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**VIA OVERNIGHT DELIVERY**

March 30, 2017

Dr. Talina Rose Mathews  
Public Service Commission  
Commonwealth of Kentucky  
211 Sower Boulevard  
Frankfort, Kentucky 40602-0615

**RECEIVED**

MAR 31 2017

PUBLIC SERVICE  
COMMISSION

Re: Case No. 2017-00129  
In the Matter of: The Application of East Kentucky Power Cooperative, Inc. for a  
Declaratory Order Confirming the Effect of Kentucky Law and Commission Precedent on  
Retail Electric Customers' Participants in Wholesale Electric Markets

Dear Dr. Mathews

Enclosed please find and accept for filing the original and ten copies of the Motion to Intervene and  
Verified Response of Duke Energy Kentucky, Inc.

Please file-stamp the extra copy of this letter and return to me in the enclosed return-addressed  
envelope.

Sincerely,

Rocco D'Ascenzo  
Associate General Counsel

Enclosures

cc: Rebecca W. Goodman  
David S. Samford  
Mark R. Overstreet

**COMMONWEALTH OF KENTUCKY  
BEFORE THE  
PUBLIC SERVICE COMMISSION**

In the Matter of:

The Application of East Kentucky Power )  
Cooperative, Inc. for a Declaratory Order )  
Confirming the Effect of Kentucky Law ) Case No. 2017-00129  
and Commission Precedent on Retail )  
Electric Customers' Participation in )  
Wholesale Electric Markets )

**RECEIVED**

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PUBLIC SERVICE  
COMMISSION

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**MOTION TO INTERVENE AND VERIFIED RESPONSE  
OF  
DUKE ENERGY KENTUCKY, INC.**

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Comes now Duke Energy Kentucky, Inc. (Duke Energy Kentucky), by counsel, pursuant to KRS 278.010, 807 KAR 5:001 Section 4(11), 807 KAR 5:001 Section 19 and other applicable law, and hereby respectfully requests that the Kentucky Public Service Commission (Commission) grant the Company's intervention in this proceeding and accept for filing the below verified response as follows:

**I. INTRODUCTION AND MOTION TO INTERVENE**

1. Duke Energy Kentucky is an investor-owned utility engaged in the business of furnishing natural gas and electric services to various municipalities and unincorporated areas in Boone, Bracken, Campbell, Gallatin, Grant, Kenton, and Pendleton Counties in the Commonwealth of Kentucky.

2. Pursuant to 807 KAR 5:001, Section 14(2), Duke Energy Kentucky states that it was originally incorporated in the Commonwealth of Kentucky on March 20, 1901, and attests that it is currently in good standing in said Commonwealth.

3. Pursuant to 807 KAR 5:001, Section 14(1), Duke Energy Kentucky's business address is 139 East Fourth Street, Cincinnati, Ohio 45202. Duke Energy Kentucky's local office in Kentucky is Duke Energy Envision Center, 4580 Olympic Boulevard, Erlanger, Kentucky 41018, and its electronic mail address is [KYfilings@duke-energy.com](mailto:KYfilings@duke-energy.com).

4. Copies of all orders, pleadings and other communications related to this proceeding should be sent to:

Rocco O. D'Ascenzo  
Associate General Counsel  
Duke Energy Kentucky, Inc.  
139 E. 4<sup>th</sup> St., Cincinnati, OH 45202  
[Rocco.D'Ascenzo@duke-energy.com](mailto:Rocco.D'Ascenzo@duke-energy.com)  
[KYfilings@duke-energy.com](mailto:KYfilings@duke-energy.com)

5. 807 KAR 5:001, Section 4(11) permits a person to become a party to a case before the Commission upon timely Motion requesting intervention. The Motion must state the person's interest in the proceeding and how the 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.<sup>1</sup>

6. Duke Energy Kentucky respectfully submits that it has a unique interest in this proceeding that is not adequately represented and that its participation is likely to present issues and develop facts that will assist the Commission in fully considering the matter and will not unduly complicate or disrupt the proceeding. The Company's Motion to Intervene and Verified Response are timely filed pursuant to 807 KAR 5:001, Section 19(4), which provides in relevant part:

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<sup>1</sup> 807 KAR 5:001 Section 4.

