COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of an Examination of the Application of the Fuel Adjustment Clause of Duke Energy Kentucky, Inc. From May 1, 2015 Through October 31, 2015	))))	Case No. 2016-00005

BRIEF OF DUKE ENERGY KENTUCKY, INC.

Comes now Duke Energy Kentucky, Inc. (Duke Energy Kentucky or the Company), by counsel, pursuant to the direction of the Kentucky Public Service Commission (Commission) as given at the hearing held in this matter on April 7, 2016, and for its brief in the above-captioned proceeding, respectfully states as follows:

I. INTRODUCTION

This case presents a question regarding the extent to which energy purchases made within the context of Duke Energy Kentucky's participation in the Day-Ahead and Real-Time Energy Markets administered by PJM Interconnection, LLC (PJM), are recoverable through the Company's Fuel Adjustment Clause (FAC) tariff. Specifically, in requests for information posed by Commission Staff prior to the aforementioned hearing and in the context of the hearing itself, an issue has arisen as to the permissible method(s) of determining "the avoided variable generation cost of [a] utility's highest cost generating unit available to serve native load during [an] FAC expense month."[1] Based on the plain language of 807 KAR 5:056 (the FAC Regulation), relevant Commission precedent, and established practice, Duke Energy Kentucky

[1] *See* Case No. 2000-00496-B, *An Examination by the Public Service Commission of the Fuel Adjustment Clause of East Kentucky Power Cooperative, Inc. from May 1, 2001 to October 31, 2001* (Ky. P.S.C. May 2, 2002), Order ("4968 Order") at 4.

respectfully submits that the manner in which it presently determines its highest cost generating unit during a given FAC expense month is consistent with law and should continue to be accepted by this Commission.

II. BACKGROUND

A. The Company

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 northern Kentucky. With respect to its retail electric service, the Company serves approximately 138,000 customers in Boone, Campbell, Grant, Kenton, and Pendleton counties. The Company currently owns and operates approximately 1062 megawatts (MW) of net installed summer generating capacity at two generating stations: (1) the East Bend Generating Station (East Bend), which consists of a coal-fired, base load generating unit in Rabbit Hash, Boone County, Kentucky (600 MW); and (2) the Woodsdale Generating Station (Woodsdale), which is located in Trenton, Butler County, Ohio, and consists of six (6) combustion turbine (CT) units. Each Woodsdale unit has a net summer capability of 77 MW and a net winter capability of 94 MW, and the minimum load for each Woodsdale unit is 5 MW.[2]

B. Procedural History

On February 5, 2016, the Commission entered an order establishing this matter to examine the application of the Company's FAC from May 1, 2015, through October 31, 2015. Throughout the course of this proceeding, the Company responded to three written requests for

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[2] *See* Hearing Video Record (HVR), at 11:34:18 AM (John Swez, responding) (April 7, 2016). As explained by the Mr. Swez during the hearing in this matter, the minimum load of a CT is generally influenced by two factors: (i) the physical capabilities and specific design of the unit; and (2) the ability of the unit to comply with applicable environmental regulations. *Id.* The Woodsdale units are designed and "tuned" in such a way as to perform in a particularly flexible, responsive manner, a fact that creates value for the Company and its ratepayers. *Id.*

information propounded by Commission Staff and one set of requests propounded during the public hearing held April 7, 2016. With the filing of this brief, this case now stands submitted for a decision.

C. Commission Jurisdiction and Authority

Pursuant to KRS 278.030(1), "[e]very utility may demand, collect and receive fair, just and reasonable rates for the services rendered or to be rendered by it to any person." The Commission is afforded significant discretion in determining what rates are "fair, just and reasonable," and may, while exercising its discretion, embrace various considerations, calculations and methodologies to arrive at an end result.[3] Ultimately, the Commission's goal is to reach a reasonable decision that effectively balances the interests of a utility and its ratepayers.[4]

Although the scope of the Commission's power to regulate the "rates" and "service" of utilities is no doubt expansive,[5] the Commission must also act within the bounds of applicable

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[3] *See National Southwire Aluminum Co. v. Big Rivers Electric Corp.*, 785 S.W.2d 503, 513 (Ky. App. 1990) ("[The Commission] has many appropriate rate-making methodologies available to it, and it must have some discretion in choosing the best one for each situation. Again, we must look more to whether the result is fair, just and reasonable rather than at the particular methodology used to reach the result.") (citation omitted); *see also Kentucky Indus. Utility Customers, Inc. v. Kentucky Utilities Company*, 983 S.W.2d 494, 498 ("[T]he Commission has discretion in working out the balance of interest necessarily involved and that it is not the method, but the result, which must be reasonable.") (*citing Federal Power Comm'n v. Hope Natural Gas*, 320 U.S. 591, 64 (1944)).

