] Aug. 23, 2023 HVT at 10:32:34.

and that costly transmission upgrades would be necessary to operate Brown 12 and Brown 3 at the same time. For those among other reasons, LG&E/KU appeared to consider Brown 12 to be replacing Brown 3 and, to a lesser extent, Ghent 2. However, because the Commission finds that the impetus for upgrading or replacing Brown 3 and Ghent 2 can be delayed at this time for the reasons discussed above, the Commission finds that there is currently no need that justifies the construction of Brown 12, and therefore, finds that the CPCN for Brown 12 should be denied.

LG&E/KU noted that the proposed Mercer Solar Facility and Marion Solar Facility would result in savings in three of the six fuel price scenarios studied even without considering a cost of Greenhouse Gas regulation compliance or income from the sale of RECs and indicated that it planned to add those facilities as a hedge against market uncertainties concerning the solar industry, gas prices, and future environmental regulations.[285] The Commission has previously granted CPCNs for new facilities based on savings to customers. In Case No. 2014-00002, the Commission recognized the importance of LG&E/KU diversifying its portfolio to hedge against environmental compliance risks even if the resource may result in a slightly higher cost.[286] Thus, the Commission finds that there is a need for the Mercer Solar Facility and Marion Solar Facility to the extent that LG&E/KU are able to establish that the facilities will not result in wasteful duplication.

<u>Absence of Wasteful Duplication</u>

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[285] Wilson Direct Testimony, Exhibit SAW-1 December 2022 at 35-36, Table 17.

[286] *See* Case No. 2014-00002, *Joint Application of Louisville Gas & Electric Company and Kentucky Utilities Company for Certificates of Public Convenience and Necessity for the Construction of a Combined Cycle Combustion Turbine at the Green River Generating Station and a Solar Photovoltaic Facility at the E.W. Brown Generating Station* (Ky. PSC Dec. 19, 2014), Order at 10-13.

The resource expansion, financial, and reliability modeling conducted in this case establish that replacing Mill Creek 1 and 2, Haefling 1 and 2, and Paddy's Run 12 with Mill Creek 5 is the most cost-effective means of reliably serving load in the most likely scenarios. Further, the modeling indicates that the proposed owned solar and solar PPAs add reliability in all scenarios and reduce costs in most scenarios, especially in scenarios with higher fuel costs or in which a risk of Greenhouse Gas regulation is modeled. The evidence also indicates that LG&E/KU's proposed Brown BESS will allow them to gain experience with utility scale batteries, which will likely be necessary to mitigate the risks associated with Greenhouse Gas regulation. Thus, for the reasons discussed below in more detail, the Commission finds that Mill Creek 5, the owned solar facilities, and Brown BESS will not result in wasteful duplication, and therefore, finds that LG&E/KU's CPCNs for those facilities should be approved.

A portfolio that replaced Mill Creek 1 and 2, Haefling 1 and 2, and Paddy's Run 12 with Mill Creek 5 would meet the minimum reserve margin requirements that LG&E/KU indicated were necessary for them to provide adequate service.[287] Further, even if LG&E/KU did not add any of the other resources proposed in this matter, a portfolio that retired Mill Creek 1 and 2, Haefling 1 and 2, and Paddy's Run 12 and added Mill Creek 5 would be marginally more reliable than LG&E/KU's current portfolio, assuming the addition of SCRs and other required environmental controls on coal units in both

[287] The portfolio with Mill Creek 5 would give LG&E/KU significantly more capacity than it currently has in the summer due to its inability to Mill Creek Unit 1 and 2 at the same time in the summer. In winter, or if SCRs were added to Mill Creek Unit 1 and 2, LG&E/KU would have roughly the same capacity, because Mill Creek 5 is roughly the same size as Mill Creek Unit 1 and 2, Haefling Units 1 and 2, and Paddy's Run Unit 12 combined but is likely to be more reliable given its age. *See* LG&E/KU Response to Post-Hearing Request, Items 9 and 10 (showing the equivalent forced outage rates for LG&E/KU's coal units and NGCC unit and reasons for unusually high equivalent for outage rates).

scenarios.[288] Even without any of the planned solar or dispatchable DSM, the portfolio with Mill Creek 5 would have an LOLE of 0.70 days every 10 years,[289] which is significantly lower than even the lowest LOLE, 3.57, associated with the portfolios that met LG&E/KU's minimum economic reserve margin.[290] An LOLE of 0.70 is also lower than the standard 1-in-10 reliability target used by PJM and others to ensure reliability in capacity planning.[291] Thus, retiring Mill Creek 1 and 2, Haefling 1 and 2, and Paddy's Run 12 and replacing them with Mill Creek 5 will allow LG&E/KU to continue to provide adequate service.

The evidence also indicated that constructing Mill Creek 5 is the least-cost method of serving load in the most likely scenarios. Based on the cost estimates included in the application, a portfolio that replaces Mill Creek 1 and 2, Haefling 1 and 2, and Paddy's Run 12 with Mill Creek 5 would have a lower PVRR than the status quo in five of the six fuel price scenarios modeled by LG&E/KU—Low Gas, Mid CTG; Mid Gas, Mid CTG; High

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[288] *See* LG&E/KU's Response to Post-Hearing Request, Item 20 (which shows the LOLE, LOLH, EUE for both portfolios).

[289] *See* LG&E/KU's Response to Post-Hearing Request, Item 20.

[290] Wilson Direct Testimony, Exhibit SAW-1 December 2022 at 13. As discussed in more detail with respect to KRS 278.264, the Commission concludes that LOLE, LOLH, and EUE are the best metrics to assess the reliability of portfolios, because they provide an objective means to evaluate the likelihood that a utility will lose load, the likely duration of expected loss of load events, and the likely magnitude of such events.

[291] *See* PJM Manual 20: PJM Adequacy Analysis, Revision 12, Section 1.2-1.5, pgs. 11-14 4 (dated August 25, 2021) (indicating that PJM establishes its reserve margin requirement based on capacity percent above the forecasted peak load required to satisfy a loss of load expectation of, on average, 1 day every 10 years); *see also* Sommer Direct Testimony at 25 (noting that she sought to develop plans based on a 1 in 10 LOLE, which she described as a typical reliability planning target);

Gas, Mid CTG; Low Gas, High CTG; and High Gas, Current CTG.[292] However, the updated bids for the NGCC units affect the economics of the proposed units.[293]

Regardless, with the exception of the High Gas, Current CTG fuel price scenario in which the PVRR of the portfolio with Mill Creek 5 is significantly lower, both with and without the updated bids, the differences in the PVRRs represent only a small portion of the total cost of the portfolios. For instance, the portfolio that replaces Mill Creek 1 and 2, Haefling 1 and 2, and Paddy's Run 12 with Mill Creek 5 went from having a PVRR that is 0.34 percent, 0.25 percent, 0.16 percent, and 0.54 percent lower than the status quo to having a PVRR that is [redacted] percent, [redacted] percent, [redacted] percent, and [redacted] percent higher than the status quo portfolio during the 2023 to 2050 planning period in the Low Gas, Mid CTG; Mid Gas, Mid CTG; High Gas, Mid CTG; and Low Gas, High CTG scenarios, respectively.[294] Regardless, there are also a number of likely costs that are not included in that PVRR analysis.

First, the PVRR analysis based on the updated bids only included cost updates for the NGCC units. However, it is highly likely that other capital costs increased from the time applications were filed in this matter, including those related to environmental compliance. This is an economically reasonable assumption given the current inflationary

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[292] *See* LG&E/KU's Response to Post-Hearing Request, Item 20, *PSC PH LGE KU Attach to Q20 - Attach 1 LOLE EUE PVRR of Alternative Portfolios – CONFIDENTIAL.xlsx*, OriginalBid Tab.

[293] *See* LG&E/KU's Response to Post-Hearing Request, Item 20, *PSC PH LGE KU Attach to Q20 - Attach 1 LOLE EUE PVRR of Alternative Portfolios – CONFIDENTIAL.xlsx*, UpdatedBid Tab.

[294] LG&E/KU's Response to Staff's Post-Hearing Request, Item 20, *PSC PH LGE KU Attach to Q20 - Attach 1 LOLE EUE PVRR of Alternative Portfolios – CONFIDENTIAL.xlsx* (showing the Absolute PVRRs for the status quo portfolio, Portfolio a, and the portfolio with Mill Creek 5, Portfolio d, both with and without the updated bids). To calculate the percentage differences, the Commission simply subtracted the Absolute PVRR for Portfolio d from the Absolute PVRR for Portfolio a, divided the difference by the Absolute PVRR for Portfolio d, and multiplied 100.

environment as evidenced by the increase in the bids for the NGCC units as well as the fact that numerous other coal units across the United States will be subject to more stringent NOx limitations. As with the NGCC units, the cost of SCRs is likely to increase in the short term due to increased demand and limited supply of contractors associated with Good Neighbor Plan compliance, as well as the short time to comply with the rule. More importantly, the PVRR analyses assumed that Mill Creek 1 and 2, Haefling 1 and 2, and Paddy's Run 12, which were placed in service in the late 1960s and 1970s, will be able to remain in service through 2050 without significant additional compliance and upgrade costs.[295] In light of the current regulatory environment and the age of the units, the Commission finds that is not a reasonable assumption. Directionally, any additional environmental compliance costs for those units incurred until 2050, particularly ones that would not apply to natural gas-fired generation, only further adds to the cost-effectiveness of adding Mill Creek 5 as opposed to continuing operation of Mill Creek 1 and 2, Haefling 1 and 2, and Paddy's Run 12

When LG&E/KU filed its initial application in this matter, it recognized the risk of potential Greenhouse Gas regulation to both the coal and NGCC units and stress tested various portfolios with $15 and $25 per ton Greenhouse Gas emission abatement costs.[296] LG&E/KU indicated that a Greenhouse Gas cost favored portfolios with Mill Creek 5 and Brown 12 because they are lower emitting than the units they would be replacing.[297] Thus, as would be expected, adding a Greenhouse Gas emission

[295] *See* Wilson 2023-00122 Testimony, Exhibit SB4-1, Table 11 (showing the stay open cost of the units through the planning period).

[296] Wilson 2023-00122 Testimony, Exhibit SAW-1 at 13, 20, 31-32, 60-61.

[297] Wilson Direct Testimony, Exhibit SAW-1 December 2022 at 31-33.

abatement cost to the portfolios discussed above would favor the portfolio in which Mill Creek 5 is added to replace Mill Creek 1 and 2, Haefling 1 and 2, and Paddy's Run 12 over the status quo portfolio.

Specifically, retiring Mill Creek 1 and 2, Haefling 1 and 2, and Paddy's Run 12 and replacing them with Mill Creek 5 becomes the lower-cost option in all six fuel price scenarios with a $15 per ton Greenhouse Gas emission abatement cost. Increasing the emission abatement cost simply makes Mill Creek 5 more cost-effective as compared to the status quo,[298] because the status quo portfolio with Mill Creek 1 and 2, Haefling 1 and 2, and Paddy's Run 12 has significantly higher emissions than the portfolios in which Mill Creek 5 replaces those units.[299]

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[298] In response to the Commission Staff's Post-Hearing Request for Information, Item, LG&E/KU performed several production cost study runs with portfolios defined by the Commission Staff. Included in these were Portfolio a, which had no retirements and no additions, and Portfolio d, which had retirements of Mill Creek 1 and 2, Haefling 1 and 2, and Paddy's Run12, with the addition of only Mill Creek 5. These studies were run under the six fuel price scenarios used throughout the case, and with a cost of Greenhouse Gas emission abatement of $0/ST CO2.

To assess the impact of Green House Gas Regulation on the cost-effectiveness of Portfolio d as compared to Portfolio a, Company workpaper PSC PH LGE KU Attach to Q20 - Attach 2 CONFIDENTIAL Workpapers.zip, CONFIDENTIAL, FinancialModel, *CONFIDENTIAL_20230505_FinancialModel_0314_D01_UpdatedBid.xlsx* was used to determine the total CO2 emissions by year for Portfolios a and d under the six fuel price scenarios. Two price scenarios ($15/ST CO2 and $25/ST CO2) were then analyzed starting in 2030 consistent with LG&E/KU's stress testing. A NPV calculation was then done using LG&E/KU's-assumed discount rate of 6.43 percent. The estimated cost of abatement based on LG&E/KU's stress test was then added to the Absolute PVRRs for Portfolio a and d with the updated bids provided in the excel sheet entitled PSC PH LGE KU Attach to Q20 - Attach 1 LOLE EUE PVRR of Alternative Portfolios – CONFIDENTIAL.xlsx. Portfolio d was lower cost than Portfolio a in all six fuel price scenarios for both the $15 and $25 prices, as shown in the following table:

[redacted]

[299] *See* LG&E/KU's Response to Staff's Post-Hearing Request, Item 20, *CONFIDENTIAL_20230505_FinancialModel_0314_D01_UpdatedBid.xlsx* (showing the emissions associated with both of the portfolios).

The risk of Greenhouse Gas regulation is also more certain now than it was when LG&E/KU filed their application in this matter. On May 23, 2023, the EPA proposed CO2 emission limits for new and existing electric generating units that would impact the cost-effectiveness of LG&E/KU's existing coal units, including Mill Creek 1 and 2, Ghent 2, and Brown 3, and the NGCC units LG&E/KU is proposing in this matter. Pursuant to the EPA's proposed emission limits, Mill Creek 1 and 2, Ghent 2, and Brown 3 would not be able to operate beyond 2032 without significantly reducing the capacity factor of the unit and agreeing to retire the unit by 2035; adding natural gas co-firing to the unit and agreeing to retire the unit by 2040; or adding CCS to the unit with 90 percent capture efficiency.[300] In order to operate beyond 2032, the EPA's proposed regulation would require new NGCC units, like those proposed by LG&E/KU in this matter, to (1) operate at a capacity factor of 50 percent and operate as an intermediate-load unit indefinitely with a CO2 emission restriction of no more than 1,000 lbs./MWh gross; (2) meet a lowered 680 lbs./MWh gross CO2 emission standard, which EPA stated will be achievable by co-firing low-Greenhouse Gas hydrogen; or (3) meet the 90 lbs./MWh gross CO2 emission standard by 2035, which EPA stated will be achievable by adding CCS to the units.[301]

In response to requests for information in this case, LG&E/KU modeled the effects of the EPAs proposed Greenhouse Gas rules. To do so, among other things, LG&E/KU placed a 50 percent capacity factor limit on new NGCC units and a $0, $15, and $25 per ton Greenhouse Gas emission abatement cost on the coal units it was proposing to retire. LG&E/KU argued that the 50 percent capacity factor limit on the new NGCC units, which

[300] LG&E/KU's Response to Staff's Fifth Request, Item 2.

[301] LG&E/KU's Response to Staff's Fifth Request, Item 2.

it had the ability to model, is the worst case compliance scenario for those units because it would choose another option such as adding CCS if it was ultimately cheaper, and assuming no additional CO2 regulation, the Commission finds that assumption to be reasonable because it was modeling the new NGCC units in a manner that complied with the proposed rule and in which costs could be known. Conversely, LG&E/KU noted that the only compliance option that would permit the coal units to operate beyond 2040 was adding CCS, and indicated that they modeled compliance for the coal units with a cost per ton of CO2 emitted, because they did not have reliable cost estimates for CCS, though they argued it would be unreasonable to assume no cost of compliance even with the 45Q tax credits for CCS.[302]

LG&E/KU's modeling of the Greenhouse Gas rules indicated that the optimum portfolio from their Stage One analysis (retiring all units as proposed, constructing the two NGCC units, and adding 637 MW of solar PPAs) had a lower PVRR in all scenarios with a cost of Greenhouse Gas emission abatement than every portfolio that they reviewed as part of their Stage One stress testing analysis, including the lowest-cost portfolio that did not retire all coal units (adding SCR to Ghent Unit 2, retiring all other units as planned, adding Mill Creek 5, and adding 637 MW of solar PPAs).[303] LG&E/KU's modeling of the proposed Greenhouse Gas rules also indicated that a portfolio that added Mill Creek 5 to replace Mill Creek 2 (Portfolio 3) would have a PVRR between $289 million and $1.331

[302] LG&E/KU's Response to Staff's Fifth Request, Item 2; *see also* LG&E/KU's Response to Joint Intervenor's First Request, Item 1; LG&E/KU's Response to Sierra Club's First Request, Item 20 (noting that converting a coal unit to gas was not economical).

[303] LG&E/KU's Response to Staff's Fifth Request, Item 2, Table 2, Table 3, CONFIDENTIAL_20221209_FinancialModel_0308_Ph2_D01_PSC5-2.xlsx; *see also* Wilson 2023-00122 Testimony, Exhibit SAW-1 at 28-29, Table 10, Table 11 (indicating the resources that are included in the portfolios used for stress testing).

billion lower than an otherwise identical portfolio that kept Mill Creek 2 without SCR (Portfolio 6) in the scenarios in which a $15 or $25 per ton cost of complying with the Greenhouse Gas rules was imposed on Ghent 2, Brown 3, and Mill Creek 2.[304] The lower PVRR in all scenarios indicates Mill Creek 5 would be much more cost-effective than Mill Creek 2 if the proposed Greenhouse Gas rules or something similar become effective.

One problem with comparing the referenced Portfolio 3 to Portfolio 6 to establish that operating Mill Creek 5 would be more cost-effective under the proposed Greenhouse Gas rules is that the modeling of Portfolio 3 did not include the updated costs of Mill Creek 5. However, the updated bid increased the PVRR effect of adding Mill Creek 5 by [redacted] during the planning period,[305] such that the referenced Portfolio 3 would still be less expensive than Portfolio 6 during the planning period in all scenarios in which a cost of complying with the Greenhouse Gas rules is imposed on the coal units. The Commission also notes that replacing Mill Creek 2 with Mill Creek 5, which is the only difference between the referenced Portfolio 3 and Portfolio 6, is not a one-for-one trade. Mill Creek 5 is more than two times larger than Mill Creek 2; and while Mill Creek 5 would be limited to a 50 percent capacity factor under the proposed rules, that limitation would not reduce its energy generation by 50 percent as compared to scenarios without the

[304] These amounts were determined by calculating the differences between the amounts reflected in Table 2 of LG&E/KU's Response to Staff's Fifth Request, Item 2 for Portfolio 3 and Portfolio 6. The resources included in the portfolios are discussed in Exhibit SAW-1 at pages 28 through 29.

[305] By looking at the differences in the costs of various portfolios provided in the Excel file titled *PSC PH LGE KU Attach to Q20 - Attach 1 LOLE EUE PVRR of Alternative Portfolios – CONFIDENTIAL.xlsx* filed in response to Staff's Post-Hearing Request, Item 20, both with and without the updated bids, it is possible to determine the incremental effect of the updated bids on the cost of the portfolios throughout the planning period. As would be expected, because the change is only in a capital cost that would not affect unit dispatching, the incremental changes caused by the updated bids for each unit are the same in all portfolios. Thus, that incremental change can be applied to other PVRR analyses to reflect the effect of the updated bids on those portfolios.

proposed Greenhouse Gas rules, because it would not operate at a 100 percent capacity factor even without an emissions restriction.[306] Thus, assuming a cost of compliance with the proposed Greenhouse Gas rules or similar rules for the coal units, a portfolio that replaces Mill Creek 1 and 2, Haefling 1 and 2, and Paddy's Run 12 with Mill Creek 5 would cost LG&E/KU's customers less in all fuel price scenarios.

The Commission also agrees with LG&E/KU that it is unreasonable to assume no cost of compliance with the Greenhouse Gas rules for coal plants. The EPA estimated as part of its analysis of the proposed Greenhouse Gas rules that it would cost between $26 and $35 per ton of CO2 emitted and removed for the installation and operation of CCS at Ghent 2, Mill Creek 1 and 2, and Brown 3 even with the 45Q tax credit.[307] The EPA has an incentive, if anything, to underestimate the cost of compliance with the proposed Greenhouse Gas rules to justify emission limits, so the Commission does not believe such numbers would be purposefully inflated. Further, as noted by LG&E/KU's witnesses, there are likely significant indirect costs to adding CCS to LG&E/KU's coal units such as the need for pipelines to transport CO2, the energy used to operate CCS, and the potential for additional environmental controls that could be needed to operate CCS.[308] Thus, the Commission finds that a portfolio that replaces Mill Creek 1 and 2, Haefling 1 and 2, and Paddy's Run 12 with Mill Creek 5 would be cheaper in all fuel price

[306] *See* LG&E/KU's Response to Staff's Post-Hearing Request, Item 23(a) (indicating that the NGCC units were operating at capacity factors of between 64 percent and 84 percent in the various fuel price scenarios without any cost for greenhouse gas regulation included in the modeling).

[307] EPA Doc. EPA-HQ-OAR-2023-0072-0061_attachment_3, which can be found at https://downloads.regulations.gov/EPA-HQ-OAR-2023-0072-0061/attachment_3.xlsx; *see also* Sierra Clubs Post-Hearing Brief at 65-67.

[308] Sinclair Rebuttal Testimony at 64-65; Aug. 25, 2023 HVT at 06:54:22-06:57:56.

scenarios in the event the proposed Greenhouse Gas rules or similar rules are implemented under similar timeframes.

Mill Creek 1 and 2 are also subject to the risk of additional environmental compliance costs that were not considered as part of the PVRR analysis discussed above. For instance, as previously mentioned, there is substantial likelihood that Mill Creek 1 and 2 will be subject to additional NOx limitations due to local nonattainment. The Louisville MSA is also subject to air quality limitations for fine particulate matter. The EPA's current standard of attainment for fine particulate matter is 12 micro grams per cubic meter (µg/m3), which the Louisville MSA currently meets narrowly. For instance, one monitoring station in the Louisville MSA registered fine particulate matter in the range of 10.1 to 10.4 µg/m3 on average for the three-year periods ending in 2020, 2021, and 2022, and it has measured 11.2 µg/m3 on average for the period running from January 2021 to August 9, 2023.[309] However, the EPA has proposed a new standard for fine particulate matter of 9-10 µg/m3 and has requested comment on a standard of 8 µg/m3.[310] If the new standard is adopted and the Louisville MSA is deemed to be in non-attainment, LMAPCD will be required to develop a state implementation plan indicating means and methods it will use to get back into attainment, including potential restrictions on plants like Mill Creek.[311] Mill Creek 1 and 2 also face environmental compliance risk related to compliance with the regional Clean Air Act's Regional Haze Rule, which could require SCRs to limit NOx emissions and modern flue gas desulfurization systems to limit

[309] Aug. 25, 2023 HVT at 11:02:13, Louisville Metro Hearing Exhibit 1 at 2.

[310] Aug. 25, 2023 HVT at 11:06:45-11:08:00.

[311] Aug. 25, 2023 HVT at 11:08:00.

Sulphur-dioxide emissions that affect visibility at national parks such as Mammoth Cave.[312] Given that regulatory gauntlet, Mill Creek 1 and 2 are likely to face additional environmental compliance risks in the near term, which will increase their costs as compared to Mill Creek 5.

The Commission recognizes that there is some uncertainty as to the nature and timing of additional limitations that are likely to be imposed on Mill Creek 1 and 2. However, given the currently proposed rules and the history of increasing regulation, the Commission finds that it is unreasonable to assume no additional compliance costs for Mill Creek 1 and 2 through 2050. Rather, the Commission finds that Mill Creek 1 and 2 are likely to face significant additional environmental compliance costs in the next 10 years to comply with regulatory limits and as those environmental compliance costs are recovered from customers,[313] they should be considered.[314] Thus, for the reasons discussed above, the Commission finds that a portfolio in which Mill Creek 5 replaces Mill Creek 1 and 2, Haefling 1 and 2, and Paddy's Run 12 is the least-cost portfolio in the most likely future scenarios, and therefore, finds that the construction of Mill Creek 5 will not result in wasteful duplication and that a CPCN should be granted for that unit.

With respect to LG&E/KU's proposed Mercer Solar Facility and Marion Solar Facility, the Commission notes that their addition to the portfolio with Mill Creek 5 will

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[312] *See* Aug. 25, 2023 HVT at 01:05:00-01:08:50; Imber Rebuttal Testimony, Imber Rebuttal Exhibit at 2.

[313] *See* KRS 278.183.

[314] *See* Case No. 2020-00290, *Electronic Application of Bluegrass Water Utility Operating Company, LLC for an Adjustment of Rates and Approval of Construction* (Ky. PSC Aug. 2, 2021), Order at 20-24 (indicating that allowing parties to break up projects to compare against alternatives in piecemeal fashion avoids the review of CPCNs anticipated by KRS 278.020(1)).

result in savings in three of the six fuel price scenarios LG&E/KU studied, even without considering a cost of Greenhouse Gas regulation compliance or income from the sale of RECs.[315] Further, LG&E/KU produced evidence that a $5 per MWh REC price would reduce the costs of the owned solar by about $35 million over the planning period and that a $10 per MWh REC price would reduce the costs of the owned solar by about $70 million over the planning period.[316] Further, LG&E/KU's modeling indicated that a $15 per ton Greenhouse Gas emission abatement cost would increase the favorability of portfolios with the owned solar facilities by about $100 million over the planning period.[317] Those numbers, which represent likely scenarios, would make the PVRRs for the owned solar favorable in four of six fuel price scenarios and would make the PVRRs nearly equal in the other two fuel price scenarios.[318] Further, while LG&E/KU's proposed PPAs are more cost-effective than the utility owned solar, the Commission agrees with LG&E/KU that there is an execution risk, which justifies LG&E/KU building and owning some solar directly. Thus, the Commission finds that the Mercer Solar Facility and Marion Solar Facility are needed to reduce costs and mitigate fuel price and regulatory risk and will not

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[315] *See* LG&E/KU Response to Staff's Post-Hearing Request, Item 20, *PSC PH LGE KU Attach to Q20 - Attach 1 LOLE EUE PVRR of Alternative Portfolios – CONFIDENTIAL.xlsx* (Portfolio d and e show the Mill Creek 5 portfolio with and without the proposed owned solar and indicate that the PVRR is lower in three of six fuel price scenarios with owned solar).

[316] *See* Wilson Direct Testimony, Exhibit SAW-1 December 2022, Table 17.

[317] *See* Wilson Direct Testimony, Exhibit SAW-1 December 2022, Table 17.

[318] *See* LG&E/KU Response to Staff's Post-Hearing Request, Item 20, *PSC PH LGE KU Attach to Q20 - Attach 1 LOLE EUE PVRR of Alternative Portfolios – CONFIDENTIAL.xlsx* (Portfolio d and e show the Mill Creek 5 portfolio with and without the proposed owned solar and indicate that the PVRRs without the solar is about $110 to $180 million more favorable in three fuel price scenarios and is less favorable in the other 3 fuel price scenarios and that moving the favorability based on Greenhouse abatement and RECs as discussed above would make the owned solar more favorable in more scenarios).

result in wasteful duplication, and therefore, finds that CPCNs should be granted for those facilities.

The Commission notes that Sierra Club and Joint Intervenors criticized the resources LG&E/KU included in their resource assessment modeling and stress testing, and argued that additional resources should have been included. However, Joint Intervenors' witness, Anna Sommer, was the only witness other than those presented by LG&E/KU to conduct resource assessment and reliability modeling and propose alternative portfolios that she contended could serve load at a lower cost than the portfolio proposed by LG&E/KU. She acknowledged in her testimony that other than converting Mill Creek 2 to a gas unit, which she included in her modeling, that there were no other generation resources that LG&E/KU should have considered as part of their resource assessment modeling due to timing constraints associated compliance with the Good Neighbor Plan.[319] Further, Ms. Sommer indicated that based on her modeling, a portfolio that included a single NGCC unit, along with solar, was the lowest-cost alternative she identified that was not considered by the LG&E/KU.[320] Thus, while the Commission does have some concerns about the manner in which new resources were identified, the Commission does not conclude that limits on the resources or portfolios that LG&E/KU modeled would affect the effect the selection of a single NGCC unit to replace Mill Creek 1 and 2, Haefling 1 and 2, and Paddy's Run 12.

The Commission further notes that Kentucky Coal Association criticized the manner in which LG&E/KU projected coal prices. Specifically, Kentucky Coal Association

[319] Aug. 29, 2023 HVT at 15:32:30.

[320] Sommer Direct Testimony at 29-35; s*ee* Aug. 29, 2023 HVT at 15:30:00 (explaining how she came up with the portfolios).

indicated that LG&E/KU should have projected coal prices directly as opposed to projecting coal prices based on a relationship between coal and natural gas prices. Kentucky Coal Association's witness, Emily Medine, indicated that the coal price forecasts should have considered the supply curves for each coal type, demand for coal in domestic and export markets, and the price of alternative energy sources.[321] Ms. Medine acknowledged that there is a relationship between coal and natural gas markets but stated that the methodology used by LG&E/KU is not based on an established methodology for forecasting coal prices.[322] Ms. Medine alleged that LG&E/KU used the coal to gas price methodology to support its desired result and as proof noted that LG&E/KU's coal price projections from their 2021 IRP, which Ms. Medine indicated were projected directly, were significantly lower than coal price projections in this case.[323] Ms. Medine also stated that due to the longer-term nature of coal contracts, utilities are able to hedge against price changes in a way that is not possible with natural gas contracts.[324]

LG&E/KU argued that an important factor in an economic analysis comparing coal to natural gas units is the spread between the prices of those fuels.[325] Due to uncertainties in fuel prices through 2050, LG&E/KU argued that it is important to use a range of fuel price scenarios and that their methodology did that by evaluating a broad range of relationships (i.e., coal-to-gas price ratios) between coal prices and projected

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[321] Medine Testimony at 37.

[322] Medine Testimony at 39.

[323] Medine Testimony at 39-40; Aug. 29, 2023 HVT 09:23:10 (in which Medine discusses her review of the coal price projections in the IRP).

[324] Medine Testimony at 37-38; *but see* Aug. 29, 2023 HVT at 09:18:25-09:20:00 (in which Medine did not directly answer when asked whether the volatility would matter in a long term projection).

[325] Rebuttal Testimony of David Sinclair (Sinclair Rebuttal Testimony) (filed Aug. 9, 2023) at 50.

gas prices.[326] LG&E/KU indicated that the range of coal-to-gas price ratios they used in this matter were based on historical relationships between its actual coal and gas prices.[327] LG&E/KU also asserted that coal prices are tied much more closely to gas prices than they have been historically because the reduction in coal mines has resulted in reduced coal-on-coal competition that previously kept coal prices in check when natural gas prices rose.[328] As an example, LG&E/KU indicated that their two largest coal suppliers supplied 79 percent of their coal in 2022, whereas their two largest suppliers in 2010 supplied only 45 percent of its coal.[329] LG&E/KU also argued that when looking at prices over long periods, it is not necessary to attempt to project random fluctuations but rather is important to test the possible ranges of long-term price trends.[330]

The Commission finds that LG&E/KU's evidence regarding the relationship between coal and natural gas prices is credible. The average ratios[331] and a recent spike in coal prices that followed a spike in natural gas prices[332] both indicate a relationship between coal and gas prices. Further, LG&E/KU provided evidence showing a correlation between a reduction in the number of coal mines and its increased reliance on two suppliers who are now providing 79 percent of LG&E/KU's coal, which supports its

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[326] Sinclair Rebuttal Testimony at 51.

[327] Wilson Direct Testimony, Exhibit SAW-1 December 2022 at 56-58.

[328] Sinclair Rebuttal Testimony at 52-53.

[329] Sinclair Rebuttal Testimony at 53.

[330] Sinclair Rebuttal Testimony at 54.

[331] *See* Wilson Direct Testimony, Exhibit SAW-1 December 2022 at 57, Table 36 (reflecting a six and ten year coal to gas price ratios that are relatively consistent).

[332] *See* Wilson Direct Testimony, Exhibit SAW-1 December 2022 at 57, Figure 11 (showing a significant spike in coal prices following a similar spike in natural gas prices as well as other less dramatic price changes that appear to correspond),

assertion of reduced coal on coal competition that, if anything, could tie coal prices more closely to gas prices.[333] Thus, whether projected separately or together, the Commission believes that it is reasonable to assume a relationship between coal prices and natural gas prices.

Further, while Ms. Medine is correct that coal price projections in the 2021 IRP were significantly lower than coal price projections in this case, natural gas price projections in the 2021 IRP were also significantly lower,[334] though the difference is presumably due to the spike in both prices in 2021 to 2022.[335] Further, the coal and natural gas price projections in the 2021 IRP, which Ms. Medine discussed favorably, followed a ratio consistent with the ratios used by LG&E/KU in this case.[336] LG&E/KU also considered a spread of fuel price scenarios and ratios both above and below the historical correlation between coal prices and fuel prices, which permitted stress testing of projected prices.[337] Finally, it is not necessary to capture volatility in long-term forecasts, because it should balance out over time.[338] Thus, the Commission finds that LG&E/KU's fuel price scenarios were reasonable and that they did not affect the reasonableness for LG&E/KU's production cost and financial modeling.

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[333] Sinclair Rebuttal Testimony at 53.

[334] *See* LG&E/KU's Response to Staff's Post Hearing Request, Item 18, PSC PH LGE KU Attach to Q18 - CONFIDENTIAL 2021 IRP Fuel Prices.xlsx (showing the coal and gas prices from the 2021 IRP).

[335] *See* Wilson Direct Testimony, Exhibit SAW-1 December 2022 at 57, Figure 11.

[336] *See* LG&E/KU's Response to Staff's Post Hearing Request, Item 18 (noting that the average coal to gas price ratio in the base fuel price scenario in the 2021 IRP was 0.58, which is similar to the mid coal to fuel price ratio of 0.57 used in this case, and that the range of ratios is also similar—0.49 to 0.75 in the 2021 IRP as compared to 0.52 to 0.84 in this case).

[337] Wilson Direct Testimony, Exhibit SAW-1 December 2022 at 56-58.

[338] Aug. 29, 2023 HVT at 09:18:25.

Furthermore, the Commission declines to direct LG&E/KU to join an RTO in this matter. LG&E/KU are under an ongoing obligation to periodically study RTO membership, and recently filed their interim review of such an option. However, whatever benefits there may be to RTO membership, a capacity market is not a replacement for a vertically integrated utility having sufficient generation capacity owned or contracted for to serve their retail customers. The Commission expects our vertically integrated utilities, in furtherance of their service, and now reliability, obligations to replace generation capacity with "steel in the ground" or a Purchase Power Agreement. To expect otherwise would open the door to runaway costs and turning over our reliability fate to out-of-state and unaccountable entities. Relatedly, the Commission declines to take up any proposal to depend on unstudied generation imports in this case, particularly in furtherance of compliance with Senate Bill 4. However, the Commission exhorts LG&E/KU to study the value and opportunities that transmission (regional and interregional) and imports provide in their next IRP. In their past IRPs, any serious consideration or discussion of transmission has been notably absent. Further failure to discuss these options in future proceedings may result in the Commission's own investigation into LG&E/KU's processes in this regard.

CPCN for Brown BESS

LG&E/KU argued that Brown BESS enhances reliability in scenarios both with and without solar, but they acknowledged that it was not the most cost-effective means to enhance reliability. LG&E/KU argued that Brown BESS's primary benefit would be to provide them valuable operational experience with a technology at utility scale that will likely be vital to integrating large amounts of renewable generation reliably in the future.

A number of Intervenors argued that Brown BESS was too costly and that the operational experience LG&E/KU will gain is not worth the cost. Conversely, some Intervenors, such as Walmart and Sierra Club, argued that the cost of Brown BESS is worth the operational experience.

The Commission is concerned about the cost of Brown BESS but also recognizes that LG&E/KU has limited resource options in light of the EPA regulations discussed above and constraints on those resources are likely to increase. For instance, as LG&E/KU's generation resources age, environmental regulations will likely prevent LG&E/KU from building certain new resources, as they essentially already do with respect to new coal plants, while simultaneously making existing resources uneconomic due to increasing compliance cost. Given those likely limitations, the Commission finds that the operational experience LG&E/KU will be able to obtain from Brown BESS is worth the expected cost. The Commission believes that such experience is necessary given the current regulatory environment, and that it will allow LG&E/KU and the Commission to make more informed decisions in the future regarding whether it makes sense from an economic standpoint to make more significant investments in battery storage in the future, which could ultimately save customers money in the long term and will help ensure that LG&E/KU can continue to provide service in a more resource constrained environment. Thus, the Commission finds that Brown BESS is needed and will not result in wasteful duplication, and therefore, a CPCN should be granted for Brown BESS. Regardless of the granting of a CPCN, as discussed below, additional regulatory requirements will be necessary prior to the construction and operation of Brown BESS. The Commission agrees with a number of parties to this case that given the need for the BESS, namely

operational experience, the Commission intends on setting subsequent reporting requirements related to LG&E/KU's operational experiences with the facility. Those requirements will be developed and determined in subsequent proceedings closer to the start of Brown BESS operations.

Retirement Approvals

LG&E/KU proposed and requested authority to retire Mill Creek 1, Mill Creek 2, Brown 3, Ghent 2, Haefling 1 and 2, and Paddy's Run 12 with the intention of replacing those units with two NGCC units and owned solar, while at the same time entering into four Solar PPAs and building Brown BESS. However, as discussed above, the Commission denied a CPCN for Brown 12, LG&E/KU's proposed NGCC unit at Brown station, because the Commission found there is currently no need that justified its construction and the retirement of Ghent 2 and Brown 3. Thus, LG&E/KU have failed to establish that approval to retire Brown 3 and Ghent 2 should be given at this time. However, as discussed in more detail below, the Commission finds that LG&E/KU met their burden and rebutted the presumption against retirement with respect to Mill Creek 1, Mill Creek 2, Haefling 1 and 2, and Paddy's Run 12 but that they failed to establish that approval to retire Brown 3 and Ghent 2 should be given at this time.

Replacement Capacity that is Dispatchable and Reliable

To rebut the presumption against the retirement of a fossil fuel generating unit, KRS 278.264(2)(a) requires LG&E/KU to establish that it will replace the retired unit with new electric generating capacity that:

> 1. Is dispatchable by either the utility or the regional transmission organization or independent system operator responsible for balancing load within the utility's service area;

> 2. Maintains or improves the reliability and resilience of the electric transmission grid; and
>
> 3. Maintains the minimum reserve capacity requirement established by the utility's reliability coordinator.

The parties disagree regarding the interpretation of most of the provisions of KRS 278.264(2)(a), particularly as to the meaning of "dispatchable" and what is necessary to establish that the replacement generation capacity will maintain or improve reliability and resilience.

Dispatchable

The term dispatchable was not defined in Senate Bill 4 and is not defined elsewhere in KRS Chapter 278. Further, the Commission finds that its meaning is ambiguous as used in the statute. As noted by Kentucky Coal Association, the term dispatchable has often been used to refer to thermal resources for which the generation is not dependent on factors outside of humans control such as the sun or wind.[339] However, as noted by LG&E/KU as well as other Intervenors in this matter, dispatchable is also used by RTOs and other grid operators, including both MISO and PJM, to refer to resources that are able to respond to dispatch instructions.[340] Thus, there is ambiguity regarding which usage should apply to the term as used in the statute.

The goal when interpreting a statute is to effectuate the intent of the General Assembly.[341] A statute should be read in context and under the assumption that the

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[339] *See* Kentucky Coal Association's Post-Hearing Brief at 4-5, FN 4; *see also* Exhibit SAW-1 (in which LG&E/KU uses the term dispatchable to refer to its thermal resources).

[340] *See* Wilson 2023-00122 Testimony, Exhibit SB4-1 at 7; LG&E/KU's Response to Staff's Fourth Request, Item 4.

[341] *King Drugs, Inc. v. Commonwealth*, 250 S.W.3d 643, 645 (Ky. 2008).

legislature intended it to be read as a whole such that each of its constituent parts have meaning.[342] A statute should be liberally construed to carry out the intent of the legislature. However, the language of the statute, as defined by the General Assembly or as generally understood in the context of the matter under consideration, is presumed to reflect the intent of the legislature.[343] Statutory terms should be interpreted based on their plain and ordinary meaning, unless they are technical terms, in which case they should be given the accepted technical meaning.[344] "Where legislative intent is apparent on the face of a statute and there is no question as to its meaning, 'there is no room for construction, liberal or otherwise.'"[345]

Here, the context in which dispatchable is used supports an interpretation that does not exclude intermittent resources, because it refers to generation capacity as being dispatchable by the RTO or ISO[346] for balancing load. Based on the definitions provided by LG&E/KU, both RTOs that are present in the state, MISO and PJM, consider intermittent resources that can respond to dispatch instructions when their fuel source is available to be dispatchable from the perspective of the transmission operator.[347] If the

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[342] *Wilson v. Commonwealth*, 628 S.W.3d 132, 140 (Ky. 2021); *see also University of Louisville v. Rothstein*, 532 S.W.3d 644, 648 (Ky. 2017) *quoting Cosby v. Commonwealth*, 147 S.W.3d 56, 59 (Ky. 2004))(stating that "[w]e have a duty to accord to words of a statute their literal meaning unless to do so would lead to an absurd or wholly unreasonable conclusion").

[343] *Kindred Healthcare v. Harper*, 642 S.W.3d 672, 680 (Ky. 2022); *see also Revenue Cabinet v. O'Daniel*, 153 S.W.3d 815, 819 (Ky. 2005) (indicating that the plain language of the statute controls unless it is ambiguous).

[344] *Hause v. Com.*, 83 S.W.3d 1, 8 (Ky. App. 2001).

[345] *Kindred Healthcare*, 642 S.W.3d at 680.

[346] For purposes of this determination, the legal distinctions between RTO and ISO are immaterial.

[347] *See* Wilson 2023-00122 Testimony, Exhibit SB4-1 at 7; LG&E/KU's Response to Staff's Fourth Request, Item 4.

RTOs that operate in the state would consider a resource to be dispatchable, then it is reasonable to infer that a statute that refers to generation capacity as being dispatchable by an RTO was intended to adopt a similar technical meaning.

However, it is actually not necessary to resolve the meaning of the term dispatchable in this case, because KRS 278.264(2)(a) does not prohibit a utility from constructing non-dispatchable resources. Rather, it only requires that the generation capacity that will replace the retired units to meet the reliability, resilience, and reserve margin requirements in KRS 278.264(2)(a)2 and KRS 278.264(2)(a)3 be dispatchable. As discussed in more detail below, replacing Mill Creek 1 and 2, Haefling 1 and 2, and Paddy's Run 12 with Mill Creek 5, which is dispatchable even under Kentucky Coal Association's more narrow definition, would, at minimum, maintain the reliability and resilience of the electric transmission grid and would satisfy any reserve margin requirement. Thus, KRS 278.264(2)(a)2 and KRS 278.264(2)(a)3 are satisfied without including resources that Kentucky Coal Association contends are not dispatchable.

Maintains or Improves Reliability and Resilience

With respect to KRS 278.264(2)(a)2, LG&E/KU indicated that they have a robust process for establishing the minimum economic reserve margin they use for planning purposes and asserted that a LOLE aligned with its minimum economic reserve margin—3.57 days every 10 years—maintains adequate reliability.[348] LG&E/KU then argued that any plan that has a lower LOLE than the LOLE aligned with its minimum economic reserve margin satisfies the requirement of KRS 278.264(2)(a)2 that a utility replace retired generation units with new electric generating capacity that maintains or improves the

[348] *See* Wilson 2023-00122 Testimony, Exhibit SB4-1 at 13.

reliability and resilience of the electric transmission grid. Assuming LOLE is an appropriate reliability metric, Kentucky Coal Association argued the replacement generation capacity must maintain or improve on the reliability of the existing system such that the LOLE of the resulting system, excluding non-dispatchable resources, must be lower than the LOLE of the existing system.

The Commission generally agrees with Kentucky Coal Association that a utility must establish that their system with the retirements and replacement generation will be at least as reliable as the current system to satisfy the requirements of KRS 278.264(2)(a)2. The term "maintains" as used in KRS 278.264(2)(a)2, is ambiguous, because taken alone it could reasonably be read as either requiring a utility to maintain some minimum reliability or resiliency standard or requiring a utility to maintain the current level of reliability or resiliency. However, by using the phrase "maintains or improves" reliability, KRS 278.264(2)(a)(2) indicates that the replacement generation must maintain or improve the current level of reliability, because the use of the term "improves" makes logical sense if it is referring to the current state of the system but would not make sense if referring to a requirement to meet a minimum established reliability standard.

The Commission concludes that LOLE, along with Loss of Load Hour (LOLH) and Expected Unserved Energy (EUE), is an appropriate measure of the reliability and resiliency for various portfolios. Further, LOLE, LOLH and EUE are modeled using the operating characteristics of a utility's actual and proposed units, the equivalent force outage rates of a utility's actual and proposed units, and a mix of load and unit availability scenarios to provide an idea regarding how a portfolio will perform under various

circumstances.[349] Taken together, those metrics should reflect the likelihood that a system will experience a loss of load event, as well as the duration and magnitude of the loss of load events that a system might experience in the relevant periods.[350] In fact, as noted above, LOLE is a commonly accepted metric to assess the reliability of integrated electric systems, including RTOs. Thus, assuming the validity of assumptions included in the model, LOLE, along with LOLH and EUE, provide a reasonable basis for measuring the reliability and resilience of a utility's generation and transmission assets.

Conversely, simply comparing the installed capacity, ramp rates, and other characteristics of individual units does not provide a clear picture of the reliability and resilience of the entire electric transmission grid. This is illustrated by LG&E/KU's discussion of their portfolios that meet their minimum economic reserve margin in Exhibit SB4-1, which have LOLE's that vary wildly from 3.57 days every 10 years to over 15 days every 10 years.[351] Thus, while the operating characteristics of units may be useful in understanding the results of modeling, comparing the operating characteristics of individual units, taken alone, would generally not be useful in determining whether replacement generation capacity will maintain the reliability and resilience of the electric transmission grid as a whole as required by KRS 278.264(2)(a)3.

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[349] *See* Wilson 2023-00122 Testimony, Exhibit SB4-1 at 22 (discussing how LG&E/KU modeled LOLE using SERVM with 49 load scenarios and 300 unit availability scenarios); Aug. 24, 2023 H.V.T at 09:10:20 (indicating that LG&E/KU's LOLE and EUE models include the operating characteristics of units).

[350] LOLE, as modeled by LG&E/KU, provides the number of days that LG&E/KU would expect its system to lose load in a 10 year period. LOLH provides the number of hours in which available resources may not meet the demand of the system during a ten year period. EUE provides the expected unserved energy during a ten year period. *See* LG&E/KU Response to Staff's Post-Hearing Request, Item 20, *PSC PH LGE KU Attach to Q20 - Attach 1 LOLE EUE PVRR of Alternative Portfolios – CONFIDENTIAL.xlsx* (reflecting that LG&E/KU calculated LOLE, LOLH, and EUE based on a 10 year period).

[351] Wilson 2023-00122 Testimony, Exhibit SB4-1 at 13.

Here, a portfolio that retires Mill Creek 1 and 2, Haefling 1 and 2, and Paddy's Run 12 and adds Mill Creek 5 would be marginally more reliable than LG&E/KU's current portfolio, assuming the addition of SCRs on coal units in both scenarios.[352] Specifically, even without any of the planned solar or dispatchable DSM, the portfolio that adds Mill Creek 5 would have an LOLE of 0.70 days every 10 years, an LOLH of 1.43 hours every 10 years, and a EUE of 290 MWh every 10 years.[353] Conversely, the portfolio that keeps Mill Creek 1 and 2, Haefling 1 and 2, and Paddy's Run 12 would have an LOLE of 0.74 days every 10 years, an LOLH of 1.46 hours every 10 years, and a EUE of 280 MWh every 10 years.[354] Based on this information, the portfolio with Mill Creek 5 would be slightly less likely to have a loss of load event, and the loss of load event would be slightly shorter in the events they occurred, but the magnitude of unserved energy in a loss of load event would be slightly larger. Thus, the Commission finds a portfolio that retires Mill Creek 1 and 2, Haefling 1 and 2, and Paddy's Run 12 and adds Mill Creek 5 would, at minimum, maintain the reliability and resilience of the electric transmission grid.

The Kentucky Coal Association and Joint Intervenors, among other parties, argued that LG&E/KU failed to properly consider risks associated with fuel assurance and correlated outages for the NGCC units. The Commission does believe that there is fuel assurance risk with respect to natural gas units and questions the manner in which

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[352] *See* LG&E/KU's Response to Post-Hearing Request, Item 20, *PSC PH LGE KU Attach to Q20 - Attach 1 LOLE EUE PVRR of Alternative Portfolios – CONFIDENTIAL.xlsx* (which shows the LOLE, LOLH, EUE for both portfolios).

[353] *See* LG&E/KU's Response to Post-Hearing Request, Item 20, *PSC PH LGE KU Attach to Q20 - Attach 1 LOLE EUE PVRR of Alternative Portfolios – CONFIDENTIAL.xlsx*.

[354] *See* LG&E/KU's Response to Post-Hearing Request, Item 20, *PSC PH LGE KU Attach to Q20 - Attach 1 LOLE EUE PVRR of Alternative Portfolios – CONFIDENTIAL.xlsx*.

LG&E/KU accounted for correlated outages but does generally believe that LG&E/KU's modeling of the reliability of the NGCC units was reasonable. Specifically, LG&E/KU assumed an unforced capacity value for the new NGCC units of about 93.4 percent, which would indicate a forced outage rate of over 6 percent.[355] Conversely, LG&E/KU's only current NGCC unit, Cane Rune 7, has had an equivalent forced outage rate of 0.74, 1.04, 1.60, 0.34 and 5.38 in each of the last 5 years.[356] Further, while fuel assurance issues will not be reflected in the equivalent forced outage rate, LG&E/KU indicated that the pipeline issue caused by Winter Storm Elliot has never happened before[357] and that such an incident would have had an limited effect on its equivalent forced outage rate.[358] Thus, a forced outage rate of over 6 percent was likely overstated if anything.

While correlated outages, for instance due to a cold weather event, may not be reflected in the way that LG&E/KU modeled reliability, because it was based on the outage rates of individual units, the evidence regarding outages during Winter Storm Elliot indicated that correlated outages associated with extreme weather events can affect units of all fuel types. Further, the Commission notes that with the retirement of Mill Creek 1 and 2 and the addition of Mill Creek 5, LG&E/KU's coal units will still make up the majority of their generation fleet. Thus, the Commission does not believe that risk of correlated outages and LG&E/KU's treatment of the same in its modeling effected modeling of the reliability of Mill Creek 5, especially given the arguably overstated forced outage rate for

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[355] *See* LG&E/KU Response to Staff's First Request, Item 89(c), 13-PSC_DR1_LGE_KU_Attach_to_Q89(c)_-_ICAP_UCAP.pdf (providing the ICAP and UCAP capacity values); LG&E/KU Response to Staff's Second Request, Item 50.

[356] LG&E/KU Response to Post Hearing Requests for Information, Item 10.

[357] *See* LG&E/KU Response to Staff's Fourth Request, Item 8.

[358] *See* LG&E/KU Response to Post Hearing Requests for Information, Item 8.

Mill Creek 5, which would tend to disfavor it from a reliability perspective. Regardless of the modeling, in order to address the risk of fuel assurance, LG&E/KU shall take all reasonable measures to mitigate the cost of Mill Creek 5, while prioritizing the addition of dual fuel capability at the facility for no more than the most recent received quote for the costs of the entire facility. Dual fuel capability, at no incremental cost (in excess of the most recent bid) will cost-effectively further minimize any risk of limited fuel availability.

While the Commission does not believe that LG&E/KU would retire Ghent 2 and Brown 3 without obtaining a CPCN for Brown 12 or some other replacement generation capacity, the Commission notes that LG&E/KU could not maintain reliability and resilience of the electric transmission grid without Ghent 2 and Brown 3 without other material changes to their systems. As noted above, LG&E/KU's system is marginally more reliable with Mill Creek 5. However, if only Brown 3 were retired without additional replacement generation, the reliability of LG&E/KU's system would drop significantly without the addition of generation capacity or a material reduction in demand, and would be lower than the status quo even with the addition of LG&E/KU's proposed owned solar and solar PPAs.[359] Further, while a portfolio that retires Brown 3, Mill Creek 1 and 2, Haefling 1 and 2, and Paddy's Run 12 and adds Mill Creek 5, owned solar, solar PPAs, and Brown BESS could achieve the same reliability as the status quo portfolio,[360] Brown 3 is necessary to support Ghent 2 in the event that SCR cannot be added in time if it is

[359] *See* LG&E/KU's Response to Post-Hearing Request, Item 20, *PSC PH LGE KU Attach to Q20 - Attach 1 LOLE EUE PVRR of Alternative Portfolios – CONFIDENTIAL.xlsx* (Portfolios l, m, and n show the reliability of the portfolio discussed above without Brown Unit 3).

[360] *See* LG&E/KU's Response to Post-Hearing Request, Item 20, *PSC PH LGE KU Attach to Q20 - Attach 1 LOLE EUE PVRR of Alternative Portfolios – CONFIDENTIAL.xlsx* (Portfolios o shows the reliability of this portfolio).

deemed needed. Thus, the Commission finds that LG&E/KU failed to establish that it can maintain reliability without Brown 3 and Ghent 2, and therefore, finds that their application to retire those units should be denied.

Maintains the Minimum Reserve Capacity Requirement

Kentucky Coal Association argued that LG&E/KU failed to present evidence regarding the reserve capacity requirement established by their reliability coordinator. LG&E/KU stated that they have contracted with TVA to be their reliability coordinator and that TVA has not established a minimum reserve capacity requirement. LG&E/KU argued that by presenting evidence that there is no minimum reserve capacity requirement applicable to them that they have presented evidence that they have complied with the minimum reserve capacity requirement.