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<sup>2</sup>.

East Kentucky Power Cooperative, Inc. filed its Application for a Declaratory Order on March 10, 2017, which pursuant to 807 KAR 5:001, Section 19(4) would make March 31, 2017 the deadline for filing of timely intervention and responses.

7. EKPC's Application for a Declaratory Order arises through East Kentucky Power Cooperative, Inc.'s (EKPC) request for certainty regarding whether retail electric customers within EKPC's service territory are barred from participating in PJM'S wholesale markets, either directly or indirectly through a third party, unless through a tariff or special contract approved by the Commission.<sup>3</sup>

8. Like EKPC, Duke Energy Kentucky is a member of PJM and its interests are directly affected by PJM's actions, which per EKPC's filing, indicates that Kentucky jurisdictional customers are directly or indirectly participating in PJM's Demand Response program in contravention of the Commission's prior directives. As a load serving entity (LSE) in PJM and a Kentucky jurisdictional utility, Duke Energy Kentucky's interests will be directly impacted by the Commission's consideration of EKPC's Application. Although Duke Energy Kentucky's interests may appear to be aligned with EKPC, they are in fact, wholly independent. The Commission's determination in this matter may have an even more significant impact on Duke Energy Kentucky and its ability to provide adequate service at a reasonable rate, that what EKPC

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

<sup>3</sup> EKPC Application at 2.

can otherwise claim. Duke Energy Kentucky is a fixed resource requirement (FRR) entity in PJM, which means Duke Energy Kentucky must supply all capacity, including reserves, to meet its load requirements outside of the PJM capacity auction process. As such, the Commission's determination in this matter could significantly impact Duke Energy Kentucky's ability to meet its FRR obligation in PJM.

9. Duke Energy Kentucky's interests are unique and its participation in this proceeding will not overly complicate or cause any disruption. The Company's status as an FRR entity should be considered by this Commission in its evaluation of Kentucky law and precedent as it relates to customer direct or indirect participation in the PJM Demand Response program outside of a utility special contract or Commission-approved tariffed offering by the utility.

## II. VERIFIED RESPONSE

10. The Commission's consideration of EKPC's Application has broad implications to the Commonwealth, far greater than just to EKPC and its members. Like EKPC, Duke Energy Kentucky is a member of PJM Interconnection LLC., (PJM) having received authorization to transfer the functional control over the Company's limited transmission system in Case No. 2010-00203 (Duke Integration Case).<sup>4</sup> The Commission, after considering all the evidence in Case No. 2010-00203, placed several conditions upon Duke Energy Kentucky, and PJM, in approving the Company's integration. Most relevant to this proceeding was the Commission's finding that "No customer should be allowed to participate directly or through a third party in any PJM demand-response

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<sup>4</sup> *In the Matter of the Application of Duke Energy Kentucky, Inc., for Approval to Transfer Functional Control of its Transmission Assets from the Midwest Independent System Operator to the PJM Interconnection Regional Transmission Organization and Request for Expedited Treatment*, (Ky. P.S.C. December 22, 2010).

program until that customer has entered into a special contract with Duke Energy which has been filed with, and approved by, the Commission or until Duke Kentucky has an approved tariff authorizing customer participation.”<sup>5</sup>

11. EKPC became a member of PJM in 2013, two years after Duke Energy Kentucky, and following approval by this Commission in Case No. 2012-00169 (EKPC Integration Case).<sup>6</sup> Similar to its Order in the Duke Integration Case, the Commission’s Order in the EKPC Integration Case directed that “[a]ny customer on the EKPC system that seeks to participate directly or through a third party in the PJM Demand Response program shall do so under the terms of an EKPC special contract or tariff that has been approved by the Commission.” As such, Duke Energy Kentucky is operating under a very similar directive as EKPC with respect to the ability of a customer’s direct or indirect participation in PJM’s demand response programs. The Commission’s consideration in this proceeding of the scope of its jurisdiction and its prior Orders with respect to customer direct or indirect in PJM Demand Response programs will have a direct impact on Duke Energy Kentucky as well.

