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VIA HAND DELIVERY

October 28, 2010

Mr. Jeff Derouen
Executive Director
Kentucky Public Service Commission
211 Sower Blvd
Frankfort, KY 40601

RECEIVED

OCT 28 2010

PUBLIC SERVICE
COMMISSION

Re: Case No. 2010-00203

Dear Mr. Derouen:

Enclosed please find an original and twelve copies of Duke Energy Kentucky Inc.'s Public response to *Midwest ISO's Second Set of Supplemental Clarifying Data Requests* and Petition for Confidential Treatment in the above captioned case. Also enclosed in the white envelope is one set of the confidential response to MISO-DR-02-007(c) and (d) being filed under seal.

Please date-stamp the two copies of the letter, the Data Requests and the Petition and return to me in the enclosed envelope.

Very truly yours,

Kristen Cocanougher

cc: Parties of Record (via electronic mail)

VERIFICATION

State of Ohio)
)
County of Hamilton)

The undersigned, William Don Wathen Jr., being duly sworn, deposes and says that I am employed by the Duke Energy Corporation affiliated companies as General Manager Duke Energy & Vice President Rates-Ohio & Kentucky; that on behalf of Duke Energy Kentucky, Inc., I have supervised the preparation of the supplemental responses to the foregoing information requests; and that the matters set forth in the foregoing response to information requests are true and accurate to the best of my knowledge, information and belief after reasonable inquiry.



William Don Wathen Jr., Affiant

Subscribed and sworn to before me by William Don Wathen, Jr. on this 27th
day of October 2010.



NOTARY PUBLIC

My Commission Expires:



ANITA M. SCHAFER
Notary Public, State of Ohio
My Commission Expires
November 4, 2014

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Duke Energy Kentucky
Case No. 2010-00203
MISO Second Set Supplemental Clarifying Response Data Request
Date Received: October 21, 2010

MISO-SUPP-DR-02-001 (c)(iii)

REQUEST:

Midwest ISO DR-02-001(c)(iii):¹

(c)With respect to the “capacity sales” for which data is given in the MISO-DR-01-012(d) attachment (2009 Q3 – 2010 Q2)

(iii) Show the derivation (and provide all workpapers) of the capacity sales “profit” to be included in the Rider PSM calculation, including gross revenues and each deduction therefrom.

Original Response:

There are immaterial costs associated with the sale of capacity. The amounts provided on attachment MISO-DR-02-001(c)(2) in the total column were the amounts included in the Rider PSM calculation.

Clarifying Supplemental Response:

There are no costs included in the Rider PSM calculation related capacity sales profit. The actual transaction costs associated with such sales (e.g., broker fees) are negligible and have not been deducted from the gross proceeds. There are no workpapers other than what was provided.

PERSON RESPONSIBLE: William Don Wathen Jr.

¹ Duke Response to Midwest ISO DR-02-001(c)(3)

Duke Energy Kentucky
Case No. 2010-00203

MISO Second Set Supplemental Clarifying Response Data Request
Date Received: October 21, 2010

MISO-SUPP-DR-02-002 (a)

REQUEST:

Midwest ISO DR-02-002(a)¹

In the MISO-DR-01-012(a) attachment, DEK provides the Rider PSM pages from its tariff ("Rider PSM Tariff"), KY.P.S.C. Electric No. 2, 14th Rev'd Sheet No. 82, issued 4/30/10 and effective 6/2/10.

- a. How are negative profits (as reflected, for example, in the 3rd quarter 2006) treated in calculating "P" for the Rider PSM Factor?

Original Response:

Negative profits can be included in calculating "P" for Rider PSM as long as the calendar year shows a net profit.

Clarifying Supplemental Response:

As agreed at the technical conference, there is no further information to be provided.

PERSON RESPONSIBLE: William Don Wathen Jr.

¹ Duke Response to Midwest ISO DR-02-002(a)

Duke Energy Kentucky
Case No. 2010-00203

MISO Second Set Supplemental Clarifying Response Data Request
Date Received: October 21, 2010

MISO-SUPP-DR-02-002 (b)(i)

REQUEST:

Midwest ISO DR-02-002(b)(i)³

- a. The Commission found that the “sharing” of off-system sales profits in the Rider PSM was reasonable and acceptable in the circumstances, in its 12/5/03 Order pp. 19-20, Case No. 2003-00252.
 - (i) What is the revenue requirement impact of the profit-sharing arrangement (*see id.* p.20 n.34)?

RESPONSE:

Original Response:

The revenue requirement impact to customers is equal to the credits flowed through via Rider PSM as reflected in response to MISO-DR-01-012.