The Commission agrees with LG&E/KU that they indicated that their reliability coordinator has not established a minimum reserve margin requirement.[361] If a utility's reliability coordinator has not established a minimum reserve margin, then any replacement capacity would meet the minimum reserve margin, because it is zero or nonexistent. An alternative reading that a utility could never satisfy KRS 278.264(2)(a)3 if its reliability coordinator does not establish a minimum reserve margin would prohibit such utilities from ever retiring generation. Thus, the Commission finds that LG&E/KU satisfied the requirements of KRS 278.264(2)(a)3 by indicating that their reliability coordinator has not established a minimum reserve margin requirement, though as noted above a portfolio that retires Mill Creek 1 and 2, Haefling 1 and 2, and Paddy's Run 12

[361] *See* Wilson 2023-00122 Testimony, Exhibit SB4-1 at 16-17.

and adds Mill Creek 5, would have an LOLE of 0.70, which is lower than the LOLE that both MISO and PJM use to establish their minimum reserve margin requirements.

Harm to Ratepayers and Cost Savings

To rebut the presumption against the retirement of a fossil fuel generating plant, KRS 278.264(2)(b) requires a utility to establish that:

> The retirement will not harm the utility's ratepayers by causing the utility to incur any net incremental costs to be recovered from ratepayers that could be avoided by continuing to operate the electric generating unit proposed for retirement in compliance with applicable law;

Similarly, KRS 278.264(3) states that:

> The utility shall at a minimum provide the commission with evidence of all known direct and indirect costs of retiring the electric generating unit and demonstrate that cost savings will result to customers as a result of the retirement of the electric generating unit.

Nearly every party to this case argued that LG&E/KU met these burdens, in whole or in part, by establishing that their preferred portfolio, or some variation thereof, had a lower PVRR than the status quo portfolio. However, Kentucky Coal Association argued that KRS 278.264(2)(b) requires a rate impact analysis to establish that there is no harm to ratepayers, that PVRR improperly excludes sunk costs from the cost of new generation by including the cost in the PVRR for the new portfolio and the status quo portfolio, and that KRS 278.264(3) requires LG&E/KU to include costs other than those that affect the rates of customers such as the loss of tax base, jobs at companies that supply the plants, and other local and State economic losses.

The Commission notes that KRS 278.264(2)(b) essentially defines harm to ratepayers as "causing the utility to incur any net incremental costs to be recovered from

ratepayers that could be avoided by continuing to operate the electric generating unit proposed for retirement in compliance with applicable law." Importantly, KRS 278.264(2)(b) does not prohibit a utility from incurring any new costs as a result of the retirement, because such a requirement would effectively prohibit a utility from retiring any generation regardless of its age, reliability, or cost.[362] Rather, KRS 278.264(2)(b) prohibits a utility from incurring any "net incremental costs to be recovered from ratepayers" due to the retirement. Thus, the Commission reads KRS 278.264(2)(b) as requiring it to measure harm to customers based on the difference between the cost to customers of providing service with and without the proposed retirement, i.e., a portfolio that can provide adequate service and reliable service with the retired units and a portfolio that can provide adequate service and reliable service without the retired units.

The Commission also does not conclude that KRS 278.264(3) requires an additional cost-benefit analysis that considers costs other than those that would be paid by customers in rates. First, KRS 278.264(3) explicitly states that a utility must demonstrate that "that cost savings will result to customers." On its face, that language indicates that the concern being addressed by KRS 278.264(3) is that additional costs would be passed on to customers through rates. Further, pursuant to KRS 278.040, the Commission's jurisdiction is limited to the rates and services of utilities, so absent a clear directive, it would be illogical to assume that a statute requiring a utility to demonstrate

[362] Since KRS 278.264(a) requires that a retired electric generating unit be replaced with new electric generating capacity, there will always be a new cost incurred with a utility retires an electric generating unit. Thus, a corresponding requirement that a retirement not result in new costs, as opposed to net incremental costs as the statute plainly says, would effectively result in a prohibition against the retirement of any electric generating units, which the legislature clearly did not intend.

savings to customers was intended to require the Commission to look at anything other than the rate effects of retirement decisions.

In fact, KRS 278.264(3) appears to be indicating what a utility must file to meet the requirements of KRS 278.264(2)(b). KRS 278.264(2) establishes a presumption against the retirement of electric generating units and states that the presumption may rebutted by evidence sufficient for the Commission to find that the requirements of KRS 278.264(2)(a), (b), and (c) are met. Conversely, KRS 278.264(3) establishes a procedural requirement not a substantive requirement for rebutting the presumption. Thus, KRS 278.264(3), in stating that a utility must provide evidence of direct and indirect costs of retiring an electric generating unit and demonstrate cost savings, is further explaining the requirement in KRS 278.264(2)(b) that the retirement not harm the utility's ratepayers by causing the utility to incur any net incremental costs to be recovered from ratepayers.

LG&E/KU, as well as most of the Intervenors, relied on PVRR to establish that their preferred portfolio would be lowest cost to customers. PVRR is calculated by identifying known costs of various portfolios over a planning period and determining the revenue requirement effect of those costs in each year of a planning period and then discounting future years to account for the time value of money. The revenue requirement is the amount that all customers will be charged as a result of costs incurred by a utility. Calculating the PVRR for various portfolios over a long period of 20 to 30 years allows utilities and the Commission to compare the overall cost of those portfolios on all customers through periods that correspond more closely to the lives of the assets involved. This method of determining the cost of a portfolio to customers has been used

the Commission for decades, including in numerous cases in which the Commission approved upgrades to coal plants in lieu of gas units with higher PVRRs, and was supported by LG&E/KU and Joint Intervenors' modeling witnesses (along with nearly every party in this case).

Kentucky Coal Association argued that utilities should perform rate impact analyses to establish that replacement generation capacity will not harm ratepayers. However, the first step of setting rates is the determination of the revenue requirement, which is the total amount that the utility will recover from all customers through the rates being established. The revenue requirement is then allocated among customer classes based on the cost of service, i.e., the cost to provide service to a particular customer class, and rates are designed based on that allocation to allow the utility to recover its full revenue requirement. A rate impact analysis would be difficult over the timeframes that it makes sense to use when looking at generation resources, because cost of service would have to be estimated in each year, and it ultimately would show the same effect on customers overall as simply looking at revenue requirement. Thus, the Commission finds that PVRR is the appropriate method for measuring the cost of portfolios to LG&E/KU's ratepayers, and therefore, whether the retirement and resulting replacement generation will result in net incremental costs to ratepayers.[363]

[363] Kentucky Coal Association's witness indicated that a rate impact analysis will show the return on and return of the capital investments made for the new generation as well as the effect of sunk costs. Aug. 29, 2023 HVT at 09:12:54-09:15:54. However, a major component of the revenue requirement, and therefore, a major component of a PVRR, is the return on and return of the capital investment. Further, the sunk costs, such as the undepreciated value of existing plant, are considered as part of a PVRR analysis, because it assumes that the sunk costs will be paid if the existing plant remained in service and if the existing plant is taken out of service such that a new plant will only be considered to be cost effective if the additional costs from the new plant and the sunk costs from the old plant are lower than the cost of operating the old plant. Including the sunk costs in that manner actually disfavors the new generation resource, as it should if the sunk costs will be paid even if the new generation resource is built and the old resource is retired.

To compare the PVRR of various portfolios, LG&E/KU conducted an extensive analysis of cost of various portfolios both in their applications and in response to extensive requests for information, as well as across six days of an evidentiary hearing. The Commission finds that LG&E/KU presented all known costs of its proposed retirements and replacement portfolios as part of that analysis and noted risks and uncertainties about such costs where appropriate. As discussed in more detail above, the Commission finds based on the evidence presented that a portfolio that retires Mill Creek 1 and 2, Haefling 1 and 2, and Paddy's Run 12 and replaces them with Mill Creek 5 has a lower PVRR than the status quo in the most likely future scenarios. As noted by LG&E/KU, the cost-effectiveness of Mill Creek 5 as compared to those resources is illustrated by the support of representatives of LG&E/KU's largest customers, KIUC and Walmart, both of which have a significant interest in LG&E/KU's rates and support the retirement of those units and the construction of Mill Creek 5. Thus, the Commission finds that the retirements of Mill Creek 1 and 2, Haefling 1 and 2, and Paddy's Run 12 will result in cost savings and will not result in harm to the ratepayers by causing the utility to incur any net incremental costs to be recovered from ratepayers that could be avoided by continuing to operate the electric generating unit proposed for retirement in compliance with applicable law.

Retirement Decision Not Result of Financial Incentives or Benefits

To rebut the presumption against the retirement of a fossil fuel generating unit, KRS 278.264(2)(b) requires a utility to present sufficient evidence for the Commission to find that "[t]he decision to retire the fossil fuel-fired electric generating unit is not the result of any financial incentives or benefits offered by any federal agency." The evidence in this case indicated that the decisions to retire Mill Creek 1 and 2, Haefling 1 and 2, and

Paddy's Run 12, and the decision to build Mill Creek 5 were not the result of any financial incentives or benefits offered by any federal agency. The evidence simply indicates that retiring Mill Creek 1 and 2, Haefling 1 and 2, and Paddy's Run 12, and building Mill Creek 5 is likely to be the most cost-effective way to serve load through the planning period. Further, rather than being financially incentivized by a federal agency, NGCC units have been subject to proposed regulations intended to increase their costs and reduce their emissions much like, though to a lesser extent than, coal units.

The only argument that was made in this matter to support a finding that the decision was a result of financial incentives or benefits offered by any federal agency was KCA's argument that LG&E/KU's decision was supported by solar resources that received tax credits from the federal government that reduced their costs. However, given the General Assembly's concern about the cost of rates, the Commission questions whether including cost savings for a new generation resource that will be passed on to customers in a cost-benefit analysis to assess the lowest cost portfolio for serving customers would be considered a financial incentive or benefit that resulted in the decision to retire a fossil fuel-fired electric generating unit.[364] Though, it is unnecessary to resolve that issue in this case, because the cost of solar resources are not necessary to establish that a portfolio in which Mill Creek 5 replaces Mill Creek 1 and 2, Haefling 1 and 2, and Paddy's Run 12 is least-cost. Thus, the Commission finds that the decision to retire the fossil fuel-fired electric generating unit is not the result of any financial incentives or benefits offered by any federal agency.

[364] Joint Intervenors' Post-Hearing Brief at 58.

For the reasons discussed above, the Commission finds that LG&E/KU presented sufficient evidence to rebut the presumption against retirement for Mill Creek 1 and 2, Haefling 1 and 2, and Paddy's Run 12, and therefore, finds that LG&E/KU's request to retire the units should be approved. Conversely, the Commission finds that LG&E/KU failed to rebut the presumptions with respect to Ghent 2 and Brown 3, and therefore, finds that LG&E/KU's request to retire Ghent 2 and Brown 3 should be denied.

As discussed above, LG&E/KU's retirement of Mill Creek 1 and 2, Haefling 1 and 2, and Paddy's Run 12 is based on, in part, their plan to replace the units, particularly Mill Creek 1 and 2, with Mill Creek 5. However, the Commission recognizes that LG&E/KU intends to retire Mill Creek 1 at the end of 2024 as it has planned to do since 2020 and that they intends retire Haefling 1 and 2, and Paddy's Run 12, which together account for 47 MW of summer capacity and 55 MW of winter capacity, only if they suffer a significant mechanical issue, which they expect to occur in 2025 based on their history with similar units. Conversely, LG&E/KU is planning to place Mill Creek 5 in service in 2027. While the Commission understands that it would not be economic or necessary to serve load[365] to invest in Mill Creek 1 to keep it open until 2027 or to invest in Haefling 1 and 2, and Paddy's Run 12, LG&E/KU should not proceed with the retirement of Mill Creek 1, Haefling 1 and 2, and Paddy's Run 12 if circumstances change such that the timing of Mill Creek 5 is expected to be materially delayed, including if the permit for Mill Creek 5 is denied, and regardless of the timing of Mill Creek 5, LG&E/KU should not proceed with

[365] As noted above, Mill Creek 1, which generally cannot operate with Mill Creek 2 in the summer, was planned to be retired in the 2024, in part, because the capacity was noted needed at that time. With BlueOval's load, LG&E/KU likely needs either Mill Creek 1 or replacement capacity. However, LG&E/KU is not expected to have to serve BlueOval's full load until at least 2027 at which time it expects Mill Creek 5 to be online.

the retirement of Haefling 1 and 2, and Paddy's Run 12 unless they experience a material mechanical issue that makes them uneconomical to repair. LG&E/KU should also not proceed with the retirement of Mill Creek 2 until construction of Mill Creek 5 is completed.

3. DECLARATORY ORDER AND COST RECOVERY FOR SOLAR PPAS

LEGAL STANDARD

Declaratory Order and Applicability of Commission Precedent

LG&E/KU requested a declaratory order that the Solar PPAs did not require prior Commission approval. Under 807 KAR 5:001, Section 19, the Commission has the authority to issue a declaratory order with respect to the jurisdiction of the Commission and the applicability to a person, property or state of facts or meaning and scope of an order, an administrative regulation of the Commission, or provisions of KRS Chapter 278.

Regarding the standard of review of the Solar PPAs, it is well settled that the Commission reviews a request to approve a PPA as an evidence of indebtedness under KRS 278.300.[366] When the purpose and use of a PPA is to acquire new generation, the Commission will review the agreement pursuant to the CPCN statute, KRS 278.020.[367] The review under KRS 278.300 arises from the financial impact on ratepayers; the review under KRS 278.020 arises from the operational impact on ratepayers.

[366] Case No. 2009-00545, *Application of Kentucky Power Company for Approval of Renewable Energy Purchase Agreement for Wind Energy Resources Between Kentucky Power Company and FPL Illinois Wind, LLC* (Ky. PSC June 28, 2010); Case No. 2013-00144, *Application of Kentucky Power Company for Approval of the Terms and Conditions of the Renewable Energy Purchase Agreement for Biomass Energy Resources Between the Company and ecoPower Generation-Hazard LLC; Authorization to Enter into the Agreement; Grant of Certain Declaratory Relief; and Grant of All Other Required Approvals and Relief* (Ky. PSC Oct. 10, 2013).

[367] *Ky. Utilities Co. v. Public Service Comm'*n, 252 S.W.2d at 890.

Three elements must be met for the Commission to approve a PPA as an evidence of indebtedness under KRS 278.300(3):

1. The PPA is for some lawful object within the corporate purposes of the utility purpose, with the lawful object deemed as the acquisition of new generation;[368]

2. The PPA is necessary or appropriate for or consistent with the proper performance by the utility of its service to the public and will not impair its ability to perform that service; and

3. The PPA is reasonably necessary and appropriate for such purpose.

Under KRS 278.020(1), a utility must establish a need for additional generation and the absence of wasteful duplication.

Relevant to this matter, in Case No. 2020-00016, the Commission found that certain solar PPAs did not require Commission approval under KRS 278.300 or KRS 278.020.[369] In discussing the applicable standard and whether KRS 278.300 applied, the Commission reviewed relevant precedent. In Administrative Case No. 350, the Commission encouraged, but did not require, utilities to file long-term PPAs for pre-approval pursuant to KRS 278.300, stating:

> In addition, these contracts may well require prior approval under KRS 278.300 if they constitute evidence of indebtedness. In particular, the inclusion in such contracts of minimum payment obligations or take/pay provisions may necessitate prior approval.[370]

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[368] Case No. 2009-00545, June 28, 2010, Order at 6.

[369] Case No. 2020-00016, *Electronic Application of Louisville Gas and Electric Company and Kentucky Utilities Company for Approval of a Solar Power Contract and Two Renewable Power Agreements to Satisfy Customer Requests for a Renewable Energy Source Under Green Tariff Option #3* (Ky. PSC May 8, 2020).

[370] Administrative Case No. 350, *The Consideration and Determination of the Appropriateness of Implementing a Ratemaking Standard Pertaining to the Purchase of Long-Term Wholesale Power by*

In subsequent reviews of PPAs, the Commission affirmed that the KRS 278.300 standard of review applied when the agreements included minimum obligation or take/pay provisions. In Case No. 2014-00321 the Commission explained that:

> The minimum payment obligations in the form of fixed capacity and O&M charges and the requirement that [LG&E/KU] take a minimum amount of production over the term of the Agreement constitute long-term financial obligations that are appropriate for Commission review and approval under KRS 278.300.[371]

In Case No. 2020-00016, the Commission determined that the facts presented were substantively different from precedential cases and that neither KRS 278.300 nor KRS 278.020 applied.[372] First, the solar PPA in Case No. 2020-00016 did not include a minimum obligation or take/pay provision.[373] Further, the solar PPA in Case No. 2020-00016 was for nonfirm energy only and included no capacity.[374] LG&E/KU's contractual obligation to pay was based upon the actual receipt of output at a specified point of delivery and the payment amount was determined by the amount of output delivered.[375] Additionally, the price that LG&E/KU paid for the output was the same price that LG&E/KU would receive from commercial customers with a contract to purchase 75 percent of the output, so LG&E/KU would recover the cost for 75 percent of output directly from those

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Electric Utilities as Required in Section 712 of the Energy Policy Act of 1992 (Ky PSC. Oct. 25, 1993), Order at 8–9.

[371] Case No. 2014-00321, *Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Declaratory Order and Approval Pursuant to KRS 278.300 for a Capacity Purchase and Tolling Agreement* (Ky. PSC Nov. 4, 2004), Order at 6–7.

[372] Case No. 2020-00016, May 8, 2020 Order at 11–12.

[373] Case No. 2020-00016, May 8, 2020 Order at 12.

[374] Case No. 2020-00016, May 8, 2020 Order at 12.

[375] Case No. 2020-00016, May 8, 2020 Order at 12.

customers.[376] Regarding the 25 percent of energy from the solar PPA allocated to native load, LG&E/KU proposed to pass any costs, offset by REC sale revenue associated with that 25 percent of energy, through LG&E/KU's FAC, which is subject to scrutiny in periodic reviews.[377] The Commission concluded that the solar PPA approved in Case No. 2020-00016 did not constitute an evidence of indebtedness because the 75 percent of output would be recovered directly from two industrial customers that the PPA was obtained to serve, and the costs of the 25 percent allocated to native load will be scrutinized through periodic FAC proceedings.[378] For those same reasons, the Commission concluded that the solar PPA would not have the same operational impact on LG&E/KU ratepayers as the construction of new generation and thus declined to apply KRS 278.020(1) as a standard of review for the PPA in that proceeding.[379]

Recovery of Solar PPA Costs

LG&E/KU requested to recover the costs for the solar PPAs in FAC proceedings, which is the manner approved in Case No. 2020-00016 for recovery of the costs of that solar PPA.

Pursuant to Commission regulation 807 KAR 5:056, Section 1(3), net energy costs for economy energy purchases, exclusive of capacity or demand charges, may be recovered in FAC proceedings when economy energy is purchased on an economic dispatch basis. In a 2002 decision, the Commission defined economy energy purchases

[376] Case No. 2020-00016, May 8, 2020 Order at 12.

[377] Case No. 2020-00016, May 8, 2020 Order at 12.

[378] Case No. 2020-00016, May 8, 2020 Order at 12.

[379] Case No. 2020-00016, May 8, 2020 Order at 12.

recoverable through FAC review as "purchases that an electric utility makes to serve native load, that displace its higher cost of generation, and that have an energy cost less than the avoidable variable generation cost of the utility's highest-cost generating unit available to serve native load during that FAC expense month."[380]

In contrast, the Commission defined non-economy energy purchases as "purchases made to serve native load that have an energy cost greater than the avoided variable cost of the utility's highest cost generating unit available to serve native load during that FAC expense month."[381] The Commission has consistently held that an electric utility can recover through the FAC review "only the lower of the actual energy cost of the non-economy purchased energy or the fuel cost of its highest cost generating unit available to be dispatched to serve native load during the reporting expense month."[382]

LG&E/KU'S REQUEST FOR A DECLARATORY ORDER AND COST RECOVERY

LG&E/KU requested a declaratory order that four Solar PPAs do not require Commission approval under KRS 278.300 or KRS 278.020, and that LG&E/KU can recover the cost of the Solar PPAs through their FAC mechanism under the same "highest cost unit calculation" approach approved in Case No. 2020-00016.[383] LG&E/KU

[380] Case No. 2000-00495-B, *An Examination by the Public Service Commission of the Application of the Fuel Adjustment Clause of American Electric Power Company from May 1, 2001 to October 31, 2001* (Ky. PSC May 2, 2002), Order at 4.

[381] Case No. 2000-00495-B, May 2, 2002 Order at 4.

[382] Case No. 2000-00495-B, May 2, 2002 Order at 5. *See also* Case No. 2016-00003, *An Examination of the Application of the Fuel Adjustment Clause of Kentucky Utilities Company from May 1, 2015 through October 31, 2015* (Ky. PSC July 7, 2016), Order at 2; and Case No. 2016-00004, *An Examination of the Application of the Fuel Adjustment Clause of Louisville Gas & Electric Company from May 1, 2015 through October 31, 2015* (Ky. PSC July 7, 2016), Order at 2.

[383] Application at 32.

proposed to enter into four nonfirm energy only PPAs for output of four solar facilities with combined capacity of 637 MW. The Solar PPAs are more specifically described as (1) a 138 MW 30-year PPA with ibV Energy Partners for a solar facility to be built in Hopkins County, Kentucky, and named Grays Branch; (2) a 280 MW 30-year PPA with ibV Energy Partners for a solar facility to be built in Hardin County, Kentucky and named Nacke Pike; (3) a 104 MW 20-year PPA with Clearway Energy for a solar facility to be built in Ballard County, Kentucky, and named Song Sparrow; and (4) a 115 MW 20-year PPA with BrightNight LLC for a solar facility to be built in Ballard County, Kentucky, and named Gage Solar.

LG&E/KU asserted that the Solar PPAs are identical to the solar PPAs approved in Case No. 2020-00016 because they are for non-firm energy only, and not for firm energy or capacity; LG&E/KU will not have capital, operating, or maintenance obligations associated with the PPAs; and LG&E/KU will not have a minimum purchase obligation.[384] LG&E/KU explained that they will purchase nonfirm energy under the Solar PPAs as available output at a fixed price per MWh.[385]

Of the four Solar PPAs, three contain a 60-day price re-opener clause that allow LG&E/KU or the solar PPA seller, or both, to reopen the PPA terms if solar energy prices increase or decrease above the contractual terms.[386] If the parties cannot agree on a new price within a specified period, the original PPA price remains in place and either

[384] Application at 31; Direct Testimony of Charles R. Schram (Schram Direct Testimony) (filed Dec. 15, 2023) at 7–8.

[385] Application at 31; Schram Direct Testimony at 7–8.

[386] Schram Direct Testimony at 8; Executed Solar PPAs (filed Mar. 1, 2023); LG&E/KU Motion for Reconsideration (filed Sept. 22, 2023).

party would have 30 days to terminate the PPA.[387] LG&E/KU explained that rising interest rates and rising costs of solar components increase the risk that the solar facilities may not be constructed.[388] LG&E/KU maintained that the price re-opener clause manages the solar execution risk that the facilities would not be built due to pricing and financing concerns.[389]

LG&E/KU asserted that the Solar PPAs are not, and should not be evaluated as, replacement generation under KRS 278.264.[390] LG&E/KU argued that the Solar PPAs are not dispatchable for KRS 278.264 purposes because LG&E/KU will not have the right to control the facilities output.[391] However, LG&E/KU included the output of the Solar PPAs in their reliability analysis, based upon LOLE, [392] and in the reserve margin analysis, conducted pursuant to KRS 278.264.[393] LG&E/KU also considered the cost of purchased power in their KRS 278.264 analysis of direct and indirect costs of unit retirements[394] and cumulative PVRR changes.[395]

In post-hearing briefing, LG&E/KU changed its position and requested to recover the Solar PPA costs through a rider, which is discussed below.

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[387] Schram Direct Testimony at 8.

[388] Direct Testimony of David Sinclair (Sinclair Direct Testimony) (filed Dec. 15, 2022) at 19–21.

[389] Sinclair Direct Testimony at 21–22.

[390] Direct Testimony of Lonnie Bellar (Bellar May 10, 2023 Direct Testimony) (filed May 10, 2023) at 10–11.

[391] Bellar May 10, 2023 Direct Testimony at 10–11.

[392] Bellar May 10, 2023 Direct Testimony at 14, Table 4.

[393] Bellar May 10, 2023 Direct Testimony at 14, Table 5.

[394] Bellar May 10, 2023 Direct Testimony at 20, Table 7.

[395] Bellar May 10, 2023 Direct Testimony at 21, Table 8.

INTERVENORS ARGUMENTS – SOLAR PPAS

Attorney General

The Attorney General did not file witness testimony. In briefing, the Attorney General argued that the Solar PPAs should be rejected because they do not satisfy the requirements for generation that replaces a retiring fossil fuel-fired generating unit established in KRS 278.264. The Attorney General asserted that the Solar PPAs do not satisfy the requirement established in KRS 278.264(2)(a)(1) that generation replacing a retired generating facility be dispatchable.[396] The Attorney General further asserted that the Solar PPAs will receive federal incentives, and thus must be rejected under KRS 278.246(2)(c), which states that the decision to retire a fossil fuel-fired electric generating unit is not the result of any financial incentives offered by any federal agency.[397] The Attorney General cited to a public comment filed into the record by Kentucky Senate President Robert Stivers that questioned whether LG&E/KU were receiving federal incentives or benefits to "provide solar power as a replacement for a portion of the power provided by fossil fuel-fired electric generating units," which is contrary to the provisions of KRS 278.264.[398]

The Attorney General argued that the Solar PPAs should be considered on their own merits and not as replacement generation.[399] The Attorney General maintained that, if the Commission approves the Solar PPAs, that the expense should not be recovered

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[396] Attorney General's Post-Hearing Brief at 35.

[397] Attorney General's Post-Hearing Brief at 35–36.

[398] Attorney General's Post-Hearing Brief at 36. *See also* Senate President Robert Stivers Public Comment (filed Aug. 18, 2023).

[399] Attorney General's Post-Hearing Brief at 36.

through the FAC, but instead through a methodology proposed by KIUC's witness, Lane Kollen, which is discussed below.[400]

KIUC

In briefing, KIUC explained that, although it originally opposed the Solar PPAs as not being in compliance with KRS 278.264, based on LG&E/KU's rebuttal testimonies, KIUC agreed that the Solar PPAs are not considered replacement generation subject to KRS 278.264.[401] KIUC also pointed to evidence in the record that under current PPA pricing the Solar PPAs will lower costs for ratepayers under five of six fuel cost scenarios.[402] Based on the changed position, KIUC stated that it does not oppose approval of the Solar PPAs.[403]

KIUC maintained that LG&E/KU should not recover costs of the Solar PPAs through the FAC process, but instead through a new Solar PPA rider.[404] KIUC argued that FAC recovery is entirely energy based, and thus is an appropriate mechanism for variable fuel costs, but inappropriate for recovery of Solar PPA costs because such costs are wholly fixed costs and do not include a variable cost component.[405] KIUC asserted that recovering demand-related fixed costs on an energy basis would burden high load

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[400] Attorney General's Post-Hearing Brief at 36.

[401] KIUC's Post-Hearing Brief (filed Sept. 22, 2023) at 2, 16–19.

[402] KIUC's Post-Hearing Brief at 16. *See also* Rebuttal Testimony of David S. Sinclair (Sinclair Rebuttal Testimony) (filed Aug. 9, 2023) at 11 and Exhibit DSS-2 at 1.

[403] KIUC's Post-Hearing Brief at 2, 16–19.

[404] Direct Testimony of Lane Kollen (Kollen Direct Testimony) (filed July 14, 2023) at 20-22; Aug. 28, 2023 Hearing Video Testimony (HVT) at 9:31:51 and 934:17; KIUC's Post-Hearing Brief at 16–19.

[405] Kollen Direct Testimony at 20-22; Aug. 28, 2023 Hearing Video Testimony (HVT) at 9:31:51 and 934:17; KIUC's Post-Hearing Brief at 16–19.

factor customers such as the KIUC members.[406] KIUC and its witness, Lane Kollen, recommended that Solar PPA costs be recovered through a rider mechanism, which would align with cost-of-service principles and results in a better regulatory review process.[407]

Walmart

Walmart did not file witness testimony. In briefing, Walmart supported approving the Solar PPAs but urged the Commission to deny recovery of Solar PPA costs through the FAC and instead approve recovery of costs in a manner that recognizes both the energy and capacity benefits of the Solar PPAs.[408] Walmart stated that it was not opposed to the mechanism rider proposed by KIUC, explaining that while generally opposed to riders, Walmart concluded that the benefits of appropriate cost allocation under a rider outweighed Walmart's general opposition to riders.[409]

Sierra Club

In briefing, Sierra Club argued that LG&E/KU had demonstrated that the Solar PPAs are necessary and beneficial for LG&E/KU ratepayers, and thus recommended that the Commission should approve the Solar PPAs.[410] Also in briefing, Sierra Club agreed with Joint Intervenors' witness, John Wilson, that the Inflation Reduction Act, which

[406] KIUC's Post-Hearing Brief at 16.

[407] Kollen Direct Testimony at 21–22; Aug. 28, 2023 HVT at 9:27:35 and 9:28:52; KIUC's Post-Hearing Brief at 17–19.

[408] Walmart Post-Hearing Brief (filed Sept. 22, 2023) at 2, 18.

[409] Walmart Post-Hearing Brief at 2, 18–19.

[410] Sierra Club's Post-Hearing Brief (filed Sept. 22, 2023) at 8, 109; Sierra Club's Post-Hearing Reply Brief (filed Oct. 4, 2023) at 27.

includes tax credits for solar projects and was enacted after LG&E/KU filed their application, was unlikely to have resulted in LG&E/KU pursuing the Solar PPAs.[411]

Louisville Metro and LFUGC

In briefing, Louisville Metro and LFUCG stated that they do not oppose a finding that Commission approval is not required for the Solar PPAs and cost recovery through the FAC based on Commission precedent in Case No. 2020-00016.[412]

Joint Intervenors

Joint Intervenors' witness, John Wilson, disputed whether federal incentives played a role in LG&E/KU's decision to obtain Solar PPAs, noting that LG&E/KU filed its application before the Inflation Reduction Act was enacted, and thus tax credits included in the Inflation Reduction Act are unlikely to have resulted in LG&E/KU pursuing the Solar PPAs.[413] Regarding dispatchability of the Solar PPAs, Mr. Wilson recommended that LG&E/KU include provisions for the right to curtail Solar PPA facilities in future contract negotiations.[414]

In briefing, Joint Intervenors stated their support for the Solar PPAs but, due to limited time and the number of contested issues, did not further address the issue.[415]

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[411] Direct Testimony of John Wilson (John Wilson Direct Testimony) (filed July 14, 2023) at 35–36.

[412] Louisville Metro and LFUGC's Post-Hearing Brief (filed Sept. 22, 2023) at 8; Louisville Metro and LFUGC's Post-Hearing Reply Brief (filed Oct. 4, 2023) at 2.

[413] John Wilson Direct Testimony at 35–36.

[414] John Wilson Direct Testimony at 12.

[415] Joint Intervenors' Post-Hearing Brief (filed Sept. 22, 2023) at 2.

Kentucky Coal Association

In written testimony, Kentucky Coal Association's witness, Emily Medine, raised concerns regarding the lack of a guarantee of performance at a specified price, must-take requirements, and the lack of a buy-out option in the Solar PPAs.[416] Ms. Medine argued that, given these issues, reliance on long-term PPAs was a high risk if the Solar PPAs became uneconomic.[417] Ms. Medine recommended that the Solar PPAs be rejected in their current form unless the contracts were revised to address concerns raised by Ms. Medine.[418]

In briefing, Kentucky Coal Association argued that the Solar PPAs, along with proposed LG&E/KU-owned solar facilities and Brown BESS, are not generating resources and should not be considered in an analysis of reliability of replacement generation under KRS 278.264.[419]

Mercer County Government

Mercer County Government intervened for the sole purpose of addressing the Mercer County property that is the subject of the stipulation discussed above. Mercer County Government took no position on this issue.

LG&E/KU RESPONSE TO INTERVENORS' ARGUMENTS – SOLAR PPAS

In rebuttal testimony and briefing, LG&E/KU disputed that they held out the Solar PPAs as replacement generation under KRS 278.264, rejecting the arguments of some

[416] Medine Direct Testimony at 50–52.

[417] Medine Direct Testimony at 34.

[418] Medine Direct Testimony at 52.

[419] Kentucky Coal Association's Post-Hearing Brief (filed Sept. 22, 2023) at 9; Kentucky Coal Association's Post-Hearing Reply Brief (filed Oct. 4, 2023) at 4.

Intervenors that the Solar PPAs are replacement generation under KRS 278.264.[420] LG&E/KU also rejected the objections to the Solar PPAs' contract terms by Kentucky Coal Association witness, Ms. Medine, arguing that implementing Ms. Medine's recommendations would likely result in the solar facilities never being built.[421]

LG&E/KU alleged that not entering into the Solar PPAs would have three adverse impacts: (1) the PVRR would be increased between $69 million and $734 million, depending upon the price of natural gas and pending EPA rules, without the Solar PPAs; (2) for every $1/REC, customers would save approximately $1.5 million annually with the Solar PPAs; and (3) without the Solar PPAs, carbon emissions increase by 1.4 million tons annually.[422] LG&E/KU asserted that the Solar PPAs would help mitigate the risks of the summer ozone season, during which certain coal-fired generating units cannot operate.[423]

In briefing, LG&E/KU asserted that there is "clear evidence" that the Solar PPAs have value as a hedge against fuel price and greenhouse gas cost risks, while noting there are risks that the PPA solar facilities will not be constructed due to increased interest rates and solar component costs.[424]

In rebuttal testimony regarding cost recovery, LG&E/KU indicated that Mr. Kollen's proposal to establish a rider to recover Solar PPA costs "may have merit as an alternative

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[420] Rebuttal Testimony of Lonnie E. Bellar (Bellar Rebuttal Testimony) (filed Aug. 9, 2023) at 11–12; LG&E/KU Post-Hearing Brief at 34.

[421] LG&E/KU Post-Hearing Brief at 46–47.

[422] Sinclair Rebuttal Testimony at 11–12.

[423] Sinclair Rebuttal Testimony at 12.

[424] LG&E/KU Post-Hearing Brief at 28.

means of cost recovery," but specific details are needed considering the impact on the FAC, After-the-Fact billing, and Off-System Sales adjustment clause.[425] In briefing, LG&E/KU revised their request to ask that the Commission to approve a PPA rider rather than recovery through the FAC based on KIUC's witness Lane Kollen's written and hearing testimony.[426]

As a basis for the changed position, LG&E/KU argued for a PPA rider similar to their existing Environmental Cost Recovery (ECR) and Retired Asset Recovery (RAR) riders, which includes rate scheduled divided into Group 1 or Group 2.[427] As a basis for the changed position, LG&E/KU agree that a rider would provide the Commission with the opportunity to assess and approve cost recovery for the PPAs before the cost is incurred rather than after the cost is incurred; would reduce risk to LG&E/KU that their costs are not fully recovered under the FAC; and would utilize the Group 1/Group 2 cost recovery methodology already in use for the ECR and RAR riders.[428] LG&E/KU agreed with Mr. Kollen that a rider better reflects that Solar PPAs provide "not only energy but also capacity" and result from fixed-cost investments by the developer even though PPA charges are stated in volumetric basis of price per kWh.[429] LG&E/KU pointed to Mr.

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[425] Rebuttal Testimony of Robert M. Conroy (Conroy Rebuttal Testimony) (filed Aug. 9, 2023) at 3.

[426] LG&E/KU's Post-Hearing Brief at 43.

[427] Group 1 includes customer classes residential service, residential time of day-energy service, residential time of day-demand service, volunteer fire department service, lighting service, restricted lighting service, lighting energy service, and traffic energy service. Group 2 includes customer classes general service, general time of day-energy service, general time of day-demand service, power service, time of day secondary service, time of day primary service, retail transmission service, fluctuating load service, electric vehicle supply equipment, electric vehicle charging service-level 2, electric vehicle fast charging service, and outdoor sports lighting service.

[428] LG&E/KU's Post-Hearing Brief at 43–44.

[429] LG&E/KU's Post-Hearing Brief at 44.

Kollen's hearing testimony that a rider removes disincentives for utilities to use PPAs that would otherwise be in the best interest of customers because of the risk to the utilities that full costs might not be recovered through the FAC.[430] LG&E/KU agreed with Mr. Kollen that using a PPA rider would remove price volatility through the FAC with the certainty of PPA costs on a total bill basis.[431] LG&E/KU asserted that customers would derive benefits of net proceeds from the sale of renewable energy credits attributable to the Solar PPAs.[432]

LG&E/KU requested that the Commission approve the concept of Solar PPA cost recovery through a PPA rider, but that details of a PPA rider be addressed in a separate proceeding.[433]

DISCUSSION AND FINDINGS – SOLAR PPAS

Applicability of Precedent

The Commission grants LG&E/KU's request for a declaratory Order and, based on the case record and being otherwise sufficiently advised, the Commission finds that the Solar PPAs are subject to the Commission's jurisdiction and require prior Commission approval under KRS 278.300 given the financial impact on customers and for the reasons discussed below. It has not escaped the Commission's notice that despite denying that the Solar PPAs provide capacity, LG&E/KU now acknowledges, in briefing and hearing testimony, that the Solar PPAs "provide not only energy but also capacity."[434] The record

[430] LG&E/KU's Post-Hearing Brief at 44. *See also* Aug. 29, 2023 HVT at 14:36:18.

[431] LG&E/KU's Post-Hearing Brief at 44.

[432] LG&E/KU's Post-Hearing Brief at 44.

[433] LG&E/KU's Post-Hearing Brief at 44.

[434] LG&E/KU's Post-Hearing Brief at 44.

is replete with references that LG&E/KU included the Solar PPAs' 637 MW in their economic analysis, LOLE reliability analysis, and target reserve margins to meet customer needs throughout the year.[435]

In addition to the above, the Solar PPAs at issue here represent a financial obligation that impact customers similar to the construction of new generation. The second prong of the legal standard established in KRS 278.300(3) is that the PPA must be necessary or appropriate for or consistent with the proper performance by the utility of its service to the public and will not impair its ability to perform that service. Until *In re PG&E Corporation*,[436] which allowed a utility to terminate an executory wholesale PPA through bankruptcy, the Commission is unaware of any instance in which a utility was able to default on a PPA. The financial impact of the Solar PPAs is greater than the Rhudes Creek Solar PPA at issue in Case No. 2020-00016. In the PPA at issue in Case No. 2020-00016 was a 100 MW solar PPA with the cost for 75 MW recovered from two industrial customers through a separate contract and only 25 MW recovered from customers through the FAC, net of RECs, and thus unlikely to impair LG&E/KU's ability to perform their service to the public. Here, the PPAs are for 647 MW, in the aggregate, between 20 and 30 years. If the Solar PPAs are executed, there is a significant financial risk that impacts ratepayers because, even if LG&E/KU cannot recover the costs, the costs remain on the books and impact LG&E/KU's financial performance. The Commission's statutory authority to ensure that PPAs will not impair a utility's ability to

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[435] *See* Bellar May 10, 2023 Direct Testimony at 14, Tables 4 and 5, at 20, Table 7, and at 21, Table 8.

[436] *In re PG&E Corporation*, 603 B.R. 471 (Bankr. N.D. Cal. 2019), order vacated, appeal dismissed sub nom. Pacific Gas & Electric Company v. FERC, 829 Fed. Appx. 751 (9th Cir. 2020) (rendered moot upon entry of bankruptcy court order confirmed a Chapter 11 plan).

perform its service to the public is fundamental to the Commission's exclusive and plenary authority under KRS 278.040.

Additionally, PPAs specific to an asset, especially when a balancing authority such as LG&E/KU has control over the ultimate dispatch of that asset, has effectively the same impact on a utility's balance sheet as a capital lease. Here, LG&E/KU is under a contractual obligation to pay so long as they receive energy through the Solar PPAs. Given the size of the 637 MW Solar PPAs and the 20- to 30-year duration, LG&E/KU's obligation to pay creates a risk for their retail customers.

For these reasons, and based upon the case record, the Commission finds that the Solar PPAs must receive prior Commission approval under KRS 278.300. The Commission further finds that LG&E/KU presented sufficient evidence to satisfy their burden of proof under KRS 278.300. LG&E/KU demonstrated that the PPAs are for a lawful object within the corporate purposes of the utility purpose, with the lawful object deemed as the acquisition of new generation. As discussed above, LG&E/KU provided evidence that the Solar PPAs will be utilized to meet customer needs throughout the year and were included in LG&E/KU's economic analysis, LOLE, and target reserve margin. For the same reason, the evidence of record supports the conclusion that the Solar PPAs are appropriate for or consistent with the proper performance by LG&E/KU of their service to the public and will not impair their ability to perform that service based upon cost recovery discussed below. Finally, the Solar PPAs are reasonably necessary and appropriate for such purpose of providing adequate service to LG&E/KU's customers, as customers require affordable energy for retail use. For these reasons, LG&E/KU's request for approval of the Solar PPAs is granted contingent on the price of the Solar

PPAs not exceeding 5 percent of the price as filed. If any of the Solar PPAs' price exceeds 5 percent of the price as filed, LG&E/KU must notify the Commission within ten days.

However, the Commission is not convinced that the Solar PPAs will have the same degree of operational impact on customers as they have financial impact, and thus declines to address the applicability of KRS 278.020 under the facts presented.

The Commission disagrees with LG&E/KU's assessment that the Solar PPAs at issue are not dispatchable under a plain reading of KRS 278.264. In hearing testimony, LG&E/KU confirmed that, as the balancing authority in their service area, they have the option and authority to curtail any generator due to safety, reliability, or voltage issues whether the generator was owned by LG&E/KU or another entity.[437] Regardless, as previously noted, since the Solar PPAs are not necessary to ensure compliance with KRS 278.264, the Commission need not make a definitive determination regarding the facilities' dispatchability.

Cost Recovery

Based on the evidence of record, the Commission concludes that it is premature to enter a decision on the method of cost recovery of the Solar PPAs. First, LG&E/KU requested to revise the cost recovery mechanism despite testimony that the specifics of the rider and the implications to the FAC should be considered[438] and proposed to use a capacity-based recovery mechanism after arguing that the Solar PPAs are energy only, and not capacity. Second, the Commission notes that the underlying solar facilities have not yet submitted applications for construction certificates with the Kentucky State Board

[437] Aug. 22, 2023 HVT at 1:51:50–1:57:48.

[438] Conroy Rebuttal Testimony at 3-4.

on Electric Generation and Transmission Siting, much less received all regulatory approvals. For these reasons, the Commission declines to address the specific method of cost recovery of the Solar PPAs at this time.

4. SITE COMPATIBILITY CERTIFICATES

LEGAL STANDARD

KRS 278.216 states that a utility cannot begin the construction of an electric generation facility capable of generating more than 10 MWs in the aggregate without first obtaining a site compatibility certificate from the Commission. The utility must submit a site assessment report (SAR) as prescribed in KRS 278.708(3) and (4), except that a utility that proposes to construct a facility on a site that already contains facilities capable of generating 10 MW or more of electricity shall not be required to comply with setback requirements established pursuant to KRS 278.704(3).

KRS 278.708(3) requires a SAR to include the following:

> (1) A description of the proposed facility that shall include a proposed site development plan that describes:
>
> a. Surrounding land uses for residential, commercial, agricultural, and recreational purposes;
>
> b. The legal boundaries of the proposed site;
>
> c. Proposed access control to the site;
>
> d. The location of facility buildings, transmission lines, and other structures;
>
> e. Location and use of access ways, internal roads, and railways; existing or proposed utilities to service the facility;
>
> f. Compliance with applicable setback requirements as provided under KRS 278.704(2), (3), (4), or (5); and
>
> g. Evaluation of the noise levels expected to be produced by the facility;
>
> (2) An evaluation of the compatibility of the facility with scenic surroundings;
>
> (3) The potential changes in property values and land use resulting from the siting, construction, and operation of the proposed facility for property owners adjacent to the facility;

> (4) Evaluation of anticipated peak and average noise levels associated with the facility's construction and operation at the property boundary; and
> (5) The impact of the facility's operation on road and rail traffic to and within the facility, including anticipated levels of fugitive dust created by the traffic and any anticipated degradation of roads and lands in the vicinity of the facility.

KRS 278.708(4) states that the SAR shall also suggest any mitigating measures to be implemented by the applicant to minimize or avoid adverse effects identified in the SAR.

KRS 278.216(3) states that the Commission may require mitigation of certain impacts disclosed in the SAR but "shall, in no event, order relocation of the facility."

KRS 278.216 does not limit a utility's exemption under KRS 100.324, which exempts utilities' subject to the Commission's jurisdiction are not required to obtain approval of a planning unit for the location of a utility's service facilities.

PROPOSED SITE COMPATIBILITY CERTIFICATES

LG&E/KU requested that the Commission grant site compatibility certificates pursuant to KRS 278.216 for the two NGCC units, Mill Creek 5 and Brown 12, both of which will be constructed on property at an existing power site owned by LG&E/KU at the Mill Creek Station and Brown Station, respectively. LG&E/KU explained that it was not requesting a site compatibility certificate for the Mercer County solar facility at this time but that, once the SAR was prepared, LG&E/KU will file an application in the future for a site compatibility certificate for that facility.[439] LG&E/KU asserted that the Brown BESS did not require a compatibility certificate because KRS 278.216 applies to generation

[439] Direct Testimony of Robert M. Conroy (Conroy Direct Testimony) (filed Dec. 15, 2022) at 5.

facilities and, according to LG&E/KU, Brown BESS is not a generation facility.[440] LG&E/KU explained that the Marion County solar facility is being built by a third party and not LG&E/KU, and thus LG&E/KU is not required to file a site compatibility certificate for that facility.

Pursuant to KRS 278.216(2), LG&E/KU submitted SAR for Mill Creek 5 and Brown 12. The SARs provided a detailed description of both facilities. Mill Creek 5 will be located at the existing Mill Creek Station in southwest Jefferson County, Kentucky, on a site currently occupied by an existing facility that will be demolished prior to constructing Mill Creek 5.[441] Mill Creek 5 will consist of (1) one natural gas-fired gas combustion turbine; (2) a steam turbine; (3) one heat recovery steam generator, with natural gas-fired duct burners arranged in a one-on-one configuration; and (4) ancillary support equipment, including one natural gas-fired boiler, one pipeline fuel gas heater, one 2 MW emergency generator with diesel-fired engine, one emergency diesel-driven fire pump, and one 8-cell mechanical draft cooling tower.[442] LG&E/KU will install a new natural gas pipeline to serve Mill Creek 5.[443] The area north and east of Mill Creek 5 is zoned for residential land use, much of which is undeveloped; the area to the south is zoned for industrial use and is occupied by a cement facility; the Ohio River lies to the west of Mill Creek 5.[444] The SAR indicated that Mill Creek 5 will utilize a single stack for exhaust emissions that is located more than 1,000 feet from the nearest property boundary and more than 2,000

[440] Conroy Direct Testimony at 5.

[441] Application, Exhibit 5 at 1-1.

[442] Application, Exhibit 5 at 1-6–1-7.

[443] Application, Exhibit 5 at 1-7.

[444] Application, Exhibit 5 at 2-4.

feet from the nearest residential neighborhood boundary.[445] The SAR further indicated that two residential parcels occur within the 2,000-foot setback requirement; however, the parcels do not meet the KRS 278.700(6) definition of a residential neighborhood because they are below five total acres.[446] LG&E/KU stated that no additional setback requirements were identified for Mill Creek 5.[447] The SAR identified no significant effects or complications on surrounding infrastructure or nearby residents, including viewshed impairments, property values, excessive noise, fugitive dust, and transportation.[448] The SAR also identified that Mill Creek 5 will contribute air emissions that are subject to environmental regulations, but that there will be a net decrease of emissions and thus Mill Creek 5 will have no significant impact on the air quality resource.[449] According to the SAR, Mill Creek 5 will not have a significant impact on the water resource.[450]

Brown 12 will be located at the existing Brown Station in Mercer County, Kentucky on a site with an existing facility that will be demolished.[451] Brown 12 will consist of (1) one natural gas-fired gas combustion turbine; (2) a steam turbine; (3) one heat recovery steam generator, with natural gas-fired duct burners arranged in a one-on-one configuration; (4) and ancillary support equipment, including one natural gas-fired boiler, one pipeline fuel gas heater, one 2 MW emergency generator with diesel-fired engine,

[445] Application, Exhibit 5 at 2-8.

[446] Application, Exhibit 5 at 2-8.

[447] Application, Exhibit 5 at 2-8.

[448] Application, Exhibit 5 at 3-3–3.35.

[449] Application, Exhibit 5 at 4-1.

[450] Application, Exhibit 5 at 4-2–4.4.

[451] Application, Exhibit 6 at 1-1.

one emergency diesel-driven fire pump, and one 8-cell mechanical draft cooling tower.[452] LG&E/KU will tap into an existing natural gas pipeline to serve Brown 12.[453] The surrounding area is zoned for residential use to the south and east, and zoned for agricultural and rural residential use to the northwest and west.[454] The SAR indicated that Brown 12 will utilize a single stack for exhaust emissions that is located more than 1,000 feet from the nearest property boundary and more than 2,000 feet from the nearest residential neighborhood, school, hospital, or nursing home facility.[455] The SAR further indicated that no additional setback requirements were identified.[456] The SAR identified no significant effects or complications on surrounding infrastructure or nearby residents, including viewshed impairments, property values, excessive noise, fugitive dust, and transportation.[457] The SAR also identified that Brown 12 will contribute air emissions that are subject to environmental regulations, but that there will be a net decrease of emissions and thus Brown 12 will have no significant impact on the air quality resource.[458] According to the SAR, Brown 12 will not have a significant impact on the water resource.[459]

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[452] Application, Exhibit 6 at 2-1.

[453] Application, Exhibit 6 at 2-1.

[454] Application, Exhibit 6 at 2-3.

[455] Application, Exhibit 6 at 2-6.

[456] Application, Exhibit 6 at 2-6.

[457] Application, Exhibit 6 at 3-1–3.28.

[458] Application, Exhibit 6 at 4-1.

[459] Application, Exhibit 6 at 4-2–4.4.

INTERVENORS' ARGUMENTS – SITE COMPATIBILITY CERTIFICATES

In witness testimony and briefing, none of the intervening parties took a position on the site compatibility certificates. The Commission notes that, as discussed above, some of the intervening parties are opposed to granting a CPCN to construct Mill Creek 5 and Brown 12.

DISCUSSION AND FINDINGS – SITE COMPATIBILITY CERTIFICATES

Having reviewed the record and being otherwise sufficiently advised, the Commission finds that the LG&E/KU have satisfied the requirements of KRS 278.216 for the issuance of a site compatibility certificate for Mill Creek 5. This is because the evidence demonstrates that Mill Creek 5, which will be constructed on property owned by LG&E/KU and located at an existing power site, would not harm local property values, unduly increase traffic or noise, or materially change the visual impact of the facility. For these reasons, the Commission finds that a site compatibility certificate should be issued for the construction of Mill Creek 5.

Because the Commission denied LG&E/KU's request for a CPCN to construct Brown 12 at this time, the issue of a site compatibility certificate for Brown 12 is moot. The Commission reiterates that the denial of the CPCN for Brown 12 is wholly based on the Commission's finding that the construction of Brown 12 should be deferred with the construction beginning on a date that provides for an in-service date in 2030.

Regarding Brown BESS, the Commission disagrees with LG&E/KU's argument that Brown BESS stores but does not generate electricity, and thus no site compatibility certificate is required. The Commission finds that, because battery energy storage systems convert electricity into other forms of energy, and then are able to produce

electricity from converting the energy again, they do not store electricity, but instead generate it. Thus, battery energy storage systems are a generation source of electricity. With the finding that Brown BESS is generation and, with four-hour, 125 MW capacity, exceeds the 10 MW threshold established in KRS 278.216, the Commission finds that LG&E/KU must file an application in a separate proceeding requesting a site compatibility certificate for Brown BESS.

5. REGULATORY ASSET

LEGAL STANDARD

KRS 278.220 provides that the Commission may establish a uniform system of accounts (USoA) for utilities and in LG&E/KU's case, that the system of accounts shall conform as nearly as practicable to the system adopted or approved by the Federal Energy Regulatory Commission (FERC). The FERC USoA provides for regulatory assets, or the capitalization of costs that would otherwise be expensed but for the actions of a rate regulator. It must be probable that the utility will recover approximately equal revenue through the inclusion of these costs for ratemaking purposes, with the intent to recover the previously incurred cost not a similar future cost.

The Commission has established parameters for expenses that qualify for regulatory asset treatment; the Commission has approved regulatory assets when a utility has incurred (1) an extraordinary, nonrecurring expense which could not have reasonably been anticipated or included in the utility's planning; (2) an expense resulting from a statutory or administrative directive; (3) an expense in relation to an industry sponsored initiative; or (4) an extraordinary or nonrecurring expense that over time will result in a

saving that fully offsets the cost.[460] Additionally, the Commission has established a requirement that utilities seek Commission approval before recording regulatory assets,[461] and requirements regarding the timing for applications seeking such approval.[462] Outside of the prescribed categories of expenses that qualify for regulatory asset treatment, utilities have established regulatory assets for certain timing and accounting differences, such as over- or under-recoveries for riders.