12. Although Duke Energy Kentucky is very closely aligned with EKPC’s position in this matter, its interests are not identical. In accordance with the Commission’s Order in the Duke Integration Case, the Company is required to operate as a fixed resource requirement (FRR) entity in PJM, as opposed to full participation in the PJM Base Residual Auction (BRA) and Incremental Auction constructs (collectively Capacity Auctions).

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<sup>5</sup> *Id.* at 18.

<sup>6</sup> *In the Matter of the Application of East Kentucky Power Cooperative, Inc. to transfer functional Control of Certain Transmission Facilities to PJM Interconnection, LLC.* Case No. 2012-00169 Ky. P.S.C. December 20, 2012.

13. The FRR process is an alternative means for a PJM load serving entity (LSE) such as Duke Energy Kentucky to satisfy its customer capacity obligation under the PJM Reliability Assurance Agreement (RAA). Under the FRR construct, an LSE must annually submit a preliminary three year forward, and a final current year FRR capacity plan that meets a PJM defined customer capacity obligation (FRR Plan). The FRR Plan must identify the unit-specific generating *and/or demand response resources*<sup>7</sup> that will be providing the MWs of capacity that will fulfill the LSE's customer obligation. The FRR process allows the LSE (*i.e.* Duke Energy Kentucky) to match its customer reliability requirement to its own generation, demand response, energy efficiency and/or transmission resources, while still being permitted to sell some or all of its excess supply into RPM. Duke Energy Kentucky would face severe penalties and limitations on its ability to choose the FRR option if PJM were to deem either its initial or final FRR plans to be insufficient or it's generation otherwise non-compliant with PJM requirements.

14. Duke Energy Kentucky annually submits both a preliminary and a final FRR Plan to PJM for its review and approval. Duke Energy Kentucky must secure and commit unit-specific generation resources to meet the peak load capacity requirements for all of its customers in advance of the PJM annual auction through its FRR Plan. Presently, the load requirements include both the forecasted load of Duke Energy Kentucky's customers, as well as the reserve requirement for that load mandated by PJM. As the FRR plan timeline follows the RPM auction timeline, the Company will soon have to submit its initial FRR Plan for the delivery period spanning June 1, 2020 through May 31, 2021, and its final FRR plan for the delivery period spanning June 1, 2017 through May 31, 2018.

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<sup>7</sup> Emphasis added

15. Duke Energy Kentucky regularly includes customer demand response as part of its FRR plan as the utility offers its own demand response programs for residential and non-residential customers as part of its portfolio of demand side management/energy efficiency programs authorized by this Commission. For the Company's current FRR plan for the delivery year (DY) ending May 31, 2017, the Company has included 27.5 Megawatts (MW) of customer demand response as part of the Duke Energy Kentucky FRR Plan. The Company is relying upon customer demand response for its future FRR Plan compliance as follows:

- a. DY June 1, 2017 through May 31, 2018 = 30.8 MWs
- b. DY June 1, 2018 through May 31, 2019 = 30.7 MWs
- c. DY June 1, 2019 through May 31, 2020 = 15 MWs

16. Duke Energy Kentucky currently offers its retail customers four demand response programs (two residential, two non-residential) that are approved by the Commission as part of the Company's demand side management (DSM) portfolio. The Company's Power Share (non-residential) and Power Manager (residential) programs have been in place for many years and are offered through Commission-approved tariffs. Recently, in Case No. 2016-00289, two additional demand response programs were added, Power Manager for Apartments, and Power Manager for small business. These programs offer convenient and cost effective opportunities for customers to avail themselves of demand response. Duke Energy Kentucky is able to use the kilowatts (kW) on an accumulated basis as total MWs of demand response to help satisfy its FRR plan.