Clarifying/ Supplemental Response:

There is no impact to the Company's base revenue requirement. To the extent there are profits to share via Rider PSM, customers receive a credit under the terms of Rider PSM which effectively lowers their total bill (i.e., reduces the net revenues collected from customers).

PERSON RESPONSIBLE: William Don Wathen Jr.

³ Duke Response to Midwest ISO DR-002(b)

Duke Energy Kentucky
Case No. 2010-00203
MISO Second Set Supplemental Clarifying Response Data Request
Date Received: October 21, 2010

MISO-DR-02-002 (b)(iii)

REQUEST:

Midwest ISO DR-02-002(b)(iii)¹

Does DEK take the position that the Rider PSM applies to any off-system sales other than from the facilities transferred in the transactions considered in Case No. 2003-00252? If so, explain.

Original Response:

This Document Request calls for speculation. Duke Energy Kentucky does not own any other generating facilities.

Clarifying Supplemental Response:

Duke Energy Kentucky takes no position on the matter at this time. The process to expand Rider PSM in any way would require an application before the Commission. Currently all generating facilities owned by Duke Energy Kentucky are included in the Rider PSM. Per the Commission's order in Case No. 2003-00252, Duke Energy Kentucky would have to file an application to amend the Rider PSM in order to include any future facilities. Moreover, Duke Energy Kentucky also must seek Commission approval to expand Rider PSM to include possible future market opportunities as they develop, even for existing facilities. For example, Duke Energy Kentucky recently filed its application to amend the Rider PSM in order to include a sharing of Midwest ISO ancillary services profits, which was approved by the Commission in Case No. 2008-00489.

PERSON RESPONSIBLE: William Don Wathen Jr.

⁴ Duke Response to Midwest ISO DR-02-002(d)

Duke Energy Kentucky
Case No. 2010-00203

MISO Second Set Supplemental Clarifying Response Data Request
Date Received: October 21, 2010

MISO-SUPP-DR-02-002(d)(i)

REQUEST:

Midwest ISO DR-02-002(d)(i)⁵

In Case No. 2008-00489, DEK sought and obtained approval to modify Rider PSM to include as an “eligible profit” the net revenues related to its provision of ancillary services in the Midwest ISO Ancillary Services Market (ASM). *See* 1/30/09 Order.

Confirm that, as part of its request and the resulting calculations under Rider PSM, DEK agreed to absorb any net costs (when costs exceed revenues for ancillary market transactions in any given month) and hold ratepayers harmless.

Original Response:

Objection. The content of the Order referenced in this Document Request speaks for itself. Without waiving said objection, Duke Energy Kentucky made no explicit agreement to absorb incremental costs related to its participation in the ancillary services market.

Supplemental/ Clarifying Response:

In reviewing the files for Case No. 2008-00489, the Company’s application proposed “that to the extent the sum of the revenues from providing ancillary services for a month exceeds the cost of purchasing ancillary services for load for the same month, the net margin will be flowed through Rider PSM to the Company’s customers as an eligible profit. To the extent that the total costs of purchasing ASM services for load for a month equals or exceeds the revenues from providing the ancillary services for the same month, Duke Energy Kentucky will not flow this difference through the Rider PSM, but instead will absorb the loss and hold its customers harmless.”

In reviewing the prior ASM quarterly filings, it was discovered that the formula was applied incorrectly and negative amounts in certain months of 2009 were included in the Rider PSM. In the Company’s next quarterly Rider PSM filing, the amount to be

⁵ Duke Response Midwest ISO DR-02-002(h)

credited back to customers will be adjusted to include the total value of monthly ASM margins. The total amount of this adjustment is \$85,905. A summary of the net monthly ASM margins is shown in the Attachment.

PERSON RESPONSIBLE: William Don Wathen Jr.

Duke Energy Kentucky
PSM Filing
Net Ancillary Service Market

| Originally Filed | | Annual Netting | Monthly Netting | |
|-------------------|--------------------------|-------------------------------|-------------------------------|---------------------------|
| Per Tariff Filing | | Net Ancillary Services Market | Net Ancillary Services Market | Adjustment ^(b) |
| Jan-09 | TFS2010-00046 Schedule 5 | 4,292 | 4,292 | 0 |
| Feb-09 | TFS2010-00046 Schedule 5 | 28,906 | 28,906 | 0 |
| Mar-09 | TFS2010-00046 Schedule 5 | (3,272) | 0 | 3,272 |
| Apr-09 | TFS2010-00046 Schedule 5 | 9,499 | 9,499 | 0 |
| May-09 | TFS2010-00046 Schedule 5 | 82,473 | 82,473 | 0 |
| Jun-09 | TFS2010-00046 Schedule 5 | 52,733 | 52,733 | 0 |
| Jul-09 | TFS2010-00046 Schedule 5 | (25,190) | 0 | 25,190 |
| Aug-09 | TFS2010-00046 Schedule 5 | (10,324) | 0 | 10,324 |
| Sep-09 | | (10,234) (a) | 0 | 10,234 |
| Oct-09 | | (22,943) (a) | 0 | 22,943 |
| Nov-09 | | (13,942) (a) | 0 | 13,942 |
| Dec-09 | | 78,606 (a) | 78,606 | 0 |
| | TFS2010-00417 Schedule 3 | 170,604 | 256,509 | 85,905 |