PROPOSED REGULATORY ASSET

LG&E/KU requested Commission approval to establish a regulatory asset to defer certain costs associated with the construction of Mill Creek 5, Brown 12, Mercer County Solar Facility, and Brown BESS. LG&E/KU proposed to record their investment in these four facilities as Construction Work In Progress (CWIP) and accrue an allowance for funds used during construction (AFUDC) using the methodology approved by the Federal Energy Regulatory Commission (FERC).[463] LG&E/KU further proposed to record a regulatory asset during the approximately four-year construction period for the difference between AFUDC accrued at LG&E/KU's weighted average cost of capital (WACC) and AFUDC accrued using the FERC methodology.[464] LG&E/KU argued that, under this

[460] Case No. 2008-00436, *Application of East Kentucky Power Cooperative, Inc. for an Order Approving Accounting Practices to Establish a Regulatory Asset Related to Certain Replacement Power Costs Resulting from Generation Forced Outages* (Ky. PSC Dec. 23, 2008), Order at 3–4.

[461] Case No. 2016-00180, *Application of Kentucky Power Company for an Order Approving Accounting Practices to Establish Regulatory Assets and Liabilities Related to the Extraordinary Expenses Incurred by Kentucky Power Company in Connection with the Two 2015 Major Storm Events* (Ky. PSC Nov. 3, 2016), Order at 9.

[462] Case No. 2016-00180, Order (Ky. PSC Dec. 12, 2016) at 5.

[463] Conroy Direct Testimony at 3. FERC requires utilities recording AFUDC to use short-term debt first and then the weighted average of long-term debt and equity for the remainder of the balance. This approach implies that projects are primarily financed with short-term debt during construction.

[464] Conroy Direct Testimony at 3.

proposed methodology, they would recover only their "actual cost of capital, no more or no less."[465] LG&E/KU explained that the AFUDC and regulatory asset accruals would end as each asset is placed in service and that the request for AFUDC treatment is only for these four facilities.[466] LG&E/KU asserted that their proposal allows LG&E/KU to construct these facilities over a four-year period without impacting the bills of customers until actual costs are known and the projects are in-service while accruing the financing costs incurred related to the four projects.[467] LG&E/KU maintained that they would record only CWIP for all other new construction projects, explaining that the other projects are smaller in scale and have a shorter construction time period than Mill Creek 5, Brown 12, Mercer County Solar Facility, and Brown Bess.[468] LG&E/KU stated that they will finance the four projects with the same capital structure used in their 2020 base rate cases during the construction period and beyond because they do not engage in project financing.[469]

INTERVENORS' ARGUMENTS – REGULATORY ASSET

KIUC was the only party to address the issue of the regulatory asset in witness testimony. In his direct testimony, KIUC's witness, Lane Kollen, stated that he did not

[465] Conroy Direct Testimony at 3.

[466] Conroy Direct Testimony at 3.

[467] Conroy Direct Testimony at 3.

[468] Conroy Direct Testimony at 3−4.

[469] Conroy Direct Testimony at 4. In their last base rate cases, LG&E's capital structure was 1.53 percent short-term debt, 45.34 percent long-term debt, and 53.13 percent common equity and KU's capital structure was 2.46 percent short-term debt, 44.41 percent long-term debt, and 53.14 percent common equity. *See* Case No. 2020-00349, Application, Tab 63, Schedule J-1 at 1; Case No. 2020-00350, Application, Tab 63, Schedule J-1 at 1.

oppose the requested regulatory asset.[470] KIUC did not take a position on this issue in its post-hearing briefs.

No other party took a position on this issue in witness testimony or post-hearing briefs.

DISCUSSION AND FINDINGS – REGULATORY ASSET

LG&E/KU have historically included CWIP in rate base during their base rate cases, which allows them to recover financing costs as construction occurs, instead of capitalizing the construction costs as AFUDC and recovering them over the life of the asset. The Commission allowed LG&E/KU to record AFUDC and defer the difference between the AFUDC accrued at LG&E/KU's WACC and AFUDC accrued using the methodology approved by the FERC for advanced metering infrastructure, due to the long construction period and significant expenditure.[471] Having reviewed the record and being otherwise sufficiently advised, the Commission finds that LG&E/KU's request for authorization to establish deferral accounting for the difference between AFUDC accrued at LG&E/KU's WACC and AFUDC accrued using the methodology approved by the FERC during the construction period of Mill Creek 5, Mercer County Solar Facility, and Brown BESS is an acceptable treatment for the financing costs during construction, given LG&E/KU's actual financing plans, the long construction period, and the significant expenditure. Accordingly, the Commission finds that LG&E/KU should be authorized to establish, for accounting purposes only, regulatory assets based on the difference between AFUDC accrued at LG&E/KU's WACC and AFUDC accrued using the

[470] Kollen Direct Testimony at 5-6.

[471] Case No. 2020-00349, June 30, 2021 Order at 13 and Appendix A at 11; Case No. 2020-00350, June 30, 2021 Order at 15 and Appendix A at 11.

methodology approved by the FERC during the construction period of Mill Creek 5, Mercer County Solar Facility, and Brown BESS.

Because the Commission denied LG&E/KU's request for a CPCN to construct Brown 12 at this time, the issue of a regulatory asset for deferred construction costs for Brown 12 is moot. The Commission reiterates that the denial of the CPCN for Brown 12 is wholly based on the Commission's finding that the construction of Brown 12 should be deferred with the construction beginning on a date that provides for an in-service date in 2030.

The Commission's approval of the regulatory asset is not a finding that LG&E/KU can recover construction costs in rates. Approval of the establishment of a regulatory asset by the Commission does not direct or imply approval of any expenses that the utility defers to the regulatory asset. That will occur in the case where LG&E/KU seek recovery of costs related to the regulatory asset and the Commission will thoroughly review the reasonableness of the deferred construction financing costs in a future rate case.

6. DSM-EE PLAN AND TARIFF

LEGAL STANDARD

KRS 278.285(1) authorizes the Commission to review and approve the reasonableness of DSM-EE programs proposed by any utility under its jurisdiction. The statue lists multiple factors the Commission can consider when determining the reasonableness of the DSM-EE programs. The listed factors in KRS 278.285(1) are:

> (a) The specific changes in customers' consumption patterns which a utility is attempting to influence;
>
> (b) The cost and benefit analysis and other justification for specific demand-side management programs and measures included in a utility's proposed plan;

(c) A utility's proposal to recover in rates the full costs of demand-side management programs, any net revenues lost due to reduced sales resulting from demand-side management programs, and incentives designed to provide positive financial rewards to a utility to encourage implementation of cost-effective demand-side management programs;

(d) Whether a utility's proposed demand-side management programs are consistent with its most recent long-range integrated resource plan;

(e) Whether the plan results in any unreasonable prejudice or disadvantage to any class of customers;
(f) The extent to which customer representatives and the Office of the Attorney General have been involved in developing the plan, including program design, cost recovery mechanisms, and financial incentives, and if involved, the amount of support for the plan by each participant, provided however, that unanimity among the participants developing the plan shall not be required for the commission to approve the plan;

(g) The extent to which the plan provides programs which are available, affordable, and useful to all customers; and

(h) Next-generation residential utility meters that can provide residents with amount of current utility usage, its cost, and can be capable of being read by the utility either remotely or from the exterior of the home.

KRS 278.285(1) also states the factors listed are not exhaustive; the Commission can consider anything that will help determine whether the programs are reasonable.

CURRENT DSM-EE PROGRAM PORTFOLIO

LG&E/KU's 2019-2025 DSM-EE program portfolio includes the following programs, as approved by the Commission in Case No. 2017-00441[472] and modified in Case No. 2019-00105.[473]

1. Residential and Small Nonresidential Demand Conservation Program
2. Low Income Weatherization Program (WeCare)
3. Residential Advanced Metering System Incentive
4. Residential and Small Nonresidential Demand Conservation Program
5. Large Nonresidential Demand Conservation Program
6. Nonresidential Rebates Program
7. Nonresidential Advanced Metering System Incentive

PROPOSED DSM-EE PROGRAM PORTFOLIO

Modifications to Current DSM-EE Plan

In the 2024−2030 DSM-EE plan, LG&E/KU proposed 14 DSM-EE programs that, according to LG&E/KU, would result in an increase in peak cumulative demand savings from 296 MW to 377 MW by 2030. Through October 2022, LG&/E/KU's DSM-EE programs have produced cumulative energy savings of approximately 1,566 GWh and gas savings of approximately 7.5 million Ccf. LG&E/KU are estimating to achieve additional peak cumulative energy and gas savings of 878 GWh and 170,000 Mcf by 2030

[472] Case No. 2017-00441, *Electronic Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for Review, Modification, and Continuation of Certain Existing Demand-Side Management and Energy Efficiency Programs* (Ky. PSC. Oct. 5, 2018).

[473] Case No. 2019-00105, *Electronic Demand Side Management Filings of Louisville Gas and Electric Company and Kentucky Utilities Company* (Ky. PSC Aug. 19, 2019) (modifying the DSM balancing adjustment and DSM capital cost recovery component for residential service and general service rate customers).

if the DSM-EE Program Plan is approved as filed. LG&E/KU also proposed to increase the total DSM budget from approximately $98 million to $341 million by 2030. LG&E/KU proposed that the DSM-EE plan and new tariff sheets to be effective as of January 1, 2024.

LG&E/KU explained that due to the limited remaining economic life of coal generation, combined with market-wide electric demand growth, they indicated a significant increase in their baseload demand projections over the next several years. LG&E/KU explained concern with the historic economic conditions over the past 32 months. LG&E/KU stated that the immediate concerns surrounding the COVID-19 pandemic are receding, the effects of it are still persisting in terms of continuing financial hardship, supply chain issues, labor shortages, and higher costs for raw materials and products.[474] LG&E/KU also stated that while the cumulative near-term economic impacts affect both LG&E/KU's costs and their customers' ability to invest in energy efficiency, the potential effect on LG&E/KU's ability to achieve their DSM-EE goals are unknown.[475] Additionally, through ongoing collaboration with stakeholders, LG&E/KU recognizes a growing need for solutions aimed at helping reduce customers' energy burden, improving indoor health and comfort, addressing environmental concerns, and contributing to workforce development and economic growth for the state of Kentucky. Therefore, those factors prompted LG&E/KU to file a new DSM-EE Plan to request approval for additional budget and programs to support a substantive increase in their portfolio offerings that will

[474] Direct Testimony of John Bevington (Bevington Direct Testimony) (filed Dec. 15, 2022), Exhibit JB-1, Appendix A, at 6.

[475] Bevington Direct Testimony, Exhibit JB-1, Appendix A, at 7.

make more comprehensive energy efficiency and demand response opportunities available to a broader customer population.

LG&E/KU and Cadmus formulated the proposed 2024-2030 DSM-EE Program Plan by beginning with a pool of 39 possible programs that were developed by researching and reviewing successful programs other utilities across the nation have implemented. LG&E/KU and Cadmus used a customized scoring rubric using 12 key objective criteria such as the program's ability to generate energy savings and demand reduction, be cost-effective, and benefit disadvantaged communities. LG&E/KU and Cadmus then narrowed the pool down to 14 programs due to some programs not passing the scoring rubric.[476] The 14 programs then went through a cost-benefit analysis in which LG&E/KU and Cadmus evaluated whether the programs were cost-effective; the cost-benefit analysis is discussed in detail below. LG&E/KU explained that it shared and discussed the results from the cost-benefit analysis with the DSM-EE Advisory Group and solicited input through frequent formal and informal communications with multiple parties. LG&E/KU then calculated program savings as the sum of each measure's annual energy-savings estimate and expected participation over the 2024-2030 period. Using the costs, savings, and avoided benefits and costs estimates for each measure, LG&E/KU then computed the programs' cost-effectiveness. Based on the results of the final round of cost-benefit analyses and discussions with the DSM-EE Advisory Group, LG&E/KU finalized the proposed 2024-2030 DSM-EE Program Plan.

In their current application, LG&E/KU propose the following DSM-EE programs:

[476] Bevington Direct Testimony at 8.

Income Qualified Solutions. The proposed Income-Qualified Solutions consists of two programs: Low-Income Weatherization, formerly known as We Care, and Whole-Building Multifamily.

Low-Income Weatherization is an education and weatherization program designed to reduce energy consumption of income-qualified customers. The program provides energy audits, energy education, and installation of weatherization and energy conservation measures in qualified single-family homes. This program is available to residential customers who qualify for Federal Low Income Weatherization Assistance Program or Low-Income Home Energy Assistance Program (LIHEAP) services or those who are at or below 300 percent of the federal poverty level. In the proposed DSM-EE plan, LG&E/KU raised the eligibility threshold from 200 percent to 300 percent of the federal poverty level.

Whole-Building Multifamily is a new education and weatherization program designed as a service for increasing the efficiency of property managers' and owners' income-qualified properties' common areas and tenant units. This program provides installation of energy-saving devices to help reduce energy use in residents' living units and in common areas, incentives to property managers and owners who purchase high-efficiency equipment to retrofit the property as a whole rather than individual units, and energy usage and conservation education.

Appliance Recycling. LG&E/KU proposed an effective date of January 1, 2026, for this program, which provides a one-time incentive for residential customers to dispose of and recycle inefficient appliances. LG&E/KU explained that the program targets removal and recycling of refrigerators, freezers, room air conditioners, and dehumidifiers,

with free pick-up and a $50 incentive per eligible, recycled refrigerator or freezer, and free pick up only for room air conditioners and dehumidifiers. LG&E/KU further explained that it will work with an independent third-party vendor to collect and transport working but inefficient appliances to a recycling center.

Similarly, LG&E/KU previously had the Residential Refrigerator Removal Program, where LG&E/KU offered a $50 incentive to remove older, less efficient refrigerators and freezers from participants' homes. LG&E/KU partnered with Appliance Recycling Centers of America and promoted the program to retailers. However, the declining age in the removed appliances made this program no longer cost-effective and in 2018, LG&E/KU discontinued the program.

Residential online audit. LG&E/KU proposed an effective date of January 1, 2025, for this program, which is a web-based, self-guided assessment of a residential customer's home designed to achieve feedback on disaggregated energy use, and energy conservation education. After the audit is completed, participants are mailed a kit with energy efficiency measures for self-installation. The kit will include a low-flow bathroom faucet aerator, a low-flow kitchen faucet aerator, a low-flow showerhead, water heater pipe insulation, weatherstripping, caulking, spray foam, and an advanced power strip. In addition, residential customers who complete the audit gain access to prescriptive rebates for deeper energy efficiency retrofits, include a $300 rebate for a heat pump water heater, $300 rebate for a central air conditioner, $400 rebate for a ductless heat pump. $400 rebate for an air source heat pump, and $250 rebate for a 95 percent annual fuel utilization efficiency (AFUE) furnace.

Business Solutions. The proposed Business Solutions consists of three programs: Nonresidential Rebates, Small Business Audit and Direct Install, and Nonresidential Midstream Lighting.

Nonresidential Rebates provides nonresidential customers with financial incentives to help replace aging and inefficient equipment. This program includes prescriptive incentives for energy audits and high-efficiency equipment such as lighting, motors, pumps, variable frequency drives, and air conditioning retrofits installed in existing buildings; custom incentives for eligible customers to implement energy-efficient technologies not covered in the prescriptive component of the program; and custom retrofit projects in existing buildings. The incentives are based upon achieved first-year energy (kWh) savings and demand (kW) reductions. New construction incentives are performance-based and intended for constructing new, efficient nonresidential facilities that exceed current state building energy code requirements, with bonus incentives for LEED certification. Industrial customers that participate in this program may not use their statutory opt-out.

The Small Business Audit and Direct Install program provides free energy audits conducted by a third-party contractor to small businesses and allows for direct installation of high-efficiency equipment, including nonresidential LED bulbs and fixtures, faucet aerators, low-flow showerheads, and pre-rinse spray valves.

LG&E/KU proposed a January 1, 2026 effective date for the Nonresidential Midstream Lighting program, which provides incentives to lighting distributors to stock and sell high-efficiency equipment, with the bulk of the incentives pass through to customers who purchase the equipment. Because purchasers don't have to submit

rebate applications, the program is designed to reduce participation barriers for customers and contractors.

Connected Solutions. The proposed Connected Solutions demand response program consists of four programs: Residential and Small Nonresidential Demand Conservation; Bring Your Own Device; Optimized Charging; and Online Transactional Marketplace. LG&E/KU retain the right to limit participation in multiple programs to prevent customers receiving compensation more than once for the same demand reduction.

Residential and Small Nonresidential Demand Conservation utilizes switches in homes and small businesses to assist in reducing the demand for electricity during peak times. The program communicates with the switches to cycle central air conditioning units, heat pumps, electric water heaters, and pool pumps off and on through a predetermined sequence. As of January 14, 2023, no additional switches will be installed under this program. Customers currently enrolled in this program will be allowed to continue to participate until their switch fails. The compensation for this demand reduction is:

- Single-family air conditioning and heat pump switches receive $5 per event per device up to 20 events per year.
- Single-family water heater and pool pump switches receive $4 per event per device, up to 20 events per year.
- Multifamily air conditioning and heat pump switches receive $2 per event per device for tenants and $2 per event per device for property owners/managers, up to 20 events per year.

- Multifamily water heater and pool pump switches receive $4 per event per device for tenants and $4 per event per device for property owners/managers, up to 20 events per year.
- Small business air conditioning switches receive $5 per summer month, up $20 annually. per device for each central air conditioning unit or heat pump system weighing up to five tons, plus an additional $1 per month for every additional ton.
- Small business water heater switches receive $4 per month, up to $16 annually, per device.

Bring Your Own Device is an event-based, load control demand response program in which LG&E/KU can directly manage summer and winter loads during hours of peak demand through smart thermostats and other devices without the need for switches. Participants receive an incentive for enrolling and another incentive for each event their device participates in. Beginning in 2024, LG&E/KU will offer customers an incentive of up to $50 for enrolling a smart thermostat and up to $10 for each event in which their device participates, up to 25 events per year. In 2026, LG&E/KU will offer customers an incentive of up to $50 for enrolling a smart water heater and up to $10 for each event in which their device participates, up to 25 events per year. Participants are limited to a maximum incentive of $300 per device in the first year of participation and $250 per device in the second and subsequent years.

Optimized Charging targets electric vehicle (EV) charging to provide demand response and load shifting. LG&E/KU will issue signals to qualifying electric vehicles and qualifying electric vehicle supply equipment to affect the timing and level of charging for electric vehicles within parameters set by participants. The program requires no action

from the customer after enrollment aside from plugging in the vehicle. LG&E/KU will offer an incentive for enrolling in the program and a monthly incentive for continuing LG&E/KU's access to optimize charging for the vehicle. LG&E/KU will offer customers a one-time incentive upon enrollment of up to a $50 per vehicle and up to $5 per month for optimized charging per vehicle. Participants are limited to a maximum incentive of $110 per vehicle in the first year of participation and $60 per vehicle in the second and subsequent years.

The Online Transactional Marketplace program offers instant incentives through price markdowns to customers who purchase qualified products. Customers who purchase a new smart thermostat from the Online Transactional Marketplace will be automatically enrolled in the BYOD program subcomponent. LG&E/KU will offer a discount of up to $75 on smart thermostats and up to $10 on smart plugs. Beginning in 2026, LG&E/KU will offer a discount of up to $50 on smart water heaters. LG&E/KU will continue to monitor cost-effective opportunities for new measure offerings to be added to the Online Transactional Marketplace.

Peak time rebates. LG&E/KU proposed an effective date of January 1, 2025, for this program, which is a voluntary, event-based demand response resource that pays customers to reduce their electric consumption during times of high demand all year round. LG&E/KU would notify customers in advance of peak demand events and educate customers on ways to save and shift energy consumption during events. Customers' savings will be calculated by comparing their metered consumption with an estimate of their baseline consumption during events. LG&E/KU will offer incentives based on a pay-for-performance model. Customers participating in Peak Time Rebates will earn up to $2

for every kWh of savings achieved during an even relative to their baseline energy consumption. Customers will be eligible for up to a $15 annual participation bonus for each year that they remain enrolled in the program and actively participate. LG&E/KU anticipates up to 25 events per year.

Nonresidential Demand Response. The proposed Nonresidential Demand Response program employs, as needed, interfaces to customer equipment to help reduce the demand for electricity during peak times by cycling power on the equipment. LG&E/KU will notify customers in advance of peak demand events. This program has an approved flexible incentive structure with an incentive rate of $75 per kW curtailed. The incentive amount that a participant receives will continue to be calculated based on the actual demand reduction achieved by the participant over the entire year's events. Curtailable Service Rider (CSR) participants are not eligible for participation in this program.

Tariff Revisions

LG&E/KU proposed to adjust the return on equity (ROE) component for the DSM capital cost recovery portion of the DSM mechanism formula. This adjustment is a decrease from the current 10.2 percent ROE for DSM-EE related capital to 9.925 percent ROE. The 9.925 percent ROE includes the most recently awarded base-rate ROE in Case Nos. 2020-00349 and 2020-00350,[477] 9.425 percent, plus a 50-basis-point

[477] Case No. 2020-00349, *Electronic Application of Kentucky Utilities Company for an Adjustment of Its Electric Rates, A Certificate of Public Convenience and Necessity to Deploy Advanced Metering Infrastructure, Approval of Certain Regulatory and Accounting Treatments, and Establishment of a One-Year Surcredit* (Ky. PSC June 30, 2021); Case No. 2020-00350, *Electronic Application of Louisville Gas and Electric Company for an Adjustment of Its Electric and Gas Rates, A Certificate of Public Convenience and Necessity to Deploy Advanced Metering Infrastructure, Approval of Certain Regulatory and Accounting Treatments, and Establishment of a One-Year Surcredit* (Ky. PSC June 30, 2021).

incentive. LG&E/KU explained that the incentive is based upon KRS 278.285, which includes language regarding incentives that are designed to provide positive financial rewards to a utility to encourage implantation of cost-effective DSM-EE. LG&E/KU further explained that the 50-basis-point incentive is consistent with past DSM-EE capital cost recovery approvals.[478]

DSM-EE PROGRAM COST-EFFECTIVENESS AND ENERGY SAVINGS

Prior to the approval of the current DSM suite of programs in Case No. 2017-00441[479], LG&E/KU had avoided capacity costs that were greater than $0, which contributed to a more robust DSM programming due to programs being more cost-effective. LG&E/KU explained that, at that time, the avoided capacity costs were based in part on declining load growth projections, very low fuel costs, and, consequently, low production costs, and those factors were compounded by an annual 30-year demand and energy forecast and resource plans that projected relatively flat demand and sufficient generating capacity.[480] LG&E/KU state that they increased the pace of the DSM-EE Program Plan development because they are proposing to retire large amounts of coal-fired generation capacity in this case, and the avoided cost of capacity has significantly increased since LG&E/KU's most recent DSM-EE Program Plan filing. However, LG&E/KU stated that the avoided cost change positively impacts the cost-effectiveness

[478] Conroy Direct Testimony, at 7-8. *See also* Case No. 2017-00441, Oct. 5, 2018 Order at 4.

[479] Case No. 2017-00441, Oct. 5, 2018 Order.

[480] Bevington Direct Testimony, Exhibit JB-1, at 4.

of certain DSM-EE programs and allows LG&E/KU to propose an expanded DSM-EE Program Plan that is cost-effective.[481]

LG&E/KU analyzed the proposed DSM-EE programs using the four California Standard Practice Manual tests that the Commission requires for DSM-EE programs evaluations.[482] The following table shows the result of the cost-effectiveness test as provided by LG&E/KU:[483]

DSM Program Portfolio	TRC	PCT	RIM	PAC
Program Development and Administration	0.00	N/A	0.00	0.00
Income-Qualified Solutions	0.27	N/A	0.13	0.27
Appliance Recycling Program	1.02	N/A	0.20	0.81
Residential Online Audit Program	0.74	5.10	0.19	1.06
Business Solutions	1.84	7.40	0.27	7.93
Connected Solutions	3.52	12.65	0.94	1.17
Peak Time Rebates	2.62	N/A	0.40	0.40
Nonresidential Demand Response Program	1.68	1.36	1.34	1.37
Overall Portfolio	1.54	7.53	0.32	1.83

[481] Bevington Direct Testimony at 5.

[482] The four tests are the Total Resource Cost (TRC), Participant Cost Test (PCT), Ratepayer Impact Measurement Test (RIM), and Program Administrator Cost Test (PAC).

[483] Bevington Direct Testimony, Exhibit JB-1 at 19, Table 1-4.

The Commission has traditionally evaluated DSM effectiveness by focusing on the Total Resource Cost (TRC) results. A TRC score of less than one indicates that the cost of the program outweighs the measured benefits. LG&E/KU explained that although the Income-Qualified Solutions does not pass the cost-effectiveness threshold, LG&E/KU included it in the portfolio to address a critical need for energy efficiency services among their most vulnerable customers and because it was important to the DSM Advisory Group's stakeholders. Additionally, the Residential Online Audit is also not cost-effective, but LG&E/KU explained that it provides both education and incentives for energy efficiency equipment intended for energy savings to their customers.[484]

LG&E/KU stated that in order to meet customer needs and fulfill resource obligations, they will need to offer a more comprehensive portfolio of energy efficiency and demand response programs that aim to capture a larger share of available energy savings potential and increase access to firm, dispatchable load reduction benefits.[485] LG&E/KU provided the annual and total demand, energy, and gas savings per program from 2024-2030. The following table shows the total savings results of the 2024-2030 DSM-EE Program Plan:[486]

Program	Total Energy Savings (MWh)	Total Demand Savings (MW)	Total Gas Savings (Ccf)
Income Qualified Solutions	30,833	2.59	927,071
Appliance Recycling	28,013	3.30	0
Residential Online Audit	23,270	1.90	63,163
Business Solutions	776,406	162.20	24,887

[484] Direct Testimony of Lana Isaacson (Isaacson Direct Testimony) (filed Dec. 15, 2022) at 8.

[485] Bevington Direct Testimony, Exhibit JB-1, Appendix A at 5.

[486] Bevington Direct Testimony, Exhibit JB-1, Appendix A at 54–56.

Connected Solutions	16,061	68.30	684,562
Peak Time Rebates	0	30.8	0
Nonresidential Demand Response	782	78.7	0
Total	875,365	347.79	1,699,683

LG&E/KU explained that the relationship between the DSM-EE costs and savings is not entirely linear and that when economic and market factors are introduced that the potential for demand and energy savings declines. LG&E/KU stated that in order for DSM to serve as a reliable generation planning resource, it is imperative that the DSM-EE programs and savings goals account for the realistic conditions of the market.[487]

DSM-EE PROPOSED RATES

LG&E/KU explained that when developing the DSM-EE Program Plan, they sought to maximize the impacts that the DSM-EE Program Plan can provide to their service territories while ensuring that program benefits outweigh program costs. LG&E/KU provided the annual and total Utility Program Costs from 2024-2030. The following table shows the total portfolio and program costs of the 2024-2030 DSM-EE Program Plan:[488]

Program	Total Program Cost
Program Development and Administration	$ 21,336,000
Income Qualified Solutions	$ 70,902,000
Appliance Recycling	$ 8,880,000
Residential Online Audit	$ 8,904,000

[487] Bevington Direct Testimony, Exhibit JB-1, Appendix A at 2.

[488] Bevington Direct Testimony, Exhibit JB-1, Appendix A at 21.

Business Solutions	$ 48,899,000
Connected Solutions	$ 100,739,000
Peak Time Rebates	$ 41,562,000
Nonresidential Demand Response	$ 38,520,000
Total Portfolio Costs	$ 340,742,000

LG&E/KU explained that they will ensure that the DSM-EE programs will remain effective once they are approved because they currently use a third-party contractor to examine program design, delivery, impacts, and processes. The contractor then ensures quality and effectiveness of the programs, optimal use of resources, and responsiveness to customers' needs. LG&E/KU stated that they will use the results and guidance to ensure that all of the programs contained in the Program Plan demonstrate continuous improvement and remain a good application of customer dollars.[489] The average monthly bill impacts with the proposed DSM-EE programs are[490] (1) Electric: $0.54 per month for LG&E customers; $0.55 per month for KU customers; and (2) Gas: $0.15 per month for LG&E customers.

INTERVENORS' ARGUMENTS – DSM-EE PLAN AND TARIFF

Attorney General

The Attorney General did not file witness testimony. In its post-hearing brief, the Attorney General recommended that the Commission approved the proposed DSM-EE plan, subject to annual reporting on the DSM-EE plans continuing cost-effectiveness, and

[489] Isaacson Direct Testimony at 16.

[490] Application at 18–19.

an annual true-up of actual costs and amounts collected through the DSM-EE cost recovery mechanisms.[491] The Attorney General also recommended that the Commission require LG&E/KU to include updates on avoided capacity costs with LG&E/KU's annual DSM-EE update given the potential uncertainty of avoided capacity costs over the seven-year duration of the DSM-EE plan.[492]

The Attorney General disagreed with LG&E/KU's proposal to modify the eligibility for the Income Qualified Solutions program to include participants with a household income up to 300 percent of the federal poverty level instead of capping eligibility at 200 percent of the federal poverty level. The Attorney General asserted that it would be more appropriate to allow participants with household income between 201 and 300 percent of the federal poverty level to participate if funds remain after serving applicants with incomes up to 200 percent of the federal poverty level.[493] However, the Attorney General agrees with one commenter who proposed that LG&E/KU track the income level of participants on an annual basis and report the aggregate numbers to the Commission to ensure the income qualified solutions serves primarily customers at lower income levels.[494]

KIUC

KIUC sponsored testimony from its witness, Lane Kollen, who stated that he did not oppose LG&E/KU's proposed DSM-EE plan and tariffs.[495] In its post-hearing brief,

[491] Attorney General's Post-Hearing Brief at 39.

[492] Attorney General's Post-Hearing Brief at 39−40.

[493] Attorney General's Post-Hearing Brief at 39–40.

[494] Attorney General's Post-Hearing Brief at 39.

[495] Kollen Direct Testimony at 5.

KIUC asserted that the DSM-EE programs, especially those for low-income residential customers, are reasonable, citing the projected cumulative peak demand savings of 377 MW, energy savings of 878 GWh, and 170,000 Mcf gas savings by 2023 at a cost of $341 million.[496]

Walmart

Walmart did not file witness testimony. In its post-hearing briefs, Walmart recommended that the Commission approve LG&E/KU's DSM-EE plan and tariff.[497] Walmart further recommended that the Commission require LG&E/KU to take steps to "better engage" commercial and industrial customers in the DSM-EE Advisory Group process.[498] Walmart pointed to the evidence of record that the majority of DSM-EE Advisory Group meeting participants represent residential and low-income customer interests.[499] Walmart asserted that because the DSM-EE Advisory Group meetings dominated by residential and low-income customer issues, it is difficult to engage commercial and industrial customers on DSM-EE issues, especially given limited time and resources of commercial and industrial customers.[500] Walmart rebutted an LG&E/KU's witness statement that commercial and industrial customers can discuss issues one-on-one with LG&E/KU representatives, arguing that one-on-one conversations are not a substitute for a group collaborative process such as the DSM-EE

[496] KIUC's Post-Hearing Brief at 11.

[497] Walmart's Post-Hearing Brief at 2; Walmart's Post-Hearing Reply Brief (filed Oct. 4, 2022) at 12.

[498] Walmart's Post-Hearing Brief at 2; Walmart's Post-Hearing Reply Brief at 12

[499] Walmart's Post-Hearing Brief at 16.

[500] Walmart's Post-Hearing Brief at 16−17.

Advisory Group.[501] Walmart argued that, without the opportunity for group collaboration for commercial and industrial customers, opportunities for commercial and industrial DSM-EE programs and the corresponding benefit to LG&E/KU are being missed.[502]

For the above reasons, Walmart requested the Commission to require LG&E/KU to take steps to better evaluate commercial and industrial customer DSM-EE programs. Walmart suggested the LG&E/KU could be required to hold separate DSM-EE Advisory Group meetings devoted to commercial and industrial customers and requiring LG&E/KU to contact larger customers, particularly those that are prohibited by statute from opting out of utility-sponsored DSM-EE, to notify such customers of the opportunity to participate in a DSM-EE Advisory Group.[503]

Sierra Club

Sierra Club did not file testimony that took a position on LG&E/KU's proposed DSM-EE plan and tariff. In its post-hearing brief, Sierra Club referenced dispatchable DSM-EE as part of the portfolios analyzed but did not expressly take a position whether to grant or deny LG&E/KU's proposed DSM-EE plan and tariff.[504]

Louisville Metro and LFUGC

Louisville Metro and LFUGC filed joint witness testimony with Sierra Club that did not take a position on LG&E/KU's proposed DSM-EE plan and tariff. In their joint post-hearing briefs, Louisville Metro and LFUCG stated that they generally support the

[501] Walmart's Post-Hearing Brief at 17.

[502] Walmart's Post-Hearing Brief at 17.

[503] Walmart's Post-Hearing Brief at 17−18.

[504] Sierra Club's Post-Hearing Brief.

proposed DSM-EE plan and tariff, but argued that the plan should be more robust.[505] Louisville Metro and LFUCG pointed to recommendations to improve LG&E/KU's DSM-EE plan presented in Joint Intervenors' witness Jim Grevatt's testimony.[506] Louisville Metro and LFUCG asserted that LG&E/KU should improve their coordination and cooperation with the DSM-EE Advisory Group and better engage commercial and industrial customers in the DSM-EE Advisory Group.[507] Louisville Metro and LFUCG also raised their concern that DSM-EE Advisory Group members are not sufficiently included in the DSM-EE planning process.[508]

Joint Intervenors

In witness testimony sponsored by Joint Intervenors and in Joint Intervenors' post-hearing briefs, Joint Intervenors recommended that the proposed DSM-EE plan be approved, but with modifications put forth in Mr. Grevatt's written testimony.[509] In their briefs, Joint Intervenors contended that LG&E/KU's DSM-EE proposal is reasonable given that it triples LG&E/KU's annual investment in DSM-EE, increases the seven-year cumulative energy savings from 112 MW to 170 MW, and increases the demand response savings from 86 MW to 207 MW, but also contended that LG&E/KU could pursue greater levels of energy savings.[510]

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[505] Louisville Metro and LFUCG's Post-Hearing Brief at 8.

[506] Louisville Metro and LFUCG's Post-Hearing Brief at 8.

[507] Louisville Metro and LFUCG's Post-Hearing Brief at 9; Louisville Metro and LFUCG's Post-Hearing Reply Brief at 2.

[508] Louisville Metro and LFUCG's Post-Hearing Brief at 9.

[509] Supplemental Errata Filing of the Direct Testimony of Jim Grevatt (Grevatt Direct Testimony) (filed Aug. 29, 2023); Joint Intervenors' Post-Hearing Brief at 3; Joint Intervenor's Post-Hearing Reply Brief (filed Oct. 4, 2023) at 1.

[510] Joint Intervenors' Post-Hearing Brief at 7; Joint Intervenor's Post-Hearing Reply Brief at 4.

Joint Intervenors contended that LG&E/KU should expand DSM-EE programs to achieve savings equal to at least one percent of LG&E/KU's 2021 MWh sales by 2027, with a balance between residential and non-residential savings.[511] Joint Intervenors requested that the Commission direct LG&E/KU to re-evaluate and revise their DSM-EE programs so that LG&E/KU can achieve Joint Intervenors' proposed savings goal.[512]

Joint Intervenors and their witness raised concerns regarding the validity of measure characteristics, avoided capacity costs, avoided fuel costs, and related assumptions LG&E/KU used in developing the proposed DSM-EE programs.[513] Joint Intervenors recommended that that Commission require LG&E/KU to revise the study used to develop the proposed DSM-EE programs, focusing on the economic potential of DSM-EE plans using avoided energy and capacity costs that reflect LG&E/KU's future needs.[514]

Regarding the Income Qualified Solutions program, Joint Intervenors and their witness asserted that the Commission should deny LG&E/KU's proposed increase in the income eligibility requirement from 200 percent of the federal poverty level to 300 percent of the federal poverty level to ensure that LG&E/KU's "highest need" and "most economically vulnerable customers" are served by the income qualified solutions program.[515] Joint Intervenors further asserted that, whether the Commission approves or

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[511] Grevatt Direct Testimony at 7, 41−47, and 60−61; Joint Intervenors' Post-Hearing Brief at 7−9; Joint Intervenors' Post-Hearing Reply Brief at 6.

[512] Grevatt Direct Testimony at 5–7, 48; Joint Intervenors' Post-Hearing Brief at 33–34.

[513] Grevatt Direct Testimony at 4, 25−34, and 59; Joint Intervenors' Post-Hearing Brief at 17−21.

[514] Grevatt Direct Testimony at 59; Joint Intervenors' Post-Hearing Brief at 17−21.

[515] Grevatt Direct Testimony at 12−17, and 19; Post-Hearing Joint Intervenors' Brief at 26−27.

denies the proposed income eligibility increase for the income qualified solutions program, the Commission should require LG&E/KU to conduct a low-income market characterization study to design DSM-EE programs to meet the needs of low-income customers and should track and report on an annual basis the income of income qualified solutions participants to monitor that the program serves customers most in need of the program.[516]

Joint Intervenors and their witness argued that LG&E/KU failed to conduct a robust analysis of an on-bill financing program, known as PAYS, and recommended that the Commission require LG&E/KU to reassess offering an on-bill financing program in their DSM-EE programs.[517]

Joint Intervenors requested that the Commission require LG&E/KU to include non-energy benefits in the DSM-EE cost/benefit analysis.[518] Joint Intervenors alleged that "there is no jurisdictional or other barrier" that prevents the Commission from considering public health, environmental, and non-energy benefits in a DSM-EE cost-benefit analysis and therefore the Commission should "[c]orrect past conflations of jurisdiction" and apply a broad discretion to hear evidence on non-energy benefits in analyzing DSM-EE programs.[519]

Joint Intervenors and their witness asserted that, if the Commission approves the DSM-EE plan and tariff as filed, then the Commission should require LG&E/KU to conduct

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[516] Grevatt Direct Testimony at 6, 17−18, and 59−60; Joint Intervenors' Post-Hearing Brief at 27.

[517] Grevatt Direct Testimony at 6, 49−53, and 60; Joint Intervenors' Post-Hearing Brief at 28.

[518] Joint Intervenors' Post-Hearing Brief at 30−33.

[519] Joint Intervenors' Post-Hearing Brief at 30−33.

a mid-plan review to update avoided costs and re-calculate cost-effectiveness, along with identifying opportunities to develop more robust programs.[520]

In their brief, Joint Intervenors claimed that LG&E/KU did not pursue increased energy savings through DSM-EE in lieu of building replacement generation for retiring units or involve the DSM-EE Advisory Group in developing and evaluating the DSM-EE plan, and therefore should be directed to improve the DSM-EE planning process.[521]

Kentucky Coal Association

Kentucky Coal Association filed witness testimony that did not take a position on LG&E/KU's proposed DSM-EE plan and tariff. In its post-hearing briefs, Kentucky Coal Association referenced the attributes of DSM-EE as part of the portfolios analyzed but did not expressly take a position whether to grant or deny LG&E/KU's proposed DSM-EE plan and tariff.[522]

Mercer County Government

Mercer County Government filed witness testimony and a brief that did not take a position on LG&E/KU's proposed DSM-EE plan and tariff.[523]

LG&E/KU RESPONSE TO INTERVENORS' ARGUMENTS – DSM-EE PLAN AND TARIFF

In rebuttal testimony, LG&E/KU addressed Joint Intervenors' witness Mr. Grevatt's criticisms of the proposed DSM-EE plan regarding the program selection process, the

[520] Grevatt Direct Testimony at 61−62; Joint Intervenors' Post-Hearing Brief at 33−34.

[521] Joint Intervenors' Post-Hearing Brief at 34−41.

[522] Kentucky Coal Association's Post-Hearing Brief at 6, 8–9, 17, 25; Kentucky Coal Associations Post-Hearing Reply Brief at 6, 8–9, 17, and 25.

[523] Mercer County Government's Post-Hearing Brief (filed Sept. 22, 2023).

income eligibility increases to the income qualified solutions program, and balance of programs between residential customers, and commercial and industrial customers, among other things. LG&E/KU noted that Mr. Grevatt did not calculate the cost-effectiveness of his proposed modifications to the DSM-EE portfolio and did not address that different states have different DSM-EE cost-effectiveness inputs when Mr. Grevatt based his recommendations on a study prepared for another state.[524] LG&E/KU disputed that the DSM-EE Advisory Group was not included in DSM-EE program selection and that only LG&E/KU and their DSM-EE consultant participated in the program selection process.[525]

Regarding the income qualified solutions, LG&E/KU argued that the increase in the eligibility was the result of feedback from the DSM-EE Advisory Group, asserting that the program as proposed will increase the number of participants along with expanded eligibility from 200 percent of the federal poverty line to 300 percent of the federal poverty line.[526] In their brief, LG&E/KU stated that it sought to make the program available to more customers by increasing the income level for eligible participants, but would not object to retaining the eligibility level of 200 percent of the federal poverty level for that program.[527] LG&E/KU challenged Mr. Grevatt's recommendation that LG&E/KU conduct a low-income DSM-EE study, arguing that LG&E/KU proposed a similar study as part of

[524] Rebuttal Testimony of Lana Isaacson (Isaacson Rebuttal Testimony) (filed Aug. 9, 2023) at 4; LG&E/KU's Post-Hearing Brief at 52–53; LG&E/KU's Post-Hearing Reply Brief (filed Oct. 4, 2023) at 34–35.

[525] Isaacson Rebuttal Testimony at 6; LG&E/KU's Post-Hearing Brief at 48–50; LG&E/KU's Post-Hearing Reply Brief at 29–31.

[526] Isaacson Rebuttal Testimony at 8; LG&E/KU Post-Hearing Reply Brief at 36.

[527] LG&E/KU Post-Hearing Reply Brief at 36.

the DSM-EE plan to identify households with high need for whole-building retrofits such as HVAC and weatherization.[528] LG&E/KU further argued that the study, as proposed by Mr. Grevatt, would increase charges to all residential customers through the DSM-EE mechanism without providing a demonstrative benefit.[529]

LG&E/KU asserted that their 2024–2030 DSM-EE plan was developed to allow all customers to meaningfully participate but that, in the balance, the proposed DSM-EE plan favors residential and small commercial customers.[530] LG&E/KU argued that the proposed DSM-EE plan allocated 69 percent of the program costs plus incentives to residential and small commercial customers and 25 percent to large commercial and industrial customers.[531] LG&E/KU also argued that the programs are expected to provide 11.5 percent of the total plan energy savings from residential and small customers, and 88.5 percent of the total plan energy savings from large commercial and industrial customers, with forecasted peak capacity reduction of 62 percent from residential and small customers, and 38 percent from large commercial and industrial customers.[532]

In their post-hearing brief, LG&E/KU noted that no Intervenors other than the Joint Intervenors took issue with the DSM-EE plan and that Joint Intervenors supported the plan while arguing that more savings were achievable.[533] LG&E/KU further noted that Joint Intervenors did not propose specifics for additional programs or calculate cost-

[528] Isaacson Rebuttal Testimony at 8–9; LG&E/KU Post-Hearing Reply Brief at 36.

[529] LG&E/KU Post-Hearing Reply Brief at 36.

[530] Isaacson Rebuttal Testimony at 9–10.

[531] Isaacson Rebuttal Testimony at 9–10.

[532] Isaacson Rebuttal Testimony at 10.

[533] LG&E/KU Post-Hearing Brief at 48.

effectiveness of their recommendations.[534] Also in their brief, LG&E/KU walked through the steps of the DSM-EE program planning and selection to support their position that the DSM-EE Advisory Group members fully participated in the planning and selection process.[535] LG&E/KU asserted that, as circumstances change, they will perform a mid-plan revision of the DSM-EE portfolio, as it has done in the past.[536]

DISCUSSION AND FINDINGS – DSM-EE PLAN AND TARIFF

In making our findings in this case, the Commission recognizes that, unlike the prior LG&E/KU DSM case in which it projected a capacity surplus, resulting in an avoided capacity cost of zero, LG&E/KU are projecting a capacity shortfall in the near future and are proposing avoided costs greater than zero. The Commission agrees with the avoided costs that LG&E/KU used to determine the cost-effectiveness of the DSM-EE Program Plan. Furthermore, the Commission has traditionally evaluated DSM effectiveness by primarily focusing on the TRC results. Therefore, when discussing LG&E/KU's low-income programs, such results are not uncommon for low-income programs to not be cost-effective. The Commission has found that such DSM programs assist low-income customers in lowering their energy bill as well as the impact these programs have on LG&E/KU's generation load. The Commission notes that LG&E/KU should be vigilant in their scrutiny of the results of each DSM program measure's cost-effectiveness test and provide those results in future DSM cases along with detailed support for future DSM program expansions and additions. Additionally, the Commission finds that LG&E/KU will

[534] LG&E/KU Post-Hearing Brief at 48.

[535] LG&E/KU Post-Hearing Brief at 48–50.

[536] LG&E/KU Post-Hearing Brief at 50–52.

include updated TRC scores and any changes to the programs or the program costs during their annual DSM-EE filings with the Commission.

The Commission notes that while it recognizes the effort LG&E/KU took to meet with the DSM-EE Advisory Groups five times, the Commission has concern that these meetings were not as constructive as they could have been. The Commission has an understanding that these meetings should be more than informational and, instead, should entail fluid dialog among all vested parties. The Commission notes Walmart's request for either a separate DSM-EE Advisory Group for commercial and industrial representatives, or designation of a portion of the DSM-EE Advisory Group meeting that focuses on commercial and industrial representatives. The Commission notes that the development of a DSM-EE plan requires full involvement of all groups, with opinions and ideas incorporated through shared decision-making. The Commission would encourage LG&E/KU to integrate opinions and discussion results more fully and formally from collaboratives and advisory groups. Therefore, the Commission finds that LG&E/KU should establish separate Advisory Group meetings for the commercial and industrial representatives, with a representative from the Office of the Attorney General, to allow a more fluid and constructive meeting with both residential customer representatives, and commercial and industrial representatives.

The Commission would also like to note that there have been multiple comments and concerns regarding LG&E/KU's recent IRP filing. The Commission refers to the 2021 IRP Staff Report in which the Commission provided recommendations for LG&E/KU's next IRP filing. The Commission finds that LG&E/KU are actively working towards achieving those recommendations and that the 2024-2030 DSM-EE Program Plan is a

more robust and expanded plan from the 2019-2025 DSM-EE Program Plan that includes cost-effective options, programs that shift load, and programs that achieve actual dollar savings and demand and energy savings. However, the Commission finds that the recommendations listed in the 2021 IRP Staff Report must be considered for future planning and that LG&E/KU should always continue to evaluate their DSM-EE Program Plan.

Additionally, the Commission finds that the factors listed in KRS 278.285(1) are supported considering LG&E/KU are attempting to alter usage patterns and lower energy and peak consumption; LG&E/KU provided a cost-benefit analysis based upon the California Tests, provide support for recovery of all program costs, lost revenues, and incentives; LG&E/KU include all DSM in their IRP flings, including the current filing;[537] the proposed programs are available to qualifying customers; the DSM-EE Advisory Group includes the Attorney General; LG&E/KU ensure that the programs are available, affordable, and educational with customer service representatives (CSRs); and LG&E/KU were granted a Certificate of Convenience and Public Necessity for full deployment of AMS meters in their 2020 rate cases and have commitments to provide an on-line platform accessible to the customer and to CSRs for usage, costs, and meter readings. Furthermore, there is near universal support for LG&E/KU's programs. The Commission also approves LG&E/KU's request for a 50-basis point addition to the ROE and the DSM rates for electric and gas service as set forth in the Appendix to this Order are reasonable and should also be approved.

[537] See Case No. 2021-00393, *Electronic 2021 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company* (Ky. PSC filed Oct. 19, 2021).

SUMMARY OF FINDINGS

As set forth above, the Commission finds that:

1. LG&E/KU's request to retire Mill Creek 1 and Mill Creek 2 should be granted, with the retirement of Mill Creek 2 conditioned on LG&E/KU constructing Mill Creek 5.

2. LG&E/KU's request to retire Haefling 1 and 2, and Paddy's Run 12 should be granted.

3. LG&E/KU's request to retire Ghent 2 and Brown 3 should be denied.

4. LG&E/KU's request for CPCNs to construct Mill Creek 5, Mercer County Solar Facility, and Brown BESS should be granted.

5. LG&E/KU's request for a CPCN to acquire Marion County Solar Facility should be granted.

6. LG&E/KU's request for a CPCN to construct Brown 12 should be denied.

7. LG&E/KU's request for a site compatibility certificate for Mill Creek 5 should be granted.

8. LG&E/KU's request for a site compatibility certificate for Brown 12 should be denied.

9. LG&E/KU should be required to file an application for a site compatibility certificate for Brown BESS.

10. LG&E/KU's request to enter into four Solar PPAs should be granted pursuant to KRS 278.300.

11. LG&E/KU's request to recover the costs of the Solar PPAs through the FAC or a PPA rider should be denied, with leave to subsequently file an application for cost recovery of the Solar PPAs in the future.

12. LG&E/KU's request for approval of the change in ownership of assets pursuant to KRS 278.218 and stipulation regarding the sale of the Mercer County property described in this Order should be granted.

13. LG&E/KU's request to establish a regulatory asset for the difference between AFUDC accrued at LG&E/KU's weighted average cost of capital and AFUDC accrued using the methodology approved by the FERC during the construction period of Mill Creek 5, Mercer County Solar Facility, and Brown BESS should be granted.

14. LG&E/KU's request to establish a regulatory asset for the difference between AFUDC accrued at LG&E/KU's weighted average cost of capital and AFUDC accrued using the methodology approved by the FERC during the construction period of Brown 12 should be denied.

15. LG&E/KU should take all reasonable measures to mitigate the cost of Mill Creek 5, while prioritizing the addition of dual fuel capability at the facility for no more than the most recent received quote for the costs of the entire facility.

16. LG&E/KU's request for approval of the DSM-EE plan and tariff should be approved

17. LG&E/KU's motion for the Commission to take administrative notice of their Hearing Exhibit 1, Joint Comment ERCOT, MISO, PJM, and SPP in EPA Docket No. EPA-HQ-OAR-2023-0072, New Source Performance Standards for Greenhouse Gas Emissions from New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating

Units; Emission Guidelines for Greenhouse Gas Emissions from Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule should be granted.

SUMMARY OF CONCLUSIONS

This case is fundamentally about the adequacy, reliability and cost of LG&E/KU's generation facilities. Importantly, the only immediate rate impact of this proceeding relates to the demand-side management and energy efficiency measures, otherwise known and DSM-EE, approved in this Order. Those programs are permitted by statute, and utilities, such as LG&E/KU, charge line-item rates to recover the costs of the programs. DSM-EE programs are intended to provide either demand reductions that can be used to reduce the overall needs of the system, or energy savings that in aggregate, reduce the total amount of electricity used by customers. Other than targeted low-income programs designed specifically to reduce the energy burden of those customers least able to afford their bills, DSM-EE programs are cost-effective in reducing demand and energy. Said differently, every dollar spent on DSM-EE programs returns benefits to customers in excess of a dollar. Given their cost-effectiveness, customers rates over time are lower with DSM-EE programs than they would have been without them.

None of the resource decisions made in this Order immediately impact rates. With the passage of Senate Bill 4 in the 2023 session of the General Assembly, for the first time this Commission was given the explicit authority to grant or deny requests to approve the retirement of utilities' generating facilities. Furthermore, Senate Bill 4, codified as KRS 278.262 and 278.264, added reliability as a specific statutory standard for the Commission to apply in regulating electric utilities, in addition to the primary requirements

of service, that service be adequate, efficient and reasonable. In recognition of the General Assembly's clear concern for the Commonwealth's electric transmission system, and the statute's dictate that the Commission ensure retirements are economic and do not negatively impact bulk grid reliability, this Order attempts to maximize the reliability of those dollars that will be spent on generation and transmission facilities, while minimizing the risk of burdensome rates and stranded costs.

In this matter, LG&E/KU requested to retire four coal-fired generating units, in order of size from smallest to largest: Mill Creek 2, 297 MW; Mill Creek 1, 300 MW; Brown 3, 412 MW; and Ghent 2, 485 MW. LG&E/KU also requested to retire three natural gas-fired units: Haefling 1 and 2, and Paddy's Run 12. The three natural gas-fired units combined have 47 MW of summer capacity and 55 MW of winter capacity, or about one-sixth the capacity of LG&E/KU's smallest coal-fired plant at issue in the proceeding. LG&E/KU proposed to replace those facilities, and add new generation, with a suite of varied facilities, including large natural gas plants, a number of solar generators (both owned and contracted), and a large battery.

In accordance with the law, this Order approves the retirement of the two smallest coal plants, Mill Creek 1 and 2, as well as the three small natural gas-fired units, Haefling 1 and 2, and Paddy's Run 12. This Order gives defined retirement dates for Mill Creek 1 and 2, as long as certain conditions are met, and approves LG&E/KU to retire the small natural gas-fired units when they break and the cost to fix or maintain them exceeds their value. In approving the retirement of those five units, the Commission also approves a certificate to build a large natural gas-fired generator, called Mill Creek 5, at the Mill Creek Station in Jefferson County, Kentucky. Replacing those five retiring units with Mill Creek

5 is cheaper than the cost of maintaining and upgrading those units, based on known, likely, and expected expenses. The Commission's Order herein also finds that replacement of those five retiring units with Mill Creek 5 will make the system more reliable than it is today, reducing the likelihood that LG&E/KU's system will not have enough energy to serve customers when they demand it, as compared to a system that keeps all five generators and makes the necessary upgrades to fully operate them. Importantly, no other proposed facility, including the solar and battery facilities, is necessary for the Commission's findings regarding the cost-effectiveness of the retirement and replacement, or the finding regarding enhanced reliability with the addition of Mill Creek 5.