17. The Company's access to customer demand response is a key part of its strategy to meet the FRR Plan obligations, and must be upheld. Duke Energy Kentucky

designs and implements its customer demand response programs in conjunction with its Integrated Resource Plan, and as part of a long term least cost solution strategy. If customers are allowed to pursue short term capacity market prices that reflect short term PJM needs, the long term Duke Energy Kentucky planning process is compromised, potentially driving sub optimal short term resource decisions. While individual customers may benefit in the short term from chasing higher prices, the long term broader impact on customers of allowing this activity is negative. If Duke Energy Kentucky's customers were permitted to bypass the Company's programs and participate directly with PJM's demand response programs, the Duke Energy Kentucky FRR Plan would lose access to resources and could be harmed. Duke Energy Kentucky would be forced to meet its FRR obligations in other ways, either through providing additional MWs from the Company's owned generating assets, thereby reducing reserves, through bilateral purchases of unit specific capacity, or potentially even through new generation build. As an FRR entity, the Company is forbidden under PJM rules to use capacity that has been already been bid into and cleared through the PJM Auctions to meet its FRR plan. Similarly, the Company cannot use MWs of capacity that have been identified as necessary and included within the FRR plan and bid those MWs into the PJM Auctions. In each case, the capacity is otherwise committed.

18. Even if Duke Energy Kentucky were to one day leave its FRR status and become a full PJM Auction participant like EKPC, (with Commission authorization), the need to rely on access to all customer demand response in the DEK load zone will remain important to the Company to satisfy its load obligations.

19. As such, the Commission should continue to follow its existing and prior decisions regarding direct or indirect customer participation in PJM Demand Response programs, limiting such instances to tariffed offerings and Commission-approved special contracts only.

WHEREFORE, Duke Energy Kentucky respectfully requests that the Commission:

- 1) Grant the Company's requested intervention in this proceeding and accept for filing its response included herein.
- 2) Issue a declaration that under Kentucky law and Commission precedent, retail electric customers, via demand response or energy efficiency, cannot participate directly, or indirectly through a third party, in any PJM wholesale market unless through a special contract or jurisdictional utility tariff approved by the Commission.
- 3) Require that PJM abide by its agreement in Case No. 2010-00203 and to closely monitor its market to prevent such a violation.
- 4) Grant any other relief to which the Company may be entitled.

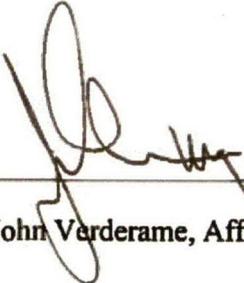
VERIFICATION

STATE OF NORTH CAROLINA )

) SS:

COUNTY OF MECKLENBURG )

The undersigned, John Verderame, Managing Director of Power Trading & Dispatch, being duly sworn, deposes and says that he has personal knowledge of the matters set forth in the foregoing testimony and that it is true and correct to the best of his knowledge, information and belief.

  
\_\_\_\_\_  
John Verderame, Affiant

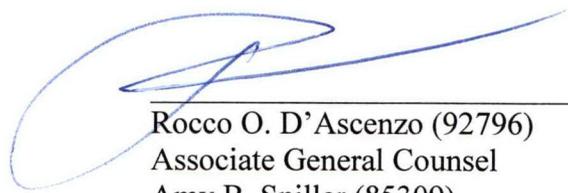
Subscribed and sworn to before me by John Verderame on this 30<sup>th</sup> day of March, 2017.

Patricia W. Townsend  
NOTARY PUBLIC



My Commission Expires: June 24, 2019

Respectfully Submitted,



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Rocco O. D'Ascenzo (92796)  
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Amy B. Spiller (85309)  
Deputy General Counsel  
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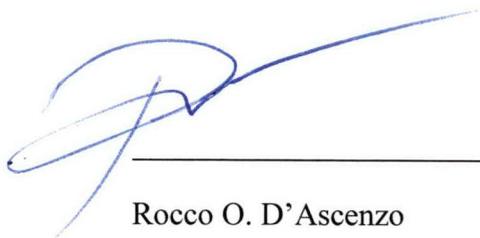
**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing Application of Duke Energy Kentucky, Inc. has been served via overnight mail to the following party on this 30<sup>th</sup> day of March, 2017.

Rebecca W. Goodman  
Executive Director  
The Office of the Attorney General  
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Rocco O. D'Ascenzo