(a) Monthly amounts differ from the TFS2010-00046 due to MISO restatements.

(b) Adjustment will be made in the October 2010 PSM filing to be effective in December Revenue Month.

| Per Tariff Filing | | Net Ancillary Services Market |
|-------------------|--------------------------|-------------------------------|
| Jan-10 | | 40,834 |
| Feb-10 | | 50,082 |
| Mar-10 | | 30,432 |
| Apr-10 | | 96,935 |
| May-10 | | 76,074 |
| Jun-10 | | 94,441 |
| | TFS2010-00417 Schedule 5 | 388,799 |

Duke Energy Kentucky
Case No. 2010-00203
MISO Second Set Supplemental Clarifying Response Data Request
Date Received: October 21, 2010

MISO-DR-02-003 (a)(iii)

REQUEST:

Midwest ISO DR-02-003(a)(iii)¹

(a) The support documentation lists categories of “Off-System Sales Revenue” other than the three components listed on the MISO-DR-01-012(d) attachment, namely: Bilateral Sales; Hedges; and MISO RSG Make Whole Payments. *See, e.g.,* TFS2010-00417, filed 7/23/10, Duke Energy Support.pdf, Sch.2 lines 4-6. As to each of these three identified categories:

(iii) State whether a negative value has ever occurred in a given month and, if so, how that occurred and whether that negative value reduces the overall “Off-System Sales Margin” (*see, e.g., id.* line 18).

Original Response:

There have been occasions when the net result for the month is negative and it will reduce the net margin to be flowed through the Rider PSM for the year. However, Rider PSM cannot be below \$0 for the year. Among other things, losses can occur as a result of how costs are allocated between native and non-native in the fuel adjustment clause (i.e., stacking); from hedges depending on market conditions; from uneconomic dispatch when units are run out of the money to avoid the cost of shut-down and start-up; and from general dispatch methodology.

Supplemental/ Clarifying Response:

If Midwest ISO was intending to ask for specific months in the July 23, 2010 filing that had a negative value, there were none. There have been no negative months in 2010.

¹ Duke Response Midwest ISO DR-02-003(c)

The primary reason for negative number is the difference between the way units are stacked for after-the-fact costing and the way units are actually dispatched. Native load is assigned the lowest cost generation and economy purchased power first and any remaining generation and purchased power taken in a given hour is assigned the higher cost. However, units are dispatched in the day-ahead and real-time markets based on the merits of each individual plant independent of native load obligations. In aggregate, sales to native and non-native should always produce a margin greater than \$0 but in the allocation process for the fuel adjustment clause filings, off-system sales can produce losses. Other factors were identified in the original response.

PERSON RESPONSIBLE: William Don Wathen Jr.

Duke Energy Kentucky
Case No. 2010-00203

MISO Second Set Supplemental Clarifying Response Data Request
Date Received: October 21, 2010

MISO-SUPP-DR-02-003 (b)

REQUEST:

Midwest ISO DR-02-003(b)¹

(b.) There are also “Capacity” revenues listed in the support documentation. *See, e.g.,* TFS2010-00417, filed 7/23/10, Duke Energy Support.pdf, Sch.2 line 7.

1. Describe what revenues are included in that category.
2. Are the amounts listed for “Capacity” gross or net? If net, what has been excluded? Describe any related costs that are included in the “Variable Costs Allocable to Off-System Sales” (*see, e.g., id.* lines 10-17).

Original Response:

See response to MISO-DR-02-001(c).

Supplemental/ Clarifying Response:

1. Each transaction that resulted in capacity revenue flowing through Rider PSM was identified in response to MISO-DR-02-001(c).
2. The capacity revenue shown for each transaction identified in response to MISO-DR-02-001(c), is gross revenue. Duke Energy Kentucky recorded brokerage fees of \$93 associated with Cargill sale and \$744 associated with the Sempra sale. No brokerage fees were recorded for the other capacity sales shown in MSIO-DR-02-001(c).

PERSON RESPONSIBLE: William Don Wathen Jr.