The Commission denies LG&E/KU's request for a certificate to build another large natural gas-fired generator, Brown 12, because it is not needed now. Herein, the Commission finds that the retirement of Ghent 2 and Brown 3, two large coal-fired units, is premature given the timing of overhaul costs and uncertainty surrounding environmental compliance. The Commission finds there are material distinctions between Mill Creek 1 and 2, and Brown 3 and Ghent 2 that support the Mill Creek unit retirements, while finding the retirement of Ghent 2 and Brown 3 is premature. There are a number of differences, including a number of local air quality issues in Jefferson County that increase the likelihood Mill Creek 1 and 2 will be forced to retire or will certainly need to make expensive upgrades, as well as the fact that Mill Creek 1 has been operated and maintained since 2020 in ways that anticipated its retirement in 2024. Regardless, in the event LG&E/KU have trouble timely constructing Mill Creek 5, the Commission finds that

given their need for adequate generation, LG&E/KU should not retire Mill Creek 2 without sufficient replacement.

LG&E/KU also proposed to own, as well as contract for, solar generation. In nearly every scenario studied the proposed solar reduced the total cost for customers by providing cheap energy at the times the facilities produce it. Given the significant savings the proposed solar provides for customers, the Commission approves it as an additive source of generation to help supplement LG&E/KU's needs. The Commission also approves a certificate to build the proposed energy storage system, or BESS, as it will give LG&E/KU a significant insight into the operation and integration of large-scale storage in meeting customer demand. Given the expected resource constraints in the future, not the least of which are increased environmental regulation and difficulty in the siting of energy infrastructure, both of which were discussed at lengths in this matter, it is imperative LG&E/KU are not caught unprepared in understanding the facilities that will be necessary to keep the lights on over the coming decades. Building, owning and operating the proposed battery as soon as practical will provide LG&E/KU with invaluable knowledge necessary to mitigate reliability and cost impacts in a changing resource environment.

A number of other items are addressed herein, including concerns around LG&E/KU's load forecast, proposals to join wholesale power markets in lieu of building or buying generation, and questions around the resource mix after this case is decided. Given the denial of the retirement of Ghent 2 and Brown 3, particularly until further environmental compliance is clearer, as well as the denial of the CPCN for Brown 12, the Commission finds that parties' concerns surrounding a sudden shift in the

Commonwealth's generation resource mix are overstated. Following this Order, LG&E/KU's reliance on gas as opposed to coal is only marginally shifted, and the addition of a battery and solar, the latter of which will materially contribute to reliability during the LG&E/KU's summer peaks, improve the system's reliability. As noted above, without the addition of the solar and battery, and only with the replacement of the retiring generators with Mill Creek 5, the reliability of the system going forward is higher than the status quo.

With regard to joining an RTO, the Commission finds that joining a market to address generation retirement is not in conformity with the law, and places customers at significant risk of unmitigable costs and reliability concerns. As this body has said in other proceedings, "This Commission has no interest in allowing our regulated, vertically-integrated utilities to effectively depend on the market for generation or capacity for any sustained period of time."[538] If LG&E/KU are retiring generation, and customer demand requires replacement generation, this Commission expects LG&E/KU to own or contract for the necessary resources, not depend on a capacity market where someone else is in charge of weatherization, maintenance and fuel assurance of those resources. Regardless, the Commission uses this opportunity to reiterate its interest in LG&E/KU continuing to seriously study the costs and benefits of RTO membership, in order to maximize LG&E/KU's investments for the benefit of its customers, and to take advantage of the reliability benefits of being in a larger system.

As it relates to measuring generation and demand for purposes of resource planning, given the uncertainty around financing, environmental regulations and the ability

[538] Case No. 2021-00198, *Electronic Tariff Filing of East Kentucky Power Cooperative, Inc. and Its Member Distribution Cooperatives for Approval of Proposed Changes to Their Qualified Cogeneration and Small Power Production Facilities Tariffs* (Oct 26, 2021) at 5, Footnote 10.

to timely construct energy infrastructure, all-else-equal the Commission would rather err on the side of having too much energy, as opposed to not enough. With surrounding regions concerned about being energy inadequate, the Commission would rather the Commonwealth standout as a state with enough power to meet customers' needs.

IT IS THEREFORE ORDERED that:

1. LG&E/KU's request to retire Mill Creek 1 and Mill Creek 2 is approved, with the retirement of Mill Creek 2 conditioned on LG&E/KU constructing Mill Creek 5.

2. LG&E/KU's request to retire Haefling 1 and 2, and Paddy's Run 12 is approved, with the conditions expressed herein.

3. LG&E/KU's request to retire Ghent 2 and Brown 3 is denied.

4. LG&E/KU's request for CPCNs to construct Mill Creek 5, Mercer County Solar Facility, and Brown BESS are granted.

5. LG&E/KU's request for a CPCN to acquire Marion County Solar Facility is granted.

6. LG&E/KU's request for a CPCN for Brown 12 is denied.

7. LG&E/KU shall obtain approval from the Commission prior to performing any additional construction not expressly authorized by this Order.

8. LG&E/KU shall provide written notice to the Commission one week prior to the actual start of construction of Mill Creek 5.

9. LG&E/KU shall provide written notice to the Commission one week prior to the actual start of construction of Mercer County Solar Facility.

10. LG&E/KU shall provide written notice to the Commission one week prior to the actual start of construction of Brown Bess.

11. LG&E/KU shall file written notice with the Commission of any increase to the cost of construction of Mill Creek 5, Mercer County Solar Facility, or Brown Bess that exceeds five percent of the costs as filed.

12. LG&E/KU shall file with the Commission documentation of the total costs of the construction of Mill Creek 5, Mercer County Solar Facility, and Brown BESS, including the cost of construction and all other capitalized costs (e.g., engineering, legal, and administrative), within 60 days of the date that the construction of each facility is substantially completed. Construction costs shall be classified into appropriate plant accounts in accordance with the USoA for electric utilities prescribed by the Commission.

13. LG&E/KU shall file with the Commission documentation of the total costs of acquiring Marion County Solar Facility within 60 days of the date that LG&E/KU acquires the facility.

14. LG&E/KU are authorized to enter into the four Solar PPAs, as filed, contingent on the respective Solar PPAs' costs not exceeding five percent of the costs as filed.

15. LG&E/KU shall file written notice within ten days of an increase that exceeds five percent of any of the Solar PPAs' costs as filed.

16. LG&E/KU's request to recover the costs of the Solar PPAs through the FAC or a PPA rider is denied, with leave to refile an application for cost recovery of the Solar PPAs in the future.

17. LG&E/KU are authorized to establish a regulatory asset for the difference between AFUDC accrued at LG&E/KU's weighted average cost of capital and AFUDC

accrued using the methodology approved by the FERC during the construction period of Mill Creek 5, Mercer County Solar Facility, and Brown BESS is granted.

18. The regulatory asset account established in this case are for accounting purposes only.

19. The amount, if any, of the regulatory asset approved in this Order that is to be amortized and included in rates shall be determined in LG&E/KU's next base rate case.

20. LG&E/KU are granted a site compatibility certificate to construct Mill Creek 5 at the Mill Creek Generating Station in Jefferson County, Kentucky.

21. LG&E/KU's request for a site compatibility certificate to construct Brown 12 at the Brown Generating Station is denied.

22. LG&E/KU shall file an application for a site compatibility certificate to construct Brown BESS at the Brown Generating Station in a separate proceeding.

23. KU's request to sell property owned in Mercer County to Mercer County Government and the city of Harrodsburg is granted.

24. The stipulation as filed by KU and Mercer County Government is approved.

25. LG&E/KU's DSM-EE programs and associated costs as filed in their January 6, 2023 application are approved effective January 1, 2024.

26. The rates for LG&E/KU's DSM-EE programs set forth in Appendices A and B to this Order are approved.

27. Within 20 days of the date of this Order, LG&E/KU shall file with this Commission, using the Commission's electronic Tariff Filing System, revised tariff sheets

setting out the rates approved in this Order and reflecting that they were approved pursuant to this Order.

28. LG&E/KU's motion for the Commission to take administrative notice of their Hearing Exhibit 1, Joint Comment ERCOT, MISO, PJM, and SPP in EPA Docket No. EPA-HQ-OAR-2023-0072, New Source Performance Standards for Greenhouse Gas Emissions from New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions from Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule is granted.

29. This case is closed and removed from the Commission's docket.

PUBLIC SERVICE COMMISSION

Chairman

Vice Chairman

Commissioner

ENTERED
NOV 06 2023
bsb
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:

Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2022-00402 DATED NOV 06 2023

The following rates and charges are prescribed for the customers served by Louisville Gas and Electric Company. All other rates and charges not specifically mentioned herein shall remain the same as those in effect under the authority of this Commission prior to the effective date of this Order.

LG&E Electric Rate Classes

RS, RTOD-Energy, RTOD-Demand, VFD	$ 0.00196 per kWh
GS, GTOD-Energy, GTOD-Demand	$ 0.00256 per kWh
PS	$ 0.00659 per kWh
TODS, TODP, RTS, FLS, OSL	$ 0.00078 per kWh

LG&E Gas Rate Classes

RGS, VFD	$ 0.00722 per Ccf
CGS, IGS, AAGS, SGSS, FT	$ 0.00165 per Ccf

APPENDIX B

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2022-00402 DATED NOV 06 2023

The following rates and charges are prescribed for the customers served by Kentucky Utilities Company. All other rates and charges not specifically mentioned herein shall remain the same as those in effect under the authority of this Commission prior to the effective date of this Order.

KU Electric Rate Classes

RS, RTOD-Energy, RTOD-Demand, VFD	$ 0.00120 per kWh
GS, GTOD-Energy, GTOD-Demand	$ 0.00156 per kWh
AES	$ 0.00849 per kWh
PS, TODS, TODP, RTS, FLS, OSL	$ 0.00198 per kWh

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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 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

FINANCING ORDER

TABLE OF CONTENTS

I. DISCUSSION AND STATUTORY OVERVIEW 10

II. DESCRIPTION OF PROPOSED TRANSACTION 21

III. FINDINGS OF FACT 44

A. Identification and Procedure 44

1. Identification of Applicant and Background 44
2. Procedural History 44

B. Costs to be Securitized 45

1. Identification 45
2. Balance to be Securitized 47
3. Issuance Advice Letter 50
4. Issuance Advice Letter and Financing Costs 51
5. Quantifiable Net Present Value Benefit 55

C. Structure of the Proposed Securitized Bond Transaction 56

1. BondCo 56
2. Credit Enhancement and Arrangements to Enhance Marketability 60
3. Securitized Property 62
4. Servicer and the Servicing Agreement 62

5. Administrator and the Administration Agreement 65
6. Securitized Bonds 67
7. Security for Securitized Bonds 68
8. General Provisions 73
9. Securitized Surcharges—Imposition and Collection, and Nonbypassability 74
10. Allocation Among Customers.....77
11. Commission True-Up of Securitized Surcharges 79
12. True-up of Securitized Surcharges.....80
13. Additional True-Up Provisions.....80
14. Designated Commission Staff.....81
15. Securitized Surcharges Lowest Cost Consistent With Market Conditions.....82

D. Use of Proceeds.....84

IV. CONCLUSIONS OF LAW 85

V. ORDERING PARAGRAPHS.....95

A. Approval 95

B. Securitized Surcharges 104

C. Securitized Bonds.....107

D. Basic Transaction Documents.....116

E. Structure of the Securitized Bond Transaction.....121

F. Use of Proceeds.....121

G. Security Interests in Securitized Property Miscellaneous Provisions 122

H. Miscellaneous Provisions.....122

Appendix A Form of Issuance Advice Letter

Appendix B Form of Tariff (Securitized Surcharge Rider)

Appendix C Projected Up-Front and Ongoing Financing Costs

Appendix D Form of Underwriter's Certificate

Appendix E Form of Financial Advisor's Certificate

Appendix F Form of Disapproval Order

FINANCING ORDER

This Financing Order (Financing Order) addresses portions of the application of Kentucky Power Company (Kentucky Power) under KRS 278.670 through KRS 678.696 and KRS 65.114 (collectively, the Act):

(1) Arrange through a finance subsidiary for the issuance of securitized bonds to finance the balance of (a) certain corporate utility costs that can be securitized as described in Table I titled "Regulatory Assets to be Securitized" (which may be referred to in this Financing Order as the Project) plus (b) carrying costs accruing on the applicable portions of such balance at the weighted average cost of capital approved in this case through the date the securitized bonds are issued minus (c) all insurance, scrap, and salvage proceeds, applicable unamortized regulatory liabilities for excess deferred income taxes; and the present value of return on all accumulated deferred income taxes related to pretax costs with respect to a retired or abandoned facility and related facilities, including those due to bonus and accelerated tax depreciation and abandonment losses (such balance, the Securitizable Balance);[1]

(2) Arrange for the issuance of securitized bonds through one or more special purpose finance subsidiaries to finance certain up-front financing costs[2] incurred in connection with such securitized bonds as further defined and described below;

(3) Approve the proposed securitized bond financing structure and issuance of securitized bonds;

[1] KRS 278.670(15) and KRS 278.670(18).

[2] KRS 278.670(6).

(4) Approve securitized surcharges sufficient to recover principal of and interest on the securitized bonds plus ongoing financing costs, such securitized surcharges to be imposed jointly on all existing and future retail customers receiving electrical service from Kentucky Power or its successors or assignees; and

(5) Approve of a tariff to implement such securitized surcharges.

On June 29, 2023, Kentucky Power submitted an application for a financing order to approve the issuance of securitized bonds to finance the securitized costs, plus certain financing costs associated with the proposed securitized bonds. The application was initially rejected for filing due to filing deficiencies, but was accepted for filing on July 14, 2023, after Kentucky Power cured various filing deficiencies. As discussed in this Financing Order, the Commission finds that Kentucky Power's application for approval of the securitized bond transaction should be approved subject to conditions. The Commission also finds that the securitized bond financing transaction approved in this Financing Order meets all applicable requirements of the Act.

Kentucky Power's application also requested approval of a general adjustment of its electric rates and approval of certain tariffs and riders among other approvals and relief. Any issues not addressed in this order, including Kentucky Power's request for approval of a general rate adjustment, will be addressed in a separate order entered on or before January 19, 2024.

In accordance with the terms of this Financing Order, the Commission:

(1) Approves the issuance of securitized bonds in an amount not exceeding the sum of the Securitizable Balance, plus up-front financing costs as described in Ordering Paragraph 2 to finance the Project;

(2) Approves the structure of the proposed securitized bond financing transaction and issuance of securitized bonds in one or more series;

(3) Approves a securitized surcharge in amounts to be calculated as provided in this Financing Order;

(4) Approves the form of tariff as provided in Appendix B of this Financing Order to implement the securitized surcharge;

(5) Finds that the proposed issuance of the securitized bonds and the imposition and collection of the resulting securitized surcharge and associated rates are fair, just and reasonable, in the public interest, and expected to provide quantifiable net present value (NVP) benefits to customers as compared to recovery of the components of securitized costs that would have been incurred absent the issuance of securitized bonds; and

(6) Finds that the proposed structuring and pricing of the securitized bonds, subject to conditions set forth in this Financing Order, are reasonably expected to result in the lowest securitized surcharges consistent with the terms of this Financing Order and with market conditions at the time the securitized bonds are priced.

To approve the issuance of securitized bonds described herein, the Commission must find that the proposed transaction meets the requirements set forth in KRS 278.676. A financing order issued by the Commission must include:

(1) The amount of securitized costs to be financed using securitized bonds and a finding by the Commission that the amount of securitized costs to be financed using securitized bonds is fair, just and reasonable and in the public interest;

(2) A description and estimate of the amount of financing costs that may be recovered through securitized surcharges and the period over which securitized costs and financing costs may be recovered;

(3) A finding that the proposed issuance of securitized bonds and the imposition and collection of a securitized surcharge are fair, just and reasonable, in the public interest, and expected to provide quantifiable NPV benefits to customers as compared to recovery of the components of securitized costs that would have been incurred absent the issuance of securitized bonds;

(4) A finding that the proposed structuring and pricing of the securitized bonds are reasonably expected to result in the lowest securitized surcharges consistent with market conditions at the time the securitized bonds are priced under the terms of the financing order;

(5) A requirement that, for so long as the securitized bonds are outstanding and until all financing costs have been paid in full, the imposition and collection of securitized surcharges authorized under a financing order shall be nonbypassable and paid by all existing and future retail customers receiving electric service from the electric utility, its successors, or assignees under Commission-approved rate schedules even if a retail customer elects to purchase electricity from an alternative electric supplier following a fundamental change in regulation of public utilities in the Commonwealth of Kentucky;

(6) A formula-based true-up mechanism for making (i) at least annually, expeditious periodic adjustments in the securitized surcharge that customers are required to pay pursuant to the financing order; and (ii) any adjustments that are necessary to correct for any over collection or under collection of the securitized surcharges and to

ensure the timely payment of securitized bonds and financing costs and other required amounts and surcharges payable under the securitized bonds;

(7) A requirement that the securitized property (i) be created or shall be created in favor of an electric utility, its successors, or assignees and (ii) shall be used to pay or secure securitized bonds and approved financing costs;

(8) A statement regarding the degree of flexibility to be afforded to the electric utility in establishing, (i) the terms and conditions of the securitized bonds, including but not limited to repayment schedules, expected interest rates, and other financing costs, (ii) subject to the Issuance Advice Letter process, the terms and conditions for the securitized bonds to accommodate changes in market conditions, including repayment schedules, interest rates, financing costs, collateral requirements, required debt service, and other reserves, and (iii) at its option, the issuance or a series of issuances of securitized bonds and correlated assignments, sales, pledges, or other transfers of securitized property;

(9) A requirement as to how securitized surcharges will be allocated among retail customer classes;

(10) A requirement that, after the final terms of a proposed issuance of securitized bonds has been established but before the issuance of the securitized bonds, the electric utility shall determine the initial securitized surcharge in the manner required by and consistent with the financing order—the initial securitized surcharge shall be final and effective upon the issuance of the securitized bonds, with the securitized surcharge to be reflected on a compliance tariff and filing bearing the securitized surcharge and the calculation thereof;

(11) A method of (i) tracing funds collected as securitized surcharges or other proceeds of securitized property and authorization to change the method of tracing funds from time to time in accordance with the financing documents, and (ii) determining that the method, as amended from time to time, shall be used for tracing the funds and the identifiable cash proceeds of any securitized property subject to a financing order under applicable law;

(12) A statement specifying the details of a future ratemaking process used to reconcile any differences between the actual securitized costs financed by the electric utility, its successor, or assignee provided that any reconciliation shall not affect the amount of securitized bonds or the associated securitized surcharges paid by customers;

(13) A procedure that shall allow the electric utility to earn a return at its weighted average cost of capital authorized by the Commission in the electric utility's rate proceedings, and subject to changes in interest rates, any moneys advanced by the electric utility to fund reserves, if any, or capital accounts established under the terms of any indenture, ancillary agreement, or other financing documents pertaining to the securitized bonds;

(14) An outside date, which shall not be earlier than one year after the date the financing order is no longer subject to appeal, when the authority to issue securitized bonds granted in the financing order expires; and

(15) A statement that accumulated deferred income taxes and regulatory liabilities for excess deferred income taxes used in calculating retired generation costs

shall be excluded from the rate base in future general rate cases and that no amortization of those excess deferred income taxes shall be reflected in future general rate cases.[3]

The evidence presented in this proceeding demonstrates that the securitized bond transaction approved by this Financing Order is expected to provide quantifiable NPV benefit to customers as compared to recovery of the components of securitized costs that would have been incurred absent the issuance of securitized bonds. Based on the amount of securitized bonds and principal amortization schedule authorized in this Financing Order, Kentucky Power's financial analysis indicated that such retail customers will realize benefits as compared to recovery of the components of securitized costs that would have been incurred absent the issuance of securitized bonds estimated to be at least $74.4 million on a present value basis.[4]

Kentucky Power provided a general description of the proposed transaction structure in its application and in the evidence submitted in support of the application. The proposed transaction structure does not contain every relevant detail and, in certain places, uses only approximations of certain costs and requirements. The final transaction structure will depend, in part, upon the requirements of the nationally recognized credit rating agencies that will rate the securitized bonds and, in part, upon the market conditions that exist at the time the securitized bonds are taken to the market with the intent that credit rating agencies will assign their top credit rating, such as "Aaa/AAA" or similar ratings, to the securitized bonds.

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[3] KRS 278.676.

[4] Application, Section III, Volume 1, Direct Testimony of Franz D. Messner at 7, Exhibit FDM-1 (filed Jun. 29, 2023).

While the Commission recognizes the need for some flexibility with regard to the final details of the securitized bond transaction approved in this Financing Order, the Commission's focus is upon the statutory requirements that must be met prior to issuing a financing order and maximizing the economic benefits to Kentucky Power customers. To this end, a focus of the Commission's review is whether conditions to the Commission's approval of Kentucky Power's application, set forth in this Financing Order, are also met.

The Commission has established in this Financing Order certain procedures, criteria and conditions that must be met in order for the approvals and authorizations granted in this Financing Order to become effective for the benefit of Kentucky Power customers. This Financing Order grants authority to issue securitized bonds and to impose, bill, charge, collect, and receive securitized surcharges only if the final structuring, marketing, and pricing of the securitized bond transaction complies in all material respects with these procedures, criteria, and conditions. The authority and approval granted in this Financing Order is effective as to each issuance upon, but only upon, *inter alia*, Kentucky Power filing with the Commission an issuance advice letter (each an Issuance Advice Letter) demonstrating compliance of that issuance with these procedures, criteria, and conditions as well as all other provisions of this Financing Order and the Act.

I. DISCUSSION AND STATUTORY OVERVIEW

The Kentucky Legislature amended KRS Chapters 65 and 278 on June 30, 2023, to permit electric utilities to use securitized bond financing to recover deferred costs and retired generation costs, including associated financing costs, incurred by public utilities

within the Commonwealth of Kentucky.[5] As a precondition to the use of securitized bond financing, the General Assembly required that the Commission must ensure that the securitized bond financing will provide greater quantifiable NPV benefits to customers than would have been achieved without issuance of the securitized bonds.[6] Consequently, a basic purpose of a securitized bond financing, the recovery of a utility's prudently incurred and approved deferred costs and retired generation costs, is conditioned upon the other basic purpose of the legislation, providing quantifiable economic benefits to retail customers in the Commonwealth.

Pursuant to the Act, the costs eligible for securitized bond financing by Kentucky Power include the Securitizable Balance plus certain up-front financing costs[7] incurred in connection with such securitized bond financing as further defined and described below. The deferred costs for regulatory assets comprising the Securitizable Balance are described, with estimates, in Table I below.

[5] KRS 278.010, 278.670 through 278.696, and 65.114.

[6] KRS 276.676(1)(c).

[7] KRS 278.670(6).

Table I – Regulatory Assets Proposed To Be Financed by Securitized Bonds

Line No.	Regulatory Asset Description	Case No.	FERC Subaccount(s)	Expected Balance as of June 30, 2023
1	**Decommissioning Rider Regulatory Asset**	Please Refer to Application Exhibit 4	1823376	**$289,193,517**
2			1823378	
3			1823379	
4			1823380	
5			1823517	
6			1823518	
7	January 2020 Windstorm	2020-00368	1823620	$ 646,479
8	April 2020 Thunderstorm			$ 474,856
9	April 2020 Windstorm			$ 9,843,199
10	December 2020 Snowstorm	2021-00135		$ 1,043,892
11	2020 Storm Incremental O&M			$ 12,008,426
12	Less: Amount in Base Rates			$ (1,498,582)
13	**2020 Storm Expense Deferral Regulatory Asset**			**$ 10,509,844**
14	February 2021 Ice and Snowstorms	2021-00129	1823623	$ 46,199,297
15	February 2021 Major Flood	2021-00402		$ 826,495
16	2021 Storm Incremental O&M			$ 47,025,792
17	Less: Amount in Base Rates			$ (1,029,789)
18	**2021 Storm Expense Deferral Regulatory Asset**			**$ 45,996,003**
19	June 2022 Thunderstorm and Windstorm	2022-00293	1823698	$ 3,401,582
20	July 2022 Historic Flood			$ 11,449,177
21	2022 Storm Incremental O&M			$ 14,850,759
22	Less: Amount in Base Rates			$ (1,012,476)
23	**2022 Storm Expense Deferral Regulatory Asset**			**$ 13,838,283**
24	March 2023 Windstorm (March 3, 2023)	2023-00137	1823722	$ 3,295,455
25	March 2023 Windstorm (March 25, 2023)			$ 1,028,326
26	April 2023 Windstorm			$ 5,643,197
27	2023 Storm Incremental O&M -			$ 9,966,978

	Estimate			
28	Less: Amount in Base Rates			$ (1,012,476)
29	**2023 Storm Expense Deferral Regulatory Asset - Estimate**			**$ 8,954,502**

30	**Rockport Deferral Regulatory Asset**	2017-00179 2020-00174 2022-00283	1823430 1823431	**$ 52,253,087**

31	**Tariff P.P.A. Under-Recovery Regulatory Asset (Under-Recovered Since January 2020)**	2017-00179 2020-00174 2022-00416	1823557	**$ 50,453,564**

32	**Total Regulatory Assets Requested for Securitized Bond Financing**			**$471,198,800**

To allow for a utility's costs, including financing costs, to be financed by securitized bonds, the Commission may authorize the issuance of corporate bonds, to be known as "securitized bonds," which are to be repaid from the securitized surcharge described in this Financing Order. Securitized bonds are generally defined as evidences of indebtedness or ownership that are issued pursuant to a financing order, limited to a term of no longer than 30 years, and secured by or payable from the securitized property, which includes (i) all rights and interests of a utility, its successor or assignee under a financing order, including the right to impose, bill, charge, collect, and receive securitized surcharges authorized under the financing order and to obtain periodic adjustments to such securitized surcharges authorized under the Act as provided in the financing order and (ii) all revenues, collections, claims, rights to payments, payments, moneys, or proceeds arising from the rights and interests specified in the financing order, regardless

of whether such revenues, collections, claims, rights to payment, payments, moneys, or proceeds are imposed, billed, received, collected, or maintained together with or commingled with other revenues, collections, rights to payment, payments, moneys, or proceeds, at the time such rights are transferred to an assignee or pledged in connection with the issuance of securitized bonds.[8]

If securitized bonds are approved and issued, all retail customers must pay the principal, interest, and related charges of the securitized bonds on a joint basis through securitized surcharges.[9] Securitized surcharges must be approved by the Commission pursuant to a financing order.[10] For so long as the securitized bonds are outstanding, and until all financing costs have been paid in full, the Commission guarantees the imposition of securitized surcharges authorized under a financing order will be nonbypassable and must be paid by all existing and future retail customers receiving electric service from the electric utility, its successors, or assignees under Commission-approved rate schedules even if a retail customer elects to purchase electricity from an alternative electric supplier following a fundamental change in regulation of public utilities in the Commonwealth of Kentucky.[11]

The Act provides that the Commission may adopt a financing order if it finds that:

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[8] KRS 278.670(17); KRS 278.670(19).

[9] KRS 276.676(1)(b).

[10] KRS 276.676(1).

[11] KRS 278.676(1)(e).

(1) The recovery of securitized costs is fair, just and reasonable and in the public interest;[12]

(2) The issuance of securitized bonds and the imposition and collection of a securitized surcharge are fair, just and reasonable, in the public interest, and expected to provide quantifiable NPV benefits to customers as compared to recovery of the components of securitized costs that would have been achieved absent the issuance of the securitized bonds:[13] and

(3) The proposed structuring and pricing of the securitized bonds are reasonably expected to result in the lowest securitized surcharges under the terms of a financing order consistent with market conditions at the time the securitized bonds are priced.[14]

All these statutory requirements are designed to ensure that the issuance of securitized bonds will provide quantifiable NPV benefits to customers.

To grant the application, the Commission must find that the issuance of securitized bonds will provide quantifiable NPV benefits to customers as compared to recovery of the components of securitized costs that would have been incurred absent the issuance of securitized bonds. An economic analysis is necessary to recognize the time value of money in evaluating whether, and the extent to which, benefits accrue from securitized bond financing. Moreover, an economic analysis recognizes the concept that the timing

[12] KRS 278.676(1)(a).

[13] KRS 278.676(1)(c).

[14] KRS 278.676(1)(d).

of a payment can be as important as the magnitude of a payment in determining the value of the payment.

The precise interest rate at which securitized bonds can be sold in a future market is not yet known. Nevertheless, benefits can be calculated based upon certain known facts (e.g., the amount of assets to be financed by securitized bonds and the cost to retail customers of rate recovery that would be the alternative to issuing securitized bonds) and assumptions (e.g., the interest rate of the securitized bonds, the term and principal amortization schedule of the securitized bonds and the amount of other securitized costs and financing costs). By analyzing the proposed securitized bond transaction based upon those facts and assumptions, a determination can be made as to whether it is reasonable to expect quantifiable NPV benefits will result.

To ensure that benefits are realized, the securitized bond transaction must conform to the structure ordered by the Commission as described in detail below and an Issuance Advice Letter must be provided to the Commission no later than one business day after pricing of the securitized bonds that (a) reports the initial securitized surcharges and other information specific to the securitized bonds as required by the Commission; (b) provides information on market conditions and other relevant information at the time of pricing for the Commission to consider in determining whether the terms of this Financing Order have been met; (c) is in the form attached as Appendix A; (d) indicates the final structure of the securitized bonds; (e) provides the best available updated estimate of total up-front financing costs and ongoing financing costs; (f) is based on updated information, confirms that the issuance of securitized bonds will provide quantifiable NPV benefits to customers as compared to recovery of the components of securitized costs that would have been

incurred absent the issuance of securitized bonds; and (g) attaches a certificate from the Applicant confirming that the structuring, marketing and pricing of the securitized bonds in fact resulted in the lowest securitized surcharges consistent with (i) prevailing market conditions at the time of pricing the securitized bonds, and (ii) the terms of the Act and the Financing Order (the Lowest Cost Objective).

Securitized surcharges will be collected by the utility, its successors, an assignee, or other collection agents as provided for in this Financing Order. The securitized surcharges will be allocated among retail customers classes as provided in the Securitized Surcharge Rider.[15]

Under the Act, the rights to impose, bill, charge, collect, and receive securitized surcharges are present, intangible property rights which will be created simultaneously when such rights are first transferred to an assignee and are pledged in connection with the issuance of securitized bonds.[16] Upon the pledge, sale, or transfer of those rights, they become securitized property and, as such, are afforded certain statutory protections to ensure that the securitized surcharges are available for bond retirement.[17]

This Financing Order contains terms ensuring that the imposition and collection of amounts authorized herein shall be nonbypassable.[18] This Financing Order also includes a mechanism requiring that securitized surcharges be reviewed and adjusted at least semiannually, to correct any overcollections or undercollections of the securitized

[15] KRS 278.676(1)(i).

[16] KRS 278.676(3).

[17] KRS 278.676(3).

[18] KRS 278.676(1)(e).

surcharges and to guarantee the timely payment of the securitized bonds and financing costs and other required amounts and securitized surcharges payable under the securitized bonds.[19] The semiannual update to its monthly securitized surcharge should be based on estimates of revenues for each revenue class and other mathematical factors to ensure that the amount of the securitized surcharges is sufficient to provide for payment of principal, interest, acquisition, defeasance, financing costs, or redemption of premium and other fees, costs, and charges with respect to securitized bonds approved under this Financing Order.[20] Interim true-up adjustments may also be made under the circumstances set forth in this Financing Order and consistent with KRS 278.676(1)(f)(2).[21] These provisions will help to ensure that the amount of securitized surcharges paid by customers does not exceed the amounts necessary to cover the costs of the securitized bond transaction.

After the transfer of securitized property to an assignee or the issuance of securitized bonds authorized by this Financing Order, the Commission has no further review other than the up to 120-day post-issuance review of upfront financing costs described below. The Commission shall not be permitted to amend, modify, or terminate this Financing Order by any subsequent action or reduce, impair, postpone, terminate, or otherwise adjust securitized surcharges approved in this Financing Order, except for

[19] KRS 278.676(1)(f).

[20] KRS 278.678(3).

[21] KRS 278.676(1)(f)(2).

changes made pursuant to the formula-based true-up mechanism made pursuant to KRS 278.678(3).[22]

The Commonwealth of Kentucky has pledged and agreed with holders of securitized bonds, owners of the securitized property, and other financing parties that the Commonwealth of Kentucky and its agencies, including the Commission, shall not (1) alter the provisions of KRS 278.670 to 278.696 and KRS 65.114, which authorize the Commission to create an irrevocable contract right or right to sue by the issuance of a financing order creating securitized property, making the securitized surcharges imposed by a financing order irrevocable, binding, or affecting the nonbypassable securitized surcharges for all existing and future retail customers of the electric utility, its successors, or assignees; (2) take or permit any action that impairs or would impair the value of securitized property or the security for the securitized bonds or revises the securitized costs for which recovery is authorized; (3) in any way impair the rights and remedies of the bondholders, assignees, and other financing parties; and (4), except for changes made pursuant to the formula-based true-up mechanism authorized under KRS 278.678, reduce, alter, or impair securitized surcharges that are to be imposed, billed, charge, collected, and remitted for the benefit of the bondholders, any assignee, and any other financing parties until any and all principal, interest, premium, financing costs, and other fees, expenses, or charges incurred, and any contracts to be performed, in connection with the related securitized bonds have been paid and performed in full.[23]

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[22] KRS 278.678(8).

[23] KRS 65.114(2).

Each securitized property (whether associated with a single bond series covering the entire amount authorized to be financed by securitized bonds or with one of multiple bond series covering only a portion of the total amount authorized to be financed by securitized bonds) that is specified in this Financing Order constitutes an existing, present, intangible property right for purposes of contracts concerning the sale or pledge of property, and the securitized property will continue to exist for the duration of the pledge of the Commonwealth of Kentucky as described in the preceding paragraph. Securitized property is not a receivable nor a pool of receivables. In addition, the interests of a transferee, purchaser, acquirer, assignee, or pledgee in securitized property (as well as the revenues and collections arising from the property) specified in this Financing Order are not subject to setoff, counterclaim, surcharge, or defense by the utility or any other person or in connection with the reorganization, bankruptcy, or other insolvency of the utility or any other entity.[24] The creation, perfection, priority, and enforcement of any security interest or lien in securitized property to secure the repayment of the principal and interest and other amounts payable in respect of securitized bonds, amounts payable under any ancillary agreement, and other financing costs are governed by KRS 278.670 through 278.696 and KRS 65.114 and not by any other provisions of the statute or other law, except as otherwise provided in KRS 278.670 through 278.696 and KRS 65.114.[25]

The Commission may, at the request of an electric utility, open a proceeding and subsequently issue a financing order providing for the refinancing, retiring, or refunding of securitized bonds issued pursuant to this Financing Order only upon making a finding

[24] KRS 278.684(6).

[25] KRS 278.686(1).

that the subsequent financing order satisfies all the criteria specified in KRS 278.670 through 278.969 and KRS 65.114.[26] Kentucky Power has not requested, and this Financing Order does not grant, any authority to refinance the securitized bonds authorized by this Financing Order.

To facilitate compliance and consistency with applicable statutory provisions, this Financing Order adopts the definitions in KRS 278.670.

II. Description of Proposed Transaction

A description of the transaction proposed by Kentucky Power to finance the Project is contained in its application and the evidence submitted in support of the application.[27] To facilitate the proposed securitized bond transaction, Kentucky Power proposed that (depending on whether more than one series of securitized bonds are issued) one or more special purpose finance subsidiaries (each referred to as a BondCo) be created to which Kentucky Power will transfer the right to impose, bill, charge, collect, and receive securitized surcharges along with the other rights arising pursuant to this Financing Order, in each case, allocable to the series of securitized bonds the BondCo is issuing. Upon transfer of the securitized property to a BondCo, the rights to the securitized property will pass from transferor to the BondCo as provided by KRS 278.670(19).

If securitized bonds are issued in more than one series, then the securitized property transferred as a result of each issuance shall be only those rights associated with that portion of the total amount authorized to be financed by securitized bonds in this

[26] KRS 278.680(2).

[27] Application, Section I, Application for Securitization Financing Order at 17-24; Application, Section I, Exhibit 5; and, Application, Section III, Volume I, Direct Testimony of Brian West (West Direct Testimony) at 21.

Financing Order that is financed by a particular series. Securitized property is not a receivable or a pool of receivables. The rights to impose, bill, charge, collect, receive, and adjust securitized surcharges, along with the other rights arising pursuant to this Financing Order as they relate to any portion of the total amount authorized to be financed by securitized bonds that remains unfinanced, shall remain with Kentucky Power and shall not become securitized property until transferred to a BondCo in connection with the issuance of a subsequent series of securitized bonds.

The rights, obligations, structure, and restrictions described in this Financing Order with respect to a BondCo are applicable to each transferee or purchaser of securitized property to the extent of the securitized property transferred and sold to it and the securitized bonds issued by it. The BondCo will issue securitized bonds and will transfer the net proceeds from the sale of the securitized bonds to its parent, Kentucky Power, in consideration for the transfer of the corresponding securitized property. The BondCo will be organized and managed in a manner designed to achieve the objective of maintaining the BondCo as a bankruptcy-remote finance subsidiary (ring-fenced from its parent, Kentucky Power) that would not be affected by the bankruptcy of Kentucky Power or any other affiliates of Kentucky Power or any of their respective successors, or assignees, and be capable of achieving top credit ratings. In addition, the BondCo will have at least one independent manager whose approval will be required for certain major actions or organizational changes by the BondCo.

The securitized bonds will be issued pursuant to an indenture and administered by an indenture trustee.[28] The securitized bonds will be secured by and payable solely out of the securitized property created pursuant to the Act and this Financing Order and other collateral (if any) described in Kentucky Power's application. The collateral will be pledged to the indenture trustee for the benefit of the holders of the securitized bonds and to secure payment of such securitized bonds.

The servicer of the securitized property will collect the securitized surcharges and remit those amounts on a daily basis to the indenture trustee on behalf of a BondCo. The servicer will be responsible for filing, with the Commission, any required or allowed true-ups of the securitized surcharges. If the servicer defaults on its obligations under a Securitized Property Servicing Agreement, the indenture trustee may, on behalf of the holders of securitized bonds, appoint a successor servicer and pursue other legal remedies against the servicer for any economic damage to BondCo investors as a result of the servicer's failure of representation or default. In accordance with a Securitized Property Servicing Agreement, which the Commission will subsequently approve, Kentucky Power will act as the servicer for the securitized bonds.

Securitized surcharges will be calculated to ensure the collection of an amount sufficient to pay the principal, interest, and related charges for the securitized bonds and in a manner that allocates this amount to the various classes of retail customers in a manner that is similar to how the corresponding facilities and related expenses are

[28] If more than one series of securitized bonds is issued, each series will be issued pursuant to a separate indenture or series supplement and be subject to its own set of other basic agreements (*e.g.*, Securitized Property Purchase and Sale Agreement, Securitized Property Servicing Agreement). For purposes of this Financing Order, the description of the securitized bonds applies to each series of securitized bonds.

allocated among customers in Kentucky Power's current rates. Specifically, as proposed, the securitized costs and financing costs due in a given period, grossed up to account for the projection of uncollectible securitized surcharges and a projection of payment lags between the billing and collection of securitized surcharges, will first be allocated among two groups of retail electric customers (hereinafter, revenue classes), consisting of (a) residential customers and (b) all other retail electric customers (non-residential retail electric customers), on a percent of revenue basis to determine the revenue requirement for each revenue class during the period. The revenue requirement allocated to each revenue class will then be further allocated among all customers within each class by applying an adjustment factor to amounts billed for certain defined retail charges during the period. The adjustment factor for each revenue class will be calculated by dividing the revenue requirement allocated to each revenue class for a given period by the revenue expected during the period from the charges to which each adjustment factor will apply. The adjustment factor will be trued up periodically to account for under and overcollections.

The Commission generally agrees with the structure for the securitized surcharges proposed to ensure the collection of amounts sufficient to fund all scheduled payments of principal and interest on the securitized bonds as well as ongoing financing costs. A formula-based true-up mechanism for making, at least annually, periodic adjustments in the securitized surcharges, as required by KRS 278.676(1)(f), enforced by the Commission is necessary to guarantee that the amount collected from securitized surcharges is sufficient to pay the securitized bonds and may be performed at other times, as provided in this Financing Order. However, the Commission believes that some

modifications and clarifications to Kentucky Power's proposed securitized surcharge are necessary to avoid confusion regarding its application and to ensure timely and accurate true-up adjustments.

First, Kentucky Power indicated that its securitized surcharge would be applicable to all existing and future retail electric customers, but in its proposed tariff for the securitized surcharge, Kentucky Power listed the tariffs to which the securitized surcharge would be applicable, including Tariffs R.S., R.S.D., R.S.-L.M.-T.O.D., R.S.-T.O.D., Experimental R.S.-T.O.D.2, G.S., S.G.S.-T.O.D., M.G.S.-T.O.D., L.G.S., L.G.S.-T.O.D., I.G.S., C.S.-I.R.P., M.W., O.L., and S.L.[29] While Kentucky Power listed its current retail electric rate classes in its proposed securitized surcharge tariff, the Commission is concerned that listing the current rate classes, especially without clarification, could later be read as preventing the application of the securitized surcharge to new customer classes or new rate classes that may be necessary in the future or to retail electric customers taking service under a special contract. Thus, the Commission finds that the language of Kentucky Power's proposed tariff should be modified to simply indicate that the securitized surcharges will be applicable to all retail electric customers.

The Commission next notes that Kentucky Power listed the revenue, or charges for retail electric service, to which the adjustment factors for residential and non-residential customers will be applied to allow recovery of the securitized costs and financing costs. For instance, Kentucky Power indicated that the residential adjustment factor would be applied to:

> [T]he sum of the customer's Service Charge, Demand Charge, Energy Charges(s), Fuel Adjustment Clause, System

[29] Kentucky Power's Application, Exhibit 5, Appendix B.

> Sales Clause, Demand-Side Management Adjustment Clause, Federal Tax Change, Residential Energy Assistance, Purchase Power Adjustment and Distribution Reliability Rider.[30]

Kentucky Power indicated that the non-residential adjustment factor would be applied to:

> [T]he sum of the customer's Service Charge, Demand Charge, Energy Charges(s), less Base Fuel, Minimum Charge, Reactive Charge, System Sales Clause, Demand-Side Management Adjustment Clause, Federal Tax Change, Kentucky Economic Development Surcharge, Purchase Power Adjustment and Distribution Reliability Rider.[31]

For residential customers, the charges listed to which the adjustment factor would apply included all current charges for retail residential electric service other than charges made pursuant to the environmental surcharge mechanism (ESM) and nonrecurring charges such as late payment fees and reconnection charges. Similarly, for non-residential retail electric customers, the charges included all charges for retail service except ESM charges and nonrecurring charges, as well as fuel costs recovered in base rates and through the Fuel Adjustment Clause. Notably, the charges to which the adjustment factors would apply did not include pass-through charges that a utility is required to collect for another entity such as amounts a utility is required to collect for local taxes and fees that are included on bills but are not embedded in the cost of service.

The charges to which the adjustment factors apply are important because they serve as the basis for the allocation of costs among the rate classes within the two revenue classes—residential and non-residential retail electric customers—between which Kentucky Power proposed to first allocate costs. Further, as noted above,

[30] Kentucky Power's Application, Exhibit 5, Appendix B.

[31] Kentucky Power's Application, Exhibit 5, Appendix B.

Kentucky Power proposed to calculate the adjustment factor for residential customers and non-residential retail electric customers, respectively, by dividing the revenue requirement for securitized costs and financing costs allocated to each such revenue class for a given period by the revenue expected during the period from the charges to which each adjustment factor will apply. That methodology, which is consistent with the methodology currently used to allocate the Decommissioning Rider Regulatory Asset, will ensure that the securitized costs and financing costs scheduled to be paid in a given period will be collected during that period so long as the revenue requirement allocated to each revenue class is divided by expected revenue from charges to which the adjustment factors will apply. Thus, it is important to be clear about the charges to which the adjustment factor will apply to avoid confusion and ensure that the true-up functions properly.

However, to ensure a fair allocation of securitized costs and financing costs across rate classes of retail customers consistent with the allocation of other costs for electric service, the adjustment factors of the securitized surcharge for residential and non-residential retail electric customers should be calculated based on and applied to all charges for electric service other than those mentioned above as being specifically excluded—i.e. ESM charges, nonrecurring charges, and pass-through charges for both residential and non-residential retail electric revenue classes, as well as fuel costs for non-residential retail electric customers.[32] Further, the Commission is concerned that

[32] The Commission agrees with Kentucky Power's exclusion of nonrecurring charges, ESM charges, and pass through charges from both revenue classes and fuel costs from the allocation of costs between non-residential retail electric customers. First, nonrecurring charges refer to late fees and other fees or charges assessed to a customer to recover the cost of a specific activity, such as reconnecting service, for which the cost is limited to recovery of an amount no greater than the cost of the specific activity and additional charges are not incurred once the activity is

specifically listing the current charges used to calculate the adjustment factor and to which the adjustment factor will apply without further explanation could be interpreted as limiting the application and calculation of the adjustment factor to those charges despite potential future changes in rate structures and rate classes. Thus, while the tariff for the securitized surcharges should list the current charges that fall into the categories to which the adjustment factors should apply, the Commission finds that it is necessary to clearly state that the adjustment factor for residential customers should be calculated based on the expected revenue from and applied to all charges for electric service other than ESM charges, nonrecurring charges, and pass-through charges, and that the adjustment factor for non-residential customers should be calculated based on the expected revenue from and applied to all charges for electric service other than ESM charges, nonrecurring charges, and pass-through charges, as well as fuel costs recovered in base rates and through the Fuel Adjustment Clause.

The Commission also believes that there is a need to provide some clarification regarding the application of Kentucky Power's proposed true-up. First, Kentucky Power indicated at various points that a true-up would be required at least annually and at least semi-annually, except in the 12 months prior to the scheduled final payment date for the latest maturing tranche of securitized bonds of a particular series in which case it proposed requiring a quarterly true-up. Second, Kentucky Power indicated that its

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completed. As Kentucky Power explained, non-recurring charges do not arise from retail sales of electricity, and therefore, it would not be reasonable to use such charges to allocate the securitized surcharge. The pass through charges, which may vary by locality, consist of fees and taxes not embedded in Kentucky Power's revenue requirement and cost of service that Kentucky Power is required to include on customer's bills to pass on to the entity that imposed the fee or tax such as a local government. The pass through charges are not collected for retail electric service, and therefore, should not be included. Further, Kentucky Power's ESM charges are calculated as a percent of revenue requirement rider such that inclusion within the amounts to which the securitized surcharge rider is applied would result in a circular calculation, because the securitized surcharge rider is also a percent of revenue requirement rider.

proposed true-up mechanism would be cumulative but proposed that the true-up for a given period be calculated based on under and over collections in the prior period. Third, Kentucky Power proposed a mechanism for the true-up, including dates when periodic required true-ups would be filed, but was unclear regarding the period through which a given true-up would be conducted. Fourth, Kentucky Power indicated that true-ups for overcollections should be calculated by subtracting the amount of the overcollection from the securitized costs and financing costs due in a given period, grossed up to account for the projection of uncollectible securitized surcharges and a projection of payment lags between the billing and collection of securitized surcharges, which would assume there are uncollectibles and lags in payments for amounts that have already been collected.

To ensure the timely correction of any under or overcollection, the Commission finds that true-ups should be required at least semi-annually, which appears to have been Kentucky Power's intention despite some ambiguity, except in the 12 months prior to the scheduled final payment date for the latest maturing tranche of securitized bonds of a particular series in which case the Commission finds that true-ups should be required at least quarterly as proposed by Kentucky Power. The Commission finds that each true-up should be calculated on a cumulative basis, as discussed in more detail below, to ensure that any under or overcollections are captured in each true-up. The Commission finds that any required periodic true-ups—i.e. the required semi-annual and quarterly true-ups—should be calculated to reflect any under or overcollections through the end of the most recent true-up period that ended prior to the filing of the periodic true-up, because such a calculation will ensure that accurate information regarding under and

overcollections is available to calculate the true-up while still allowing for a timely true-up of any under or overcollections.[33]

The methodology for establishing the securitized surcharge and conducting true-ups, and the circumstances under which each shall be made, as modified to address the issues discussed above, are discussed in more detail below and described in the Securitized Surcharge Rider. If securitized bonds are issued in more than one series, then each series will be subject to a separate true-up under this Financing Order. If the Commission defaults on its obligations under the true-up pursuant to this Financing Order, the indenture trustee may, on behalf of the holders of securitized bonds seek to enforce the terms of the Financing Order for the benefit of holders of the securitized bonds.

The Commission finds that Kentucky Power's proposed financing structure for the securitized property should be used, subject to the terms of this Financing Order. This structure provides for substantially levelized annual revenue requirements over the expected life of the securitized bonds. This structure offers the benefit of not relying upon customer growth and will allow the resulting securitized surcharges to remain level or decline over time if billing determinants remain level or grow. Further, Kentucky Power's proposed securitized surcharge tariff applies consistent allocation factors across the two revenue classes, subject to modification in accordance with the true-up mechanisms adopted in this Financing Order.

Kentucky Power requested approval of securitized surcharges sufficient to recover principal and interest on the securitized bonds plus ongoing financing costs as described

[33] For instance, in the case of semi-annual true-ups, any under or overcollections through the end of a six month period would be reflected in the securitized surcharge beginning on the first date of that same six month period the following year such that any under or overcollection should be corrected within a year assuming expected revenue is accurately projected in the period in which the true-up is applied.

in this Financing Order and Appendix C attached hereto. Each retail customer's monthly bill shall (i) include as a separate line item and include each of (a) the base rate for the retail customer's electricity and (b) the amount of the securitized surcharge, and (ii) explicitly state the portion of securitized surcharges applicable to the revenue class as approved in this Financing Order.

Kentucky Power requested in the application that its financing costs, including up-front and ongoing costs of issuing and maintaining the securitized bonds, be recovered through the securitized bonds and securitized surcharges approved in this Financing Order. Kentucky Power's estimated up-front financing costs total approximately $6.3 million, while estimated ongoing financing costs total approximately $1 million per year for each year of the term of the securitized bonds. The estimates were based on assumptions regarding a number of variables that will directly affect the level of up-front and ongoing financing costs including (1) the total Securitizable Balance of $440,389,797; (2) only one series of securitized bonds issued; (3) the Financing Order proceeding will not be contested; and (4) Kentucky Power acts as servicer.

The Commission finds that Kentucky Power should be permitted to recover the up-front financing costs of the issuance of the securitized bonds in accordance with the terms of this Financing Order. However, if the Commission determines that up-front financing costs did not result in the lowest securitized surcharges consistent with market conditions at the time of the pricing and the terms of this Financing Order; the Commission also finds that there should be a post-issuance review of up-front financing costs and that Kentucky Power should be required to credit the Securitized Bond Deferral Account (defined below) by an amount equal to such excess amount, together with interest expected to be paid

on securitized bonds used to finance that excess amount, provided such crediting of the Securitized Bond Deferral Account should not directly or indirectly increase Kentucky Power's net income.

Kentucky Power estimated that up-front financing costs will be $6.3 million plus (i), if applicable, the cost of original issue discount, credit enhancements, and other arrangements to enhance marketability as discussed in ordering paragraphs 4 and 21 of this Order; plus (ii) the cost of the Commission's financial advisors, outside legal counsel and other consultants, if any, and any additional costs incurred by Kentucky Power to comply with the requests and recommendations of the Commission's financial advisor and other consultants; plus (iii) any costs incurred by Kentucky Power if this Financing Order is appealed; plus (iv) any post-issuance audit or other procedure mandated by this Financing Order. In the Issuance Advice Letter, Kentucky Power will report the updated up-front financing costs to be financed by securitized bonds.

Kentucky Power is authorized to recover directly through securitized surcharges the fees and expenses BondCo must pay for servicing the securitized bonds and providing administrative services to each BondCo. However, Kentucky Power, as BondCo's regulated utility parent, must provide revenue credits to customers as described below. The total estimated annual fees are between approximately $511,000 and $561,000, comprised of (i) annual servicing fees expected to be 0.05 percent of the original principal amount of the securitized bonds plus out of pocket third-party costs, and (ii) annual administrative fees expected to be between $50,000 and $100,000 per annum per BondCo plus out of pocket third-party costs. The estimated ongoing financing costs should be updated in the Issuance Advice Letter to reflect more current information than

what was available when Kentucky Power filed the application. In accordance with the terms of this Financing Order and subject to the approval of the indenture trustee, the Commission will permit a successor servicer to Kentucky Power to recover a higher servicer fee if Kentucky Power, a successor utility, or an affiliate ceases to service the securitized property.

Kentucky Power does not anticipate incurring costs of retiring or refunding debt or equity in connection with the use of the proceeds from the issuance of the securitized bonds.[34] Kentucky Power should be authorized to record such costs as a regulatory asset included on its books and to accrue carrying costs on such regulatory asset using the average weighted interest rate on the securitized bonds, until the costs are included in Kentucky Power's next base rate case, and that the costs, together with carrying costs, be considered for recovery in Kentucky Power's next base rate case, subject to a showing that such costs were prudently incurred and are reasonable and necessary.

Kentucky Power proposed eight principal agreements to be executed by Kentucky Power or each BondCo: (i) a Securitized Property Purchase and Sale Agreement; (ii) a Securitized Property Servicing Agreement; (iii) an Administration Agreement; (iv) an Indenture; (v) an Underwriting Agreement: (vi) the BondCo's Original Limited Liability Company Agreement; (vii) the BondCo's Amended and Restated Limited Liability Agreement; and (viii) an Intercreditor Agreement (collectively, the Basic Transaction Documents).[35]

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[34] Application, Section III, Volume 1, Direct Testimony of Franz D. Messner (Messner Direct Testimony) at 10 (filed Jun. 29, 2023).

[35] *See* draft Basic Transaction Documents (filed Nov. 27, 2023).