[4] *See National Southwire, supra*, at 513 (*quoting Jersey Central Power & Light Co. v. Federal Energy Regulatory Comm'n*, 810 F.2d 1168, 1177 (D.C. Cir. 1987) ("In reviewing a rate order courts must determine whether or not the end result of that order constitutes a reasonable balancing, based on factual findings, of the investor interest in maintaining financial integrity and access to capital markets and the consumer interest in being charged non-exploitative rates…those choices must still add up to a reasonable result.").

[5] *See* KRS 278.040(2); *Kentucky Public Service Comm'n v. Commonwealth of Kentucky, ex rel. Conway*, 324 S.W.3d 373 (Ky. 2010).

law and the statutory scheme established by the General Assembly.[6] Particularly pertinent limitations on the Commission's ratemaking authority are reflected in KRS 278.160, which codifies what is commonly referred to as the filed rate doctrine, and the related prohibition against retroactive ratemaking. Each of these issues is addressed *infra*.

III. DISCUSSION

A. Relevant Precedent

Issues related to FAC cost recovery have received increased attention in recent years, most notably as part of the Commission's examination of utility FAC operations covering the period of November 1, 2013, through April 30, 2014.[7] The primary issue under examination in certain of those FAC proceedings concerned the nature of energy purchases made through a regional transmission organization (RTO) such as PJM. Duke Energy Kentucky and East Kentucky Power Cooperative, Inc., argued, *inter alia*, that all energy purchases made through PJM should be available for recovery through the utility's FAC due to the security-constrained economic dispatch and commitment bases on which PJM operates. Fundamentally, the utilities contended that the economic dispatch principles embraced by Section 1(3)(c) of the FAC Regulation[8] also lie at the heart of RTO membership, and that interpretation and application of

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[6] It is well-established that the Commission only possesses such powers as granted by the General Assembly. *See Boone Co. Water and Sewer Dist. v. Public Service Comm'n*, 949 S.W.2d 588, 591 (Ky. 1997); *Simpson Co. Water Dist. v. City of Franklin*, 872 S.W.2d 460, 462 (Ky. 1994); *Com., ex rel. Stumbo v. Kentucky Public Service Comm'n*, 243 S.W.3d 374, 378 (Ky. App. 2007); *Cincinnati Bell Tel. Co. v. Kentucky Public Service Comm'n*, 223 S.W.3d 829, 836 (Ky. App. 2007); *Public Service Comm'n v. Jackson Co. Rural Elec. Co-op., Inc.*, 50 S.W.3d 764, 767 (Ky. App. 2000).

[7] *See* Case No. 2014-00229, *In the Matter of the Examination of the Application of the Fuel Adjustment Clause of Duke Energy Kentucky, Inc. from November 1, 2013 through April 30, 2014*; Case No. 2014-00226, *In the Matter of the Examination of the Application of the Fuel Adjustment Clause of East Kentucky Power Cooperative, Inc. from November 1, 2013 through April 30, 2014.*

[8] Section 13(3)(c) of 807 KAR 5:056 provides, in pertinent part, that "the net energy cost of energy purchases, exclusive of capacity or demand charges (irrespective of the designation assigned to such transaction)" are recoverable under an FAC "when such energy is purchased on an economic dispatch basis."

the FAC Regulation should not be so rigid as to completely ignore, erode, or undermine the benefits of participation in an RTO. The Commission disagreed.

In its Orders entered January 30, 2015, in Case Nos. 2014-00226 and 2014-00229, the Commission reaffirmed the pre-RTO concepts of "economy energy purchases" and "non-economy energy purchases" as initially set forth in the 4968 Order. The Commission declined to recognize the impact RTO membership has on utility operations and energy generation/purchasing. Instead, the Commission affirmed its limitation on FAC recovery of purchased power costs through an FAC "to the fuel cost of [a utility's] highest-cost generating unit available to be dispatched to serve native load during the reporting expense month,"[9] thereby limiting recovery of all other fuel and purchased power-related costs to possible inclusion in base rates. It is this regulatory interpretation under which the Company presently operates and the Company abides.