¹ Duke Response Midwest ISO DR-02-003(d)(i) and (ii)

Duke Energy Kentucky
Case No. 2010-00203
MISO Second Set Supplemental Clarifying Response Data Request
Date Received: October 21, 2010

MISO-SUPP-DR-02-003 (c)(i)

REQUEST:

Midwest ISO DR-02-003(c)(i)¹

(c)The support documentation lists “MISO and Other Costs” as a category of “Variable Costs Allocable to Off-System Sales.” *See, e.g.*, TFS2010-00417, filed 7/23/10, Duke Energy Support.pdf, Sch.2 line 14.

- (i) What are “Other Costs”? Are there any “Other Costs” associated with Bilateral Sales?

Original Response:

The MISO and other cost line in the filing only include MISO costs.

Supplemental/ Clarifying Response:

As discussed at the technical conference, there is no further information to provide. There are no “other costs” associated with Bilateral Sales, only MISO costs. It is just a line item name.

PERSON RESPONSIBLE: William Don Wathen Jr.

¹ Duke Response Midwest ISO DR-02-003(e)

Duke Energy Kentucky
Case No. 2010-00203

MISO Second Set Supplemental Clarifying Response Data Request
Date Received: October 21, 2010

MISO-SUPP-DR-02-004 (c)

REQUEST:

Midwest ISO DR-02-004(c)⁹

In its participation within PJM, has a Duke Energy entity taken a position on the issues raised by the IMM's recommendations in the 7/14/10 *Analysis*? If so, state each vote or other position taken, by which Duke Energy entity (or entities), and the date (or time period).

Original Response:

Objection. This question is vague and overly broad. Without waiving said objection, assuming that this refers to the July 14, 2010 IMM Report on the 2013/2014 RPM BRA results, See **MISO-DR-01-006**. There was no vote on the IMM Analysis.

Clarifying/ Supplemental Response:

Duke Energy entities already in PJM have not taken any positions on the issues raised by the IMM recommendations in the 7/14/10 analysis. There was no vote taken on the IMM report or the IMM issues in general. Referring specifically to the issues identified by MIDWEST ISO in its DR-01-006:

Duke is supportive of the IMM recommendation to eliminate the 2.5% demand adjustment, but has not advocated to eliminate it. In its MOTION FOR LEAVE TO ANSWER AND ANSWER OF DUKE ENERGY OHIO, INC. in ER09-412 Duke stated that –

“we also oppose protests seeking to increase the “holdback” in PJM's proposal from 2.5% of the reliability requirement in the initial capacity auction to some even greater percentage. The purpose of the holdback is to provide additional incentives for future, unspecified short-term resources in subsequent incremental auctions. But it also unduly discriminates in favor of short-term resources and automatically suppresses prices in the base residual auction. For these reasons, Duke Energy opposed PJM's proposal. Now certain protesters seek to increase the “holdback” from 2.5% of demand in the base residual auction to some larger percentage (up to 10%), which would of course be even worse for the markets. PJM's proposal should be rejected, as should these proposals to

⁹ Duke Response Midwest ISO DR-02-004(c)

increase the holdback. Other, far less-invasive changes could ease the participation of short-term resources, if necessary, without automatically suppressing capacity prices.”

With regard to Demand Response resources, Duke Energy entities in PJM have taken no public positions.

With regard to ACR adjustments, Duke Energy entities in PJM have taken no public position. Prior to the 2013/2014 RPM Base Residual Auction, the IMM presented a proposal to change the PJM OATT to reflect the Handy Whitman adjustment. The proposal had little to no support from the PJM membership. Duke Energy entities in PJM neither supported or opposed the proposal.

PERSON RESPONSIBLE: Kenneth Jennings

Duke Energy Kentucky
Case No. 2010-00203
MISO Second Set Supplemental Clarifying Response Data Request
Date Received: October 21, 2010

MISO-SUPP-DR-02-005

REQUEST:

Midwest ISO DR-02-005:

As agreed at the technical conference, Duke Energy Kentucky has fully responded to this data request.

PERSON RESPONSIBLE: N/A

Duke Energy Kentucky
Case No. 2010-00203

MISO Second Set Supplemental Clarifying Response Data Request
Date Received: October 21, 2010

MISO-SUPP-DR-02-006(a)

REQUEST:

Midwest ISO DR-02-006(a)¹⁰

DEK describes in STAFF DR-01-004(e) the basis (daily; not one lump sum) on which it would be assessed RTEPP costs. Provide the information requested as to:

1. an estimate of the number of years that payments will be made for the RTEPP costs of projects currently underway; and

Original Response:

Assuming that the grid will always require upgrades and modifications, Duke Energy Kentucky will make payments for transmission expansion as long as they are a member of PJM. The significant difference is that PJM does not require exiting members to continue the payments going forward. PJM permits transmission expansion payments to terminate upon exiting, unlike with MISO where the payments will continue.