III. Conditions of Approval

Securitized bonds proposed by Kentucky Power will be unlike any of Kentucky Power's utility bonds or equity securities previously approved by the Commission. In all other Kentucky Power debt and equity offerings, Kentucky Power is directly responsible to make payments to investors who purchase the securities. In the securitized bond transaction, as a result of this Financing Order, neither the assets nor the revenues of Kentucky Power will be available to make promised payments of principal, interest, and other costs associated with securitized bonds approved by this Financing Order. Similar to a stand-alone project financing, the parent utility (Kentucky Power) will not guarantee the finance subsidiary BondCo's securitized bonds for the project. Rather, through this Financing Order, the Commission must find that the securitized bonds will be repaid from securitized surcharges imposed on retail electric customers in the service area of Kentucky Power as those customers purchase electric services from Kentucky Power or its successors or assignees in the future. Since Kentucky Power will not be responsible for any of the securitized costs or securitized surcharges associated with securitized bonds and the Commission will have no further review of the securitized costs except as provided in this Financing Order, the Commission must impose conditions in this Financing Order to eliminate potential waste and inefficiency in the structuring, marketing, and pricing of the securitized bonds and to protect customers from other risks of financing the project.

To ensure that the interests of ratepayers are protected in connection with the issuance of securitized bonds, the standard for the Commission allowing the transaction to close will be that the structuring, marketing, and pricing of securitized bonds results in

the lowest securitized surcharges consistent with (i) the prevailing market conditions at the time of pricing the securitized bonds and (ii) the structure of securitized bonds and the Basic Transaction Documents are in the form approved in this Order. If the Commission finds that the Lowest Cost Objective is satisfied, that the proposed issuance of securitized bonds and the imposition and collection of securitized surcharges are expected to provide quantifiable NPV benefits to customers as compared to recovery of the components of securitized costs that would have been incurred absent the issuance of securitized bonds, and other conditions set forth in this Financing Order are satisfied; then (a) pursuant to KRS 278.676(1)(d), the Commission will find that the proposed structuring and pricing of the securitized bonds are reasonably expected to result in the lowest securitized surcharges consistent with market conditions at the time the securitized bonds are priced under the terms of this Financing Order; and (b) pursuant to KRS 278.674(1)(b), the Commission will find that the financing order is in the public interest, and the resulting estimated securitized surcharge and other rates are fair, just and reasonable.

To ensure that these standards are met, the outlined procedures are followed, and the targeted benefits to Kentucky Power's ratepayers are realized, the Commission will use experts and resources. The Commission's Staff and financial advisor (Financial Advisor) will participate in all aspects of structuring, marketing, and pricing of securitized bonds. Informed by advice from the Financial Advisor, the Commission will determine if the securitized bonds should be issued.

KRS 278.674(1)(a)(1) authorizes the Commission to approve Kentucky Power's application subject to conditions to ensure the interests of the ratepayers are protected in connection with the securitized bonds. The Commission believes additional conditions

should be imposed to ensure that the interests of ratepayers are protected and that ratepayers are insulated from risks that are not absolutely essential for them to bear. The Commission requires Kentucky Power to abide by the following conditions (as more fully described below) to ensure the protection of the ratepayers and that the resulting securitized bonds and the imposition of securitized surcharges are fair, just and reasonable.

- *Commission Staff and Financial Advisor Involvement after Issuance of This Financing Order*. A designated representative of the Commission selected from Commission Staff (the Designated Representative) and the Financial Advisor should participate in all decisions concerning structuring, marketing, and pricing of the securitized bonds approved in this Financing Order. The Financial Advisor should conduct its own due diligence to advise the Commission, without any conflicts of interest. The Financial Advisor should not have been an underwriter of any debt or equity securities previously issued by or on behalf of Kentucky Power or affiliates.

- *Certifications that the Lowest Cost Standard Has Been Achieved*. After the pricing of securitized bonds approved in this Financing Order, Kentucky Power, and the bookrunning underwriter(s) should each deliver to the Commission an independent certificate, without material qualifications, confirming that the structuring, marketing, and pricing of the securitized bonds achieved the Lowest Cost Objective. In addition, the Financial Advisor should deliver to the Commission a certificate, without material qualifications, confirming that the structuring, marketing, and pricing of the securitized bonds achieved the Lowest Cost Objective.

- *Commission Review and Approval of Financing Costs*. Proceeds of

securitized bonds approved by this Financing Order should be used to pay or reimburse the utility's up-front financing costs of the securitized bonds. Proceeds of securitized bonds should not be used to pay or reimburse ongoing financing costs of the securitized bonds, but securitized surcharge collections shall be used to pay or reimburse ongoing financing costs. Kentucky Power, in conjunction with designated Commission Staff and the Financial Advisor, should seek, wherever possible, to negotiate the lowest financing costs possible, including fees that will be paid to underwriters, rating agencies, accountants, and other service providers.

- *Post-Issuance Review of Financing Costs*. Within 120 days after issuance of any series of securitized bonds authorized by this Financing Order, Kentucky Power should file with the Commission information on actual up-front financing costs of the series of securitized bonds. The Commission should review such information to determine if such up-front financing costs in fact resulted in the lowest securitized surcharges consistent with the terms of this Financing Order and market conditions at the time of pricing. The Commission may disallow any excess incremental up-front financing costs by crediting the Securitized Bond Deferral Account (defined below) by an amount equal to such excess, provided such crediting of the Securitized Bond Deferral Account does not directly or indirectly increase Kentucky Power's net income. The Commission is not authorized to make adjustments to the securitized surcharge for any such excess.

- *Mechanics for Commission Disapproving Issuance of Securitized Bonds*. The Commission will reserve the right to issue an order disapproving issuance of securitized bonds, in the form attached as Appendix F of this Financing Order if the Commission does not find that all conditions set forth in this Financing Order and the Act

have been met.

- *Adjust Other Customer Rates to Minimize or Eliminate Any Windfall to Kentucky Power*. Kentucky Power should establish a deferral account with respect to securitized bonds authorized by this Financing Order (Securitized Bond Deferral Account). The balance in the Securitized Bond Deferral Account should grow at Kentucky Power's pre-tax weighted-average cost of capital (WACC). Kentucky Power should credit back to customers through the Securitized Bond Deferral Account the following amounts until the next general rate case when costs and revenues associated with the servicing fees will be included in the cost of service:

(1) Any disallowed up-front financing costs disallowed by the Commission in connection with its up to 120-day post-closing review of final up-front financing costs described above;

(2) All periodic servicing and administration revenues in excess of Kentucky Power's incremental cost of performing the servicer and administration functions;

(3) Any amount by which the up-front financing costs included in the principal amount securitized exceeds the actual up-front financing costs;

(4) Any amount by which other securitized costs included in the principal amount securitized exceeds the actual amount of such other securitized costs; and

(5) After all the securitized bonds have been repaid, the fair market value of the BondCo in excess of Kentucky Power's capital contribution.

In each future base rate case, Kentucky Power should include a revenue credit for each of these amounts, provided such crediting of the Securitized Bond Deferral Account does not directly or indirectly increase Kentucky Power's net income. In each future base

rate case, Kentucky Power may also request revenue for all costs of providing servicing and administration services. The failure on the part of Kentucky Power to provide any such credit to ratepayers should in no way affect the securitized property, the securitized surcharge or the rights of Kentucky Power, the indenture trustee and the holders of securitized bonds under the Financing Order but should be addressed by the Commission through other proceedings.

- *Commission Authority to Review and Approve Basic Transaction Documents*. To ensure that the Lowest Cost Objective is achieved, the Financial Advisor and counsel to the Commission Staff should review and approve the proposed forms of all Basic Transaction Documents. In addition, after securitized bonds have been issued, the Basic Transaction Documents should only be amended upon written consent from the Commission.

- *Commission Authority to Appoint at Least One Independent Manager of Each BondCo*. The Commission will be authorized to appoint, as well as remove and replace, at least one of each of BondCo's independent managers.

- *Servicer and Administrator Standard of Care to Protect Customers*. As servicer under the Securitized Property Servicing Agreement and as administrator under the Administration Agreement, Kentucky Power should be held to a simple negligence standard. Kentucky Power, as servicer or as administrator, should be required to indemnify customers for any loss, including any loss resulting from higher compensation payable to a successor servicer or a successor administrator, that results from Kentucky Power's breach of the Securitized Property Servicing Agreement or the Administration Agreement.

- *Seller / Servicer / Administrator Liability for Failure of Representation or Breach*. Kentucky Power should be liable in connection with any failure of representation or warranty in connection with, or any breach of, the Securitized Property Purchase and Sale Agreement, the Securitized Property Servicing Agreement, or the Administration Agreement. As seller, as servicer, or as administrator, Kentucky Power should be required to indemnify customers for any loss that results from Kentucky Power's failure of representation or warranty in connection with, or breach of, the Securitized Property Purchase and Sale Agreement, the Securitized Property Servicing Agreement, or the Administration Agreement.

- *Commission Authority over Servicer Behavior*. The Commission will be authorized to declare an event of default (Servicer Default) under the Securitized Property Servicing Agreement. The Commission will be authorized to declare an Event of Default under the Administration Agreement. Any event of default under the Securitized Property Servicing Agreement or under the Administration Agreement should not be waived without Commission consent.

- *No Resignation or Termination of Kentucky Power as Servicer or Administrator Without Commission Consent*. Kentucky Power should not resign or be terminated as servicer under the Securitized Property Servicing Agreement or as administrator under the Administration Agreement without written consent of the Commission.

- *Commission Authority to Enforce Kentucky Power's Covenants and Representations*. The Commission should be named as a third-party beneficiary, for the benefit of ratepayers, of each Basic Transaction Document, and the Commission will be

authorized to enforce the provisions of each Basic Transaction Document for the benefit of ratepayers.

- *Automatic Credit of Interest Earnings to Customers*. The economic benefit of any servicer interest earnings on actual or estimated securitized surcharge collections prior to remittance of those collections to the indenture trustee and the collection account should automatically be credited to the benefit of customers without the need for any further Commission action. This means that any investment earnings on actual or estimated amounts collected must be added to the amounts remitted to the indenture trustee for the benefit of the BondCo to reduce amounts collected from securitized surcharges. Kentucky Power should be allowed to estimate the amount of collections at the time of transfer to the indenture trustee based on the collection curve so long as they are reconciled to the actual amount as soon as practical.

- *Present the Bonds to Investors as Corporate Bonds and Not as Asset-Backed Securities.* Consistent with the United States Securities and Exchange Commission's (SEC) September 19, 2007 response by the Office of Chief Counsel, Division of Corporation Finance to the September 7, 2007, incoming letter from MP Environmental Funding LLC and PE Environmental Funding LLC, each BondCo should be structured as a series trust so that the BondCo will not be an asset-backed issuer and its securitized bonds will not be asset-backed securities for purposes of SEC Regulation AB and are corporate securities.[36] Description of the securitized bonds as corporate bonds should be presented prominently and clearly in marketing documents for the

[36] *See* https://www.sec.gov/Archives/edgar/vprr/0707/07076398.pdf. Last accessed January 8, 2024.

securitized bonds. The marketing documents for the securitized bonds also should describe prominently the structural features that distinguish the BondCo's securitized bonds from asset-backed securities and from Kentucky Power's other corporate bonds which are issued pursuant to other orders of the Commission. These features include but are not limited to (i) the strength of the Act and the Financing Order in protecting holders of securitized bonds; (ii) the nonbypassability of the securitized surcharge on all sales of electricity to Kentucky Power's, its successors', or its assignees' retail customers on a joint basis; (iii) the automatic true-up adjustment mechanism guaranteed to be implemented by the Commission; and (iv) the Commonwealth pledge not to revoke or amend this Financing Order or the securitized surcharge and the bondholders' right to receive securitized surcharge collections until the securitized bonds and all ongoing financing costs have been repaid.

- *Describe to Investors the Negligible Credit Risk Associated with the Bonds and Proactively Educate Both Retail and Institutional Investors*. The marketing documents for securitized bonds approved by this Financing Order should describe the structural features that are expected to result in credit rating agencies assigning top credit rating, such as "Aaa/AAA" or similar ratings to the securitized bonds. These top ratings do not ensure that the Lowest Cost Objective will be met. Consequently, Kentucky Power should make additional efforts in consultation and coordination with designated Commission Staff and the Commission's Financial Advisor to educate investors on the unique strength of BondCo's credit compared to similarly rated securities in the market to achieve the lowest interest rates possible under market conditions at the time of pricing. Because of the unique strength of this credit, Kentucky Power should make efforts to sell

securitized bonds to individuals and institutions that value long-term safety and security over short-term trading and profits.

- *Underwriter Certification of Independent Indicative Rates*. Underwriters of the securitized bonds approved by this Financing Order should be required to certify, without material qualification, that any indicative rates submitted to Kentucky Power, the Financial Advisor, and the Designated Representative of the Commission in preparation for launch of the transaction reflect the independent view of each submitting firm and that other firms have not been consulted about or informed of such indicative rates.

- *Competitive Process for Selecting Underwriters and Other Transaction Participants*. A competitive process should be used for selecting underwriters, underwriters' counsel, and other significant transaction participants whose fees will be paid from securitized bond proceeds or from the securitized surcharge unless the Commission's Designated Representative, advised by the Financial Advisor, determines that a competitive process should not be used in selecting particular transaction participants to achieve the best value for customers and the Lowest Cost Objective.

- *20-year Forecast of Residential Retail Revenues and of All Other Classes Non-Fuel Retail Revenue as Defined in the Securitized Surcharge Rider in Appendix B.* Prior to the issuance of each series of securitized bonds, Kentucky Power will provide a 20-year forecast of revenues by revenue classes as defined in the Securitized Surcharge Rider such that it may be used to calculate a forecast of the residential and non-residential components of the securitized surcharge over the scheduled term that the securitized bonds are expected to be outstanding.

The Commission intends that Kentucky Power, the Commission's Designated Representative, and the Financial Advisor will work together closely and on a cooperative basis to create the broadest possible competition for securitized bonds among domestic and international retail and institutional investors, and potential underwriters to ensure that the above standards are met and procedures are followed. This includes creating a set of standards as well as qualifications for the selection of and budget for other transaction participants such as accountants, structuring counsel and rating agencies. The Commission will require Kentucky Power and the Financial Advisor to effectively communicate to the capital markets the unusual strength of the credit supporting the securitized bonds issued pursuant to this Financing Order.

III. Findings of Fact

A. Identification and Procedure

1. Identification of Applicant and Background

1. Kentucky Power is a public utility principally engaged in the provision of electricity in the Commonwealth of Kentucky. Kentucky Power is a direct, wholly owned subsidiary of American Electric Power Company, Inc., which is a public utility holding company under the Public Utility Holding Company Act of 2005.

2. Procedural History

2. On June 29, 2023, Kentucky Power filed the application for this Financing Order under the Act to permit securitized bonds to be issued to finance an amount equal to the sum of (1) the Securitizable Balance as of the date of issuance of the securitized bonds, plus (2) up-front financing costs. The application included exhibits, schedules, attachments, and testimony.

3. On July 20, 2023, the Commission entered an Order finding that Kentucky Power's application should be deemed filed on July 14, 2023, and established an intervention deadline of August 4, 2023.

4. The following parties requested and were granted intervention: Kentucky Office of the Attorney General (Attorney General); Kentucky Industrial Utility Customers (KIUC); Walmart Inc. (Walmart); SWVA Kentucky, LLC (SWVA); and Mountain Association, Appalachian Citizens Law Center, Kentuckians for the Commonwealth, and the Kentucky Solar Energy Society (collectively, Joint Intervenors). None of these intervenors contested any portion of the application related to the issuance of securitized bonds or the imposition of securitized surcharges.

5. An evidentiary hearing was held on November 28, 2023, through November 30, 2023.

6. By Financing Order issued January 10, 2024, and subject to the conditions stated herein, the Commission approves Kentucky Power's request for deferral costs and approves the issuance of securitized bonds to finance the Securitizable Balance and certain up-front financing costs; authorizes the issuance of securitized bonds in one or more series in an aggregate principal amount not to exceed the sum of the Securitizable Balance plus up-front financing costs as described herein; approves the structure of the proposed securitized bond transaction; approves securitized surcharges in an amount to be calculated as provided in this Financing Order; and approves the form of tariff as provided in this Financing Order to implement those securitized surcharges.

B. Costs to be Securitized

1. Identification

7. Financing costs are defined in KRS 278.670(6) to include the interest and acquisition, defeasance, or redemption premiums payable on securitized bonds; any payment required under an ancillary agreement and any amount required to fund or replenish a reserve account or other accounts established under the terms of any indenture, ancillary agreement, or other financing document pertaining to securitized bonds; any other cost related to issuing, supporting, repaying, refunding, or servicing securitized bonds, including the following fees and costs without limitation servicing fees, accounting and auditing fees, trustee fees, consulting fees, structuring adviser fees, financial advisor fees, administrative fees, placement and underwriting fees, independent director and manager fees, rating agency fees, stock exchange listing and compliance fees, security registration fees, and filing fees; capitalized interest and information technology programming costs; and any other costs necessary to otherwise ensure the timely payment of securitized bonds or other amounts or charges payable in connection with the bonds, including costs related to obtaining the financing order; any taxes and license fees or other fees imposed on the revenues generated from the collection of the securitized surcharge or otherwise resulting from the collection of securitized surcharges, in any such case whether paid, payable, or accrued; any state or local taxes, franchise taxes, gross receipts, and other taxes or similar charges, including Commission assessment fees, whether paid, payable, or accrued; and any costs associated with performance of the Commission's responsibilities under KRS 278.670 through 278.696 and KRS 65.114.

8 The actual costs of issuing and supporting the securitized bonds will not be known until the securitized bonds are issued, and certain ongoing financing costs relating to the securitized bonds may not be known until such costs are incurred. The amount of the up-front financing costs as of the Pricing Date shall be shown in the Issuance Advice Letter to ensure compliance with all Statutory Requirements and all conditions set forth in this Financing Order.

9 Kentucky Power intends to use the proceeds from the sale of the securitized property for Commission-approved corporate purposes to reduce recoverable securitized costs and, thereafter, repay outstanding short-term debt at Kentucky Power and fund capital expenditures to support utility operations and services; accordingly, it does not anticipate incurring costs of retiring or refunding debt or equity in connection with the proceeds from the issuance of the securitized bonds.[37] However, if costs of retiring or refunding debt are incurred, the Commission authorizes Kentucky Power to record such costs as a regulatory asset included on its books. Kentucky Power is allowed to accrue carrying costs on such regulatory asset using the weighted-average interest rate on the securitized bonds. The accrual of carrying costs will continue until the costs are included in Kentucky Power's next base rate case, and the costs, together with carrying costs, will be considered for recovery in Kentucky Power's next base rate case, subject to a showing that such costs were prudently incurred and are reasonable and necessary.

2. **Balance to be Securitized – Sizing the Securitized Bond Issuance**

[37] *See* Messner Direct Testimony at 10.

10. The regulatory assets that make up the Securitizable Balance reflected in Table I consist of the Decommissioning Rider Regulatory Asset, the Rockport Deferral Regulatory Asset, the Tariff P.P.A. Under-Recovery Regulatory Asset, and regulatory assets for storm damage expenses in 2020, 2021, 2022, and 2023.[38] The Decommissioning Rider Regulatory Asset and the Rockport Deferral Regulatory Asset, which make up the majority of the Securitizable Balance, and associated costs are currently being recovered in rates pursuant to previous Commission orders that found such recovery to be fair, just and reasonable.[39] The Tariff P.P.A. Under-Recovery Regulatory Asset represents an under recovery that Kentucky Power would be authorized to true-up pursuant to its purchase power adjustment tariff, and the storm damage expense regulatory assets are extraordinary expenses, beyond those included in base rates, that Kentucky Power incurred to recover from and repair its system following severe weather. Thus, the costs from which the regulatory assets arose were prudently incurred such that recovery of the regulatory assets in rates would be fair, just and reasonable in the absence of the proposed securitization.

Insofar as wholesale customers are currently allocated and are paying for any of the regulatory assets proposed to be securitized, such as the Big Sandy Decommissioning Rider Regulatory Asset,[40] and to the extent the rates paid by wholesale customers at the time of securitization include amortization expense related to the

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[38] Application at 18.

[39] *See* Case No. 2022-00283, *Electronic Investigation of Kentucky Power Company Rockport Deferral Mechanism* (Ky PSC Dec. 8, 2022), Order; Case No. 2014-00396, *Application of Kentucky Power Company for: (1) A General Adjustment of its Rates for Electric Service; (2) an Order Approving its 2014 Environmental Compliance Plan; (3) an Order Approving its Tariffs and Riders: and (4) An Order Granting all Other Required Approvals and Relief* (Ky PSC Jun. 22, 2015), Order.

[40] *See* Kentucky Power's Response to Commission Staff's Third Request for Information, Item 37 (filed Sept. 11, 2023).

regulatory assets to be securitized, Kentucky Power should defer as a regulatory liability any revenues billed to wholesale customers related to that amortization expense after the date of issuance of the securitized bonds. This regulatory liability will be reviewed in a subsequent rate proceeding. This will ensure Kentucky Power is not paid twice for any portion of a regulatory asset and ensure retail customers get the benefit of wholesale customers' contribution to the regulatory assets, as retail customers will be paying the entirety of securitized surcharges.

11. Kentucky Power should be authorized to cause securitized bonds to be issued in an aggregate principal amount equal to the Securitizable Balance at the time of issuance plus certain up-front financing costs. The Securitizable Balance as of any given date is equal to the balance of securitized costs as is approved in this case plus carrying costs accruing on the applicable portions of such balance at the WACC approved in this case through the date the securitized bonds are issued, as reduced by all corresponding insurance, scrap, and salvage proceeds, applicable unamortized regulatory liabilities for excess deferred income taxes; and the present value of return on all accumulated deferred income taxes related to pretax costs with respect to a retired or abandoned facility and related facilities, including those due to bonus and accelerated tax depreciation and abandonment losses.

Accumulated deferred income taxes and regulatory liabilities for excess deferred income taxes used in calculating retired generation costs should be excluded from the rate base in future general rate cases, and no amortization of those excess deferred income taxes should be reflected in future general rate cases as required by KRS 278.676(1)(o).

The Commission finds that it is appropriate to finance prudently incurred up-front financing costs. In one or more Issuance Advice Letters, Kentucky Power should update the amounts to reflect the Securitizable Balance on the date(s) of issuance and the amount of up-front financing costs securitized.

12. It is appropriate for Kentucky Power to recover the BondCo's annual ongoing servicing fees, annual ongoing administration fees and annual fixed operating costs directly through securitized surcharges. As outlined below, Kentucky Power may retain the economic benefit of only incremental out-of-pocket costs incurred by Kentucky Power or by its affiliates in performing duties under the Securitized Property Servicing Agreement and the Administration Agreement. Kentucky Power may not allocate the costs of any existing Kentucky Power or any affiliate's personnel or resources as a cost of service to any of the activities of the finance subsidiary, BondCo. It is also appropriate for the initial annual servicing fees incurred when Kentucky Power, a successor utility or an affiliate serves as servicer to be 0.05% of the initial principal balance of the securitized bonds plus out of pocket third-party costs and for the initial administrative fees incurred when Kentucky Power or an affiliate is the administrator to be between $50,000 and $100,000 per year for each BondCo plus out of pocket third-party costs as shown in Appendix C. The annual servicing fee payable to a servicer not affiliated with Kentucky Power should not at any time exceed 0.60% of the initial principal balance of the securitized bonds unless such higher rate is approved by the Commission. Ongoing financing costs are estimated in Appendix C to this Financing Order.

3. **Discussion Regarding Securitized Bonds; Lowest Cost Objective**

13. In this Financing Order, the Commission establishes the Lowest Cost

Objective, together with other standards and procedures set forth in this Financing Order, which the Commission finds represent best practices for the benefit of ratepayers while respecting legitimate interests of Kentucky Power. These standards and procedures will ensure that the proposed recovery of securitized costs is fair, just and reasonable and in the public interest, that the imposition of securitized surcharge is in the public interest, and that the resulting securitized surcharge and other rates are fair, just and reasonable as required by KRS 278.674(1)(b), KRS 276.676(1)(a) and KRS 276.676(1)(d). Each of these standards and procedures must be met to protect customers and to provide the targeted benefits both to customers and to Kentucky Power. Therefore, this Financing Order grants authority to issue securitized bonds and to impose and collect securitized surcharges only if the final structure of the transaction and the procedures followed comply in all respects with these standards and procedures.

4. **Issuance Advice Letter and Financing Costs**

14. Because the actual structure and pricing of the securitized bonds will not be known at the time this Financing Order is issued, following the determination of the final terms of the securitized bonds and prior to issuance of the securitized bonds, Kentucky Power will provide the Commission with an Issuance Advice Letter for each series of securitized bonds issued. The Issuance Advice Letter will report the initial securitized surcharges and other information specific to the securitized bonds, including a description of market conditions at the time of pricing, the final structure and terms of the securitized bonds, a comparison to other similarly rated corporate securities, total estimated up-front financing costs for such issuance itemized for each transaction participant and best estimates of ongoing financing costs for such issuance also itemized by transaction

participant. The estimated total up-front financing costs in the Issuance Advice Letter will be included in the principal amount financed by securitized bonds. The Issuance Advice Letter will report the actual dollar amount expected to be recovered from the initial securitized surcharges and other information specific to the securitized bonds to be issued. All amounts that require computation will be computed using the mathematical formulas contained in the form of the Issuance Advice Letter in Appendix A to this Financing Order and the Securitized Surcharge Rider in Appendix B. The securitized surcharges and the final terms of the securitized bonds set forth in the Issuance Advice Letter should become effective on the date of issuance of the securitized bonds unless, prior to noon on the fourth business day after pricing, the Commission issues a Disapproval Order.

15. A competitive process designed and approved by the Commission through its Designated Representative and Financial Advisor should be used for selecting underwriters, underwriters' counsel and other significant transaction participants whose fees will be paid from securitized bond proceeds or from the securitized surcharge unless the Commission's Designated Representative, advised by the Financial Advisor, determines that a competitive process should not be used in selecting particular transaction participants to achieve the best value for customers.

16. The Issuance Advice Letter should include a list of comparable top rated corporate bonds with a similar weighted average life remaining to the securitized bonds to compare the proposed pricing of the securitized bonds. The comparison should show the spread over U.S. treasury yields for those corporate bonds, adjusted for any embedded options contained in those bonds, otherwise known as the "option-

adjusted g-spread." The U.S. Treasury yields shall be interpolated on the basis of the most recent "on the run" U.S. Treasury yields for the range of maturities. The corporate bond spread should be based on the most recent sale between investors of at least $250,000 of such bonds versus the corresponding U.S. Treasury curve as reported to FINRA. The comparison should show the corporate spreads to the proposed and actual pricing spread for the securitized bonds.

17 Within 120 days after issuance of any series of securitized bonds authorized by this Financing Order, Kentucky Power should file with the Commission information on actual up-front financing costs of the series of securitized bonds. The Commission should review the information to determine if such up-front financing costs in fact resulted in the lowest securitized surcharges consistent with market conditions at the time of pricing and the terms of this Financing Order. The Commission should then determine if any excess incremental up-front financing costs should be disallowed and require a credit to the Securitized Bond Deferral Account in an amount equal to the excess. The Commission should not be authorized to make adjustments to the securitized surcharge for any such excess.

18 If the actual up-front financing costs are less than the up-front financing costs included in the principal amount securitized, the Commission should require a credit to the Securitized Bond Deferral Account in an amount equal to such overage, provided such crediting of the Securitized Bond Deferral Account does not directly or indirectly increase Kentucky Power's net income. The Commission should not be authorized to make adjustments to the securitized surcharge for any such overage. If the final up-front financing costs are more than the up-front

financing costs included in the principal amount securitized, Kentucky Power should be allowed to request recovery of the remaining up-front financing costs through a surcharge to Kentucky Power's rates for electric service.

19 If other actual securitized costs are less than the estimated other securitized costs included in the principal amount of securitized bonds, the Commission should require a credit to the Securitized Bond Deferral Account in an amount equal to such overage, provided such crediting of the Securitized Bond Deferral Account does not directly or indirectly increase Kentucky Power's net income. If the actual final up-front financing costs allowed by the Commission following such review are more than the up-front financing costs included in the principal amount financed by securitized bonds, Kentucky Power should be allowed to request recovery of the remaining up-front financing costs through a surcharge to Kentucky Power's rates for electric service.

20. Kentucky Power will provide a draft Issuance Advice Letter to the Commission Staff for review not later than two weeks prior to the expected date of commencement of marketing each series of securitized bonds. Within one week after receipt of the draft Issuance Advice Letter, the Designated Representative, along with the Financial Advisor will provide Kentucky Power comments and recommendations regarding the adequacy of the information provided and as may be necessary to ensure the accuracy of the calculations and that the requirements of the Act and of this Financing Order have been met.

21. The final Issuance Advice Letter for a series of securitized bonds should be provided to the Commission not later than the end of the first business day after

the pricing of such series of securitized bonds. The initial securitized surcharges and the final terms of the securitized bonds set forth in the Issuance Advice Letter should become effective on the date of issuance of the securitized bonds (which should not occur prior to the fifth business day after pricing) unless prior to noon on the fourth business day after pricing the Commission issues a Disapproval Order. The Commission reserves the right to issue a Disapproval Order if the Commission does not find that all conditions set forth in this Financing Order and the Act have been met.

22. The filing of an Issuance Advice Letter, in the form attached as Appendix A, is necessary to ensure that any securitized bond transaction actually undertaken by Kentucky Power complies with the terms of this Financing Order and the Act. Additional information shall be included in the Issuance Advice Letter if requested in writing by Designated Representative and the Financial Advisor after the issuance of this Financing Order.

5. **Quantifiable Net Present Value Benefit**

23. The Commission is required to find that the imposition and collection of a securitized surcharge is fair, just and reasonable, in the public interest, and expected to provide quantifiable NPV benefits to customers as compared to recovery of the components of securitized costs that would have been incurred absent the issuance of securitized bonds.[41]

24. Kentucky Power indicated the issuance of securitized bonds to finance the Securitizable Balance and other financing costs is expected to result in at least

[41] KRS 278.676(1)(c).

$74.4 million of quantifiable NPV benefits to customers on a present value basis if the securitized bonds are issued at an average weighted average interest rate of 5.166% allowed by this Financing Order, with a 20-year expected scheduled life and with substantially levelized annual revenue requirements over the expected life of the securitized bonds. These estimates use Kentucky Power's Securitizable Balance as of June 30, 2023, and assume that updated up-front and ongoing financing costs will be as shown on Appendix C to this Financing Order. Kentucky Power presented estimated expected quantifiable NPV benefits to customers greater than would be achieved absent the issuance of securitized bonds; however, the actual benefit to customers will depend upon market conditions on the date of issuance of the securitized bonds, the actual up-front financing costs, the actual scheduled maturity of the securitized bonds, and the amount of Securitizable Balance actually financed. Based on this analysis and subject to the standards and procedures in this Financing Order, the Commission finds that the imposition and collection of a securitized surcharge are fair, just and reasonable, in the public interest, and expected to provide quantifiable NPV benefits to customers as compared to recovery of the components of securitized costs that would have been incurred absent the issuance of securitized bonds.

C. Structure of the Proposed Securitized Bond Transaction

1. BondCo

25. For purposes of this securitized bond transaction, Kentucky Power will create one or more BondCo finance subsidiaries, each of which will be a Delaware limited liability company with Kentucky Power as its sole member. If more than one series of

securitized bonds is issued, Kentucky Power may create a separate finance subsidiary BondCo for the issuance of a particular series of securitized bonds, and the rights, structure and restrictions described in this Financing Order with respect to the BondCo will be applicable to each such purchaser of securitized property to the extent of the securitized property sold to it and the securitized bonds issued by it. Each BondCo will be formed as a finance subsidiary and series trust for the limited purpose of managing the acquisition of securitized property, issuing securitized bonds in one or more series consisting of one or more tranches, and performing other activities relating thereto or otherwise authorized by this Financing Order or by another financing order approved by the Commission. Each BondCo will not be permitted to engage in any activities other than managing the series trust. It will have no assets other than securitized property and related assets to support its obligations under the securitized bonds. Securitized property is not a receivable and the securitized bonds are not backed by a pool of receivables. Obligations relating to the securitized bonds and the Basic Transaction Documents will be the BondCo's only significant liabilities. These restrictions on the activities of the BondCo and restrictions on the ability of Kentucky Power to take action on the BondCo's behalf are imposed to achieve the objective that BondCo will be bankruptcy remote, ring-fenced and not adversely affected by a bankruptcy of Kentucky Power and help achieve top credit ratings from at least one or two nationally recognized statistical rating organizations approved by the SEC.[42] Each BondCo will be managed by a board of managers with rights and duties similar to those of a board of directors of a corporation. As long as the securitized bonds remain outstanding, the BondCo will have at least one

[42] *See* https://www.sec.gov/about/divisions-offices/office-credit-ratings/current-nrsros for current list. Last accessed January 7, 2024.

independent manager, appointed by the Commission, with no organizational affiliation with Kentucky Power other than acting as independent manager for any other bankruptcy-remote subsidiary of Kentucky Power or its affiliates. The BondCo will not be permitted to amend the provisions of the organizational documents that relate to bankruptcy-remoteness of the BondCo without the consent of the independent manager. Similarly, the BondCo will not be permitted to institute bankruptcy or insolvency proceedings or to consent to the institution of bankruptcy or insolvency proceedings against it, or to dissolve, liquidate, consolidate, convert, or merge without the consent of the independent manager. Other restrictions to facilitate bankruptcy remoteness may also be included in the organizational documents of the BondCo as required by the rating agencies.

To ensure that the Lowest Cost Objective is achieved, the Commission finds the Financial Advisor and the Commission's outside counsel retained pursuant to KRS 278.674(3) should review and advise the Commission whether to approve the Basic Transaction Documents; the Commission should be named as a third-party beneficiary, for the benefit of the ratepayers, of each Basic Transaction Document; the Commission should be authorized to enforce the provisions of each Basic Transaction Document for the benefit of customers; and after securitized bonds have been issued, the Basic Transaction Documents should only be amended upon written approval from the Commission.

26. The initial capital of each BondCo is expected to be not less than 0.5 percent of the original principal amount of the securitized bonds issued by the BondCo. Adequate funding of each BondCo at this level is intended to protect the bankruptcy remoteness and ring-fencing of the BondCo and to qualify for safe

harbor corporate federal income tax treatment under Internal Revenue Service (IRS) Revenue Procedure 2005-62. A sufficient level of capital is necessary to minimize this risk and, therefore, assist in achieving the Lowest Cost Objective. This capital will function as liquidity support for the securitized bonds and is not expected to provide any material assurance that principal of and interest on the securitized bonds will be paid when they become legally due and owing. Consequently, this account should not be presented in marketing materials as a form of credit enhancement but as a source to pay principal, interest and other costs as needed to meet scheduled payments.

27. Each BondCo will issue one or more series of securitized bonds consisting of one or more tranches. The aggregate amount of all tranches of all series of securitized bonds issued pursuant to this Financing Order should not exceed the principal amount approved by this Financing Order. Each BondCo should pledge to the indenture trustee, as collateral for payment of the securitized bonds, the securitized property, including that BondCo's right to receive the securitized surcharges as and when collected, and certain other collateral described in Kentucky Power's application.

28. Concurrent with the issuance of any of the securitized bonds, Kentucky Power will transfer to a BondCo all of Kentucky Power's rights under this Financing Order related to the amount of securitized bonds that BondCo is issuing, including rights to impose, bill, charge, collect, and receive securitized surcharges approved in this Financing Order. This transfer will be structured so that it will qualify as a true sale as required by KRS 278.688(1), and the rights, title and interest of

Kentucky Power in, to and under the securitized property will transfer concurrently with the sale to the BondCo as provided in KRS 278.670(19). By virtue of the transfer, the BondCo will acquire all the right, title, and interest of Kentucky Power in the securitized property arising under this Financing Order that is related to the amount of securitized bonds the BondCo is issuing for the purpose of financing Kentucky Power corporate costs approved in this Financing Order.

29. The use and proposed structure of each BondCo and the limitations related to its organization and management are necessary to minimize risks related to the proposed securitized bond transactions and to minimize the securitized surcharges so as to achieve top credit ratings and provide the opportunity to achieve the lowest interest costs associated with such top credit ratings. Therefore, the use and proposed structure of each BondCo should be approved.

2. **Credit Enhancement and Arrangements to Enhance Marketability**

30. In addition to the rights described below, Kentucky Power should be permitted to recover the ongoing costs of any other credit enhancements and arrangements to enhance marketability, provided that the present value of such enhancements and arrangements provide NPV economic benefits greater than the NPV of their tangible and intangible costs and otherwise meet the Lowest Cost Objective. If the use of original issue discount, other credit enhancements, or other arrangements is proposed by Kentucky Power, Kentucky Power should consult with and provide the designated Commission Staff and the Financial Advisor copies of all cost-benefit analyses performed by or for Kentucky Power that support the arrangement as in furtherance of the Lowest Cost Objective. This finding does not apply to the collection account or its

subaccounts approved in this Financing Order.

31 Kentucky Power's proposed use of credit enhancements and other arrangements to enhance credit quality and/or marketability is reasonable and should be approved, provided that the enhancements or arrangements provide benefits with NPV greater than the NPV of their cost, and otherwise are determined by the Commission to meet the Lowest Cost Objective.

3. **Securitized Property**

32. Under KRS 278.684(1), the property right or interest therein in the securitized property exists regardless of whether the revenues or proceeds arising from the property have been billed, accrued, or collected; and that the value or amount of the property is dependent on the future sales of service to customers by Kentucky Power, its successors, or assignees and on the future purchase of electricity by its customers.

33. The rights to impose, bill, charge, collect, and receive the securitized surcharges approved in this Financing Order along with the other rights arising pursuant to this Financing Order will become securitized property of the BondCo upon the transfer of such rights by Kentucky Power to the BondCo.[43] If securitized bonds are issued in more than one series, then the securitized property transferred as a result of each issuance should be only those rights associated with that portion of the total amount authorized to be securitized by this Financing Order which is securitized by such issuance. The rights to impose, bill, charge, collect and receive securitized surcharges along with the other rights arising pursuant to this Financing Order as they relate to any portion of the total amount authorized to be securitized

[43] KRS 278.684 and KRS 278.688.

that is not transferred to a BondCo should remain with Kentucky Power and should not become securitized property unless, and until, transferred to a BondCo in connection with a subsequent issuance of securitized bonds.

34. Securitized property and all other collateral should be held and administered by the indenture trustee pursuant to the indenture, as described in Kentucky Power's application.

35. Under KRS 278.684, securitized property constitutes an existing, present, intangible property right or interest therein concerning the sale, transfer or pledge of property. Securitized property is a separate interest in property, and it is not a receivable notwithstanding the fact that the imposition and collection of securitized surcharges depends on the parent electric utility or a successor continuing to sell or distribute electricity to retail customers in the electric utility's historic service area and to perform its servicing functions relating to the collection of securitized surcharges and on future retail sales of electric service.

4. **Servicer and the Servicing Agreement**

36. Kentucky Power will execute a Securitized Property Servicing Agreement with each BondCo. Each Securitized Property Servicing Agreement may be amended, renewed or replaced by another Securitized Property Servicing Agreement. The entity responsible for carrying out the servicing obligations under any Securitized Property Servicing Agreement is the servicer. Kentucky Power will be the initial servicer but may be succeeded as servicer by another entity under certain circumstances detailed in the Securitized Property Servicing Agreement and as authorized by the Commission. Pursuant to the Securitized Property Servicing Agreement, the servicer is required,

among other things, to impose and collect the applicable securitized surcharges for the benefit and account of the BondCo, to make the periodic true-up adjustments of securitized surcharges required or allowed by this Financing Order, and to account for and remit the applicable securitized surcharges to or for the account of the BondCo in accordance with the remittance procedures contained in Appendix B of this Financing Order and in the Securitized Property Servicing Agreement without any charge, deduction, or surcharge of any kind (other than the servicing fee specified in the Securitized Property Servicing Agreement). Under the terms of the Securitized Property Servicing Agreement, if any servicer fails to perform its servicing obligations in any material respect, the indenture trustee acting under the indenture to be entered into in connection with the issuance of the securitized bonds, or the indenture trustee's designee, may, or, upon the instruction of the requisite percentage of holders of the outstanding amount of securitized bonds, should, appoint an alternate party to replace the defaulting servicer, in which case the replacement servicer will perform the obligations of the servicer under the Securitized Property Servicing Agreement. The obligations of the servicer under the Securitized Property Servicing Agreement and the circumstances under which an alternate servicer may be appointed are more fully described in the Securitized Property Servicing Agreement. The rights of the BondCo under the Securitized Property Servicing Agreement will be included in the collateral pledged to the indenture trustee under the indenture for the benefit of holders of the securitized bonds.

37. The Commission finds that, as servicer under the Securitized Property Servicing Agreement, Kentucky Power should be held to a simple negligence standard (rather than a "gross negligence" standard) and that Kentucky Power as

servicer should be required to indemnify customers for any loss that results from Kentucky Power's breach of the Securitized Property Servicing Agreement.

38. The Commission finds that the Commission should be authorized to declare a Servicer Default under the Securitized Property Servicing Agreement, and that any Servicer Default under the Securitized Property Servicing Agreement should not be waived without Commission consent.

39. The Commission finds that Kentucky Power should not resign or be terminated as servicer under the Securitized Property Servicing Agreement without written consent of the Commission.

40. The Commission finds that the economic benefit of any servicer interest earnings on securitized surcharge collections prior to remittance of those collections to the indenture trustee should automatically be credited to the benefit of customers without the need for any further Commission action.

41. The Securitized Property Servicing Securitized Property Agreement negotiated as part of each securitized bond transaction should contain a recital clause that the Commission will enforce the Securitized Property Servicing Agreement for the benefit of Kentucky ratepayers to the extent permitted by law.

42. The obligations to continue to provide service and to collect and account for securitized surcharges will be binding upon Kentucky Power and any other entity that provides electrical services to a person that was, or becomes, a retail customer of Kentucky Power, its successors or assignees under commission-approved rate schedules, even if a retail customer elects to purchase electricity from an alternative electricity supplier following a fundamental change in regulation

of public utilities in the Commonwealth of Kentucky. The Commission will enforce the obligations imposed by this Financing Order, its applicable substantive rules, and statutory provisions.

43. To the extent that any interest in the securitized property created by this Financing Order is assigned, sold, or transferred to an assignee[44] or otherwise is acquired by a successor (e.g., by operation of law), Kentucky Power will enter into a contract with that assignee or successor that will require Kentucky Power to continue to operate its transmission and distribution system in order to provide electric services to Kentucky Power's customers. This provision does not prohibit Kentucky Power from selling, assigning or otherwise divesting its transmission and distribution system or any part thereof so long as the entity acquiring such facilities agrees to continue operating the facilities to provide electric services to Kentucky Power's customers under Commission-approved rate schedules; and agrees to assume Kentucky Power's obligations under the Securitized Property Servicing Agreement and the Administration Agreement.

5. **Administrator and the Administration Agreement**

44. Kentucky Power should execute an Administration Agreement with each BondCo. Each Administration Agreement may be amended, renewed, or replaced by another Administration Agreement. The entity responsible for carrying out the administration obligations under any Administration Agreement is the administrator.

[44] The term assignee means a legally recognized entity to which an electric utility assigns, sells, or transfers, other than as security, all or a portion of its interest in or right to securitized property. The term "assignee" includes a corporation, limited liability company, general or limited partnership, public authority, trust, and financing entity to which an assignee assigns, sells or transfers, other than as security, its interest in or right to securitized property. *See* KRS 278.670(2).

Kentucky Power should be the initial administrator but may be succeeded as administrator by another entity under certain circumstances detailed in the Administration Agreement and as authorized by the Commission. Pursuant to the Administration Agreement, the administrator is required to perform various administrative services for benefit and account of the BondCo. Under the terms of the Administration Agreement, if any administrator fails to perform its obligations in any material respect, the indenture trustee acting under the indenture to be entered into in connection with the issuance of the securitized bonds, or the indenture trustee's designee, may, or, upon the instruction of the requisite percentage of holders of the outstanding amount of securitized bonds, should, appoint an alternate party to replace the defaulting administrator, in which case the replacement administrator will perform the obligations of the administrator under the Administration Agreement. The obligations of the administrator under the Administration Agreement and the circumstances under which an alternate administrator may be appointed shall be more fully described in the Administration Agreement. The rights of the BondCo under the Administration Agreement will be included in the collateral pledged to the indenture trustee under the indenture for the benefit of holders of the securitized bonds.

45. The Commission finds that, as administrator under the Administration Agreement, Kentucky Power should be held to a negligence standard and that Kentucky Power, as administrator should be required to indemnify customers for any loss that results from Kentucky Power's breach of the Administration Agreement (including any loss resulting from higher compensation payable to a successor administrator as provided in this Financing Order).

46. The Commission finds that Kentucky Power should not resign or be terminated as administrator under the Administration Agreement without written consent of the Commission.

47. The Commission finds that it should be authorized to declare an Event of Default under the Administration Agreement, and that any Event of Default under the Administration Agreement should not be waived without Commission consent.

48. The Administration Agreement negotiated as part of each securitized bond transaction should contain a recital clause that the Commission, or its counsel, will enforce the Administration Agreement for the benefit of Kentucky Power customers to the extent permitted by law.

49. These provisions are reasonable, will reduce risk associated with the proposed securitized bond transaction, and will result in lower securitized surcharges and greater NPV benefits to customers and should be approved.

6. **Securitized Bonds**

50. Each BondCo will issue and sell securitized bonds in one or more series consisting of one or more tranches. The proposed scheduled final maturity date of any series of securitized bonds should not exceed 20 years and 3 months from the date of issuance of such series, and the legal final maturity date of any series of securitized bonds should not exceed 22 years and 3 months from the date of issuance of such series. The legal final maturity date of any series of securitized bonds should not exceed 2 years from the scheduled final maturity date of such series. The scheduled final maturity date and the legal final maturity date of each series and tranche within a series and amounts in each series will be finally determined by Kentucky Power and the Commission consistent

with market conditions and indications of the rating agencies, at the time the securitized bonds are priced, but subject to collaboration with designated Commission Staff and Financial Advisor and ultimate Commission review and approval through the Issuance Advice Letter process. Kentucky Power will retain sole discretion regarding whether or when to assign, sell, or otherwise transfer any rights concerning securitized property arising under this Financing Order, or to cause the issuance of any securitized bonds authorized in this Financing Order, subject to the right of the Commission to issue a Disapproval Order in connection with the Issuance Advice Letter process described in this Financing Order.

51. The Commission finds that the proposed structure, providing for substantially levelized annual revenue requirements over the expected life of the securitized bonds, is in the public interest and should be used. This structure offers the benefit of not relying upon customer growth and will allow the resulting securitized surcharges to remain level or decline over time if billing determinants remain level or grow. The approved structure is reasonable and should be approved.

52. The Commission finds that (a) each financing subsidiary BondCo should be structured as a "series trust" so that the BondCo will not be an "asset-backed issuer" and its securitized bonds will be corporate securities, not "asset-backed securities" for purposes of SEC Regulation AB; and (b) this should be described prominently in the marketing documents for the securitized bonds. The marketing documents for the securitized bonds also shall describe prominently, in plain English (including using Question and Answer format wherever helpful), structural

features which distinguish the BondCo's securitized bonds from Kentucky Power's other corporate bonds, including in particular the Act, the Financing Order, nonbypassability of the securitized surcharge imposed on a joint basis on all retail customers of Kentucky Power, the automatic true-up adjustment mechanism as described above, and the Commonwealth pledge not to revoke or amend this Financing Order or the securitized surcharge until the securitized bonds and all ongoing financing costs have been repaid. In addition, various terminology used in the Act and this Financing Order may accurately be described in ways that the broadest group of investors will understand.

53. The Commission finds that documents used to market the securitized bonds should prominently disclose that the securitized bonds will not be "asset-backed securities" for purposes of SEC Regulation AB and are corporate securities. The marketing documents also should describe structural features which distinguish the securitized bonds from Kentucky Power's other corporate securities, including, in particular, nonbypassability of the securitized surcharge, the automatic true-up adjustment mechanism as described above, and the Commonwealth pledge not to revoke or amend this Financing Order or the securitized surcharge until the securitized bonds and all ongoing financing costs have been repaid. In addition, the marketing documents should describe the structural features which are expected to result in credit rating agencies assigning their high ratings to the securitized bonds.

7. **Security for Securitized Bonds**

54. The payment of the securitized bonds and related charges authorized by this Financing Order is to be secured primarily by the securitized property created by this Financing Order as described in the application pursuant to the Act. The securitized bonds will be issued pursuant to an indenture administered by the indenture trustee. The indenture will include provisions for a collection account for the series and subaccounts for the collection and administration of the securitized surcharges and payment or funding of the principal and interest on the securitized bonds and other costs, including fees and expenses, in connection with the securitized bonds, as described in Kentucky Power's application. Pursuant to the indenture, the BondCo will establish a collection account as a trust account to be held by the indenture trustee or by a securities intermediary as collateral to ensure the payment of the principal, interest, and other costs approved in this Financing Order related to the securitized bonds in full and on a timely basis. The collection account will include the general subaccount, the capital subaccount, and the excess funds subaccount, and may include other subaccounts.

a. The General Subaccount

55. The indenture trustee will deposit the amounts that the servicer remits to the indenture trustee for the account of the BondCo into one or more segregated trust accounts held by the indenture trustee or by a securities intermediary and allocate the amount of those remittances to the general subaccount. The indenture trustee will on a periodic basis apply moneys in this subaccount to pay expenses of the BondCo, to pay principal of and interest on the securitized bonds, and to meet the funding requirements of the other subaccounts. The funds in the general subaccount will be invested by the indenture trustee or by a securities intermediary in short-term high-quality investments,

and such funds will be applied by the indenture trustee to pay principal of and interest on the securitized bonds and all other components of the Periodic Payment Requirement and otherwise in accordance with the terms of the indenture.

The Periodic Payment Requirement (PPR) is the required periodic payment for a given period (e.g., annually, semiannually, or quarterly) due under the securitized bonds. Each PPR includes: (a) the principal amortization of the securitized bonds in accordance with the expected amortization schedule (including deficiencies of previously scheduled principal for any reason); (b) periodic interest on the securitized bonds (including any accrued and unpaid interest); (c) ongoing financing costs consisting of the servicing fee, rating agencies' fees, trustee fees, legal and accounting fees, other ongoing fees and expenses, and the costs, if any, of maintaining any credit enhancement; and (d) funds needed to replenish the capital subaccount. The initial PPR for the securitized bonds issued pursuant to this Financing Order should be updated in the Issuance Advice Letter.

b. The Capital Subaccount

56. When a series of securitized bonds is issued, Kentucky Power will make a capital contribution to the BondCo for that series, which capital contribution the BondCo will deposit into the capital subaccount. The amount of the capital contribution is expected to be not less than 0.5 percent of the original principal amount of each series of securitized bonds, although the actual amount will depend on tax and rating agency requirements. The capital subaccount represents the equity capital of BondCo. The capital subaccount will function as liquidity support for the securitized bonds and is not expected to provide any material assurance that principal of and interest on the securitized bonds will be paid when they become legally due and owing and should not

be presented as a form of credit enhancement but a source of liquidity for the payment of authorized costs according to their schedule. Any funds drawn from the capital subaccount to pay these amounts due to a shortfall in the securitized surcharge remittances will be replenished through future securitized surcharge remittances. The funds in this subaccount will be invested by the indenture trustee or by a securities intermediary in short-term, high-quality investments, and, if necessary, such funds may also be used by the indenture trustee to pay principal and interest on the securitized bonds and all other components of the PPR. For any capital contribution made by Kentucky Power into the capital subaccount, the Act requires Kentucky Power to be authorized to receive an annual return at the authorized pre-tax WACC established in Kentucky Power's most recent base rate case on the remainder of the capital contribution for such series. The required revenue, if any, to provide the annual return at the pre-tax WACC established in Kentucky Power's most recent base rate case is an ongoing financing cost. Upon payment of the principal amount of all securitized bonds and the discharge of all obligations that may be paid by use of securitized surcharges, all amounts in the capital subaccount will be released to BondCo and will be available for payment to Kentucky Power.

c. The Excess Funds Subaccount

57. The excess funds subaccount will hold any securitized surcharge remittances, investment earnings on the collection account (other than earnings which are attributable to the capital subaccount and are released under the terms of the indenture) and possibly additional amounts in excess of the amounts needed to pay current principal of and interest on the securitized bonds and to pay other PPRs

(including, but not limited to, replenishing the capital subaccount). Any balance in or amounts allocated to the excess-funds subaccount on a true-up adjustment date will be subtracted from the PPR for the purposes of the true-up adjustment. The money in this subaccount will be invested by the indenture trustee or a securities intermediary in short-term, high-quality investments, and such money and investment earnings will be used by the indenture trustee to pay principal and interest on the securitized bonds and other PPRs. The Excess Funds Account is not expected to provide any material assurance that principal of and interest on the securitized bonds will be paid when they become legally due and owing.

d. Other Subaccounts

58. Other subaccounts, such as an over-collateralization account or other features, may be utilized for the transaction provided that such enhancements provide benefits greater than their tangible and intangible costs and meet the Lowest Cost Objective.