B. Duke Energy Kentucky's Established Methodology

In order to determine which energy purchases a utility may fully recover through its FAC, Commission precedent requires the utility to compare the costs of its energy purchases to the avoided variable generation cost of its own highest cost unit *available* to be dispatched during the FAC expense month.[10] Duke Energy Kentucky, like other jurisdictional electric utilities, expresses and compares these amounts on a cost-per-megawatt-hour ($/MWh) basis; with respect to Company-owned generation, the amount is calculated by multiplying the heat rate of a generating unit by the cost of fuel for that unit at a specific loading characteristic.[11] Notably,

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[9] *See, e.g.*, Case No. 2014-00229, Order at pp. 5, 8 (Ky. P.S.C. January 30, 2015).

[10] *See* n. 1, *supra*.

[11] *See, e.g.*, the Company's Response to Commission Staff's First Request for Information, Item No. 27 (filed Feb. 19, 2016).

the energy capable of production by the Company's Woodsdale gas-fired combustion turbines is nearly always the most expensive that could be generated by Duke Energy Kentucky.[12]

The average heat rate of the Company's Woodsdale CTs is not a fixed figure, but rather varies based on ambient air temperature and the load at which the unit operates.[13] For purposes of determining its highest cost unit available to be dispatched during an FAC expense month, Duke Energy Kentucky calculates the average heat rate of the Woodsdale CTs utilizing a thermal performance factor coefficient depending on the time of year (summer versus winter) and a hypothetical load of 5 MW, which is both the minimum load at which the units are available and the loading at which the highest variable generation costs are observed.[14] The fuel cost utilized to determine the Company's highest cost unit available to be dispatched during an FAC expense month is the delivered price of natural gas to Woodsdale on the day of the relevant month that experienced the highest gas price.[15]

C. Argument

Duke Energy Kentucky's methodology for determining the energy purchases it may recover through its FAC is entirely consistent with Commission precedent, properly collects such costs via a rider versus base rates, and should be summarily upheld. The Commission has made clear that purchased energy, in order to be fully recoverable through a utility's FAC, must cost less than energy that could have been generated by a utility's "highest cost unit available to be dispatched during an FAC expense month." This standard requires a utility to retrospectively

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[12] *See* the Company's Response to Commission Staff's Third Request for Information, Item No. 3 (filed March 29, 2016).

[13] *See, e.g.*, the Company's Response to Commission Staff's Second Request for Information, Item No. 2 (filed March 11, 2016).

[14] *Id.*

[15] *Id.*

examine its generation capabilities to calculate the highest costs it would have incurred had its owned assets not been avoided in favor of purchased energy during a particular reporting month. The most expensive energy that Duke Energy Kentucky can typically generate and dispatch during an FAC expense month is that energy produced by a Woodsdale CT operating at minimum load, and thus the Company's methodology as described herein is both reasonable and in harmony with the plain language of the Commission's directives.

It is, perhaps, necessary to underscore the fact that neither the quantity nor the cost of the energy a utility actually generates in a particular reporting month has any influence on the FAC-recoverability of purchased energy.[16] Instead, the focus of the standard set forth by the Commission is on the highest cost unit *available* to be dispatched during an FAC expense month. It is not the load(s) at which a generating unit may have actually operated during a period under review. Actual unit dispatch is simply immaterial for purposes of determining the recoverability of purchased energy.[17] This is because the phrase established by the Commission and followed by the Company, of unit *available* to be dispatched, necessarily and clearly implies that the applicable threshold for determining recoverability of purchase power is the next MW of company-owned generation that could be, but has not already been, dispatched (*i.e. available)*. It

[16] Notably, the FAC Regulation renders recoverable all costs of "[f]ossil fuel consumed in the utility's own plants," regardless of whether the resulting energy could have been purchased for an amount less than it cost to self-generate. *See* 807 KAR 5:056 Section 13(3)(a). This codified preference for self-supplied energy (irrespective of that energy's cost to ratepayers) is yet another example of outdated FAC jurisprudence failing to recognize the many benefits of the RTO construct under which Duke Energy Kentucky operates. Essentially, in order to ensure that it may timely and appropriately recover its fuel expenses, a utility is encouraged to always utilize its own generation to meet load; relatedly, if a utility does decide to purchase energy, a perverse incentive exists for the utility to own generation that is unnecessary in an RTO construct.