Supplemental/ Clarifying Response:

Duke Energy Kentucky has not performed a project by project analysis of existing RTEPP projects to determine how long those costs are being paid for by PJM members. To the extent the question refers to Duke Energy Kentucky's commitment made in this proceeding not to seek double recovery of MTEP or RTEPP for overlapping periods, Duke Energy Kentucky submits that it will address this issue at the time it files its next electric rate case and once it knows the MTEP obligation including terms of the obligation upon withdrawal from Midwest ISO.

PERSON RESPONSIBLE: Ron Snead, G. R. Burner

¹⁰ Duke Response to Midwest ISO DR-02-006(a)

Duke Energy Kentucky
Case No. 2010-00203

MISO Second Set Supplemental Clarifying Response Data Request
Date Received: October 21, 2010

MISO-SUPP-DR-02-012(b)(ii)(iii)

REQUEST:

Midwest ISO DR-02-012(b)(ii) and (iii)¹

Is it optional for East Bend to now be “in” both PJM and the Midwest ISO, or is it required?

- (i) How does that option or requirement change (if at all) if Duke Energy Ohio realigns with PJM? Explain.
- (ii) How does that option or requirement change (if at all) if DEK realigns with PJM? Explain

Original Response:

- (ii) The realignment of Duke Energy Ohio and Duke Energy Kentucky to PJM will result in East Bend Unit 2 being modeled as directly connected to PJM.
- (iii) See response to b(ii).

Supplemental/ Clarifying Response:

- (ii): If Duke Energy Ohio only realigns without Duke Energy Kentucky, then East Bend would be modeled as connected to the PJM transmission system. Duke Energy Kentucky’s portion of East Bend would likely be pseudo-tied back to the MISO.
- (iii) If both Duke Energy Ohio and Duke Energy Kentucky realign, then Duke Energy Kentucky’s share of East Bend becomes a PJM unit attached to PJM transmission. A pseudo-tie would not be required.

PERSON RESPONSIBLE: Ron Snead

¹ Duke Response Midwest ISO DR-02-12(b)(ii)

Duke Energy Kentucky
Case No. 2010-00203
MISO Second Set Supplemental Clarifying Response Data Request
Date Received: October 21, 2010

Regarding MISO-SUPP-DR-02-007 (c)

REQUEST:

Midwest ISO DR-02-007 (c)

Referring to Duke Energy Kentucky's 3 page financial analysis filed under seal in response to Midwest ISO DR-02-007(c):

1. Are there any work papers supporting the calculations and assumptions contained in the analysis? If yes please provide.
2. Provide an explanation of assumptions, calculation, and origin of numbers used in the analysis.
3. When was analysis performed?

Clarifying Supplemental Response:

SUBMITTED UNDERSEAL

PERSON RESPONSIBLE: G.R. Burner

Duke Energy Kentucky
Case No. 2010-00203

MISO Second Set Supplemental Clarifying Response Data Request
Date Received: October 27, 2010

Regarding MISO-SUPP-DR-02-007 (d)

REQUEST:

Midwest ISO DR-02-007 (d)

In its responses to the Midwest ISO and Commission Staff data requests, DEK (a) claims that it is DEK's choice or "business decision" to realign with PJM, *see, e.g.*, MISO-DR-01-020, -021; and (b) states that it "believes" or "anticipates" that moving to PJM (relative to remaining in the Midwest ISO) will or has the potential to be beneficial, *see, e.g.*, MISO-DR-01-013(a), STAFF-DR-01-009; but (c) has not performed various analyses or made determinations about the risks, costs, or other effects of that move, *see, e.g.*, MISO-DR-01-013(b), STAFF-DR-01-010.

1. Other than those provided in subparts (b) and (c), provide all written or documented analyses that consider DEK's realigning with PJM, not realigning if Duke Energy Ohio realigns, or the effects of either action — even if the analysis is not specific to DEK.