8. **General Provisions**

59. The collection account and the subaccounts described above are intended to provide for full and timely payment of scheduled principal of and interest on the securitized bonds and all other components of the PPR. If the amount of securitized surcharges remitted to the general subaccount is insufficient to make all scheduled payments of principal of and interest on the securitized bonds and to make payment on all of the other components of the PPR, the excess funds subaccount and the capital subaccount will be drawn down, in that order, to make those payments. Any deficiency in the capital subaccount due to such withdrawals will be replenished to the capital

subaccount on a periodic basis through the true-up process. In addition to the foregoing, there may be such additional accounts and subaccounts as are necessary to segregate amounts received from various sources, or to be used for specified purposes. Such accounts will be administered and utilized as set forth in the Securitized Property Servicing Agreement, the Intercreditor Agreement and the indenture. Upon the maturity of the securitized bonds and the discharge of all obligations in respect thereof, remaining amounts in the collection account will be released to BondCo; and equivalent amounts, less amounts remaining in the capital subaccount, will be credited by Kentucky Power to customers.

60. The use of a collection account and its subaccounts in the manner proposed by Kentucky Power is reasonable, will lower certain liquidity risks associated with the securitized bonds and thus lower the costs to customers consistent with the Lowest Cost Objective, and should, therefore, be approved.

61. The Commission finds the issuance of securitized bonds approved in this Financing Order satisfies the requirement of KRS 278.676(1)(c) mandating that the issuance of securitized bonds and the imposition and collection of a securitized surcharge be reasonable and in the public interest.

62 The Commission finds the issuance of securitized bonds approved in this Financing Order satisfies the requirement of KRS 278.676(1)(c) mandating that the issuance of securitized bonds and the imposition of a securitized surcharge be expected to provide quantifiable NPV benefits to customers as compared to recovery of the components of securitized costs that would have been incurred absent the issuance of securitized bonds.

63. The BondCo's issuance of the securitized bonds approved in this Financing Order in compliance with the criteria established by this Financing Order satisfies the requirement of KRS 278.676(1)(d) prescribing that the proposed structuring and pricing of the securitized bonds are reasonably expected to result in the lowest securitized surcharges consistent with market conditions at the time the securitized bonds are priced under the terms of this Financing Order.

9. **Securitized Surcharges—Imposition and Collection, and Nonbypassability**

64. Kentucky Power seeks authorization to impose on and collect from customers the securitized surcharges under this Financing Order or the tariffs approved hereby, in an amount sufficient to provide for the timely recovery of its securitized costs and any ongoing financing costs approved in this Financing Order (including payment of principal and interest on the securitized bonds and ongoing financing costs related to the securitized bonds).

65. Securitized surcharges will appear as a separate line-item on customer bills, in accordance with KRS 278.682(1)(b).

66. The securitized bonds may not have a legal final maturity date exceeding 30 years under KRS 278.670(17). The Commission approves Kentucky Power's proposal of a scheduled final payment date for the securitized bonds to be up to 20 years and 3 months from the date of issuance of a series of securitized bonds.

67. Kentucky Power will collect securitized surcharges from all existing and future retail customers receiving electric service from Kentucky Power, its successors, or assignees under Commission-approved rate schedules even if a retail customer elects to purchase electricity from an alternative electric supplier

following a fundamental change in regulation of public utilities in the Commonwealth of Kentucky. Any such existing or future retail customer may not avoid securitized surcharges by switching to another electric utility, electric cooperative, or municipally owned utility on or after the date this Financing Order is issued.

68. Kentucky Power's proposal related to the guaranteed imposition, billing, charging and collection of securitized surcharges is reasonable as modified herein and is necessary to ensure collection of securitized surcharges sufficient to support recovery of the securitized costs and ongoing financing costs approved in this Financing Order and should be approved. It is reasonable to approve the form of Kentucky Power's Securitized Surcharge Rider, as modified in this Financing Order, and require tariff provisions consistent with this order be filed before any securitized bonds are issued pursuant to this Financing Order.

10. **Allocation Among Customers**

69. The Periodic Billing Requirement (PBR) represents the aggregate dollar amount of securitized surcharges that must be billed during a given period (e.g., annually, semiannually, or quarterly) so that the securitized surcharge collections will be sufficient to meet the sum of all PPR for that period, given: (i) forecast usage and revenue data, excluding the securitized surcharge, for the period; (ii) forecast uncollectibles for the period; and (iii) forecast lags in collection of billed securitized surcharges for the period.

70. The securitized costs and financing costs which will be recovered through the Securitized Surcharge Rider authorized by this Financing Order are allocated among the customer classes on a percent of revenue basis by residential and all

other retail electric rate schedules. Specifically, the PPR for a given period will first be allocated among two groups of retail electric customers (hereinafter, revenue classes), consisting of (a) residential customers and (b) all other retail electric customers (i.e., non-residential retail electric customers) on a percent of revenue basis. The PPR allocated to residential customers and the PPR allocated to non-residential retail electric customers, both grossed up to account for the projection of uncollectible securitized surcharges and a projection of payment lags between the billing and collection of securitized surcharges, will then be further allocated among each revenue class through application of an adjustment factor for each revenue class to charges for electric service for each revenue class.

71. The adjustment factor for residential customers will be calculated based on the expected revenue from and applied to all charges for electric service other than ESM charges, nonrecurring charges, and pass-through charges.

72. The adjustment factor for non-residential retail electric customers will be calculated based on the expected revenue from and applied to all charges for electric service other than ESM charges, nonrecurring charges, pass-through charges, and fuel costs recovered in base rates and through the Fuel Adjustment Clause.

11. **Commission True-Up of Securitized Surcharges**

73. The Commission finds that a guaranteed periodic true-up is necessary to ensure full recovery of required amounts over the expected life of the securitized bonds. Pursuant to KRS 278.676(1)(f), the servicer of the securitized bonds will make at least semiannually, guaranteed adjustments to the securitized surcharges to:

(a) Collect full required amounts over the expected life of the securitized bonds;

(b) Correct any under collections or overcollections through the preceding period or, if necessary, since the prior adjustment; and

(c) Ensure the billing of securitized surcharges necessary to generate the collection of amounts sufficient to timely provide all scheduled payments of principal and interest and any other amounts due in connection with the securitized bonds (including ongoing fees and expenses and amounts required to be deposited in or allocated to any collection account or subaccount, trustee indemnities, payments due in connection with any expenses incurred by the indenture trustee or the servicer to enforce bondholder rights and all other payments that may be required pursuant to the waterfall of payments set forth in the indenture) during the period for which such adjusted securitized surcharges are to be in effect.

With respect to any series of securitized bonds, the servicer will make true-up adjustment filings with the Commission at least semiannually.

74. True-up filings will be based upon the cumulative differences, regardless of the reason, between the PPR (including scheduled principal and interest payments on the securitized bonds) and the amount of securitized surcharge remittances and any other remittances to the indenture trustee. True-up mechanisms are necessary to correct for any overcollection or undercollection of the securitized surcharges and to ensure the timely payment of securitized bonds and ongoing financing costs and other required amounts and surcharges payable under the securitized bonds. In order to ensure adequate securitized surcharge

revenues to fund the PPR and to avoid large overcollections and under collections over time, the servicer will reconcile the securitized surcharges using Kentucky Power's most recent forecast usage and revenue data, excluding the securitized surcharge, and estimates of transaction-related expenses. The calculation of the securitized surcharges will also reflect for each revenue class both a projection of uncollectible securitized surcharges and a projection of payment lags between the billing and collection of securitized surcharges based upon Kentucky Power's most recent experience regarding collection of securitized surcharges.

75. True-up mechanisms are necessary to correct for any overcollection or under collection of the securitized surcharges and to ensure the timely payment of securitized bonds and ongoing financing costs and other required amounts and surcharges payable under the securitized bonds on the next semiannual payment date as provided in Appendix B; provided, however, that Appendix B may be revised to require the adjusted securitized surcharge to be sufficient to ensure such timely payments for each of the two payment periods (generally six months) following the effective date of the initial or adjusted securitized surcharge if Kentucky Power's designated representative and the Commission's Designated Representative find this is necessary or appropriate to achieve the Lowest Cost Objective.

76. Subject to paragraph 75 of the Findings of Fact, the servicer will make true-up adjustments in the following manner:

(a) Allocate the upcoming period's PPR between the revenue classes based on the allocation factors approved in this Financing Order;

(b) Calculate undercollections or overcollections, through the preceding period for each revenue class by subtracting the cumulative securitized surcharge revenues collected from each revenue class through the preceding period from the cumulative PPR allocated to that revenue class through the preceding period;

(c) Sum the amounts allocated to each revenue class in steps (a) and (b) and adjust those amounts as necessary to reflect both the projection of uncollectible securitized surcharges and a projection of payment lags between the billing and collection of securitized surcharges based upon Kentucky Power's most recent experience regarding collection of securitized surcharges to determine the PBR for each securitized surcharge class for the upcoming period; and

(d) Divide the amount assigned to each revenue class in step (c) above by the appropriate forecasted revenue, as indicated in paragraphs 71 and 72 above, to determine the securitized surcharge rate, or adjustment factors, by class for the upcoming period.

12. **Interim True-Up Adjustments**

77. In addition to the semiannual true-up adjustments, true-up adjustments may be implemented by the servicer and the Commission more frequently at any time during the term of the securitized bonds to correct any undercollection or overcollection, as provided for in this Financing Order, in order to assure timely payment of securitized bonds based on rating agency and bondholder considerations. Beginning 12 months prior to the scheduled final payment date for the latest maturing tranche of securitized bonds of a particular series, the required true-up adjustments should be done on a quarterly basis.

78. In the event an interim true-up is necessary, the interim true-up adjustment should use the methodology utilized in the most recent semiannual true-up and be filed not less than 10 days prior to the first billing cycle of the month in which the revised securitized surcharges will be in effect.

13. **Additional True-Up Provisions**

79. The true-up adjustment filing will set forth the servicer's calculation of the true-up adjustment to the securitized surcharges. The Commission will have 10 days after the date of a true-up adjustment filing in which to confirm the mathematical accuracy of the servicer's adjustment.[45] Any true-up adjustment filed with the Commission should be effective on its proposed effective date, which should be not less than 10 days after filing.[46] Any necessary corrections to the true-up adjustment, due to mathematical errors in the calculation of such adjustment or otherwise, will be made in future true-up adjustment filings.

80. To enhance the credit of the securitized bonds, and unlike other Commission rate orders supporting Kentucky Power's debt, through the true-up procedure each revenue class will be required to accept joint liability for payment of the securitized bonds and ongoing financing costs similar to the way banks in the Federal Home Loan system support each other.

81. The Commission finds the true-up procedures contained in the proposed Securitized Surcharge Rider, as modified above, are reasonable and will reduce risks related to the securitized bonds, resulting in lower securitized surcharges and

[45] KRS 278.678(5).

[46] KRS 278.678(5).

greater NPV benefits to customers and should be approved.

14. **Designated Commission Staff**

82. The Commission may designate one (1) or more representatives from Commission Staff who may be advised by one (1) or more financial advisors contracted with the Commission to provide: (a) input to and collaboration with Kentucky Power during the process undertaken to place the securitized bonds to market and (b) a certificate without material qualification to the Commission in the form attached as Appendix E of this Financing Order.[47]

83. Activities of designated Commission Staff, the Financial Advisor, outside counsel, advisors, or other consultants engaged by the Commission described in this Financing Order do not constitute "direct[ing] the placement of securitized bonds" for purposes of KRS 278.674(3) or "[h]aving authority to direct how Kentucky Power places the bonds to market" for purposes of KRS 278.674(5).

84. In structuring, marketing, and pricing the securitized bonds, Kentucky Power and each BondCo should be advised by its own legal counsel and its own financial advisor. The Commission's Financial Advisor is not an agent or representative of Kentucky Power or of any BondCo, and has not been an underwriter of any debt or equity securities issued by or on behalf of Kentucky Power, but is solely responsible to the Commission with a duty of loyalty and care solely to the Commission.

15. **Securitized Surcharges Lowest Cost Consistent with Market Conditions**

85. Kentucky Power has proposed a transaction structure that is expected to

[47] KRS 278.674(4).

include (but is not limited to):

(a) The use of a BondCo as issuer of the securitized bonds, limiting the risks to securitized bond holders of any adverse impact resulting from a bankruptcy proceeding of the BondCo's parent or any affiliate;

(b) The right to impose, bill, charge, collect, and receive securitized surcharges that are nonbypassable and which must be trued-up at least semiannually, but may be trued-up more frequently under certain circumstances, in order to assure the timely payment of the debt service and other ongoing financing costs;

(c) Additional liquidity in the form of a collection account and subaccounts, including a capital subaccount funded in cash in an amount equal to not less than 0.5% of the original principal amount of the securitized bonds and other subaccounts resulting in greater certainty of payment of interest and principal to investors and that are consistent with the IRS requirements that must be met to receive the desired corporate federal income tax treatment for the securitized bond transaction;

(d) Protection of securitized bondholders against potential defaults or failure of representations by Kentucky Power as servicer or any successor servicer under a Securitized Property Servicing Agreement, by Kentucky Power as seller of securitized property under a Securitized Property Purchase and Sale Agreement, by Kentucky Power as administrator of a BondCo under an Administration Agreement, or by a BondCo under the indenture for the securitized bonds;

(e) Benefits for corporate federal income tax purposes including: (i) the transfer of the rights under this Financing Order to a BondCo not resulting in gross income to Kentucky Power and the future revenues under the securitized surcharges being

included in Kentucky Power's gross income under its usual method of accounting; (ii) the issuance of the securitized bonds and the transfer of the proceeds of the securitized bonds to Kentucky Power not resulting in gross income to Kentucky Power; and (iii) the securitized bonds constituting obligations of Kentucky Power; and

(f) The securitized bonds will be marketed using proven underwriting and marketing processes acceptable to the Commission, through which market conditions and investors' preferences, with regard to the timing of the issuance, the terms and conditions, related maturities, and other aspects of the transaction will be determined, evaluated and factored into the structuring and pricing of the securitized bonds, all in accordance with the standards and procedures set forth in this Financing Order.

86. Kentucky Power's proposed transaction structure is necessary to enable the securitized bonds to obtain the highest possible bond credit ratings, ensures that the structuring and pricing of the securitized bonds will result in securitized surcharges that are fair, just and reasonable, in the public interest, and provide quantifiable NPV benefits to customers as compared to recovery of the components of securitized costs that would have been incurred absent the issuance of securitized bonds.

87. To ensure that customers receive the quantifiable NPV benefits due from the proposed securitized bond transaction and so that the proposed securitized bond transaction will be consistent with the standards set forth in KRS 278.670 to 278.696 and KRS 65.114, it is necessary that (i) based on updated information, the Issuance Advice Letter demonstrates that the transaction in fact provides quantifiable NPV benefits to customers compared to collection of the Securitizable

Balance through conventional financing, and (ii) Kentucky Power otherwise satisfies the requirements of this Financing Order and the Act.

D. Use of Securitized Bond Proceeds for Corporate Purposes of Kentucky Power

88. Upon the issuance of securitized bonds, the BondCo will use the net proceeds from the sale of the securitized bonds (after payment of certain up-front financing costs) to pay to Kentucky Power the purchase price of the securitized property representing the prudently incurred costs of Kentucky Power and related BondCo financing costs. The proceeds from the sale of the securitized property will be applied by Kentucky Power to reduce its recoverable securitized costs. The proposed accounting entries will result in removal of the regulatory asset representing the distribution portion of recoverable securitized costs from Kentucky Power's books. Thereafter, securitized bond proceeds will be used to repay any outstanding term loans and short-term debt at Kentucky Power and to fund capital expenditures to support Kentucky Power's utility operations and services. The specific application of the proceeds will be determined by market conditions and Kentucky Power's expected future expenditures at the time the proceeds are received.

E. Security Interests in Securitized Property

89. The servicer and each BondCo should be required, on a timely basis, to make all filings that would be required by the Uniform Commercial Code (UCC) if the servicer or BondCo changes its name or changes its jurisdiction of organization.

90. The Securitization Property Servicing Agreement should require the servicer to provide written confirmation to the indenture trustee within 30 days after each 5-year anniversary of issuance of each series of securitized bonds that

relevant financing statements still appear as unexpired in the Commonwealth of Kentucky's Secretary of State's records and should require the servicer promptly to correct any problems that have arisen.

91. Kentucky Power should be required to run a lien search shortly before the issuance of securitized bonds. If any preexisting liens appear to cover the securitized property, the situation should be appropriately resolved before securitized bonds are issued.

92. The servicer should be required to determine what cash constitutes collections of the securitized surcharge and to transfer that cash to a segregated account no less frequently than monthly.

Summary

93. The Commission finds the provisions described in the above Findings of Fact are reasonable, will reduce risk associated with the proposed securitized bond transaction and will, therefore, result in lower securitized surcharges and greater NPV benefits to customers and should be approved.

IV. Conclusions of Law

1. Kentucky Power is a utility, as defined in KRS 278.670(21) and KRS 278.010(3)(a), and an electric utility, as such term is used in KRS 278.672(1).

2. Kentucky Power is entitled to file an application for a financing order under KRS 278.672(1).

3. The Commission has jurisdiction and authority over Kentucky Power's application pursuant to KRS 278.674 and KRS 278.680.[48]

[48] KRS 278.040.

4. The Commission has authority to approve this Financing Order under the Act.

5. The Act allows Kentucky Power to arrange for the issuance of securitized bonds to finance its deferred costs and retired generation costs (and associated financing costs thereto).

6. A BondCo will be an assignee, as defined in KRS 278.670(2), when an interest in the securitized property created under this Financing Order is transferred, other than as security, to the BondCo.

7. The holders of the securitized bonds and the indenture trustee will each be a financing party as defined in KRS 278.670(8).

8. A BondCo may issue securitized bonds in accordance with this Financing Order.

9. The issuance of securitized bonds approved in this Financing Order results in the removal of the regulatory asset representing the securitized costs from Kentucky Power's books and satisfies the requirement of KRS 278.670(17) dictating that the proceeds of the securitized bonds shall be used to directly or indirectly recover, finance, or refinance capitalized costs assets and financing costs that are secured by or payable from securitized property.

10. This Financing Order details that for so long as the securitized bonds are outstanding, and until all financing costs have been paid in full, the imposition and collection of securitized surcharges authorized under this Financing Order shall be nonbypassable and imposed on a joint basis on all existing and future retail customers receiving electric service from the electric utility, its successors, or assignees under

Commission-approved rate schedules even if a retail customer elects to purchase electricity from an alternative electric supplier following a fundamental change in regulation of public utilities in the Commonwealth of Kentucky. The Commission is obligated to ensure that the requirements of KRS 278.670, *et seq*., including but not limited to those set forth in KRS 278.676(1)(e), are satisfied in connection with the relevant approvals that would be required of it after such a change in Kentucky public utility regulation.

11. The method approved in this Financing Order for collecting and allocating the securitized surcharges satisfies the requirements of KRS 278.676(1)(i) and KRS 278.676(1)(k). The securitized bond transaction approved in this Financing Order satisfies the requirements of KRS 278.676(1)(k) directing that the total amount of revenues to be collected under this Financing Order include a method of tracing funds collected as securitized surcharges or other proceeds of securitized property and that a method has been determined for tracing the funds and the identifiable cash proceeds of any securitized property subject to a financing order under applicable law.

12. As provided in KRS 278.678, this Financing Order, together with the securitized surcharges authorized by this Financing Order, is irrevocable and not subject to reduction, impairment, postponement or otherwise any adjustment by further act of the Commission, except for the true-up procedures approved in this Financing Order, as required by application of the formula-based true-up mechanism as provided in KRS 278.670 through KRS 278.696 and KRS 65.114.

13. As provided in KRS 278.688(4), the rights and interests of Kentucky Power or its successor under this Financing Order, including the right to impose, bill, charge,

collect and receive the securitized surcharges authorized in this Financing Order, are assignable and shall be securitized property when they are first transferred by Kentucky Power to a BondCo.

14. As provided in KRS 278.670(19) and (20), "securitized property" includes the right of a utility, its successor, or assignee under a financing order to impose, bill, charge, collect, and receive securitized surcharges authorized under a financing order on a joint liability basis upon or from all existing or future retail customers receiving retail electrical service from the utility or its successors or assignees under Commission-approved rate schedules. This includes customers receiving retail electrical service in the geographical electric service areas of Kentucky Power or its successors or assignees on the date of the Financing Order as well as customers receiving retail electrical service in any subsequent additions to or enlargements of such geographical electric service areas.

15. The rights, interests and property that will be conveyed to a BondCo in the Securitized Property Purchase and Sale Agreement and the related Bill of Sale, including the irrevocable right to impose, collect and receive securitized surcharges and the revenues and collections from securitized surcharges are “securitized property” within the meaning of KRS 278.670(19).

16. Securitized property is not a receivable or a pool of receivables.

17. Unlike rates and charges imposed pursuant to the Commission’s general rate orders that Kentucky Power uses to pay its debts, securitized property will constitute an existing, present, intangible property right or interest therein for purposes of contracts concerning the sale or pledge of property, created in favor of Kentucky Power, its

successors or assignees. This is a separate property interest notwithstanding the fact that the imposition and collection of the securitized surcharges depends on Kentucky Power or a successor to continue to provide retail electric service, to perform its servicing functions relating to the collection of securitized surcharges and on future retail sales of electricity within Kentucky Power's service area, as provided by KRS 278.684(1).

18. All revenues and collections resulting from the securitized surcharges will constitute proceeds only of the securitized property arising from this Financing Order, as provided by KRS 278.670(19)(b).

19. Upon the transfer by Kentucky Power of securitized property to a BondCo, the BondCo will have the rights, title and interest of Kentucky Power with respect to such securitized property including the right to impose, bill, charge, collect, and receive the securitized surcharges authorized by this Financing Order.

20. The term "securitization bonds" used in KRS 278.682(1) and 278.670(7)(a) includes all "securitized bonds" as defined in KRS 278.670(17).

21. The term "customer class" used in KRS 278.676(1)(i) has the same meaning as "rate class" used in KRS 278.678(3) and KRS 278.682(1)(a).

22. Pursuant to KRS 278.676(1)(i) and KRS 278.678(3), the securitized surcharge shall be imposed at separate rates on (a) residential customers; and (b) all others retail electric customers (each a Revenue Class). .

23. The term "successor" used in KRS 278.670 *et seq* means any entity that succeeds by any means whatsoever to any interest or obligation of its predecessor, including by way of bankruptcy, reorganization or other insolvency proceeding, merger, consolidation, conversion, assignment, pledge or other security, by operation of law or

otherwise.

24. The securitized bonds issued pursuant to this Financing Order will be securitized bonds within the meaning of KRS 278.670(17), and the securitized bonds and holders thereof are entitled to all of the protections provided under the Act.

25. Amounts that are required to be paid to or for the account of a BondCo (and collected by the servicer for the benefit of the BondCo) as securitized surcharges under this Financing Order or the tariffs approved hereby are securitized surcharges as defined in KRS 278.670(20), and the amounts collected from retail customers with respect to such securitized surcharges are "securitized surcharges" as defined in KRS 278.670(20).

26. As provided in KRS 278.684(6), the interests of an assignee and the indenture trustee in securitized property and in the revenues and collections arising from that property are not subject to setoff, counterclaim, surcharge, or defense by Kentucky Power or any other person or in connection with the bankruptcy of Kentucky Power or any other entity.

27. The Commission's true-up mechanism approved in this Financing Order to adjust the securitized surcharges satisfies the requirements of KRS 278.676 and KRS 278.678.

28. If and when Kentucky Power transfers to a BondCo the right to impose, bill, charge, collect, and receive the securitized surcharges and to issue the securitized bonds, the servicer will be able to recover the securitized surcharges associated with such securitized property only for the benefit of the BondCo and the holders of the securitized bonds in accordance with the Securitized Property Servicing Agreement.

29. If and when Kentucky Power transfers its rights under this Financing Order

to a finance subsidiary BondCo under an agreement that expressly states that the transfer is a sale or other absolute transfer in accordance with the true-sale provisions of KRS 278.688, then, pursuant to that statutory provision, that transfer will be a true sale of an interest in securitized property and not a secured transaction or other financing arrangement, and title, legal and equitable, to the securitized property will pass to the BondCo. As provided by KRS 278.688, this true sale shall apply regardless of whether the purchaser has any recourse against the seller, or any other term of the parties' agreement, including the seller's retention of an equity interest, whether direct or indirect, or whether subordinate or otherwise, in the securitized property, Kentucky Power's role as the collector of securitized surcharges relating to the secured property, or the treatment of the transfer as a financing for tax, financial reporting, or other purposes.

30. As provided in KRS 278.686, a valid and enforceable lien and security interest in the securitized property and other secured property in favor of the holders of the securitized bonds or a trustee on their behalf will be created by this Financing Order and the execution and delivery of a security agreement with the holders of the securitized bonds or a trustee on their behalf in connection with the issuance of the securitized bonds. The lien and security interest will attach automatically without any physical delivery of collateral or other act from the time that value is received for the securitized bonds and, on perfection through the filing of notice with the Secretary of State in accordance with the rules prescribed under KRS 278.692, will be a continuously perfected lien and security interest in the securitized property and all proceeds of the securitized property, whether accrued or not, will have priority in the order of filing and will take precedence over any subsequent judicial or other lien creditor.

31. As provided in KRS 278.688(4)(d), the transfer of an interest in securitized property to an assignee will be perfected against all third parties, including subsequent judicial or other lien creditors, when this Financing Order becomes effective, transfer documents have been delivered to that assignee, and a notice of that transfer has been filed in accordance with the rules prescribed by the Secretary of State under KRS 278.692. The transfer to a BondCo of Kentucky Power's rights under this Financing Order will be a transfer of an interest in securitized property for purposes of the Act.

32. As provided in KRS 278.690, the priority of transfer perfected under KRS 278.686, KRS 278.688, KRS 278.690, and KRS 278.692 shall not be impaired by any later modification of this Financing Order or securitized property or by the commingling of funds arising from securitized property with other funds.

33. As provided in KRS 278.690(1), if securitized property is transferred to an assignee, any proceeds of the securitized property will be treated as held in trust for the assignee.

34. As provided in KRS 278.686(7), if a default or termination occurs under the securitized bonds, the financing parties or their representatives may exercise the rights and remedies available to a secured party under the UCC, including the rights and remedies available under Article 9, Part 6. The Commission also may order amounts arising from securitized surcharges be transferred to a separate account for the benefit of the financing party, to which their lien and security interest shall apply. On application by, or on behalf of, the financing parties, the Circuit Court for the county or city in which the electric utility's headquarters is located shall order the sequestration and payment of revenues arising from the securitized surcharges to the financing parties.

35. As provided by KRS 278.694(2), the securitized bonds authorized by this Financing Order are not a debt or obligation of the Commonwealth of Kentucky and are not a charge on its full faith and credit or taxing power other than as a customer of Kentucky Power.

36. Pursuant to KRS 278.678(8), the Commission is prohibited from taking any action that would amend, modify, or terminate this Financing Order by any subsequent action and the Commission may not reduce, impair, postpone, terminate, or otherwise adjust securitized surcharges approved by this Financing Order.

37. Pursuant to KRS 65.114, the Commonwealth of Kentucky has pledged for the benefit and protection of all financing parties and Kentucky Power, that the Commonwealth of Kentucky and its agencies, including the Commission shall not: (1) alter the provisions of KRS 278.670 through KRS 278.696 and KRS 65.114 which authorize the Commission to create an irrevocable contract right or right to sue by the issuance of a financing order creating securitized property, making the securitized surcharges imposed by a financing order irrevocable, binding, or affecting the nonbypassable charges for all existing and future retail customers of the electric utility; (2) take or permit any action that impairs or would impair the value of securitized property or the security for the securitized bonds or revises the securitized costs for which recovery is authorized; (3) in any way impair the rights and remedies of the bondholders, assignees, and other financing parties; and (4) except for changes made pursuant to the formula-based true-up mechanism authorized under KRS 278.678, reduce, alter, or impair securitized surcharges that are to be imposed, billed, charge, collected, and remitted for the benefit of the bondholders, any assignee, and any other financing parties

until any and all principal, interest, premium, financing costs, and other fees, expenses, or charges incurred, and any contracts to be performed, in connection with the related securitized bonds have been paid and performed in full.[49] A BondCo, in issuing securitized bonds, is authorized, pursuant to KRS 65.114(3) and this Financing Order, to include this pledge in any documentation relating to the securitized bonds.

38. This Financing Order will remain in full force and effect and unabated notwithstanding the bankruptcy of Kentucky Power, its successors, or assignees.

39. Kentucky Power shall retain sole discretion regarding whether or when to assign, sell or otherwise transfer the rights and interests created by this Financing Order or any interest therein, or to cause the issuance of any securitized bonds authorized by this Financing Order, subject to the right of the Commission to designate one (1) or more representatives from Commission Staff who may be advised by one (1) or more financial advisors contracted with the Commission to provide input to and collaborate with the electric utility in advance concerning all decisions related to the structuring, marketing and proposed pricing during the process undertaken to sell the securitized bonds in an SEC registered public offering, and subject to the right of the Commission to confirm that all conditions set forth in this Financing Order have been satisfied pursuant to procedures set forth in this Financing Order.

40. Activities of designated Commission Staff, the Financial Advisor, outside counsel, advisors, or other consultants engaged by the Commission described in this Financing Order do not constitute "direct[ing] the placement of securitized bonds" for purposes of KRS 278.674(3) or "[h]aving authority to direct how [Kentucky Power] places

[49] KRS 65.114(2).

the bonds to market" for purposes of KRS 278.674(5).

41. All parties shall be bound by any Commission authorization and approval of activities of designated Commission Staff, any financial advisor providing advice to Commission Staff, outside counsel, advisors, or other consultants engaged by the Commission described in this Financing Order pursuant to this Financing Order as and to the same extent as such authorization or approval were included verbatim in this Financing Order.

42. This Financing Order is final, is not subject to modification or revocation by this Commission, and is not subject to review or appeal except as expressly provided in KRS Chapter 278. The finality of this Financing Order is not impaired in any manner by the participation of the designated Commission Staff or any financial advisor or by the Commission's review of or decision to issue a Disapproval Order.

43. The Commission's obligations under this Financing Order relating to the securitized bonds, including the specific actions the Commission guarantees to take, are direct, explicit, irrevocable, and unconditional upon issuance of the securitized bonds, and are legally enforceable against the Commission, a United States public sector entity.

44. The approval of this Financing Order, including the true-up provisions, by the Commission constitutes a guarantee of state regulatory action to ensure repayment of the securitized bonds and associated costs.

45. No approval of the Commission after the date of this Financing Order to authorize Kentucky Power and the BondCo to proceed to cause the issuance of securitized bonds pursuant to this Financing Order shall be considered or construed as a "final order" of the Commission, or an amendment or supplement to this Financing Order,

to which an independent statutory appeal right would attach.

46. This Financing Order meets the requirements for a financing order under the Act.

V. Ordering Paragraphs

Based upon the record, the Findings of Fact and Conclusions of Law set forth herein, and for the reasons stated above, IT IS THEREFORE ORDERED:

A. Approval

1. **Approval of Application**. Subject to compliance with all conditions set forth in this Financing Order, the application of Kentucky Power for the issuance of a financing order under the Act is approved, as provided in this Financing Order. The Commission guarantees that it will act pursuant to this Financing Order as expressly authorized by KRS 278.678 to ensure that securitized surcharge revenues are sufficient to pay principal and interest on the securitized bonds issued pursuant to this Financing Order and other costs, including fees and expenses, in connection with the securitized bonds. The approval of this Financing Order, including the true-up provisions, by the Commission constitutes a guarantee of state regulatory action to ensure repayment of the securitized bonds and associated costs.

2. **Authority to Arrange for the Issuance of Securitized Bonds**. Subject to full compliance with all Findings of Fact and Conclusions of Law contained in this Financing Order, Kentucky Power is authorized to cause the issuance of securitized bonds with a principal amount equal to the sum of (a) the Securitizable Balance at the time the securitized bonds are issued plus (b) up-front financing costs described in Finding of Fact paragraphs and Appendix A, Attachment 1, Schedule B of this Financing

Order (which are estimated to be approximately $6.3 million) plus, (i) if applicable, the cost of original issue discount, credit enhancements and other arrangements to enhance marketability (ii) the cost of the Commission's Financial Advisor, and any additional costs incurred by Kentucky Power to comply with the requests and recommendations of the Commission's Financial Advisor, (iii) any costs incurred by Kentucky Power if this Financing Order is appealed; and (iv) any costs incurred by Kentucky Power in connection with any post-issuance audit or other procedure mandated by this Financing Order. The Securitizable Balance as of any given date is equal to the balance of securitized costs as is approved in this case plus carrying costs accruing on the applicable portions of such balance at the pre-tax WACC approved in this case through the date the securitized bonds are issued, as reduced by all corresponding insurance, scrap, and salvage proceeds, applicable unamortized regulatory liabilities for excess deferred income taxes; and the present value of return on all accumulated deferred income taxes related to pretax costs with respect to a retired or abandoned facility and related facilities, including those due to bonus and accelerated tax depreciation and abandonment losses.

Accumulated deferred income taxes and regulatory liabilities for excess deferred income taxes used in calculating retired generation costs shall be excluded from the rate base in future general rate cases, and no amortization of those excess deferred income taxes shall be reflected in future general rate cases. Deferred income taxes that are not recoverable in future rates (referred to in KRS 278.676(1)(o)) relate only to deferred income taxes that are known and estimable as of the date of this Financing Order, and this Financing Order does not preclude the reflection in future retail rates of future changes in the corporate income tax rate.

3. **Securitized Bond Deferral Account**. Kentucky Power shall establish a deferral account with respect to securitized bonds authorized by this Financing Order (Securitized Bond Deferral Account). The balance in the Securitized Bond Deferral Account shall grow at Kentucky Power's pre-tax WACC. Kentucky Power shall credit back to customers through the Securitized Bond Deferral Account until the next general rate case when costs and revenues associated with the servicing fees shall be included in the cost of service:

a. any disallowed up-front financing costs disallowed by the Commission in connection with its up to 120-day post-closing review of final up-front financing costs;

b. all periodic servicing and administration fees in excess of Kentucky Power's incremental cost of performing the servicer and administration functions;

c. any amount by which the up-front financing costs included in the principal amount securitized exceeds the actual up-front financing costs;

d. any amount by which other securitized costs included in the principal amount securitized exceeds the actual amount of such other securitized costs; and

e. after all the securitized bonds have been repaid, the fair market value of the BondCo in excess of Kentucky Power's capital contribution.

In each future base rate case, Kentucky Power shall include a revenue credit for each of these amounts (to the extent not previously credited back through the Securitized Bond Deferral Account), provided such crediting of the Securitized Bond Deferral Account does not directly or indirectly increase Kentucky Power's net income. In each future base rate case, Kentucky Power may also request revenue for all costs of providing servicing

and administration services. The failure on the part of Kentucky Power to provide any such credit to customers shall in no way affect the securitized property, the securitized surcharge or the rights of Kentucky Power, the indenture trustee, and the holders of securitized bonds under the Financing Order, but may be addressed by the Commission through other proceedings.

4. Within 120 days after issuance of any series of securitized bonds authorized by this Financing Order, Kentucky Power shall file with the Commission information on actual up-front financing costs of the series of securitized bonds. The Commission shall review such information to determine if such up-front financing costs in fact resulted in the lowest securitized surcharges consistent with market conditions at the time of the pricing and the terms of this Financing Order. The Commission shall disallow any excess incremental up-front financing costs by crediting back to customers through the Securitized Bond Deferral Account an amount equal to such excess plus interest on securitized bonds equal to such excess. The Commission shall not make adjustments to the securitized surcharge for any such excess.

If the final up-front financing costs allowed by the Commission, following such review, are more than the up-front financing costs included in the principal amount financed by securitized bonds, Kentucky Power may request recovery of the remaining up-front financing costs through a surcharge to Kentucky Power's rates for distribution service.

5. If other securitized costs are less than the estimated securitized costs financed by securitized bonds, the Commission shall disallow the difference by crediting back to customers through the Securitized Bond Deferral Account an amount equal to

such difference plus the amount of interest on securitized bonds attributable to such difference. The Commission shall not make adjustments to the securitized surcharge for any such excess.

6. **Recovery of Securitized Surcharges**. Kentucky Power shall act as the initial servicer and impose on and collect securitized surcharges from all existing and future retail customers receiving electrical service from Kentucky Power or its successors or assignees under Commission-approved rate schedules, even if a retail customer elects to purchase electricity from an alternative electricity supplier following a fundamental change in regulation of public utilities in the Commonwealth of Kentucky, in an amount sufficient to provide for the timely recovery of its aggregate securitized costs detailed in this Financing Order, including payment of principal and interest on the securitized bonds.

7. **Issuance Advice Letter and Basic Transaction Documents**. For each series of securitized bonds issued, Kentucky Power shall provide an Issuance Advice Letter to the Commission following the determination of the final terms of the series of securitized bonds no later than 5:00 pm Eastern Time one (1) business day after the pricing of the securitized bonds, at which time a meeting will be noticed for four (4) business days after pricing to afford this Commission an opportunity to review the proposed transaction. This Issuance Advice Letter shall: (a) report the initial securitized surcharges; (b) include independent unqualified certifications from Kentucky Power embedded in the Issuance Advice Letter, and from the bookrunning underwriter(s) as attached in Appendix D to this Financing Order, each confirming that the structuring, marketing and pricing of the securitized bonds in fact resulted in the Lowest Cost

Objective;[50] (c) other information specific to market conditions and other information concerning the securitized bonds as required by the Commission including but not limited to comparisons to other top quality corporate bonds issued or trading in the secondary market; (d) indicate the final structure of the securitized bonds; and (e) provide the best available estimate of total ongoing financing costs. The Issuance Advice Letter shall be completed and shall evidence the actual dollar amount of the initial securitized surcharges and other information specific to the securitized bonds to be issued. In addition, if original issue discount, additional credit enhancements, or arrangements to enhance marketability are used, the Issuance Advice Letter shall include such information. All amounts which require computation shall be computed using the mathematical formulas contained in the form of the Issuance Advice Letter in Appendix A to this Financing Order and the Securitized Surcharge Rider approved in this Financing Order. Electronic spreadsheets with the formulas supporting the schedules contained in the Issuance Advice Letter shall be included with such letter. The Commission's review of the Issuance Advice Letter shall be limited to the arithmetic accuracy of the calculations and to compliance with the Act, this Financing Order, and the specific requirements that are contained in the Issuance Advice Letter.

No later than 5:00 pm Eastern Time one (1) business day after delivery of the Issuance Advice Letter, the Financial Advisor shall deliver to the Commission a

[50] With respect to its certification that will be embedded in the Issuance Advice Letter, Kentucky Power may exercise its rights pursuant to KRS Chapter 61 and 807 KAR 5:001, Section 13 to seek a determination from the Commission granting confidential treatment to this certification. With respect to its certification in substantially the form attached as Appendix D to this Financing Order, the bookrunning underwriter(s) may exercise their rights pursuant to KRS Chapter 61 and 807 KAR 5:001, Section 13 to seek an order(s) from the Commission granting confidential treatment to this certification.

certification without material qualifications, in the form attached as Appendix E to this Financing Order, confirming that the structuring, marketing, and pricing of the securitized bonds resulted in the Lowest Cost Objective.[51]

Commission Staff and the Financial Advisor shall receive all drafts of the Basic Transaction Documents for review, comment, and approval as those Basic Transaction documents are developed.

Kentucky Power shall provide a draft Issuance Advice Letter as well as final drafts of the Basic Transaction Documents to the Commission Staff for review not later than two weeks prior to the expected date of commencement of marketing each series of securitized bonds. Within one week after receipt of the draft Issuance Advice Letter, Commission Staff shall provide Kentucky Power comments and recommendations regarding the final draft Basic Transaction Documents and the adequacy of other information provided as may be necessary to assure the accuracy of the calculations and that the requirements of the Act and of this Financing Order have been met.

The proposed final Issuance Advice Letter as well as executed versions of the Basic Transaction Documents for a series of securitized bonds shall be provided to the Commission not later than 5:00 pm Eastern Time one (1) business day after the pricing of such series of securitized bonds. The initial securitized surcharges and the final terms of the Basic Transaction Documents and the securitized bonds set forth in the Issuance

[51] With respect to its certification that will be embedded in the Issuance Advice Letter, Kentucky Power may exercise its rights pursuant to KRS Chapter 61 and 807 KAR 5:001, Section 13 to seek a determination from the Commission granting confidential treatment to this certification. With respect to its certification in substantially the form attached as Appendix D to this Financing Order, the bookrunning underwriter(s) may exercise their rights pursuant to KRS Chapter 61 and 807 KAR 5:001, Section 13 to seek an order(s) from the Commission granting confidential treatment to this certification.

Advice Letter shall become effective on the date of issuance of the securitized bonds (which shall not occur prior to the fifth business day after pricing) unless, prior to noon on the fourth business day after the pricing of the securitized bonds, the Commission issues a Disapproval Order. The Commission may issue a Disapproval Order if the Commission finds find that (i) the Statutory Requirements have not been satisfied; (ii) the Lowest Cost Objective has not been achieved; or (iii) all other procedures, criteria and requirements set forth in this Financing Order and the Act have not been satisfied. The opportunity for the Commission to disapprove the issuance of the securitized bonds is a component of the integrated securitized bond review and approval structure, the entirety of which is hereby authorized and approved.

The Financial Advisor and counsel to the Commission Staff shall review, advise, and approve as herein set forth with respect to proposed forms of all Basic Transaction Documents; the Commission shall be named as a third-party beneficiary (for the benefit of customers) of each Basic Transaction Document; the Commission shall be authorized to enforce the provisions of each Basic Transaction Document for the benefit of customers; and after securitized bonds have been issued, the Basic Transaction Documents may only be amended upon written consent from the Commission.

8. **Approval of Tariff**. The form of the Securitized Surcharge Rider attached as Appendix B to this Financing Order is approved. Prior to the issuance of any securitized bonds under this Financing Order, Kentucky Power shall file a tariff that conforms to the form of the Securitized Surcharge Rider tariff provisions attached to this Financing Order.

B. Securitized Surcharges

9. **Imposition and Collection**. Kentucky Power is authorized to impose on, and the servicer is authorized to collect from, all existing and future retail customers receiving electrical service from Kentucky Power or its successors or assignees under Commission-approved rate schedules, even if a retail customer elects to purchase electricity from an alternative electricity supplier following a fundamental change in regulation of public utilities in the Commonwealth of Kentucky, securitized surcharges in an amount sufficient to provide for the timely recovery of the aggregate PPR (including payment of principal and interest on the securitized bonds), as approved in this Financing Order. If there is a shortfall in payment of an amount billed, the amount paid shall first be apportioned ratably between the securitized surcharges and other fees and charges, other than late fees, and second, any remaining portion of the payment shall be allocated to late fees.

To facilitate the calculation and true-up of securitized surcharges, Kentucky Power and any successor servicer shall prepare forecasts of Revenues by revenue class. The initial forecast shall be prepared prior to delivery of the Issuance Advice Letter and shall include forecasts of Revenues by revenue class for each semiannual Payment Period until final scheduled maturity of the securitized bonds.

Kentucky Power shall impose securitized surcharges in amounts sufficient to guarantee the timely recovery of aggregate securitized costs and financing costs detailed in this Financing Order, including payment of principal and interest on the securitized bonds.

10. BondCo's Rights and Remedies. Upon the transfer by Kentucky Power

of the securitized property to a special purpose finance subsidiary BondCo, the BondCo shall have all of the rights, title and interest of Kentucky Power with respect to such securitized property, including, without limitation, the right to exercise any and all rights and remedies with respect thereto, including the right to authorize disconnection of electric service and to assess and collect any amounts payable by any retail customer in respect of the securitized property. If securitized bonds are issued in more than one series, then the securitized property transferred as a result of each issuance shall be only those rights associated with that portion of the total amount authorized to be securitized pursuant to this Financing Order which is securitized by such issuance. The rights to impose, bill, charge, collect and receive securitized surcharges along with the other rights arising pursuant to this Financing Order as they relate to any portion of the total amount authorized to be securitized that remains unsecuritized shall remain with Kentucky Power until transferred to a BondCo in connection with a subsequent issuance of securitized bonds.

The Commission is authorized to appoint, remove, and replace at least one of the BondCo's independent managers.

Each BondCo is authorized, and shall have flexibility, to issue additional indebtedness in wholly separate and unrelated future transactions which additional indebtedness will be obligations of BondCo with future approval of the Commission.

11. Collector of Securitized Surcharges. Kentucky Power or any subsequent servicer of the securitized property shall bill retail customers, or other entity which, under the terms of this Financing Order or the tariffs approved hereby, is required

to bill or collect securitized surcharges, for the securitized surcharges attributable to that customer and shall be responsible to the Commission for their actions as described above.

12. Collection Period. The securitized surcharges related to a series of securitized bonds shall be designed to be collected over the up to 20-year and three (3) months scheduled life of the securitized bonds. However, to the extent that any amounts are not recovered by the end of the scheduled life of the securitized bonds, Kentucky Power may continue to bill and collect securitized surcharges over a period ending not more than thirty (30) years from the date of the issuance of the securitized bonds, and any amounts due at or before the end of that period for securitized surcharges allocable to the period ending on the legal final maturity may be collected after the legal final maturity.

13. Allocation. Kentucky Power shall allocate the securitized surcharges between the two revenue classes in the manner described in this Financing Order.

14. Nonbypassability. Kentucky Power and any other entity providing electric services or acting as servicer to any existing and future retail customers receiving electric service from Kentucky Power, its successors, or assignees under Commission-approved rate schedules are entitled to collect and must remit, consistent with this Financing Order, the securitized surcharges from such existing and future retail customers even if a retail customer elects to purchase electricity from an alternative electric supplier following a fundamental change in regulation of public utilities in the Commonwealth of Kentucky. The Commission will ensure that such obligations are undertaken and performed by Kentucky

Power and any other entity providing electric services or acting as servicer to such retail customers.

15. Adjustments through True-Ups. True ups of the securitized surcharges shall be undertaken and conducted as described in the Securitized Surcharge Rider. The servicer shall file the true-up adjustments in a compliance docket and shall give notice of the filing to all parties in this docket. If securitized bonds are issued in more than one series, then each series will be subject to separate true-up adjustments pursuant to the Act and this Financing Order, provided, however, that more than one series may be trued-up in a single proceeding.

16. Ownership Notification. Any entity that bills securitized surcharges to retail customers shall include on the customer bill a statement that (i) the securitized surcharges are the property of the BondCo and not of the entity issuing such bill and (ii) such entity is acting as a collection agent or servicer for BondCo.

C. Securitized Bonds

17. **Issuance**. Kentucky Power is authorized through one or more finance subsidiary BondCos, each organized as a series trust in accordance with SEC regulations and guidance pronouncements, to issue one or more series of securitized bonds as specified in this Financing Order. Kentucky Power's securitized costs and ongoing financing costs described in Appendix C may be recovered directly through the securitized surcharges. The securitized bonds shall be denominated in U.S. dollars.

18. Up-Front Financing Costs. Kentucky Power may securitize up-front financing costs in accordance with the terms of this Financing Order (which are estimated to be approximately $6.3 million) plus (i) if applicable, the cost of original

issue discount, credit enhancements and other arrangements to enhance marketability; (ii) the cost of the Commission's Financial Advisor(s) and other consultant(s), if any, and any additional costs incurred by Kentucky Power to comply with the requests and recommendations of the Commission's Financial Advisor(s) and other consultant(s); (iii) any costs incurred by Kentucky Power if this Financing Order is appealed; and (iv) cost incurred by Kentucky Power in connection with any post-issuance audit or other procedure mandated by this Financing Order.

A competitive process shall be used for selecting underwriters, underwriters' counsel, Kentucky Power's counsel, and other significant transaction participants whose fees will be paid from securitized bond proceeds or from the securitized surcharge unless the Commission's Designated Representative, advised by the Financial Advisor, determines that a competitive process should not be used in selecting particular transaction participants to create the best value for customers in implementing financing of the Project. Wherever possible, the competitive process shall specify that the amount of fees shall be based in whole, or in part, on performance. The following factors shall be used in evaluating respondents in each competitive process: (i) proposed fees; (ii) specific expertise; and (iii) experience and success with corporate bonds or prior securitized ratepayer-backed bond transactions.

Proceeds of securitized bonds approved by this Financing Order shall be used to pay or reimburse up-front financing costs of the securitized bonds. Proceeds of securitized bonds shall not be used to pay or reimburse ongoing financing costs of the

securitized bonds, but securitized surcharge collections shall be used to pay or reimburse ongoing financing costs.

19. Ongoing Financing Costs. Subject to the annual caps on the servicing fees and administrative fees set forth in this Financing Order, Kentucky Power may recover through securitized surcharges (i) Kentucky Power's actual incremental out-of-pocket ongoing financing costs related to personnel or operating systems of Kentucky Power paid to unaffiliated persons or entities, and (ii) if Kentucky Power subcontracts any of its duties as servicer or administrator to AEP Services or another affiliate, such affiliate's actual incremental out-of-pocket costs related to personnel or operating systems of such affiliate paid to unaffiliated persons or entities. To prevent double recovery, Kentucky Power may not allocate to BondCo servicing and administrative functions for any costs currently recovered in rates as part of Kentucky Power's cost of service or net income. Ongoing financing costs, other than the servicing fee and the administrative fees of Kentucky Power as servicer and administrator, are not capped by this Financing Order. Ongoing financing costs also include an annual return at the currently authorized pre-tax WACC. The amount of ongoing financing costs is subject to updating in the Issuance Advice Letter to reflect a change in the size of the securitized bond issuance, any decision to issue securitized bonds in more than one series and other information available at the time of submission of the Issuance Advice Letter. As servicer, Kentucky Power may collect a servicing fee higher than that set forth in Appendix C to this Financing Order, if such higher fee is approved by the Commission and the indenture trustee.

20. Refinancing. Kentucky Power or any assignee may apply for one or more new financing orders pursuant KRS 278.680(2).

21. Collateral. All securitized property and other collateral shall be held and administered by the indenture trustee or a securities intermediary pursuant to the indenture as described in Kentucky Power's application. The BondCo shall establish a collection account under the indenture. Upon payment of the principal amount of all securitized bonds authorized in this Financing Order and the discharge of all obligations in respect thereof, all amounts in the collection account, other than amounts in the capital subaccount, shall be released by the indenture trustee to the BondCo for distribution. Kentucky Power shall notify the Commission within 30 days after the date that these funds are eligible to be released of the amount of funds available for crediting to the benefit of customers.

22. Distribution and Revenue Credits Following Repayment. Following repayment of the securitized bonds authorized in this Financing Order and release of the funds held by the trustee, the BondCo shall distribute to Kentucky Power the final balance of the general, excess funds, and all other subaccounts, whether such balance is attributable to principal amounts deposited in such subaccounts or to interest thereon, remaining after all other financing costs have been paid. BondCo, or its successor in interest to the securitized property, shall also distribute to Kentucky Power any subsequently collected securitized surcharges. The amount of these distributions to Kentucky Power in excess of Kentucky Power's capital contribution shall be credited back to customers through the Securitized Bond Deferral Account without need for any further Commission action, provided

such crediting of the Securitized Bond Deferral Account does not directly or indirectly increase Kentucky Power's net income.

23. Funding of Capital Subaccount. The capital contribution by Kentucky Power to be deposited into the capital subaccount shall, with respect to each BondCo and series of securitized bonds, be funded by Kentucky Power and not from the proceeds of the sale of securitized bonds. Upon payment of the principal amount of all securitized bonds and the discharge of all obligations in respect thereof, all amounts in the capital subaccount and any amounts required to replenish the capital subaccount to the level of Kentucky Power's capital contribution and any unpaid authorized return on capital contributions for a series of securitized bonds shall be released to the BondCo for payment to Kentucky Power.

24. Credit Enhancement of BondCo's Securitized Bonds. The principal form of credit enhancement for securitized bonds will be the Commission's true up mechanism. Kentucky Power may provide original issue discount or provide for various forms of credit enhancement, including letters of credit, an overcollateralization subaccount or other reserve accounts, surety bonds, and other mechanisms designed to promote the credit quality or marketability of the securitized bonds to the extent not prohibited by this Financing Order. Kentucky Power may not enter into an interest rate swap, currency hedge, or interest rate hedging arrangement. Kentucky Power may include the costs of original issue discount, credit enhancements or other arrangements to promote credit quality or marketability as financing costs only if such arrangements are reasonably

expected to provide net quantifiable benefits greater than their cost. Kentucky Power shall not be required to enter any arrangements to promote credit quality or marketability unless all related costs and liabilities can be included in financing costs. Kentucky Power shall evaluate the relative benefits of the arrangements in the same way that quantifiable NPV benefits are qualified under this Financing Order. This Ordering Paragraph does not apply to the collection account or its subaccounts approved in this Financing Order.

25. Life of Bonds. The legal final maturity date of the securitized bonds authorized by this Financing Order shall not exceed 30 years.

26. Amortization/Repayment Schedule. The Commission approves, and the securitized bonds shall be structured to provide, a securitized surcharge that is based on substantially levelized annual revenue requirements over the expected life of the securitized bonds and utilize consistent allocation factors across rate classes, subject to modification in accordance with the true-up mechanisms adopted in this Financing Order. The structure employing substantially levelized annual revenue requirements will allow the resulting securitized surcharges to remain level or decline over time, if billing determinants remain level or grow. If the securitized bonds are issued in more than one series, each series must meet the requirement of substantially levelized annual revenue requirements.

27. Commission Participation in Bond Issuance. The Commission shall designate one (1) representative from Commission Staff (the Designated Representative) who may be advised by the Commission's Financial Advisor to provide input to and collaborate with Kentucky Power during the process

undertaken to place the securitized bonds to market and to provide certificates to the Commission with respect to the Lowest Cost Objective based substantially on the forms attached to this Financing Order as Attachment 5 to Appendix A and Appendix D. The Commission's Designated Representative and the Financial Advisor shall participate visibly, and in advance, in all aspects of structuring, marketing, and pricing the securitized bonds approved in this Financing Order; provided, however, that the Commission's Designated Representative and the Financial Advisor shall: (a) have no authority to direct how Kentucky Power places the securitized bonds to market; and (b) be permitted to attend meetings convened by Kentucky Power to address placement of the securitized bonds to market. The Commission directs its Designated Representative and the Financial Advisor to advise the Commission through a filing in Case No. 2023-00159 of any proposal that does not comply in any material respect with the criteria established in this Financing Order. The Commission's Designated Representative or Financial Advisor shall promptly inform Kentucky Power and the Commission of any items that, in the opinion of the Commission's Designated Representative or Financial Advisor, are not reasonable. In addition, the Commission directs its Designated Representative and Financial Advisor to notify the Commission if either becomes aware that any material aspect of the transaction has been performed in a manner that is not legal or ethical or that any decisions made in the transaction have not been appropriately documented, including documentation of any difficulties, anomalies, or unusual circumstances encountered in the transaction and the resolution of any such matters.

Kentucky Power, the Commission's Designated Representative, and the Financial Advisor shall work together closely, and on a cooperative basis, to create the broadest possible competition for securitized bonds among investors and potential underwriters to ensure that the best practices standards are met and procedures are followed. Bookrunning underwriters and other managing underwriters of securitized bonds approved by this Financing Order shall be required to certify, without material qualification, that indicative rates submitted to Kentucky Power, the Financial Advisor, and the Designated Representative reflect the independent view of the submitting firm and that other firms have not been consulted about or informed of such indicative rates.

28. The designated Commission Staff and the Financial Advisor do not have authority to direct how Kentucky Power and the BondCo place the securitized bonds to market.[52] That authority resides with the Commission pursuant to standards and procedures set forth in this Financing Order. The Commission may communicate to Kentucky Power through these representatives.

29. Meetings. The designated Commission Staff and the Financial Advisor are permitted to attend meetings convened by Kentucky Power to address placement of the securitized bonds to market,[53] including all matters relating to structuring, marketing or pricing the securitized bonds.

30. To facilitate the efficient planning and execution of the transaction and use of Commission staff and advisors, within 10 days after the issuance of this Financing Order, Kentucky Power shall provide a proposed time and responsibility schedule

[52] KRS 278.674(5).

[53] KRS 278.674(5).

specifying key dates and milestones and where meetings may occur. For each meeting, Kentucky Power will provide to the designated Commission Staff and the Financial Advisor written notice of, and invitations to attend, any meeting Kentucky Power proposes to convene to address placement of the securitized bonds to market. Such written notice shall include a description of each topic proposed to be addressed at such meeting. The designated Commission Staff and the Financial Advisor shall be entitled to place additional topics on the agenda for discussion at any such meeting. Unless waived in writing by both the designated Commission Staff and the Financial Advisor, such written notice shall be provided no less than two (2) full business days in advance of the meeting. The designated Commission Staff and the Financial Advisor shall have the option to attend any such meeting either in person, by telephone, or by other electronic means.

31. The designated Commission Staff and the Financial Advisor also may convene meetings with representatives of Kentucky Power to address placement of the securitized bonds to market, including all matters relating to structuring, marketing, or pricing the securitized bonds, by providing written notice to Kentucky Power. Such written notice shall include a description of each topic proposed to be addressed at such meeting. Kentucky Power shall be entitled to place additional topics on the agenda for discussion at any such meeting. Unless waived in writing by Kentucky Power, such written notice shall be provided no less than two (2) full business days in advance of the meeting. Representatives of Kentucky Power shall have the option to attend any such meeting either in person, by telephone, or by other electronic means.

32. Dispute Resolution. One designated representative of Kentucky Power

and the Commission's Designated Representative shall be joint decision makers in all aspects of the structuring, marketing, and pricing of the securitized bonds.

33. Kentucky Power and the Commission's Designated Representative, advised by the Financial Advisor, shall have equal rights on decisions regarding the hiring of underwriters and counsel to the underwriters.

34. Presentation of Securitized Bonds to Investors as Corporate Securities. As described in the findings of facts above, the marketing documents shall prominently disclose in plain English that the securitized bonds will not be "asset-backed securities" for purposes of SEC Regulation AB but will be corporate bonds. The marketing documents also shall describe structural features which distinguish the securitized bonds from Kentucky Power's other corporate securities, including nonbypassability of the securitized surcharge, the Commission's guarantee to implement the automatic true-up adjustment mechanism, and the Commonwealth pledge not to interfere with bondholders' rights, and not to revoke or amend this Financing Order or the securitized surcharge, until the securitized bonds and all ongoing financing costs have been repaid. In addition, the marketing documents shall describe the structural features which are expected to result in credit rating agencies assigning their high ratings to the securitized bonds.

35. Use of a BondCo. Kentucky Power shall use a BondCo, ring-fenced special purpose finance subsidiary, as proposed in its application, in conjunction with the issuance of a series of securitized bonds authorized under this Financing Order. Each BondCo shall be funded with an amount of capital that is sufficient

for such BondCo to carry out its intended functions and to avoid the possibility that Kentucky Power would have to extend funds to such BondCo in a manner that could jeopardize the bankruptcy remoteness of such BondCo. Kentucky Power may create more than one BondCo in which event, the rights, structure, and restrictions described in this Financing Order with respect to a BondCo would be applicable to each purchaser of securitized property to the extent of the securitized property sold to it and the securitized bonds issued by it.

D. Basic Transaction Documents

36. **Sale Agreement**. The Commission authorizes Kentucky Power to enter into a Securitized Property Purchase and Sale Agreement with each BondCo. Kentucky Power, as seller, shall be required to indemnify customers for any loss that results from any failure of representation or warranty or from Kentucky Power's breach of the Securitized Property Purchase and Sale Agreement. The Commission shall be named as a third-party beneficiary for the benefit of Kentucky Power's retail customers of each Securitized Property Purchase and Sale Agreement.

The Commission shall be authorized to declare an Event of Default under the Securitized Property Purchase and Sale Agreement. No Event of Default, or any other term or provision of the Securitized Property Purchase and Sale Agreement, may be waived, and no time for its performance may be extended, without written Commission consent.

37. Servicing Agreement. The Commission authorizes Kentucky Power to enter into a Securitized Property Servicing Agreement with each BondCo and to perform the servicing duties approved in this Financing Order. Without limiting the foregoing, in

its capacity as initial servicer of the securitized property, Kentucky Power is authorized to calculate, bill and collect for the account of each BondCo, the securitized surcharges initially authorized in this Financing Order, as adjusted from time to time to meet the PPR as provided in this Financing Order; and to make such filings and take such other actions as are required or permitted by this Financing Order in connection with the periodic true-ups described in this Financing Order. The servicer shall be entitled to collect servicing fees in accordance with the provisions of the Securitized Property Servicing Agreement, provided that, as set forth in Appendix C, the annual servicing fee payable to Kentucky Power, while it is serving as servicer (or to any other servicer affiliated with or a successor to Kentucky Power), shall initially be 0.05% of the original principal amount of the securitized bonds plus out of pocket third-party costs. The annual servicing fee payable to a servicer not affiliated with Kentucky Power shall not at any time exceed 0.60% of the initial principal balance of the securitized bonds unless such higher rate is approved by the Commission.

As servicer under the Securitized Property Servicing Agreement, Kentucky Power shall be held to a simple "negligence" standard. Kentucky Power, as servicer, shall be required to indemnify customers for any loss that results from any failure of representation or warranty or from Kentucky Power's breach of the Securitized Property Servicing Agreement, including any loss resulting from higher compensation payable to a successor servicer. The Commission shall be named as a third-party beneficiary, for the benefit of customers, of each Securitized Property Servicing Agreement.

The Commission shall be authorized to declare a Servicer Default under the Securitized Property Servicing Agreement. Any Servicer Default under the Securitized Property Servicing Agreement shall not be waived without Commission consent.

Kentucky Power shall not resign or be terminated as servicer under the Securitized Property Servicing Agreement without written consent of the Commission.

38. Administration Agreement. The Commission authorizes Kentucky Power to enter into an administration agreement with each BondCo to provide the services covered by the administration agreements. The fee charged by Kentucky Power, as administrator under that agreement, shall initially be between $50,000 and $100,000 per annum per BondCo plus out of pocket third-party costs.

As administrator under the Administration Agreement, Kentucky Power shall be held to a simple "negligence" standard. Kentucky Power shall indemnify each BondCo for any losses, including any loss resulting from higher compensation payable to a successor administrator, resulting from any failure of representation or warranty or from Kentucky Power's breach of the Administration Agreement. The Commission shall be named as a third-party beneficiary, for the benefit of customers, of the Administration Agreement.

The Commission shall be authorized to declare an Event of Default under the Administration Agreement. Any Event of Default under the Administration Agreement shall not be waived without written Commission consent.

Kentucky Power shall not resign or be terminated as administrator under the Administration Agreement without written consent of the Commission.

39. Intercreditor Agreement. The Commission authorizes Kentucky Power to enter into an intercreditor agreement with each BondCo allowing Kentucky Power to allocate the collected, commingled funds according to each party's interest.

40. Servicing and Administration Agreement Revenues. Kentucky Power, or any affiliate of Kentucky Power, acting as either the servicer under the Securitized Property Servicing Agreement or the administrator under a BondCo Administration Agreement, shall periodically credit back to customers through the Securitized Bond Deferral Account all periodic servicing and administration fees in excess of Kentucky Power's incremental cost of performing the servicer and administration functions until the next general rate case when costs and revenues associated with the servicing fees and administration fees shall be included in the cost of service. In each future base rate case, Kentucky Power shall include a revenue credit in the amount of the administration fees and servicing fees that Kentucky Power collects as the servicer/administrator of the securitized bonds, to the extent not previously credited back through the Securitized Bond Deferral Account, provided such crediting of the Securitized Bond Deferral Account does not directly or indirectly increase Kentucky Power's net income. In the base rate case, Kentucky Power may also request revenue for all costs of providing servicing and administration services. The failure on the part of Kentucky Power to provide any such credit to ratepayers will in no way affect the securitized property, the securitized surcharge or the rights of Kentucky Power, the indenture trustee, and the holders of securitized bonds under the Financing Order but may be addressed by the Commission through other proceedings.

41. Replacement of Kentucky Power as Servicer. Upon the occurrence of a

Servicer Default under a Securitized Property Servicing Agreement relating to servicer's performance of its servicing functions with respect to the securitized surcharges, the financing parties may replace Kentucky Power as the servicer in accordance with the terms of the Securitized Property Servicing Agreement. If the servicing fee of the replacement servicer will exceed the applicable maximum servicing fee, the replacement servicer shall not begin providing service until (i) the date the Commission approves the appointment of such replacement servicer or (ii) if the Commission does not act to either approve or disapprove the appointment, the date which is 45 days after notice of appointment of the replacement servicer is provided to the Commission. No entity may replace Kentucky Power as the servicer in any of its servicing functions with respect to the securitized surcharges and the securitized property authorized by this Financing Order if the replacement would cause any of the then current credit ratings of the securitized bonds to be suspended, withdrawn, or downgraded.

42. Collection and Remittance Terms. Within 2 business days following actual or deemed collection, the servicer shall remit collections of the securitized surcharges to the BondCo or the indenture trustee for the BondCo's account in accordance with the terms of the Securitized Property Servicing Agreement. The economic benefit of any servicer "float", interest earnings, on securitized surcharge collections prior to remittance of those collections to the indenture trustee or the securities intermediary shall automatically be credited to the benefit of customers without the need for any further Commission action.

43. Contract to Provide Service. To the extent that any interest in the securitized property created by this Financing Order is assigned, sold, or transferred to

an assignee or otherwise is acquired by a successor, Kentucky Power shall enter into a contract with that assignee or successor that requires Kentucky Power to continue to operate its transmission and distribution system in order to provide electric services to Kentucky Power's customers; provided, however, that this provision shall not prohibit Kentucky Power from selling, assigning, or otherwise divesting its transmission and distribution systems or any part thereof so long as the entities acquiring such system agree to continue operating the facilities to provide electric service to Kentucky Power's customers.

E. Structure of the Securitized Bond Transaction

44. **Structure**. Kentucky Power shall structure the securitized bond transaction as proposed in Kentucky Power's application. This structure shall be consistent with Findings of Fact in this Financing Order.

F. Use of Proceeds

45. **Use of Proceeds**. Upon the issuance of securitized bonds, the BondCo shall pay the net proceeds from the sale of the securitized bonds (after payment of up-front financing costs) to Kentucky Power for the purchase price of the securitized property. Kentucky Power will apply these net proceeds to reduce recoverable securitized costs of Kentucky Power. Thereafter, securitized bond proceeds will be used to repay any outstanding short-term debt at Kentucky Power and to fund capital expenditures to support utility operations and services.

G. Security Interests in Securitized Property

46. The servicer and each BondCo shall, on a timely basis, make all filings that would be required by the UCC if the servicer or BondCo changes its name or changes its jurisdiction of organization.

47. The servicer shall provide written confirmation to the indenture trustee within 30 days after each 5-year anniversary of issuance of each series of securitized bonds that relevant financing statements still appear as unexpired in the Commonwealth of Kentucky's Secretary of State's records, and the servicer shall promptly correct any problems that have arisen.

48. Kentucky Power shall run a lien search shortly before the issuance of securitized bonds. If any preexisting liens appear to cover the securitized property, the situation shall be appropriately resolved before securitized bonds are issued.

49. The servicer shall determine what cash constitutes collections of the securitized surcharge and shall transfer that cash to a segregated account no less frequently than once monthly.

H. Miscellaneous Provisions

50. **Continuing Issuance Right**. Kentucky Power has the continuing irrevocable right to cause the issuance of securitized bonds in one or more series in accordance with this Financing Order for a period commencing with the date of this Financing Order and extending 1 year following the later of (i) the date on which this Financing Order becomes final and no longer subject to any appeal or (ii) the date on which any other regulatory approvals necessary to issue the securitized bonds are obtained and no longer subject to any appeal.

51. Internal Revenue Service (IRS) Private Letter or Other Rulings. Kentucky Power is not required by this Financing Order to obtain a ruling from the IRS; however, if it elects to do so, then upon receipt, Kentucky Power shall promptly deliver to the Commission a copy of each private letter or other ruling issued by the IRS with respect

to the proposed transaction, the securitized bonds or any other matter related thereto. Kentucky Power shall also include a copy of every such ruling by the IRS it has received as an attachment to each Issuance Advice Letter required to be filed by this Financing Order. Kentucky Power may cause securitized bonds to be issued without a private letter ruling if it obtains an opinion of tax counsel sufficient to support the issuance of the securitized bonds.

52. Binding on Successors. This Financing Order, together with the securitized surcharges authorized in it, shall be binding on Kentucky Power and any successor to Kentucky Power, and such successor shall perform and satisfy all obligations of, and have the same rights under this Financing Order as, Kentucky Power under this Financing Order in the same manner and to the same extent as Kentucky Power, including collecting and paying to the person entitled to receive the revenues, collections, payments, or proceeds of the securitized property. This Financing Order is also binding on any other entity responsible for billing and collecting securitized surcharges on behalf of the BondCo and on any successor to the Commission. In this paragraph, a "successor" means any entity that succeeds by any means whatsoever to any interest or obligation of its predecessor, including by way of bankruptcy, reorganization or other insolvency proceeding, merger, consolidation, conversion, assignment, pledge or other security, by operation of law or otherwise.

53. Flexibility. Subject to compliance with the conditions and other requirements of this Financing Order, Kentucky Power and the BondCo shall be afforded flexibility in establishing the terms and conditions of the securitized bonds, including the final structure of the BondCo, repayment schedules, term, payment dates, collateral,

credit enhancement, required debt service, reserves, interest rates, use of original issue discount, and other financing costs and the ability of Kentucky Power, at its option, to cause one or more series of securitized bonds to be issued.

54. Appendices. Prior to the issuance of a series of securitized bonds authorized by this Financing Order, the forms of documents included as Appendices of this Financing Order with respect to that series of securitized bonds may be revised or additional information may be requested as approved by the Commission's Designated Representative upon advice from the Financial Advisor.

55. Effectiveness of Order. This Financing Order is effective upon its issuance and irrevocable upon the issuance of a series of securitized bonds. This Financing Order may not be modified or revoked with respect to that series of securitized bonds. Notwithstanding the foregoing, Kentucky Power shall not be authorized to impose, collect, and receive securitized surcharges, until concurrently with the transfer of Kentucky Power's rights hereunder to the BondCo in conjunction with the issuance of the securitized bonds.

56. Regulatory Approvals. Subject to compliance with future conditions and other requirements set forth in this Financing Order, all regulatory approvals within the jurisdiction of the Commission that are necessary for the issuance of securitized bonds and the imposition of securitized surcharges associated with the costs that are the subject of the application, and all related transactions contemplated in the application, are granted.

57. Payment of Commission's Costs for Professional Services. In accordance with KRS 278.670(6)(f), and the Commission's order in this docket dated

August 2, 2023, Kentucky Power has paid and shall pay the costs of acquiring professional services for the purpose of evaluating and executing Kentucky Power's proposed transaction, including, but not limited to, the Commission's outside attorneys' fees and fees of the Commission's Financial Advisor.

58. Effect. This Financing Order constitutes a legal financing order for Kentucky Power under the Act. The Commission finds this Financing Order complies with the provisions of the Act. A financing order gives rise to rights, interests, obligations, and duties as expressed in the Act. It is the Commission's express intent to give rise to those rights, interests, obligations, and duties by issuing this Financing Order. Kentucky Power and any successor servicer is directed to take all actions as are required to effectuate the transactions approved in this Financing Order, subject to compliance with the criteria established in this Financing Order.

59. Further Commission Action. The Commission will act pursuant to this Financing Order as expressly authorized by the Act to ensure that expected securitized surcharge revenues are sufficient to pay on a timely basis scheduled principal of and interest on the securitized bonds issued pursuant to this Financing Order and other costs, including fees and expenses, in connection with the securitized bonds. In addition, the Commission will act pursuant to this Financing Order as expressly authorized by the Act to enforce against other persons the obligations imposed by this Financing Order, its applicable substantive rules, and statutory provisions.

60. All Other Motions, etc. Denied. All motions, requests for entry of specific findings of fact and conclusions of law, and any other requests for general or specific relief related to securitization not expressly granted herein, are denied.

PUBLIC SERVICE COMMISSION

Chairman

Vice Chairman

Commissioner

ENTERED
JAN 10 2024
bsb
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:

Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2023-00159 DATED JAN 10 2024

FORM OF ISSUANCE ADVICE LETTER

TO: Kentucky Public Service Commission

SUBJECT: Issuance Advice Letter for Securitized Bonds, Case No. 2023-00159

DATE:

Kentucky Power Company (Kentucky Power or the Applicant) is providing this filing pursuant to the Financing Order adopted in Case No. 2023-00159 (the Financing Order).

This Issuance Advice Letter is submitted no later than 5:00 p.m. Eastern Time of the first (1st) business day after the Pricing Date of this series of securitized bonds.

Any capitalized terms not defined in this Issuance Advice Letter have the meanings ascribed to them in the Financing Order, including Appendices.

Table of Contents

PURPOSE OF THIS ISSUANCE LETTER 5

FINANCING COSTS BEING SECURITIZED 5

COMPLIANCE WITH FINANCING ORDER PROCEDURES AND STANDARDS 5

PROPOSED FINAL TERMS OF ISSUANCE 8

PROPOSED INITIAL SECURITIZED SURCHARGE 9

PROPOSED EFFECTIVE DATE 10

ATTACHMENT 1: ESTIMATED UP-FRONT FINANCING COSTS 11

ATTACHMENT 2: ANNUAL COSTS 12

Schedule 2-A Securitized Bond Revenue Annual Requirement Information 12

Schedule 2-B Estimated Annual Ongoing Costs 13

Schedule 2-C Calculation of Securitized Surcharges 14

Schedule 2-D Compliance with KRS 278.672 And 278.676 15

ATTACHMENT 3: INITIAL ALLOCATION OF COSTS TO REVENUE CLASSES 16

ATTACHMENT 4: INFORMATION CONCERNING STRUCTURING, MARKETING AND MARKET CONDITIONS AT PRICING TIME 17

Schedule 4-A Specific Steps Taken to Ensure Lowest Cost Objective Was Achieved 17

Schedule 4-B- General Market Conditions Post Financing Order 19

Schedule 4-C: Proposed Pricing Compared to Taxable Corporate Debt Securities 21

Schedule 4-D Proposed Pricing Compared to Other Long-Term Taxable Ratepayer-Backed/ Bonds by Offering and Tranche 22

ATTACHMENT 5: KENTUCKY POWER CERTIFICATE CONFIRMING LOWEST COST OBJECTIVE WAS ACHIEVED 24

Kentucky Power provides the information set forth below pursuant to the Financing Order.

PURPOSE OF THIS ISSUANCE ADVICE LETTER

This Issuance Advice Letter provides the following information for the Commission to consider in deciding whether to allow the proposed transaction involving issuance of proposed securitized bonds (the Securitized Bonds) to proceed to closing, or to issue a Disapproval Order in accordance with the Financing Order:

(a) identification of the limited purpose financing subsidiary / issuer (the BondCo);
(b) total amount of Securitized Costs and Financing Costs proposed to be financed by the Securitized Bonds;
(c) actual terms and structure of the Securitized Bonds; initial securitized surcharges for existing and future retail electric customers in connection with the Securitized Bonds;
(d) market conditions under which the Securitized Bonds were priced; and
(e) confirmation of compliance with issuance procedures and standards with respect to the Securitized Bonds.

FINANCING COSTS BEING SECURITIZED

The total amount of Securitized Costs and Financing Costs proposed to be financed by the Securitized Bonds is $_____.

COMPLIANCE WITH FINANCING ORDER PROCEDURES AND STANDARDS

The Financing Order requires compliance with procedures and standards set forth in the Act, including (without limitation) the following Statutory Requirements:

1. As of the Pricing Time, the transaction is expected to provide quantifiable NPV benefits to customers as compared to recovery of the components of Securitized Costs that would have been incurred absent issuance of the Securitized Bonds (See Attachment 2, Schedule 2-D);

2. The Securitized Bonds will be issued in one or more series comprised of one or more tranches having legal final maturities not exceeding thirty (30) years from the date of issuance of such series (see Actual Terms of Issuance and Attachment 2, Schedule 2-A); and

3. As of the date of the Financing Order, the structuring and pricing of the Securitized Bonds was reasonably expected to result in the lowest securitized surcharges consistent with market conditions at the Pricing Time under the terms of the Financing Order (see Attachment 4, Schedules 4-A through 4-E).

In addition, the Financing Order provides that the Commission's approval is conditioned upon specified conditions being met, including (without limitation) the following:

1. The structuring, marketing and pricing of the Securitized Bonds must in fact achieve the lowest securitized surcharges consistent with (i) prevailing market

conditions at the time of pricing, and (ii) the terms of the Act and the Financing Order (the Lowest Cost Objective).

2. A designated representative of the Commission selected from Commission Staff (the Designated Representative) and the Financial Advisor must participate in all decisions concerning structuring, marketing, and pricing of the Securitized Bonds.

3. After the pricing of Securitized Bonds, the Applicant, the bookrunning underwriter(s), and the Financial Advisor must each deliver to the Commission an independent certificate, without material qualifications, confirming that the structuring, marketing, and pricing of the securitized bonds achieved the Lowest Cost Objective.

4. The Applicant must establish a deferral account with respect to Securitized Bonds (Securitized Bond Deferral Account) for excess revenues received by Kentucky Power over actual incremental ongoing costs.

5. To ensure that the Lowest Cost Objective is achieved, the Financial Advisor and counsel to the Commission Staff must review and approve the proposed forms of all Basic Transaction Documents.

6. The Commission is authorized to appoint, as well as remove and replace, at least one of the BondCo's independent managers.

7. As servicer under the Securitized Property Servicing Agreement and as administrator under the Administration Agreement, the Applicant must be held to a simple negligence standard. The Applicant, as servicer or as administrator, must indemnify customers for any loss, including any loss resulting from higher compensation payable to a successor servicer or a successor administrator, that results from the Applicant's breach of the Securitized Property Servicing Agreement or the Administration Agreement.

8. The Applicant must be liable in connection with any failure of representation or warranty in connection with, or any breach of, the Securitized Property Purchase and Sale Agreement, the Securitized Property Servicing Agreement, or the Administration Agreement. As seller, as servicer, or as administrator, the Applicant must be required to indemnify customers for any loss that results from the Applicant's failure of representation or warranty in connection with, or breach of, the Securitized Property Purchase and Sale Agreement, the Securitized Property Servicing Agreement, or the Administration Agreement.

9. The Commission is authorized to declare an event of default (Servicer Default) under the Securitized Property Servicing Agreement, and the Commission must be authorized to declare an Event of Default under the Administration Agreement.

10. The Commission must be named as a third-party beneficiary, for the benefit of ratepayers, of each Basic Transaction Document, and the Commission must be authorized to enforce the provisions of each Basic Transaction Document for the benefit of ratepayers.

11. The economic benefit of any servicer interest earnings on actual or estimated securitized surcharge collections prior to remittance of those collections to the indenture trustee and the collection account must automatically be credited to the benefit of customers without the need for any further Commission action.

12. The BondCo must be structured as a series trust so that the BondCo will not be an asset-backed issuer and its Securitized Bonds will not be asset-backed securities for purposes of United States Securities and Exchange Commission (SEC) Regulation AB and are corporate securities.[1] Descriptions of the Securitized Bonds as corporate bonds must be presented prominently and clearly in plain English in marketing documents for the Securitized Bonds.

13. Marketing documents for Securitized Bonds must describe the structural features in plain English which were expected to result in credit rating agencies assigning top credit rating, such as "Aaa/AAA" or similar ratings to the Securitized Bonds.

14. Underwriters of the Securitized Bonds must be required to certify, without material qualification, that any indicative rates submitted to the Applicant, the Financial Advisor, and the Designated Representative of the Commission in preparation for launch of the transaction reflect the independent view of each submitting firm and that other firms have not been consulted about or informed of such indicative rates.

15. A competitive process must be used for selecting underwriters, underwriters' counsel, Kentucky Power's counsel and other significant transaction participants whose fees will be paid from Securitized Bond proceeds or from the securitized surcharge unless the Commission's Designated Representative, advised by the Financial Advisor, determines that a competitive process should not be used in selecting particular transaction participants to achieve the best value for customers and the Lowest Cost Objective.

16. Prior to issuance of the Securitized Bonds, the Applicant must provide a 20-year forecast of revenues by revenue classes as defined in the securitized surcharge Rider such that it may be used by the Applicant to calculate a forecast of the residential and non-residential components of the securitized surcharge over the scheduled term that the Securitized Bonds are expected to be outstanding.

The Applicant certifies that all Statutory Requirements and, apart from condition 3 (which the Applicant anticipates will be met prior to issuance of the Bonds), all other procedures and conditions listed above have been met. Specifically, as set forth in the letter attached as Attachment 5, the Applicant confirms and certifies that condition 1 above (that the

[1] See https://www.sec.gov/divisions/corpfin/cf-noaction/2007/mpef091907-1101.htm.

structuring, marketing and pricing of the Securitized Bonds must in fact achieve the lowest securitized surcharges consistent with (i) prevailing market conditions at the Pricing Time, and (ii) the terms of the Act and the Financing Order (the Lowest Cost Objective)) has been met.

Unless the Commission issues a Disapproval Order as provided in the Financing Order, the proposed final terms as described below will become effective and the Securitized Bonds will be issued on _____, 202_.

PROPOSED FINAL TERMS OF ISSUANCE

The purchaser and owner of the Securitized Property from Kentucky Power (and issuer of the Securitized Bonds) is a newly established finance subsidiary of Kentucky Power (referred to in the Financing Order as BondCo). The finance subsidiary's name is _____. The finance subsidiary was formed on [date] pursuant to the laws of the State of [_____].

Securitized Bond Issuer;	[Name of **BondCo**]
Kentucky Power's Securitizable Balance;	
Upfront Financing Costs'	
Principal Amount of Securitized Bonds:	
Securitized Bond Series Name;	
Indenture Trustee	
Securities Intermediary	
Preliminary Bond Ratings:	1. Agency: Name / and to be assigned rating 2. Agency: Name / and to be assigned rating (if appropriate) 3. Agency: Name / and to be assigned rating (if appropriate)
Effective Annual Weighted Average Interest Rate of the Securitized Bonds:	[____] %
Scheduled Final Maturity of the Securitized Bonds:	[ ] years
Weighted Average Life of the Securitized Bonds:	[ ] years
Amortization Schedule:	See Attachment 2, Schedule 2-A
Scheduled Final Payment Dates:	See Attachment 2, Schedule 2-A
Legal Final Maturity Dates:	See Attachment 2, Schedule 2-A
Payments of Principal and Interest to Investors:	Semiannually Beginning [month]/ [day], 20[__]
Initial Annual Servicing Fee as a Percent of Original Securitized Bond Principal Amount:	0.05%

Tranche	Scheduled Final Payment Date [month]/[day]/202[ ]_	Expected Weighted Average Life (Years)	Coupon Rate (%)	Yield (%)	Spread above corresponding U.S. Treasury Curve G-Spread (Basis Points)
A-1					
A-2					

PROPOSED INITIAL SECURITIZED SURCHARGE

Table I below shows the current assumptions for each of the variables used in the calculation of the initial securitized surcharges.

Table I **Input Values for Initial Securitized Surcharge**	
Applicable period:	from [month]/ [day] /[year] to _ [month]/ [day] /[year]
Forecasted Revenues from residential customers for the applicable period:	$_____
Forecasted Revenues from non-residential retail electric customers for the applicable period	$
Securitized Bond scheduled debt service for the applicable period:	$
Percent of billed amounts expected to be uncollectible:	%
Forecasted % of billed amounts expected to be paid in the applicable period	%
Forecasted retail kWh/kW sales billed and collected for the applicable period:	$
Forecasted annual ongoing financing costs (Excluding Securitized Bond principal and interest):	$
Initial Securitized Bond outstanding balance	$
Target Securitized Bond outstanding balance as of [month]/ [day] /[year]:	$
Total PBR for applicable period:	$

For the Allocation of the PBR among Revenue Classes: See Attachment 3.

Based on the foregoing, the initial securitized surcharges calculated for retail customers are as follows:

TABLE II Retail Customer Securitized Surcharge	
Revenue Class	**Initial Securitized Surcharge**
Residential Customers	
Non-Residential Retail Electric Customers	

PROPOSED EFFECTIVE DATE

In accordance with the Financing Order, unless the Commission issues a Disapproval Order, the securitized surcharge shall automatically be effective upon the Applicant's receipt of payment in the amount of $_____ from [**BondCo**], following Applicant's execution and delivery to [**BondCo**] of the Bill of Sale transferring Applicant's rights and interests under the Financing Order and other rights and interests that will become Securitized Property upon transfer to [**BondCo**] as described in the Financing Order.

NOTICE

Copies of this filing are being furnished to the parties on the attached service list. Notice to the public is hereby given by filing and keeping this filing open for public inspection at Applicant's corporate headquarters.

SUBMITTED BY AUTHORIZED OFFICER

The undersigned is an officer of Applicant and authorized to provide this Issuance Advice Letter on behalf of Applicant.

Respectfully submitted,

KENTUCKY POWER COMPANY

By: _____
Name: _____
Title: Chief Financial Officer

ATTACHMENT 1: ESTIMATED UP-FRONT FINANCING COSTS[2]

Up-Front Financing Costs	
BondCo Setup Costs	$
Miscellaneous Administrative Costs	
Legal Fees (Kentucky Power, Issuer/BondCo, and Underwriter – List by each counsel used and amount paid from Securitized Bond proceeds)	$
Counsel to [ ]	$
Counsel to [ ]	$
Counsel to [ ]	$
Kentucky Power's Advisor's Fee	
Indenture Trustee's and Indenture Trustee Counsel's Fees and Expenses	$
Accountant's Fees (List each accountant if more than one)	$
	$
Negotiated Underwriters' Fees (% of Principal Amount)	$
Rating Agency Fees (List each Agency and fee)	
[Agency 1]	$
[Agency 2, if appropriate]	$
[Agency 3, if appropriate]	$
SEC Registration Fee	$
Commission's Financial Advisor Fees & Expenses	$
Commission's Counsel Fees & Expenses	$
Original Issue Discount (if any)	$
Cost of Other Credit Enhancements (if any)	$
Rounding/Contingency	$
Total Estimated Up-Front Financing Costs	$

[2] Differences that result from the estimated up-front financing costs securitized being less than the actual up-front costs incurred will be resolved as described in the Financing Order.

ATTACHMENT 2: ANNUAL COSTS

Schedule 2-A
Securitized Bond Revenue Annual Requirement Information

SERIES, [_____] TRANCHE [_____]				
Payment Date [month]/ [day] /[year]	Scheduled Principal Balance[3] $	Scheduled Interest Payment $	Scheduled Principal Payment $	Total Scheduled Payment $
			=	

SERIES, [_____] TRANCHE [_____]				
Payment Date [month]/ [day] /[year]	Scheduled Principal Balance[4] $	Scheduled Interest Payment $	Scheduled Principal Payment $	Total Scheduled Payment $

[3] Immediately before this Payment Date.

[4] Immediately before this Payment Date.

Schedule 2-B Estimated Annual Ongoing Costs

Estimated Annual Ongoing Financing Costs		
	FIRST PAYMENT PERIOD ($)[5]	**SECOND PAYMENT PERIOD**
Servicing Fee paid to Kentucky Power (0.05% of Initial Principal Amount)		
Administration Fee		
Accountant's Fee		
Legal Fees/Expenses for Kentucky Power's/Issuer's Counsel		
Indenture Trustee's and Indenture Trustee's Counsel's Fees and Expenses		
Independent Manager's Fees		
Rating Agency Surveillance Fees (list each Agency)		
[Agency 1]		
[Agency 2, if appropriate]		
[Agency 3. If appropriate]		
Printing/Edgarizing Fees		
Miscellaneous		
Total Estimated Ongoing Financing Costs (Kentucky Power as Servicer) (0.05% of Initial Principal Amount)		

If Third Party (Not affiliated with Kentucky Power) is Servicer (0.60% of the Initial Principal Amount)		
Total Estimated Ongoing Financing Costs (with Third Party as Servicer)		

[5] The first payment period represents payment for approximately [__] months. The Financing Order requires the Applicant to establish a Securitized Bond Deferral Account to track the Applicant's actual out of pocket incremental ongoing financing costs for the purpose of granting revenue credits against other rates imposed by the Applicant on retail customers.

Schedule 2-C
Calculation of Securitized Surcharges

Year	Scheduled Securitized Bond Payments[6] ($)	Scheduled Ongoing Financing Costs[7] ($)	Present Value of Scheduled Securitized Surcharges[8] ($)
1[9]	$	$	$
2	$	$	$
3	$	$	$
4	$	$	$
5	$	$	$
6	$	$	$
7	$	$	$
8	$	$	$
9	$	$	$
10	$	$	$
11	$	$	$
12	$	$	$
13	$	$	$
14	$	$	$
15	$	$	$
16	$	$	$
17	$	$	$
18	$	$	$
19	$	$	$
20	$	$	$
Total	$	$	$

[6] From Attachment 2, Schedule 2-A.

[7] From Attachment 2, Schedule 2-B.

[8] The discount rate used is the pre-tax weighted average cost of capital currently in effect for Kentucky Power.

[9] Year 1 will include the first two payment periods, which might be longer than 12 months.

Schedule 2-D
Compliance with KRS 278.672 And 278.676
Demonstration of quantifiable Net Present Value (NPV) benefits to customers that are

a) greater than would be achieved absent the issuance of Securitized Bonds and

b) as compared to collection of the Securitizable Balance through alternative means of financing, determined using an economic analysis to account for the time value of money:[10]

	Alternative Means of Financing $ Millions	Securitized Bond Financing[11] $ Millions	Savings/(Cost) of Securitized Bond Financing $ Millions
NPV	$	$	$

[10] The methodology to calculate net present value savings to ratepayers should make the following assumptions regarding the conventional recovery (i.e., no securitized bond financing) revenue requirements and securitized bond revenue requirements respectively, in addition to any assumptions that would be necessitated by applicable legislation: (i) conventional Big Sandy regulatory asset periodic revenue requirements are levelized and recovered over 17 years except it is assumed there will be a 50 basis point (0.50%) rate increase to the pre-tax WACC every 3 ½ years beginning 3 ½ years from when the securitized bonds would otherwise be issued; (ii) the remaining regulatory assets in the conventional case will be amortized in equal periodic amounts over a 7-year period similar to conventional utility asset book depreciation such that the total periodic revenue requirement (asset amortization plus pre-tax WACC return) will decrease each period over the 7-year recovery term , and assuming the same rate case timing and changes as in the conventional Big Sandy treatment described above, and (iii) the discount rate for all revenue cash flows for both the conventional recovery and the securitized bond financing will be Kentucky Power's current (at the time of securitized bond issuance) pre-tax weighted average cost of capital.

[11] From Attachment 2, Schedule 2-C.

ATTACHMENT 3: INITIAL ALLOCATION OF COSTS TO REVENUE CLASSES

(1) REVENUE Class	(2) Allocation[12] (%)	(3) Periodic Billing Requirement ($)	(4) Forecasted Billing Determinants	(5) Total Securitized Surcharge ($)
Residential Customers	%	$		$
Non-Residential Retail Electric Customers	%	$		$
Total	100%	$		$

[12] Determined in accordance with the methodology set forth in the Financing Order and the Securitized Surcharge Rider.

ATTACHMENT 4: INFORMATION CONCERNING STRUCTURING, MARKETING AND MARKET CONDITIONS AT PRICING TIME

Schedule 4-A

Specific Steps Taken to Ensure Lowest Cost Objective Was Achieved

Please describe whether the following steps were taken by Kentucky Power with respect to the structuring, marketing and pricing of the Securitized Bonds to achieve the Lowest Cost Objective? If not, please explain why not.

- Developed and implemented a competitive selection process for the structuring advisor, underwriters, legal counsel, accounting or analytical services.

- Selected transaction participants, including lead underwriters and comanagers, through a competitive process, to determine that they have relevant value-added experience and execution capability, that they are aligned with the Applicant's and the Commission's objectives and do not have conflicts of interest.

- Developed a budget for legal expenses and for each counsel and transaction participant recommended by Kentucky Power. Monitored and controlled expenses to minimize legal expenses.

- Solicited and chose a diverse group of underwriters including underwriters with international and mid-tier expertise to attract a wide variety of potential investors to negotiate with, including underwriters not previously engaged by Kentucky Power or any affiliates.

- Included credit enhancement in the form of the true-up mechanism, as required by the Act and the Financing Order.

- Developed rating agency presentations and worked actively upon issuance of the Financing Order to engage proactively with the rating agencies in order to achieve Aaa/AAA ratings or equivalent from [name of each rating agency].

- Structured the Securitized Bonds to appeal to the broader and deeper corporate bond market than for asset-backed securities and marketed the bonds as high-quality corporate securities.

- Developed and implemented a marketing plan designed to encourage each of the underwriters to aggressively market the Securitized Bonds to a broad base of prospective investors, including investors who have not previously purchased this type of security.

- Developed all Securitized Bond transaction documents, marketing materials (prospectus, term sheet, etc), and legal opinions in a plain English manner conforming to SEC disclosure requirements.

- Registered the Securitized Bonds under the Securities and Exchange Act of 1933 to allow a broad public marketing of the Securitized Bonds and facilitate greater

competition for the Securitized Bonds upon initial offering and greater liquidity in the after market.

- Developed the Registration Statement containing plain English disclosures to communicate the superior credit features of the Securitized Bonds and distinguish the Securitized Bonds from asset-backed securities or more complex securities that may adversely affect the credit spread / pricing of the Securitized Bonds.

- Requested a written marketing plan from each lead bookrunning underwriter with sufficient detail to evaluate the underwriter's proposed approach to marketing and achieving the Lowest Cost Objective.

- Developed marketing materials and educated each underwriter's salesforce to ensure that investors can easily understand that the Securitized Bonds are not asset backed securities but are of the highest corporate credit quality.

- Reviewed all underwriter salesforce presentation materials to ensure the proper positioning of the Bonds to investors consistent with the terms of the Financing Order and Lowest Cost Objective.

- Arranged issuance of rating agency pre-sale reports during the marketing period.

- Allowed [# of days] time for potential investors to review the preliminary prospectus and other marketing documents and to ask questions regarding the transaction.

- Attended in person and telephonic pre-pricing investor meetings throughout 2024, including attending and actively meeting with investors at the [identify investor conferences, if any] in a well-coordinated fashion with representatives of Commission Staff and the Financial Advisor.

- During the period that the Securitized Bonds were marketed, held [#_] market update discussions with the underwriting team, the Commission's Designated Representative and the Financial Advisor to develop recommendations for pricing.

- Had multiple conversations with all the members of the underwriting team during the marketing phase in which the Applicant stressed the requirements of the Financing Order.

- Conducted in person and telephonic roadshows with over [_____] investors in [_____] cities.

- Provided other potential investors with access to an internet roadshow for viewing at investors' convenience. The internet roadshow was view by [#] of distinct potential investors.

- Negotiated with underwriters to bring the Securitized Bond offering to market given the existing market conditions at the time of pricing, consistent with the guidelines

outlined within the Financing Order. The key variables impacting the final structure of the transaction are listed below in Schedule 4-B.

- Worked with the Commission to develop Securitized Bond allocations, underwriter compensation and preliminary price guidance designed to achieve the Lowest Cost Objective.

- Priced the Securitized Bonds as soon as reasonably possible, consistent with standards and procedures set forth in this Financing Order and proceeded diligently to bring the Securitized Bonds to market and achieve the Lowest Cost Objective.

- [ADD ANY ADDITIONAL STEPS TAKEN]

Schedule 4-B- General Market Conditions Post Financing Order

[Provide the following information in a concise narrative form. Applicant may include any other information that Applicant believes the Commission should consider in determining whether the proposed pricing achieved the Lowest Cost Objective. Designated Commission Staff or the Financial Advisor may supplement this request for additional independently verifiable information from the Applicant or other transaction participants after the Financing Order is issued but no later than 10 days prior to when the initial draft Issuance Advice Letter would be submitted to them for review if this date is known.

Describe fundamental (macro-economic) and technical (supply and demand) market conditions for high quality (i.e., AAA) bonds from January 10, 2024 to the time the decision was made to offer the Bonds for sale and then the subsequent day of pricing. Describe also the credit spread environment for high quality bonds during these periods. In particular, discuss the specific market conditions that affected the pricing spread of the Securitized Bonds, such as:

- Show in graphical format, with underlying data provided in a table, for the U.S. Treasury Securities yield curve from June 1, 2016 to present.
- Show in graphical format, with underlying data provided in a table, current and daily observations of option adjusted spread of the ICE BofA AAA and BBB index (BAMLC0A1CAAA and BAMLC0A4CBBB available from the St. Louis Federal Reserve) from January 10, 2024 through the day of pricing.
- Were there any new offerings of taxable corporate bonds with similar average life/maturity as the Securitized Bonds in the market at the day of pricing or within one week prior to the day of pricing? Were there any other competing issues with similar ratings and weighted average life?

Describe how the selected participants ensured broad distribution to investors who are most likely to value the safety and security of the Securitized Bonds and willingness to market the Securitized Bonds in a manner consistent with the superior credit quality and uniqueness of the Securitized Bonds.

Describe the marketing plan and how it was developed to meet the Lowest Cost

Objective. In particular, address the following issues:

- Were the Bonds marketed as corporate securities?
- What type of investors were targeted and why?
- Were “buy and hold” corporate bond investors targeted?
- Were international investors targeted?
- Were owners of individual retirement accounts and 401(k) accounts targeted?

Attach screenshots of all announcements or descriptions on electronic media like Bloomberg relating to this Bond issuance. Identify the specific page(s) on which the announcement occurred (e.g., Bloomberg’s corporate page (NIM 3) or other).

Describe how the initial estimated pricing spreads for each tranche (Price Talk) was determined and communicated to the market.

Describe the indications of interest and the order book at each stage of the marketing and pricing.

- If there was an oversubscription, was there a repricing? How much oversubscription (if any) was there for each tranche?
- If yes, did demand materially drop after repricing? What was the amount of remaining over / undersubscription? Was there a subsequent repricing? If not, why not?

Did any large investor order place demands or conditions to those orders that negatively affected the pricing?
List all orders by type of buyer (corporate or ABS) and by individual or institution and, if an institution, by type of institution (money manager, insurance company, hedge fund etc) and buy and hold versus total return and whether foreign or domestic.
Did the underwriter offer to or underwrite any bonds of any tranche?

Attach screenshots of all Price Talk announcements or descriptions on electronic media like Bloomberg relating to this Bond issuance.

Schedule 4-C: Proposed Pricing Compared to Taxable Corporate Debt Securities
For each tranche of the Securitized Bonds, in the below table describe the proposed pricing as an option adjusted spread to interpolated U.S. Treasuries i.e., g-spread. Compare each tranche's g-spread to the g-spread of other taxable corporate bonds issued or being traded in the secondary market at the time of pricing with a similar weighted average life or maturity.

Provide at least 3 comparable pricings for each tranche:

- Include only recent institutional trades of $250,000 or more done on the Pricing Date or if not available, within no more than 7 days of the day of the Pricing Date, that are within 2 years of the WAL of the tranche.
- Include JNJ and MSFT bonds and other high quality taxable corporate bonds with either a Aaa rating from Moody's or AAA rating from S&P.
- Include taxable utility first mortgage bonds with at least an A rating.

Remaining 2- to 20-Year Weighted Average Lives,
Secondary Market Trades ($250,000 or more) between
Institutional Investors as Reported to FINRA

[Add Rows as Necessary]	Issuer with CUSIP #	Ticker	Ratings Moody's/ S&P	WAL Remaining (Years)	Coupon (%)	Trade Date	Trade Size ($000)	Price ($)	Spread to Interpolated UST – G-Spread (Basis Points)	Yield (%)
Securitized Bonds Tranche										
High Quality Corporate (Rated Aaa/AAA)										
Other Corporate (with at least one AAA or equivalent by one agency)										

[Add Rows as Necessary]	Issuer with CUSIP #	Ticker	Ratings Moody's/ S&P	WAL Remaining (Years)	Coupon (%)	Trade Date	Trade Size ($000)	Price ($)	Spread to Interpolated UST – G-Spread (Basis Points)	Yield (%)
Utility First Mortgage Bonds A - rated or better										

Schedule 4-D Proposed Pricing Compared to Other SEC Registered Long-Term Taxable Ratepayer-Backed Bonds with an Expected Final Maturity of approximately 20 years by Offering and Tranche from 2016 to Present

By Deal - Comparison of Weighted Average Pricing Spreads for Each New Issue Offering (All Tranches) 2016-Present:

Initial Offering Date	Issue (Ticker, CUSIP and Name of Issuer)	Total Principal ($ millions)	Expected Term Weighted Average Life of Deal All Tranches (Years)	Weighted Average Spread to Interpolated UST G-Spread (bps)

By Tranche: Comparison New Issue Pricing g-spreads to U.S. Treasuries By Comparabe Tranche to Other Taxable Ratepayer-Backed Bonds Tranches with Similar Weighted Average Lives 2016-Present

Initial Offering Date	Issue (Ticker, CUSIP and Issuer Name)	Tranche Principal Amount At Time Of New Issue ($ millions)	Expected Term Weighted Average Life Tranches (Years)	Spread to Interpolated UST G-Spread (bps)

Attachment 5
Kentucky Power Company Certificate
Confirming Financing Order Condition Met

[_____], 2024

Kentucky Public Service
Commission
211 Sower Blvd.
Frankfort, KY 40601

Saber Partners, LLC
260 Madison Avenue
8th Floor
New York, NY 10005
Attn: Joseph S. Fichera
Chief Executive Officer

Re: Kentucky Power Company, [Name of Bonds]

Ladies and Gentlemen;

Subject to stated conditions, Kentucky Revised Statutes sections 278.670 through 678.696 and 65.114 authorize the Kentucky Public Service Commission (the "Commission") to issue financing orders approving the issuance of securitized bonds. In Case No. 2023-0015, the Commission issued its financing order dated January [10], 2024 (the "Financing Order"). The Financing Order authorizes Kentucky Power Company (the "Applicant") to issue one or more series of securitized bonds ("Bonds") and to participate in certain related transactions as specified in the Financing Order through a wholly-owned subsidiary of the Applicant, subsequently identified as [Name of BondCo] (the "BondCo").

The Bonds were priced [with respect to Tranche A-1 at [_:__] [_].M. New York time, and with respect to Tranche A-2 at [_:__] [_].M New York time,] on [_____], 2024 (the "Pricing Time") when [_____] and [_____] (acting for themselves and as representatives of a syndicate of underwriters) agreed to purchase the Bonds in accordance with the terms of the Underwriting Agreement dated [_____], 2024.

The Financing Order states: "To ensure that benefits are realized, the securitized bond transaction must conform to the structure ordered by the Commission as described in detail below, and an Issuance Advice Letter must be provided to the Commission no later than one (1) business day after pricing of the securitized bonds that . . . (g) attaches a certificate from the Applicant confirming that the structuring, marketing and pricing of

the securitized bonds in fact resulted in the lowest securitized surcharges consistent with (i) prevailing market conditions at the time of pricing the securitized bonds, and (ii) the terms of the Act and the Financing Order (the Lowest Cost Objective)."

On the date of this letter, in connection with $[_____] aggregate principal amount of the BondCo's [Name of Bonds] (the "Bonds"), the Applicant is filing at the Commission an issuance advice letter (the "Issuance Advice Letter") to which this letter is to be attached as Attachment 5.

Therefore, in connection with the Bonds, we hereby certify to you as follows:

1. Given the terms of the Financing Order, the schedule of principal amounts set forth in the Issuance Advice Letter, market conditions at the Pricing Time, and applicable securities laws, and based on the Applicant's experience, the work performed in structuring, marketing and pricing the Bonds, and on market conditions and other information reasonably available to officers, agents and employees of the Applicant, the structuring, marketing and pricing of the Bonds resulted in the lowest securitized surcharges consistent with market conditions and the terms of the Financing Order for each tranche of the Bonds.

2. On [_____], 2024, a decision was made by the Applicant and the Commission's Designated Representative and financial advisor to proceed with marketing the Bonds as a negotiated sale through a syndicate of selected underwriters. Based on information reasonably available to us as of that date, and given the terms of the Financing Order, the schedule of principal amounts set forth in the Issuance Advice Letter and applicable securities laws, (a) competitive sales are not customary in the market in which securities such as the Bonds typically are marketed, nor are competitive sales generally considered to be the most effective manner in which to market highly structured securities such as the Bonds; and (b) the BondCo could not have expected to achieve lower securitized surcharges for any or all tranches of the Bonds through a competitive bidding process than it obtained through the negotiated sale of all the Bonds.to the syndicate of underwriters jointly selected by the Applicant and the Commission's designated representative.

3. Given the terms of the Financing Order, market conditions at the Pricing Time and the schedule of principal amounts set forth in the Issuance Advice Letter, the amount of compensation payable to the underwriters from proceeds of the Bonds was necessary to achieve the lowest securitized surcharges for each tranche of Bonds, and the amount of compensation payable to the underwriters and funded from proceeds of the Bonds have been established at amounts that could not be reduced without increasing overall securitized surcharges.

For purposes of this letter, the following definitions apply:

(a) "marketing" means all aspects of presenting the Bonds to the public capital markets and offering the Bonds for sale to investors, including but not

limited to targeting particular investors or classes of investors and selecting methods of communicating with investors;

(b) "securitized surcharges" means securitized surcharges imposed to pay the annualized cost, expressed as a percentage, of principal, interest and the cost of external credit enhancement, if any, attributable to that tranche;

(c) the "structure" of the Bonds means the structure reflected in the Preliminary Prospectus filed with the United States Securities and Exchange Commission on [_____], 2024, including the transaction documents described and/or contemplated therein; and

(d) the "lowest securitized surcharges" means (i) the lowest securitized surcharges in respect of the Bonds as a whole, and (ii) the lowest securitized surcharges in respect of each tranche of Bonds.

4. Consequently, the Applicant confirms and certifies that the Bonds in fact resulted in the Lowest Cost Objective.

The Applicant authorizes this letter to be included as Attachment 5 to the Issuance Advice Letter.

The undersigned is an officer of the Applicant and is authorized to provide this letter on behalf of the Applicant. This letter is being delivered to assist the Commission and Saber in meeting your obligations under the Financing Order, and we shall be fully accountable for all matters set forth in this letter. Without our written permission, this letter may not be used by or relied upon by any other person or entity.

Respectfully submitted,

Chief Financial Officer
Kentucky Power Company

APPENDIX B

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2023-00159 DATED

Securitized Surcharge Rider
(S.S.R.)

Applicable

To all retail electric customers.

Rate

1. Pursuant to the financing order of the Kentucky Public Service Commission in Case No. 2023-00159, Kentucky Power Company is to recover from retail ratepayers the costs approved for securitized bond financing by the Commission. Terms not defined in this rider shall have the meanings ascribed to those terms in that financing order.

   This rider is designed to recover from all retail electric customers the amounts necessary to service, repay and administer customer-backed securitized bonds associated with the approved securitized costs pursuant to the terms of the financing order of the Kentucky Public Service Commission in Case No. 2023-00159.

   This rider shall remain in effect until the complete repayment and retirement of any securitized bonds, or refunding bonds, associated with the approved securitized costs, together with ongoing financing costs. Upon issuance of a series of securitized bonds, this schedule is irrevocable and associated securitized surcharges are nonbypassable for the full term of that series of securitized bonds.