Clarifying Supplemental Response:

SUBMITTED UNDER SEAL

PERSON RESPONSIBLE: N/A

**BEFORE THE
KENTUCKY PUBLIC SERVICE COMMISSION**

In The Matter of:

| | | |
|---|---|-------------------|
| Duke Energy Kentucky, Inc.'s Application for Approval |) | Case No. 2010-203 |
| To Transfer Functional Control of its Transmission Assets |) | |
| From the Midwest Independent Transmission System |) | |
| Operator to the PJM Interconnection Regional Transmission |) | |
| Organization And Request for Expedited Treatment |) | |

**PETITION OF DUKE ENERGY KENTUCKY, INC.
FOR CONFIDENTIAL TREATMENT OF INFORMATION CONTAINED IN
ITS SUPPLEMENTAL RESPONSE TO MIDWEST ISO'S SECOND SET OF
DATA REQUESTS**

Duke Energy Kentucky, Inc. (Duke Energy Kentucky or Company), pursuant to 807 KAR 5:001, Section 7, respectfully requests the Commission to classify and protect certain information provided by Duke Energy Kentucky in its supplemental response to Midwest ISO's DR-02-007(c) and (d). These requests ask:

(c) Other than those provided in subpart (b), provide all written or documented analyses by or on behalf of DEK about realigning with PJM Interconnection, LLC (PJM), not realigning if Duke Energy Ohio realigns, or the effects of either action; [and]

(d) Other than those provided in subparts (b) and (c), provide all written or documented analyses that consider DEK's realigning with PJM, not realigning if Duke Energy Ohio realigns, or the effects of either action—even if the analysis is not specific to DEK.

In the Company's supplemental response to part (c), Duke Energy Kentucky provided an analysis that compared the Company's forecast of the impacts of realigning with PJM, including assumptions regarding the energy and capacity prices in both Midwest ISO and PJM (the Kentucky Analysis). The Kentucky Analysis was marked

confidential and filed with the Commission along with a Motion for Confidential Treatment. The confidential Kentucky Analysis was used by Duke Energy Kentucky in evaluating the decision to realign RTO membership.

In its initial response to part (d), Duke Energy Kentucky objected to this discovery request for reasons of vagueness, over breadth, relevancy, and that the request is: (1) not likely to lead to discovery of admissible evidence; (2) confidential and proprietary trade secret information; and (3) seeking information protected by attorney client privilege and work product doctrine.

On October 13, 2010, Midwest ISO filed a Motion to Compel Discovery. Duke Energy Kentucky filed its Response on October 21, 2010. On Thursday, October 21, 2010, the Commission held a technical conference for the above-styled proceeding. At that technical conference, the Parties and the Commission staff discussed Midwest ISO's pending Motion to Compel. Midwest ISO provided further explanation regarding what it was intending with several of its data requests. Duke Energy Kentucky agreed, based upon Midwest ISO's clarification, to supplement and/or clarify specific responses. With respect to Midwest ISO's generic request for "analysis," however, Duke Energy Kentucky continues its objections based upon relevance and privilege. And Duke Energy Kentucky thus objects to the production of analysis performed by other Duke Energy Entities and that was not relied upon by Duke Energy Kentucky in making its decision to realign its own RTO membership.

Duke Energy Kentucky maintains its position that any analysis, document, or discussion regarding another Duke Energy Entity's business decision is well beyond the scope of discovery in this proceeding. Such information is undeniably non-jurisdictional,

commercially sensitive, likely to cause financial harm if disclosed, irrelevant, and proprietary to such other companies, especially considering that such information was not relied upon or considered by Duke Energy Kentucky as part of its own decision to realign. Disclosure of such non-jurisdictional and confidential information is financially harmful to those non-jurisdictional entities, particularly those that operate in competitive retail electric jurisdictions. The non-Kentucky jurisdictional information includes legal strategy, financial analysis and key business drivers for decisions of other Duke Energy Entities to realign RTO membership or not realign RTO membership. Midwest ISO has not demonstrated a need for such non-jurisdictional information, nor has it articulated why such information would be relevant to this proceeding. Furthermore, the Midwest ISO has not demonstrated how it can compel disclosure from this Commission of proprietary information from entities not before this Commission and that hold the privileges applicable to that information. Therefore, the Company should not and will not provide it. Duke Energy Kentucky's realignment is the only issue before the Commission. And Duke Energy Kentucky conducted its own evaluation and business decision. The Company is providing the non-privileged information, responsive to the Midwest ISO's requests, that concerns its business decision.

Expressly reserving all objections and in the spirit of cooperation in discovery, the Company is providing a document prepared by and with assistance of counsel.¹ This document, in relevant part, summarizes Duke Energy Kentucky's analysis and decision to realign that was already provided in this proceeding. This document includes both proprietary and non-proprietary information for the other Duke Energy Entities. And as

¹ Attached to Supplemental Discovery Response Labeled as Confidential Attachment #2 to Midwest ISO DR 2-007(d).

the document contains information that Duke Energy Kentucky maintains is protected from disclosure, Duke Energy Kentucky has redacted portions of the document as further described herein.