2. The Periodic Payment Requirement (PPR) is the required periodic payment for a given period (e.g., annually, semiannually, or quarterly) due under the securitized bonds.

3. Periodic Billing Requirement (PBR) shall be the aggregate dollar amount of securitized surcharges that must be billed during a given period (e.g., annually, semiannually, or quarterly) so that the securitized surcharge collections will be sufficient to meet the sum of all PPR for that period, given: (i) forecast usage and revenue data, excluding the securitized surcharge, for the period; (ii) forecast uncollectibles for the period; and (iii) forecast lags in collection of billed securitized surcharges for the period.

Continued on Sheet No. [XX]

Securitized Surcharge Rider Continued
(S.S.R.)

4. The PBR for a given period shall be the sum of (a) the PBR for residential customers for the period (y) (Residential PBR Allocation (y)) and (b) the PBR for all other retail electric customers (non-residential retail electric customers) for the period (y) (Non-Residential PBR Allocation (y)).

5. The Residential PBR Allocation (y) shall be recovered from residential customers through application of the Residential S.S.R. Adjustment Factor to all charges on each residential customers bill for electric service, except for environmental surcharge (ES) charges, nonrecurring charges, and pass through charges as discussed and defined in the financing order in Case No. 2023-00159. The charges to which the Residential S.S.R. Adjustment Factor currently applies, based on that definition, are [List of Current Charges to Which Factor is Applicable].

6. The Non-Residential PBR Allocation (y) shall be recovered through application of the Non-Residential S.S.R. Adjustment Factor to all charges on each non-residential retail electric customers bill for electric service, except for charges for base fuel costs and fuel cost adjustments, and environmental surcharge (ES) charges, nonrecurring charges, and pass through charges as discussed and defined in the financing order in Case No. 2023-00159. The charges to which the Non-Residential S.S.R. Adjustment Factor currently applies, based on that definition, are [List of Current Charges to Which Factor is Applicable].

7. The Residential S.S.R. Adjustment Factor for a given period (e.g., semiannually, or quarterly; (y)) shall be calculated according to the following formula:

$$\text{Residential S.S.R. Adjustment Factor (y)} = \frac{\text{Residential PBR Allocation (y)}}{\text{Expected Residential Retail Revenue (y)}}$$

Where:

(y)	=	the given period (e.g., semiannually, or quarterly);
Expected Residential Retail Revenue (y)	=	Expected retail revenue for the period (y) from charges to which the Residential S.S.R. Adjustment Factor will apply in the period (y).

Continued on Sheet No. [XX]

Securitized Surcharge Rider Continued
(S.S.R.)

8. The Non-Residential S.S.R. Adjustment Factor shall be calculated according to the following formula:

$$\text{Non-Residential S.S.R. Adjustment Factor (y)} = \frac{\text{Non-Residential PBR Allocation (y)}}{\text{Expected Non-Residential Non-Fuel Retail Revenue NR(y)}}$$

Where:

(y) = the given period (e.g., semiannually, or quarterly);

Expected Non-Residential Non-Fuel Retail Revenue NR(y) = Expected non-fuel retail revenue for all non-residential retail electric customers for the period (y) from charges or portions of charges to which the Non-Residential S.S.R. Adjustment Factor will apply in the period (y).

9. The Residential PBR Allocation (y) shall be calculated by taking the sum of the residential true-up for the given period (y) (Residential True-up (y)) and the Residential PPR Allocation (y) and adjusting the sum to reflect both the projection of uncollectible securitized surcharges from residential customers and a projection of payment lags between the billing and collection of securitized surcharges from residential retail customers based upon the most recent experience regarding collection of securitized surcharges from residential customers.

10. The Non-Residential PBR Allocation (y) shall be calculated by taking the sum of the non-residential retail electric customers true-up for the given period (y) (Non-Residential True-up (y)) and the Non-Residential PPR Allocation (y) and adjusting the sum to reflect both the projection of uncollectible securitized surcharges from non-residential retail electric customers and a projection of payment lags between the billing and collection of securitized surcharges from non-residential retail electric customers based upon the most recent experience regarding collection of securitized surcharges from non-residential retail electric customers.

Continued on Sheet No. [XX]

11. The PPR for a given period shall be allocated between residential customers and non-residential retail electric customers based upon their respective contributions to total retail revenues from the charges to which the Residential S.S.R. Adjustment Factor and Non-Residential S.S.R. Adjustment Factor applied and fuel costs for non-residential retail electric customers, according to the following formula:

$$\text{Residential PPR Allocation (y)} = \text{PPR(y)} \times \frac{\text{Residential Retail Revenue (b)}}{\text{KY Retail Revenue (b)}}$$

$$\text{Non-Residential PPR Allocation (y)} = \text{PPR(y)} \times \frac{\text{Non-Residential Retail Revenue (b)}}{\text{KY Retail Revenue (b)}}$$

Where:

(y)	=	the given period (e.g., semiannually, or quarterly);
(b)	=	Most recent available twelve month period ended December 31 or June 30
Residential Retail Revenue (b)	=	Retail revenue for residential retail electric customers for the period (b) from charges to which Residential S.S.R. Adjustment Factor applied in the period (b) (or to which it would have applied if the adjustment factor was not applicable during all or a portion of the period).
Non-Residential Retail Revenue (b)	=	Retail revenue for all non-residential retail electric customers for the period (b) from charges to which the Non-Residential S.S.R. Adjustment Factor applied (or to which it would have applied if the adjustment factor was not applicable during all or a portion of the period) and charges for base fuel and pursuant to the fuel adjustment clause.
KY Retail Revenue(b)	=	Residential Retail Revenue (b) + Non-Residential Retail Revenue (b).

12. The Residential True-up (y) shall be calculated by subtracting the cumulative revenues collected from the Residential S.S.R. Adjustment Factor through the preceding period from the cumulative Residential PPR Allocation for all periods through the preceding period, in which the preceding period is the adjustment period that ended prior to the filing of the current adjustment to the Residential S.S.R. Adjustment Factor (except in the case of an interim adjustment).

Continued on Sheet No. [XX]

13. The Non-Residential True-up (y) shall be calculated by subtracting the cumulative revenues collected from the Non-Residential S.S.R. Adjustment Factor through the preceding period from the cumulative Non-Residential PPR Allocation for all periods through the preceding period, in which the preceding period is the adjustment period that ended prior to the filing of the current adjustment to the Non-Residential S.S.R. Adjustment Factor (except in the case of an interim adjustment).

14. The initial Residential S.S.R. Adjustment Factor and Non-Residential S.S.R. Adjustment Factor shall be filed on the day following the pricing of each series of securitized bonds, shall be calculated based on the formulas in paragraphs 7 and 8, respectively, and shall become effective the first billing cycle following the closing of the securitized bonds. The Residential S.S.R. Adjustment Factor and Non-Residential S.S.R. Adjustment Factor shall thereafter be adjusted at least semi-annually (every six months) beginning [_____] along with all the necessary supporting data to justify the amount of the adjustments, which shall include data and information as may be required by the Commission.

    Quarterly true-ups will begin 12 months prior to the scheduled final payment date for the latest maturing tranche of securitized bonds of a particular series.

    Interim Securitized Surcharge Rider adjustments may be filed with the Commission outside of the standard semi-annual or quarterly timeframe in order to correct for over- or under-collection to be submitted no later than 10 days before the rate is to be effective.

    Copies of all documents required to be filed with the Commission shall be open and made available for public inspection at the office of the Public Service Commission pursuant to the provisions of KRS 61.870 to 61.884.

Continued on Sheet No. [XX]

Securitized Surcharge Rider Continued
(S.S.R.)

15. The applicable rates for service rendered on and after XXXXXXXXX ##, 202# to be applied to the revenues described in paragraphs 5 and 6 of this tariff are:

Residential S.S.R. Adjustment Factor	=	$X / $X	=	X.X%
Non-Residential S.S.R. Adjustment Factor	=	$X / $X	=	X.X%

APPENDIX C

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2023-00159 DATED JAN 10 2024

ESTIMATED UP-FRONT FINANCING COSTS

	AMOUNT
Legal Fees (Kentucky Power and Issuer)	$2,750,000
Accountant's Fees	$150,000
Indenture Trustee's, Securities Intermediary's and Indenture Trustee Counsel's Fees and Expenses	$25,000
Servicer's Set-up Costs	$125,000
Printing/Edgarizing	$75,000
Commission and Kentucky Power's Advisor's Fee	$750,000
Miscellaneous Administrative Costs	$31,242
Underwriters' Fees	$1,787,066
Rating Agency Fees	$591,965
SEC Registration Fee	$24,930
TOTAL ESTIMATED UP-FRONT FINANCING COSTS SECURITIZED	**$6,310,203**

ESTIMATED ONGOING FINANCING COSTS

	ANNUAL AMOUNT
Servicing Fee (.05% of principal amount)	$446,766
Administration Fee	[Between $50,000 and $100,000]
Accountant's Fee	$75,000
Legal Fees/Expenses for Kentucky Power's/Issuer's Counsel	$50,000
Indenture Trustee's, Securities Intermediary's and Indenture Trustee's Counsel's Fees and Expenses	$10,000
Independent Manager's Fees	$2,750
Rating Agency Fees	$75,000
Return on Capital Account	$188,027
Miscellaneous	$25,000
TOTAL ESTIMATED ONGOING FINANCING COSTS	**[Between $922,543 and $972,543]**

APPENDIX D

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2023-00159 DATED JAN 10 2024

[_____], 2024

Kentucky Public Service Commission
211 Sower Blvd.
Frankfort, KY 40601

Saber Partners, LLC
260 Madison Avenue 8th Floor
New York, New York 10005
Attention: Joseph S. Fichera
Chief Executive Officer

Kentucky Power Company
[Name of Issuer]
1645 Winchester Avenue
Ashland, Kentucky 41101
Attention: [_____]

Re: [Name of Issuer], [Name of Bonds]

Ladies and Gentlemen:

In Case Number:2023-00159, the Kentucky Public Service Commission (the "Commission") issued its Financing Order dated January 10, 2024 (the "Financing Order"). The Financing Order authorized a wholly-owned subsidiary of Kentucky Power Company (the "Company"), [_____] (the "Issuer"), to issue securitized bonds as defined in the Financing Order. This certificate is being delivered pursuant to Ordering Paragraph 7 of the Financing Order which states (internal citations omitted):

> For each series of securitized bonds issued, Kentucky Power shall provide an Issuance Advice Letter to the Commission . . . This Issuance Advice Letter shall: . . . include independent unqualified certifications from Kentucky Power embedded in the Issuance Advice Letter, and from the bookrunning underwriter(s) as attached in Appendix D to this Financing Order, each confirming that the structuring, marketing and pricing of the securitized bonds in fact resulted in the Lowest Cost Objective.

The Financing Order defines the "Lowest Cost Objective" to mean "the structuring, marketing and pricing of the securitized bonds in fact resulted in the lowest securitized surcharges consistent with (i) prevailing market conditions at the time of pricing the securitized bonds, and (ii) the terms of the Act [Kentucky Revised Statutes sections 278.670 through 678.696 and 65.114] and the Financing Order".

[_____] (the "Underwriter") serves as [a joint-lead] bookrunning underwriter for $[_____] aggregate principal amount of the Issuer's [_____] Bonds (the "Bonds") proposed to be issued pursuant to the Financing Order. Attached as Appendix [__] is the Pricing Term Sheet delivered by the

Company in connection with the issuance of the Bonds. This Pricing Term Sheet includes a schedule setting forth the principal amount, any original issue premium or discount, the interest rate, and the resulting net proceeds to the Issuer (before expenses) for each weighted average life designation of the Bonds.

Since the date the Underwriter was first retained to serve as [a joint-lead] bookrunning underwriter in connection with the issuance of the Bonds, the Underwriter has offered the Commission's Designated Representative and Saber Partners, LLC ("Saber Partners"), as the Commission's financial advisor in connection with the Bonds, the opportunity to participate fully and in advance in all negotiations in which the Underwriter has participated regarding all aspects of the structuring, marketing, and pricing of the Bonds. The Bonds were priced at [_:__] [_]M New York Time on [_____], 2024 (the "Pricing Time"), when a syndicate of underwriters, [jointly] led by the Underwriter, agreed to purchase the Bonds in accordance with the terms of the Underwriting Agreement, dated [_____], 2024.

Based on the Underwriter's experience and on market conditions and other information reasonably available to the Underwriter through the Pricing Time, we hereby certify [, in our opinion,] that:

1. Competitive sales are not customary in the market in which securitized ratepayer-backed bonds typically are marketed, nor are they generally considered to be the most effective manner in which to market securities such as the Bonds and to obtain the lowest possible securitized surcharges.

2. The Issuer would not have achieved a lower net cost of funds to the Issuer for any or all weighted average life designations of the Bonds through a competitive bidding process than through the negotiated sale of all the Bonds to the syndicate of underwriters [jointly] led by the Underwriter.

3. The structure of the Bonds reflected in the Preliminary Prospectus filed with the United States Securities and Exchange Commission on [_____], 2024 and in the transaction documents described and/or contemplated therein, when viewed in the aggregate, resulted in the Lowest Cost Objective in that it resulted in the lowest overall net cost of funds to the Issuer in respect of the Bonds.

4. The marketing and pricing of the Bonds resulted in (a) the Lowest Cost Objective in that it resulted in the lowest overall net cost of funds to the Issuer in respect of the Bonds in the aggregate, and (b) the Lowest Cost Objective in that it resulted in the lowest net cost of funds to the Issuer in respect of each weighted average life designation of the Bonds.

Based on the foregoing, on the Underwriter's experience and on market conditions, the work performed in marketing, pricing and structuring the Bonds, and other information reasonably available to the Underwriter through the Pricing Time, we hereby certify that, in our opinion, the Issuer achieved (a) the Lowest Cost Objective in that it resulted in the overall net cost of funds to the Issuer in respect of the Bonds, and (b) given the schedule of weighted average life designations of the Bonds, the Lowest Cost Objective in that it resulted in the lowest net cost of funds to the Issuer in respect of each weighted average life designation of the Bonds.

For purposes of this certificate, "net cost of funds to the Issuer" means the yield payable by the Issuer on each weighted average life designation of the Bonds plus the annualized cost, expressed as a percentage, of the underwriter's discount and any external credit enhancement attributable to that weighted average life designation.

For purposes of this certificate, “marketing” means all aspects of presenting the Bonds to the public capital markets and offering the Bonds for sale to investors, including but not limited to targeting particular investors or classes of investors and selecting methods of communicating with investors.

We are delivering this certificate (i) to Saber Partners to assist Saber Partners in determining whether to notify the Company and the Commission that the structuring, marketing, and pricing of the Bonds complies with the criteria established in the Financing Order, (ii) to the Company to assist it in executing end delivering its Issuance Advice Letter, and (iii) to the Commission to assist it in determining whether to issue a Disapproval Order pursuant to Ordering Paragraph 7 of the Financing Order, or whether to allow the Bonds to be issued without further action by the Commission pursuant to Ordering Paragraph 7.

Respectfully submitted,

[_____], as Underwriter

APPENDIX E

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2023-00159 DATED JAN 10 2024

[Saber Partners Letterhead]

[_____], 2024

Kentucky Public Service Commission
211 Sower Blvd.
Frankfort, KY 40601

Re: **Kentucky Power Company – [_____] Bonds Proposed to Be Issued Pursuant to Case No. 2023-00159**

Ladies and Gentlemen:

Subject to stated conditions, Kentucky Revised Statutes sections 278.670 through 678.696 and 65.114 (collectively, the Financing Act), authorize the Kentucky Public Service Commission (the Commission) to issue financing orders approving the issuance of securitized bonds. Section 278.674(3) authorizes the Commission to engage outside consultants to assist the Commission in performing its responsibilities under the Financing Act. The Commission has engaged Saber Partners, LLC (Saber Partners or the Financial Advisor) to perform specified services in connection with the issuance of securitized bonds in Case No. 2023-00159.

On January 10, 2024, the Commission issued its Financing Order in Case No. 2023-00159 (the Financing Order). The Financing Order authorizes a wholly-owned subsidiary of Kentucky Power Company (Kentucky Power or the Company), subsequently identified as [_____] (the Issuer), to issue securitized bonds as defined in the Financing Act and the Financing Order (the Bonds). The Financing Order states:

> While the Commission recognizes the need for some flexibility with regard to the final details of the securitized bond transaction approved in this Financing Order, the Commission's focus is upon the statutory requirements that must be met prior to issuing a financing order and maximizing the economic benefits of the Act to Kentucky Power customers. To this end, a focus of the Commission's review is whether conditions to the Commission's approval of Kentucky Power's application, set forth in this Financing Order, also are met.
>
> The Commission has established in this Financing Order certain procedures, criteria and conditions that must be met in order for the approvals and authorizations granted in this Financing Order to become effective for the benefit

> of Kentucky Power customers. This Financing Order grants authority to issue securitized bonds and to impose, bill, charge, collect and receive securitized surcharges only if the final structuring, marketing and pricing of the securitized bond transaction complies in all material respects with these procedures, criteria and conditions. The authority and approval granted in this Financing Order is effective as to each issuance upon, but only upon *inter alia*, Kentucky Power filing with the Commission an issuance advice letter (each an Issuance Advice Letter) demonstrating compliance of that issuance with these procedures, criteria, and conditions as well as all other provisions of this Financing Order and the Act.[1]

The Financing Order conditions its authorization of the issuance of securitized bonds for the benefit of the Company upon the Commission not issuing a Disapproval Order prior to noon Eastern Time on the fourth business day after pricing of a series of securitized bonds pursuant to Ordering Paragraph 7 of the Financing Order. Not later than 5:00 pm on the second business day after the Company's Issuance Advice Letter (IAL) is delivered to the Commission, Ordering Paragraph 7 directs the Commission's Financial Advisor to deliver to the Commission a certification, without material qualifications, that the structuring, marketing and pricing of the securitized bonds in fact resulted in the Lowest Cost Objective.

To facilitate this process, Ordering Paragraph 7 of the Financing Order states: "For each series of securitized bonds issued, Kentucky Power shall provide an Issuance Advice Letter to the Commission following the determination of the final terms of the series of securitized bonds no later than 5:00 pm Eastern Time one (1) business day after the pricing of the securitized bonds, at which time a meeting [of the Commission] will be noticed for four (4) business days after pricing to afford this Commission an opportunity to review the proposed transaction." This was designed in part to provide Saber Partners at least 24 hours to review the IAL before being required to deliver its certification pursuant to Ordering Paragraph 7.

To further facilitate Saber Partners' review and evaluation of the transaction, Ordering Paragraph 7 of the Financing Order requires independent, unqualified certifications from the Company (embedded in the IAL) and from the bookrunning underwriter(s) (in the form attached as Appendix D to the Financing Order), each confirming that the structuring, marketing and pricing of the Bonds in fact achieved the Lowest Cost Objective. The Company and the Commission's Designated Representative selected [_____ (XXX)] and [_____] (YYY) as [joint] bookrunning underwriter[s] for the Bonds. Pursuant to Ordering Paragraph 7, the Company and the Commission's Designated Representative requested XXX [and YYY each] to deliver [an] opinion letter[s] as to whether the Lowest Cost Objective in fact was achieved. Those opinion letter[s] [are] enclosed as Appendix A-1 [and Appendix A-2].

Ordering Paragraphs 27, 28, 32 and 33 of the Financing Order state:

> 27. The Commission shall designate one (1) representative from Commission Staff (the Designated Representative) who may be advised by the Commission's Financial Advisor to provide input to and collaborate with Kentucky Power during the process undertake to place the securitized bonds to market and to

[1] Financing Order at pages [10] and [11].

provide certificates to the Commission with respect to the Lowest Cost Objective in substantially to forms attached to this Financing Order as Appendix C and Appendix D. The Commission's Designated Representative and the Financial Advisor shall participate visibly and in advance in all aspects of structuring, marketing and pricing the securitized bonds approved in this Financing Order; provided, however, that the Commission's Designated Representative and the Financial Advisor shall: (a) have no authority to direct how Kentucky Power places the securitized bonds to market; and (b) be permitted to attend meetings convened by Kentucky Power to address placement of the securitized bonds to market. The Commission directs its Designated Representative and the Financial Advisor to advise the Commission [through a filing in Case No. 2023-00159] of any proposal that does not comply in any material respect with the criteria established in this Financing Order. The Commission's Designated Representative or Financial Advisor shall promptly inform Kentucky Power and the Commission of any items that, in the opinion of the Commission's Designated Representative or Financial Advisor are not reasonable. In addition, the Commission directs its Designated Representative and Financial Advisor to notify the Commission if either becomes aware that any material aspect of the transaction has been performed in a manner that is not legal or ethical or that any decisions made in the transaction have not been appropriately documented, including documentation of any difficulties, anomalies, or unusual circumstances encountered in the transaction and the resolution of any such matters.

Kentucky Power, the Commission's Designated Representative and the Financial Advisor shall work together closely and on a cooperative basis to create the broadest possible competition for securitized bonds among investors and potential underwriters, and to ensure that the best practices standards are met and procedures are followed. Bookrunning underwriters and other managing underwriters of securitized bonds approved by this Financing Order shall be required to certify without material qualification that indicative rates submitted to Kentucky Power, the Financial Advisor and the Designated Representative reflect the independent view of the submitting firm and that other firms have not been consulted about or informed of such indicative rates.

28. The designated Commission Staff and the Financial Advisor do not have authority to direct how Kentucky Power and the BondCo place the securitized bonds to market. That authority resides with the Commission pursuant to standards and procedures set forth in this Financing Order. The Commission may communicate to Kentucky Power through these representatives.

* * *

32. **Dispute Resolution**. One designated representative of Kentucky Power and the Commission's Designated Representative shall be joint decision makers in all aspects of the structuring, marketing and pricing of the securitized bonds.

33. Kentucky Power and the Commission's Designated Representative (advised by the Financial Advisor) shall have equal rights on decisions regarding the hiring of underwriters and counsel to the underwriters.

Pursuant to Ordering Paragraph 32 of the Financing Order, the designated representative of the Company and the Commission's Designated Representative jointly decided that all the Bonds should be priced [_____] Eastern Time on [_____,] 2024, [with no flexibility to downsize the issue or to delay the issuance of some or all of the Bonds if market conditions were not ideal at or prior to that date and time].

[Narrative discussion of additional post-Financing Order topics which required discussion / negotiations between the Company's designated representative and the Commission's Designated Representative and/or Financial Advisor.]

On [_____, 2024, the Commission published notice of its public meeting, commencing at [_____] [_]m Eastern Time, for the purpose of issuing any Disapproval Order that might be necessary under Ordering Paragraph 7 of the Financing Order.

Pricing of the Bonds in fact occurred at [____] [_]m Eastern Time on [_____], 2024 (the Pricing Time). The Company in fact delivered its IAL to the Commission at [_____] []m Eastern Time on [_____], 2024, and to Saber Partners at [_____], [_]m Eastern Time on [_____], 2024. A redacted copy of that IAL is attached as Appendix B.

Saber Partners notes that as part of that IAL, the Company has provided the following certification:

> The Applicant certifies that all Statutory Requirements and, apart from condition 3 (which the Applicant anticipates will be met prior to issuance of the Bonds), all other procedures and conditions listed above have been met. Specifically, as set forth in the letter attached as Attachment 5, the Applicant confirms and certifies that condition 1 above (that the structuring, marketing and pricing of the securitized bonds must in fact achieve the lowest securitized surcharges consistent with (i) prevailing market conditions at the Pricing Time, and (ii) the terms of the Act and the Financing Order (the Lowest Cost Objective)) has been met.

Pursuant to Ordering Paragraph 7 of the Financing Order, Saber Partners, as Financial Advisor, has been asked to deliver to the Commission this confidential certificate addressing the following matters:

(1) Have the statutory requirements been met?

Yes.

Based upon information known or reasonably available to Saber Partners, its officers, agents and employees, and based on its professional judgment, Saber Partners hereby confirms and certifies that (a) as required by Section 278.676(1)(c) of the Financing Act, the proposed

issuance of the Bonds and the imposition and collection of a securitized surcharge are expected to provide quantifiable net present value benefits to customers as compared to recovery of the components of securitized costs that would have been incurred absent the issuance of the Bonds; and (b) as required by Section 278.676(1)(d) of the Financing Act, as of January 10, 2023, it was reasonable for the Commission to expect that the proposed structuring and pricing of the Bonds would result in the lowest securitized surcharges consistent with market conditions at the time the Bonds would be priced under the terms of the Financing Order.

(2) Has the Lowest Cost Objective been achieved?

Yes.

Based upon information known or reasonably available to Saber Partners, its officers, agents and employees, based on its professional judgment, and subject to the post-closing review and possible adjustment of Bond issuance costs pursuant to Ordering Paragraph 4 of the Financing Order, Saber Partners hereby confirms and certifies that the structuring, marketing and pricing of the Bonds in fact achieved the Lowest Cost Objective, consistent with the terms of the Financing Order and market conditions the Pricing Time.

For purposes of this letter, the following definitions apply:

(i) "marketing" means all aspects of presenting the Bonds to the public capital markets and offering the Bonds for sale to investors, including but not limited to targeting particular investors or classes of investors and selecting methods of communicating with investors;

(ii) the "structure" or "structuring" of the Bonds means the structure reflected in the Registration Statement on Form SF-1 filed with the United States Securities and Exchange Commission by the Company and the Issuer on [_____], 2024, including the transaction documents described and/or contemplated therein.

Saber Partners notes that Attachment [__] to the IAL lists the following actions taken by the designated representative of the Company and by the Commission's Designated Representative and Financial Advisor in connection with the structuring, marketing, pricing and financing costs in order to achieve the Lowest Cost Objective:

[To come.]

As noted above, the designated representative of Company and the Commission's Designated Representative and Financial Advisor jointly decided that all the Bonds should be priced before [_:__] [_]m Eastern Time, [_____], 2024. Within that parameter, Saber Partners believes these were reasonable steps taken to achieve the Lowest Cost Objective (consistent with prevailing market conditions at the Pricing Time, and with conditions and terms of the Financing Order and other applicable law).

(3) Report any proposal that does not comply in any material respect with the criteria established in this Financing Order.

The Financing Order (including pages 5 of the form of IAL included as Appendix A) specify customer protections which are to be included in the transaction. Saber Partners and outside legal counsel to Commission Staff reviewed the proposed form of Financing Order and the proposed form of transaction documents and requested changes as necessary to ensure that the transaction achieved the greatest possible customer protections. Among the changes made were the following:

[To come.]

Saber Partners believes these were important steps toward achieving the greatest possible customer protections, consistent with the terms of the Financing Order and other applicable law. Based upon information known or reasonably available to Saber Partners, its officers, agents and employees, based on its professional judgment, Saber Partners is of the opinion that the transaction has achieved the greatest possible customer protections reasonably consistent with the terms of the Financing Act, the Financing Order and other applicable law.

In addition, Ordering Paragraph 27 of the Financing Order states:

> The Commission directs its Designated Representative and the Financial Advisor to advise the Commission [through a filing in Case No. 2023-00159] of any proposal that does not comply in any material respect with the criteria established in this Financing Order. The Commission's Designated Representative or Financial Advisor shall promptly inform Kentucky Power and the Commission of any items that, in the opinion of the Commission's Designated Representative or Financial Advisor are not reasonable. In addition, the Commission directs its Designated Representative and Financial Advisor to notify the Commission if either becomes aware that any material aspect of the transaction has been performed in a manner that is not legal or ethical or that any decisions made in the transaction have not been appropriately documented, including documentation of any difficulties, anomalies, or unusual circumstances encountered in the transaction and the resolution of any such matters.

[Discussion of any proposals which arguably would not comply in any material respect the criteria established in the Financing Order - to come.]

For purposes of this letter, Saber Partners assumes that none of the facts or circumstances summarized above are the types of actions or inactions the Commission expects to be reported. With that understanding, Saber Partners is not aware of any action or inaction which Saber Partners believes "does not comply in any material respect with the criteria established in this Financing Order."

In summary, based on the foregoing, on Saber Partners' experience and on market conditions and other information known or reasonably available to Saber Partners, its officers, agents and employees through the Pricing Time, Saber Partners does not recommend that the Commission issue a Disapproval Order.

This letter is being delivered to the Commission to assist it in determining whether to issue a Disapproval Order with respect to the Bonds pursuant to Ordering Paragraph 7 of the Financing Order. Without our written permission, unless otherwise required by applicable law (other than an order of the Commission), this letter may not be (i) furnished to, used by or relied upon by any other person or entity including, without limitation, any purchaser of the Bonds, (ii) quoted in or referred to, in whole or in part, in any registration statement, prospectus or other materials furnished to any other person or entity, including, without limitation, any purchaser or potential purchaser of the Bonds, or (iii) used for any other purpose.

Respectfully submitted,

APPENDIX A

[Bookrunning Underwriter Opinion Letter]

APPENDIX B

[IAL (Redacted Version)]

APPENDIX F

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2023-00159 DATED JAN 10 2024

FORM OF DISAPPROVAL ORDER

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

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

O R D E R

This matter is before the Commission in the above-styled matter for the purpose of determining whether the Commission should issue a Disapproval Order pursuant to ordering paragraph 7 of the Financing Order issued on January 10, 2024, in this matter. The Commission considered (i) an Issuance Advice Letter (IAL), including Appendices, submitted by Kentucky Power Company (Kentucky Power) on _____, 2024; (ii) certificate of [Saber Partners, LLC,] financial advisor to Commission Staff in this matter, (iii) certificate of _____, bookrunning underwriter for securitized bonds described in the Issuance Advice Letter, and (iv) _____. [Additional Information as Needed]

Having reviewed the information described herein and being otherwise sufficiently advised, the Commission finds _____. [Additional Reasoning as Needed]

IT IS THEREFORE ORDERED that

1. The request for approval of the proposed transaction as described in the IAL is denied pursuant to ordering paragraph 7 in the Financing Order.

2. [Additional Ordering Paragraphs as Needed]

PUBLIC SERVICE COMMISSION

_____
Chairman

_____
Vice Chairman

_____
Commissioner

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AN ACT relating to energy policy and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

(1) The General Assembly finds and declares that:

(a) The long-term economic health and well-being of the citizens of the Commonwealth and the United States depends upon the availability of reliable sources of energy;

(b) The Commonwealth has abundant reserves of coal, natural gas, and other natural resources;

(c) The energy needs of the Commonwealth are best met by continuing to engage in an all-of-the-above approach to electric generation resources, including but not limited to coal, oil, natural gas, wind, solar, hydropower, nuclear, and any future or emerging technologies like hydrogen power;

(d) The current economy and future economic development of the Commonwealth requires reliable, resilient, dependable, and abundant supplies of electrical power;

(e) The demand for reliable, resilient, dispatchable electrical power is anticipated to significantly increase in the coming decades as the Commonwealth becomes home to additional manufacturing and other economic development projects which increase demand for electrical power;

(f) It is in the interest of the Commonwealth that it be able to generate sufficient electricity within its borders to serve its own industrial, residential, and commercial demand and to power its own economy;

(g) The electrification of the United States' economy combined with unprecedented federal regulatory pressures have created an electric generation resource crisis in the Commonwealth;

(h) Existing state and federal policies with respect to energy do not adequately address the concerns of the General Assembly or citizens of the Commonwealth such that a comprehensive Kentucky energy policy is required;

(i) Current policies at the state and federal level do not adequately assess capacity, availability, reliability, or resilience attributes of existing and new fossil fuel-fired, nuclear, or other emerging dispatchable electric generating resources;

(j) It is the policy of the Commonwealth to maintain adequate capacity of available, reliable, dispatchable, and resilient electric generation to provide for the existing and reasonably projected future energy consumption needs of all wholesale, retail, and other consumers of electricity in the Commonwealth;

(k) Further retirement of fossil fuel-fired electric generating resources is not necessary for the protection of the environment or the health, safety, and welfare of the citizens of the Commonwealth;

(l) The health, happiness, safety, economic opportunity, and general welfare of the citizens of the Commonwealth will be promoted and protected by the operation of fossil fuel-fired electric generating resources and, conversely, those interests would be harmed by the premature retirement of those generating resources;

(m) The Commonwealth can support a multitude of potential electric generating resources and energy fuel supply sources so as to be the national leader in the production of energy in all forms;

(n) Local economic development is essential to the health, happiness, safety, and general welfare of the citizens of the Commonwealth;

(o) Local economic development requires an adequate supply of electricity to

support new and expanding industries and is enhanced by robust employment in coal mining and coal transportation and at electric generating facilities, the local job multiplier effect of employment in the coal, natural gas, and electric generating industries, and state and local taxes and other forms of economic value creation for the Commonwealth; and

(p) The numerous energy policy challenges facing the Commonwealth require a comprehensive energy policy informed by the input, judgment, experience, and expertise of diverse stakeholders representing a variety of interests and energy resources, including but not limited to coal, oil, natural gas, wind, solar, hydropower, nuclear, and any future or emerging resources to achieve the best results for the citizens of the Commonwealth.

(2) For the purposes of this section:

(a) "Commission" means the Energy Planning and Inventory Commission established in this section;

(b) "Dispatchable" means a source of electric power generation that is available on demand, that is not intermittent, and that can be adjusted to increase or decrease its power output upon request of a power grid operator or otherwise upon demand or request, or that can have its power output adjusted in response to market or system needs;

(c) "Generation and transmission cooperative" has the same meaning as in KRS 278.010;

(d) "Intermittent" means:

1. A source of electric power generation from a solar photovoltaic, solar thermal heating, concentrating solar thermal collector, or other solar energy collection or generation system;

2. A source of electric power that generates energy by harnessing wind

1 ***power or energy, whether through a turbine or other device;***
2 ***3. Geothermal energy, biomass energy, anaerobic digestion, or combined***
3 ***heat and power from solar, wind, geothermal, or anaerobic digestion***
4 ***sources;***
5 ***4. Any short duration energy storage, which includes any method of***
6 ***storing generated electricity for later dispatch to the grid, whether***
7 ***alone or in conjunction with any other intermittent sources described***
8 ***in this paragraph, that is equivalent to less than forty-eight (48) hours***
9 ***of the average peak generation of the unit it is used to offset; or***
10 ***5. Conventional hydropower and pumped storage hydropower, unless***
11 ***they are capable of providing energy on demand, in which case they***
12 ***shall be deemed to be dispatchable;***
13 ***(e) "Public Service Commission" means the Kentucky Public Service***
14 ***Commission established under KRS Chapter 278, or any successor entity***
15 ***having the power to regulate rates and services of public utilities pursuant***
16 ***to the powers enumerated in KRS Chapter 278; and***
17 ***(f) "Utility" has the same meaning as in KRS 278.010.***
18 ***(3) The Energy Planning and Inventory Commission is hereby established and***
19 ***administratively attached to the University of Kentucky Center for Applied***
20 ***Energy Research, but it shall otherwise be independent from the University of***
21 ***Kentucky and any Kentucky executive branch agency. The affairs of the***
22 ***commission shall be governed exclusively by the provisions of this section. The***
23 ***exercise of the commission's powers conferred by this section and the carrying***
24 ***out of its purposes and duties are essential governmental functions and are***
25 ***conducted for public purposes.***
26 ***(4) (a) The commission shall be composed of an eighteen (18) member board and a***
27 ***five (5) member executive committee. Except for the state government***

officials and the ex officio nonvoting commission board members appointed by the President of the Senate and the Speaker of the House of Representatives, each member of the commission board shall be appointed by the Governor and confirmed by the Senate as set forth in this subsection. The commission board shall be composed of the following members:

1. One (1) representative of a Kentucky investor-owned utility;

2. One (1) representative of a Kentucky generation and transmission cooperative, nominated by the chief operating officer of the Kentucky Association of Electric Cooperatives;

3. One (1) representative of Kentucky coal producers, nominated by the president of the Kentucky Coal Association;

4. One (1) representative of Kentucky oil and gas producers, nominated by the executive director of the Kentucky Oil and Gas Association;

5. One (1) representative of an industry or business engaged in the transportation of coal;

6. One (1) representative of a business engaged in the transportation or distribution of natural gas, nominated by the president of the Kentucky Gas Association;

7. One (1) representative with professional experience in the purchasing or sale of fossil fuels, nominated by the president of the Kentucky Coal Association;

8. One (1) member representing the nuclear electric generation industry, nominated by the executive director of the United States Nuclear Industry Council;

9. One (1) member representing the interests of businesses or entities engaged in activities related to the mining, milling, conversion, enrichment, or fabrication of nuclear fuel or involved in the

remediation of past enrichment of nuclear fuels in the Commonwealth;

10. One (1) member representing commercial and industrial consumers of electrical power, nominated by Kentucky Industrial Utility Customers;

11. One (1) member representing Kentucky economic interests, nominated by the chief executive officer of the Kentucky Chamber of Commerce;

12. One (1) member representing producers of renewable electricity;

13. One (1) member with experience in investment banking or utility finance, nominated by the president of the Kentucky Banker's Association;

14. One (1) member representing residential electricity consumers;

15. One (1) member of the House of Representatives, who shall be an ex officio nonvoting member, nominated by the Speaker of the House of Representatives;

16. One (1) member of the Senate, who shall be an ex officio nonvoting member, nominated by the President of the Senate;

17. The secretary of the Energy and Environment Cabinet, or designee; and

18. The secretary of the Cabinet for Economic Development, or designee.

(b) The executive committee of the board shall include the following five (5) members:

1. The director of the University of Kentucky Center of Applied Energy Research;

2. One (1) member appointed by the Governor who has the same level of education, training, and professional experience as would be required to serve in the role of chief executive officer or board member of a company engaged in the production of coal;

3. One (1) member appointed by the Governor who has the same level of education, training, and professional experience as would be required to serve in the role of chief executive officer or board member of an investor-owned, cooperative, or municipal electric utility; and

4. Two (2) members elected by the commission board from the commission board membership. Any vacancy in an executive committee position under this subparagraph shall be filled in the same manner as the original election.

(c) Any appointment made by the Governor to the commission board or the executive committee shall be subject to confirmation by the Senate. If a pending appointment to the board or executive committee requiring confirmation is not confirmed by the Senate upon the conclusion of the legislative session during or before which the appointment was made, then the member's position on the board or executive committee shall become vacant, either upon sine die adjournment of the legislative session or the date that the Senate votes to decline to confirm appointment, and the Governor shall appoint a different replacement.

(d) After the expiration of their initial terms, members who are not members of the legislative or executive branch shall serve for terms of four (4) years and until a successor is appointed and confirmed by the Senate. Legislative members shall serve during the terms of their elected positions in the General Assembly, and executive branch members shall serve during the appointed terms of their state government positions. In the event of a vacancy prior to the expiration of a term for member appointed by the Governor, the Governor shall appoint a replacement in the same manner as the original appointment, and the appointment shall be subject to the same Senate confirmation process. Members appointed by the Governor shall not

be full-time employees of the Commonwealth as defined in KRS 18A.005, and shall not be compensated for their service on the board, but they shall be subject to the requirements of the executive branch code of ethics established under KRS Chapter 11A.

(e) A majority of the commission board may select one (1) member of the commission board to serve as chair of the commission board and one (1) member of the commission board to serve as vice chair of the commission board.

(f) The executive committee may adopt rules of procedure or bylaws governing the conduct of the commission's business.

(g) Other than being a customer of retail electric service, no member of the executive committee shall have any current employment, contractual, or other direct financial relationship with any utility at the time of their appointment or during their service on the executive committee.

(h) No person shall serve as a member of the commission board or executive committee if the service would cause a conflict with, or result in the disclosure of confidential information relating to, any research projects performed by or in partnership with the University of Kentucky Center for Applied Energy Research.

(i) If the review of a notice given under subsection (7) of this section would result in the disclosure of confidential information to an executive committee member that is prohibited under subsection (7)(c)3. of this section, the executive committee member shall recuse himself or herself, and the remaining executive committee members shall name a replacement from the membership of the commission board solely for the purpose of reviewing the notice that caused the recusal.

(j) A majority of the executive committee shall constitute a quorum, and the

affirmative vote of the majority of the members present during a meeting is necessary for any action taken by vote of the executive committee.

(k) The Governor shall not have reorganization power over the commission, the structure of the commission, its board, the executive committee, or the hiring, compensation, or termination of its executive director. Only the General Assembly may reorganize or restructure the commission or the commission board by legislative act.

(5) The commission may employ an executive director who shall be selected and hired by the executive committee, subject to confirmation by the Senate. If a pending selection for an executive director is not confirmed by the Senate upon the conclusion of the legislative session during or before which the selection was made, then the executive director's position shall become vacant, either upon sine die adjournment of the legislative session or the date that the Senate votes to decline to confirm appointment, and the executive committee shall select a different replacement. Until an executive director is selected and hired, or in the event of a vacancy in the role of executive director, the director of the University of Kentucky Center for Applied Energy Research shall serve in the role of executive director of the commission.

(6) The commission shall be authorized to:

(a) Take all necessary measures to effectuate the public purposes described in subsection (1) of this section;

(b) Assist in fulfilling the executive committee's mandatory duties regarding review of planned retirement decisions described in subsection (7) of this section;

(c) Engage in the examination and study of:

1. The adequacy of the Commonwealth's existing and anticipated future electric generation and transmission resources and the existing and

anticipated future electric demand;

2. The continued operation, retirement, divestiture, or other major action impacting any electric power generating unit, or any pollution control equipment associated with any such unit, located in the Commonwealth;

3. Issues concerning the adequacy of the Commonwealth's energy supply, including but not limited to the economic impact of energy production and consumption in the Commonwealth, the Kentucky energy grid's response to severe weather events, projected power demand and growth in demand, land use impacts from power generation, local economic impacts resulting from the closure of electric generating resources, and whether alternatives to decommissioning electric generating resources exist;

4. The effect of any federal policy which may impact the availability of dispatchable power or the adequacy of energy supplies in the Commonwealth;

5. The Commonwealth's ability to participate in energy markets or in the production, transmission, or distribution of energy;

6. The Commonwealth's ability to finance or provide financing assistance to energy producers to encourage additional energy production in the Commonwealth;

7. New and emerging electric generating technologies that could supply future electric demand in the Commonwealth; and

8. Whether the Commonwealth's energy resources are sufficiently dispatchable to ensure against loss of electrical power supply in the event of extreme weather or other unexpected or catastrophic events that may challenge the ability of the Commonwealth's electrical grid

to meet demand; and

(d) On or before December 1, 2024, and each December 1 thereafter, submit a report with recommendations, including but not limited to recommendations for statutory changes or budgetary proposals, to the Legislative Research Commission, the Governor, and the Public Service Commission concerning any of the issues examined or studied by the commission pursuant to paragraph (c) of this subsection.

(7) (a) Notwithstanding any provision of law to the contrary, no utility shall retire any existing coal, oil, or natural gas-fired electric generating plant, or any unit within the plant, prior to submitting notice to the commission and receiving the findings from the executive committee, as described in this subsection.

(b) A utility proposing to retire any existing coal, oil, or natural gas-fired power plant, or unit within such plant, shall give notice to the commission's executive committee, in the form and manner as the executive committee may require, at least one hundred eighty (180) days prior to submitting the retirement application to the Public Service Commission required by subsection (1) of Section 4 of this Act. The utility may include with its notice any information the utility believes will assist in the executive committee's review of the proposed activity.

(c) 1. The executive committee or executive director may require a utility filing notice under this subsection to provide any information, records, or data that the executive committee or executive director deems reasonably necessary to make its findings under this subsection, and the utility shall respond to all such requests within a reasonable timeframe as established by the executive committee or executive director.

1 ***2. A utility responding to an information request may designate***
2 ***information, records, or data provided in the response as confidential***
3 ***business information, and the information, records, or data shall be***
4 ***exempt from disclosure under the requirements of KRS 61.870 to***
5 ***61.884.***
6 ***3. A utility responding to an information request may indicate in its***
7 ***response that the information, records, or data provided should not be***
8 ***shared with specific members of the commission board or executive***
9 ***committee to avoid an unfair competitive or market advantage, in***
10 ***which case the confidential information, records, or data shall not be***
11 ***shared with or made available to that member or members.***
12 ***(d) Other than being a customer of retail electric service, any member of the***
13 ***commission board who has an employment or contractual relationship with***
14 ***the utility filing the notice required by this subsection shall have no contact***
15 ***with the executive director or any member of the executive committee***
16 ***concerning the proposed activities described in the notice.***
17 ***(e) Within ninety (90) days of its receipt of the notice required by this section,***
18 ***the commission shall hold a public hearing in the county in which the***
19 ***retirement is proposed to occur in order to receive public comments on the***
20 ***proposed activity.***
21 ***(f) Within one hundred thirty-five (135) days of receiving a utility's notice of a***
22 ***proposed retirement, but following the public hearing described in***
23 ***paragraph (e) of this subsection, the executive committee shall issue a final***
24 ***report containing written findings and recommendations concerning the***
25 ***proposed retirement. The executive committee's written findings and***
26 ***recommendations shall include:***
27 ***1. The impact of the proposed activity on the available supply of***

dispatchable and reliable power within the Commonwealth, including the ability of the Commonwealth to meet future demand growth or respond to extreme weather events;

2. Whether alternatives to the proposed activity exist, and whether those alternatives should be further evaluated prior to proceeding with the proposed activity;

3. Whether the replacement of the generating unit or units subject to the proposed activity with other generating resources will result in any adverse land use impacts in the Commonwealth;

4. Whether the proposed activity will result in loss of revenue to the Commonwealth or any local government unit;

5. The positive or negative economic impact of the proposed activity on the local economy of the area in which the proposed activity will take place;

6. The economic impact of the proposed activity on the Commonwealth as a whole; and

7. The impact of the proposed activity on the Commonwealth's ability to increase the available supply of electrical power for current or future economic development purposes.

(g) The findings of the executive committee that are approved by a majority of the members of the executive committee shall be designated as findings of the commission and shall be submitted to the Public Service Commission. If no majority decision of the executive committee is reached with respect to the findings, the report shall so indicate, and each member of the executive committee may make a written statement of position concerning the proposed activity by the deadline provided for in the report. Each written statement shall be included in the report and transmitted along with the

report to the Public Service Commission. Any executive committee member dissenting from the report, any portion of the report, or any specific findings in the report may, within one hundred eighty (180) days of the utility filing notice of the proposed activity, transmit separate dissenting findings to the Public Service Commission.

(h) The executive committee's written report, and any dissenting statements provided to the Public Service Commission, shall be included in any retirement application made to the Public Service Commission under Section 4 of this Act, and the Public Service Commission shall not approve any retirement application without considering all information received from the executive committee or any member of the executive committee. Any order of the Public Service Commission in a proceeding under Section 4 of this Act shall contain specific written findings of fact or conclusions of law addressing whether the executive committee's findings and recommendations were considered by the Public Service Commission.

(i) No retirement application to the Public Service Commission under Section 4 of this Act shall be deemed administratively complete unless it includes either the executive committee's report submitted pursuant to this section or evidence that more than one hundred eighty (180) days have passed since notice was submitted to the commission as required in paragraph (b) of this subsection and no executive committee report or determination has been provided to the utility.

(8) Notwithstanding any provision of law to the contrary, the executive committee, or the executive director if authorized by the executive committee, shall have standing to participate as an intervening party in any case or other proceeding before the Public Service Commission.

(9) Subject to available funding, the executive committee may employ administrative

staff or third-party consultants with expertise in the subject matter of any study, examination, or review undertaken by the commission to assist in carrying out the commission's functions under this section.

(10) The Commission shall cease to exist on December 31, 2035.

➔SECTION 2. A NEW SECTION OF KRS 278.010 TO 278.450 IS CREATED TO READ AS FOLLOWS:

(1) Except as otherwise provided in KRS 278.010 to KRS 278.450, if the commission fails to issue a final order on any application submitted to it by a utility pursuant to KRS 278.018, 278.020, 278.216, 278.218, 278.271, and 278.300 within eight (8) months of the acceptance of the filing of the application, then the application shall be deemed approved by the commission and the relief requested shall be deemed to be granted.

(2) The commission shall complete and issue a final order on all eight (8) month and two (2) year reviews of the operation of a utility's environmental surcharge and fuel adjustment clause within eight (8) months of commencing the review.

➔Section 3. KRS 278.110 is amended to read as follows:

(1) The commission acting through the executive director may employ such clerks, stenographers, rate experts, agents, special agents, engineers, accountants, auditors, inspectors, lawyers, hearing examiners, experts and other classified service employees and the commission may contract for services of persons in a professional or scientific capacity to make or conduct a hearing or a temporary or special inquiry, investigation or examination as it deems necessary to carry out the provisions of this chapter, or to perform the duties and exercise the powers conferred by law upon the commission.

(2) (a) When the commission contracts for the services of a person in a professional or scientific capacity to conduct a hearing, temporary special inquiry, investigation, or examination, any nonprivileged final report or

recommendation prepared in fulfillment of the contract shall be filed within the record for the case for which the final report or recommendation was prepared at the same time it is provided to the commission.

(b) A contracted person who has prepared and submitted a final report or recommendation pursuant to this subsection shall be required to respond to any written information requests regarding the final report or recommendation. Additionally, the contracted person shall be available for cross-examination as a witness in the case for which the final report or recommendation was prepared and filed at any public hearing held by the commission pursuant to the rules it has adopted.

➔Section 4. KRS 278.264 is amended to read as follows:

(1) Notwithstanding any provision of law to the contrary, the commission shall have the authority to approve or deny the retirement of an electric generating unit owned by a utility. Prior to retiring an electric generating unit, a utility shall apply to the commission for an order approving the retirement, and shall give the commission thirty (30) days' notice of the application. ***The application shall include a statement certifying the applicant's compliance with the requirements of Section 1 of this Act.*** The commission shall enter an order approving, approving with conditions, or denying the application within one hundred eighty (180) days of receiving an administratively complete application.

(2) There shall be a rebuttable presumption against the retirement of a fossil fuel-fired electric generating unit. The commission shall not approve the retirement of an electric generating unit, authorize a surcharge for the decommissioning of the unit, or take any other action which authorizes or allows for the recovery of costs for the retirement of an electric generating unit, including any stranded asset recovery, unless the presumption created by this section is rebutted by evidence sufficient for the commission to find that:

(a) The utility will replace the retired electric generating unit with new electric generating capacity that:

1. Is dispatchable by either the utility or the regional transmission organization or independent system operator responsible for balancing load within the utility's service area;

2. Maintains or improves the reliability and resilience of the electric transmission grid;~~[and]~~

3. Maintains the minimum reserve capacity requirement established by the utility's reliability coordinator;***<u>and</u>***

<u>4. Has the same or higher capacity value and net capability, unless the utility can demonstrate that such capacity value and net capability is not necessary to provide reliable service;</u>

(b) The retirement will not harm the utility's ratepayers by causing the utility to incur any net incremental costs to be recovered from ratepayers that could be avoided by continuing to operate the electric generating unit proposed for retirement in compliance with applicable law;~~[and]~~

(c) The decision to retire the fossil fuel-fired electric generating unit is not the result of any financial incentives or benefits offered by any federal agency***<u>; and</u>***

<u>(d) The utility shall not commence retirement or decommissioning of the electric generating unit until the replacement generating capacity meeting the requirements of paragraph (a) of this subsection is fully constructed, permitted, and in operation, unless the utility can demonstrate that it is necessary under the circumstances to commence retirement or decommissioning of the existing unit earlier</u>.

(3) The utility shall at a minimum provide the commission with evidence of all known direct and indirect costs of retiring the electric generating unit and demonstrate that

cost savings will result to customers as a result of the retirement of the electric generating unit.

(4) The commission shall prepare and submit an annual report to the Legislative Research Commission by December 1 of each year detailing:

(a) The number of requests by utilities to retire electric generating units in the Commonwealth, the nameplate capacity of each of those units, and whether the request was approved or denied by the commission;

(b) The impact of any commission-approved retirement of an electric generating unit on the:

1. Commonwealth's generation fuel mix;

2. Required capacity reserve margins for the utility;

3. Need for capacity additions or expansions at new or existing facilities as a result of the retirement; and

4. Need for additional purchase power or capacity reserve arrangements; and

(c) Whether the retirement resulted in stranded costs for the ratepayer that will be recovered by the utility through a surcharge or some other separate charge on the customer bill.

(5) As used in this section:

(a) "Dispatchable" means a source of electric power generation that is available on demand, that is not intermittent, and that can be adjusted to increase or decrease its power output upon request of a power grid operator or otherwise upon demand or request, or that can have its power output adjusted in response to market or system needs; and

(b) "Intermittent" means:

1. A source of electric power generation from a solar photovoltaic, solar thermal heating, concentrating solar thermal collector, or other solar

energy collection or generation system;

2. A source of electric power that generates energy by harnessing wind power or energy, whether through a turbine or other device;

3. Geothermal energy, biomass energy, anaerobic digestion, or combined heat and power from solar, wind, geothermal, or anaerobic digestion sources;

4. Any short duration energy storage, which includes any method of storing generated electricity for later dispatch to the grid, whether alone or in conjunction with any other intermittent sources described in this paragraph, that is equivalent to less than forty-eight (48) hours of the average peak generation of the unit it is used to offset; or

5. Conventional hydropower and pumped storage hydropower, unless they are capable of providing energy on demand, in which case they shall be deemed to be dispatchable.

➔Section 5. All initial appointments to the Energy Planning and Inventory Commission board and executive committee shall be made on or before July 1, 2024. The initial terms of appointments made by the Governor who are not executive branch officials shall be staggered as follows: seven members shall serve until the July 1, 2025, seven members shall serve until July 1, 2026, and the two gubernatorial appointments to the executive committee shall serve until July 1, 2027.

➔Section 6. Whereas the continued unabated retirement of needed generating resources threatens to harm employment, tax revenue, and utility rates, and is creating a crisis with respect to the Commonwealth's ability to meet current and projected future energy demands, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.