This redacted document was a presentation made to Duke Energy Corporation's executive management to summarize the Duke Energy entities positions on RTO membership that was prepared by counsel. Accordingly, Duke Energy Kentucky has redacted information pertaining to its realignment decision that reflects privileged communication or attorney work product. Those redactions notwithstanding, Duke Energy Kentucky willingly provides the limited Kentucky-specific portions of this document (that do not otherwise contain discrete legal analysis, advice or work product) in response to Midwest ISO's Discovery request. The Kentucky-specific sections explain Duke Energy Kentucky's business decision to realign RTO membership (that is not otherwise protected by the attorney-client privilege and work product doctrine) and contains summaries of the Kentucky analysis and Kentucky considerations, including financial assumptions, supporting its realignment decision that have already been provided in this case.

The redacted portion of this document, which the Company is not providing, also includes sensitive and proprietary analysis and legal strategy specific to Duke Energy Ohio and Duke Energy Indiana, other Duke Energy Entities not before this Commission and that are not relevant to this proceeding. The redacted information that is not being provided has nothing to do with Duke Energy Kentucky and is not responsive to Midwest ISO's Motion to Compel because it:

- was not prepared by or on behalf of Duke Energy Kentucky;

- did not affect Duke Energy Kentucky's decision to realign;
- was not reviewed or considered by Duke Energy Kentucky in the course of making its decision;
- does not relate (in whole or in part) to the decision regarding Duke Energy Kentucky or to the effects on Duke Energy Kentucky of realignment or its alternatives; and
- was not considered or relied upon (by someone other than Duke Energy Kentucky's counsel) in preparing Duke Energy Kentucky's application, testimony, or data responses filed in this proceeding.

With this submission, Duke Energy Kentucky has fully complied with Midwest ISO's discovery requests as well as Midwest ISO's Motion to Compel and there is nothing more for this Commission to decide. Duke Energy Kentucky seeks confidential protection of this redacted document (as well as those documents described below), as the documents show the Company's business-decision strategy and discuss the results of its own confidential analysis. This redacted document discusses the same information for which Duke Energy Kentucky has sought confidential protection in response to other Midwest ISO data requests.

At the Technical Conference, Duke Energy Kentucky committed to provide additional and clarifying information regarding the Kentucky Analysis already provided pursuant to Midwest ISO's DR-02-007(c). In response to this commitment, Duke Energy Kentucky is providing the work papers and commercial business model (CBM) runs regarding Duke Energy Kentucky's generating stations that were performed for the energy market comparison contained in the Kentucky Analysis. The Company is also

providing a supplemental response that explains its assumptions made in the Kentucky Analysis. This CBM run also included a run involving one of Duke Energy Indiana's generating stations. That information was prepared for Duke Energy Indiana, not Duke Energy Kentucky, and was not considered by Duke Energy Kentucky in connection with its decision to realign RTO membership. The information pertaining to Duke Energy Indiana is outside the scope of the Midwest ISO discovery request and is further irrelevant to this Kentucky proceeding. Accordingly, the Company is providing only the Kentucky information to the Parties and the Commission and redacting the Indiana information. Admittedly, Duke Energy Kentucky could have provided only the CBM runs pertinent to its decision and responsive to discovery without regard to the Indiana information. But in the spirit of discovery, Duke Energy Kentucky informs the Parties here of this information and of its intention to provide hard copies of the CBM runs that exclude the irrelevant and inadmissible Indiana references.

In the course of its review, the Company has also identified an analysis that was reviewed early on in the decision process that was performed by PJM.² This analysis was not performed by or on behalf of Duke Energy Kentucky or any other Duke Energy entity. As such, the analysis was not responsive to the requests as tendered by the Midwest ISO. Duke Energy Kentucky, however, did review PJM's analysis during the course of its decision-making process and consistent with its prior commitment to produce additional or clarifying information, Duke Energy Kentucky advises that it will produce the PJM analysis in response to Midwest ISO's DR-02-007(d).

The information for which Duke Energy Kentucky now seeks confidential treatment (Confidential Information) shows the underlying CBM model runs that

² Attached as Supplemental Clarifying Response Attachment # 1 to Midwest ISO DR02-007(d).

compare Duke Energy Kentucky's generating assets in Midwest ISO with how the assets would be dispatched if the Company realigned its membership in PJM. In addition, Duke Energy Kentucky also seeks confidential protection of PJM's analysis of the potential benefit on a market wide basis if Duke Energy Ohio and Duke Energy Kentucky realign into PJM. The analysis estimates the possible impact to the combined Midwest ISO-PJM footprint if Duke Energy Ohio and Kentucky realign with PJM.

In support of this Petition, Duke Energy Kentucky states:

1. The Kentucky Open Records Act exempts from disclosure certain Commercial information. KRS 61.878(1)(c). Significantly, this rule applies to those records that are generally recognized as confidential or proprietary. And provided the records at issue satisfy this general characterization, they are subject to protection where the disclosure of such information would otherwise result in an unfair advantage to competitors of the party seeking non-disclosure. Public disclosure of the information identified herein would, in fact, prompt such a result for the reasons set forth below.

2. The Confidential Information that Duke Energy Kentucky now seeks protection is the underlying calculation for the energy portion of the Kentucky Analysis already provided and that the Company already sought confidential protection. It also includes the document prepared by counsel, described above regarding RTO membership. Also, the Company is providing a clarifying response that lists the assumptions made as part of this analysis. This underlying energy analysis concerns Duke Energy Kentucky's assumptions for its future energy needs, fuel costs, environmental compliance costs, and operating costs as well as market assumptions for operation in PJM.

3. Furthermore, the Confidential Information at issue herein also includes PJM's combined analysis of gross load payments, average weighted LMP, generation, gross generation revenue, generation production costs, and net generation revenue as well as congestion impacts for each entity listed and across the combined Midwest ISO - PJM footprint.

4. The Confidential Information was, and remains, integral to Duke Energy Kentucky's effective execution of business decisions. And such information is generally regarded as confidential or proprietary. Indeed, as the Kentucky Supreme Court has found, "information concerning the inner workings of a corporation is 'generally accepted as confidential or proprietary.'" Hoy v. Kentucky Industrial Revitalization Authority, Ky., 904 S.W.2d 766, 768.

5. Disclosure of the Confidential Information, which includes Duke Energy Kentucky's analysis of its future costs of operation and energy needs used as the basis for its Kentucky Analysis and the individual factors underlying PJM's analysis of Duke Energy Ohio and Duke Energy Kentucky RTO realignment with load and congestion payments related to costs and revenues for all Midwest ISO and PJM members, would damage Duke Energy Kentucky's position and business interests. This information reveals sensitive information of Duke Energy Kentucky as well as of members in both PJM and Midwest ISO's markets. If the Commission grants public access to the Confidential Information contained in supplemental data request No. 7, potential market participants could gain insight into Duke Energy Kentucky's valuation of its own market position and operation costs as well as its view of the entire Midwest ISO and PJM markets and its members, thereby putting the Company at a disadvantage. Moreover,

release of the analysis and assumptions could give potential competitors for similar products insight into Duke Energy Kentucky's own valuation thereby creating the potential to manipulate market pricing or undermine Duke Energy Kentucky's ability to secure reasonable cost products, including fuel and environmental compliance in the market.

6. The Confidential Information contained in the analysis of Duke Energy Kentucky's energy position is not known outside of Duke Energy Kentucky.

7. The confidential information contained in the management presentation discussed above shows Duke Energy Kentucky's justification (and non-proprietary justification for other Duke Energy entities) for RTO membership decisions. The Company has redacted non-Kentucky information that:

- involves non-jurisdictional entities that has not otherwise been provided in discovery,
- is irrelevant,
- is legal analysis,
- is proprietary to those non-Kentucky jurisdictional companies, and
- was not relied upon or reviewed by Duke Energy Kentucky as part of its own realignment decisions.

That information is commercially sensitive and, if disclosed, financially harmful for the reasons articulated above, in Duke Energy Kentucky's Response to Midwest ISO's Motion to Compel and as already discussed in similar Motions for Confidential

Treatment already filed in this proceeding, both pending decision and already granted. Duke Energy Kentucky respectfully incorporates those prior reasons by reference.³

8. The Confidential Information prepared by PJM was provided to Duke Energy Ohio and Duke Energy Kentucky under terms of confidentiality as Duke Energy Ohio and Kentucky were considering its RTO realignment with PJM and is not known outside of Duke Energy Ohio and Duke Energy Kentucky.

9. Duke Energy Kentucky and Midwest ISO executed a Confidentiality Agreement on September 17, 2010 to govern the disclosure and use of confidential information in this case.

10. In accordance with the provisions of 807 KAR 5:001 Section 7, the Company is filing with the Commission one copy of the Confidential Material highlighted and ten (10) copies without the confidential information.

WHEREFORE, Duke Energy Kentucky, Inc. respectfully requests that the Commission classify and protect as confidential the specific information described herein.

³ See Duke Energy Kentucky's Response to Midwest ISO's Motion to Compel, (October 21, 2010)(pg 16-24).

Respectfully submitted,

DUKE ENERGY KENTUCKY, INC.



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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been served via hand delivery to the following party on this 28th day of October 2010:



Rocco O D'Ascenzo

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