[17] *See* Case No. 2014-00229, Order at 6 (Ky. P.S.C. January 30, 2015) ("The phrase 'highest cost generating unit available to be dispatched' means that the highest-cost unit is available to be dispatched, but is not required to have been dispatched in order to be considered the highest-cost unit."). Although irrelevant for the purpose of determining the FAC-recoverability of energy purchases, it should be noted that PJM regularly does dispatch one or more of the Woodsdale units at minimum load. *See, e.g.*, the Company's Response to Commission Staff's Second Request for Information, Item No. 2 (filed March 11, 2016); HRV at 11:37:33 AM (Scott Burnside, responding) (April 7, 2016).

is illogical to interpret the threshold of a unit *available* to be dispatched to be synonymous with a unit that has already been dispatched. Moreover, the language employed by the Commission reveals that the relevant period of reference for determining the "highest cost unit" is not at each five minute interval, each hour, or each day, but rather the full "FAC expense month" under evaluation.[18] For this reason, and as instructed by the Commission, Duke Energy Kentucky examines each reporting month and calculates the highest cost of energy it and its ratepayers could have incurred if the Company's own units had been dispatched to satisfy native load during that timeframe. The Company's determination of its "highest cost unit available to be dispatched during an FAC expense month" appropriately takes into account the highest average heat rate of its generating unit when dispatched at a particular MW loading that represents its highest cost that is within the unit's operational capability, (*i.e.,* minimum load) and the highest "observed" gas cost during the FAC expense month (*i.e.,* delivered price of natural gas on the day of the relevant month that experienced the highest gas cost).

Importantly, the determination of a particular month's "highest cost unit" utilizing inputs other than the available units' highest heat rate and the highest observed price monthly fuel cost does not comport with applicable Commission precedent, nor does it yield reliable results. For example, if the Commission were to require Duke Energy Kentucky to use the average monthly fuel cost and/or the average of a Woodsdale unit's minimum load heat rate and maximum load heat rate to establish the relevant FAC-recoverability benchmark, the result would be an artificial and inaccurate reflection of the Company's true costs of dispatchable generation. Because averages often fail to genuinely account for variation and outliers (which, of course, is when costs can be most extreme), Duke Energy Kentucky would inevitably and regularly be unable to

[18] *Id.* (The Commission's own directive explicitly states that the relevant threshold is the highest cost unit available to be dispatched during the expense *month.) Emphasis added.*

timely recover appropriately incurred fuel expenses that may exceed an arbitrary average, but fall below the actual cost of self-supplying load.

Yet, that is the apparent course the Commission appears to be charting in this proceeding. Beginning with discovery and continuing with cross-examination during the evidentiary hearing, it appears that the Commission is seeking to re-define the recoverability of purchased power through the FAC. The Company has responded to numerous requests, under various assumptions and operating scenarios, with the sole purpose to recalculate the level of purchased power that could be excluded from FAC recovery.[19] This heretofore unapparent position taken by the Commission in FAC discovery is inconsistent with the express direction of the Commission's prior orders to establish the purchased power recovery at the lower of the cost of purchased power or the utility's highest cost unit *available* to be dispatched in the reporting month. The highest cost unit *available* to be dispatched is unambiguously different from an average of any unit's actual monthly production cost. By definition, an average cost is something less than the highest cost.

Furthermore, determining a particular month's "highest cost unit" *available* utilizing inputs other than those consistently used by the Company ignores and undermines the nature of the RTO construct in which the Company operates. As the Commission is aware, Duke Energy Kentucky offers all of its available generation into both the Day-Ahead and Real-Time Energy Markets administered by PJM and must purchase all energy from PJM to satisfy the Company's load; moreover, PJM, absent requirements such as unit testing that require an exact generating unit output, is responsible for determining which of the Company's Woodsdale units are on-line

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[19] *See e.g., Staff Data Request 02, Second Set; Staff Data Requests, 05 and 07, Third Set; and Post Hearing Data Requests 7 and 8.*

and at what load based on demand and reliability requirements.[20] This functional and efficient regional paradigm, a significant portion of which the Company has limited (or no) control, renders unreasonable a regulatory interpretation that requires a moment-by-moment comparison of energy purchases and costs of available generation.

For the Company to mathematically and factually determine its "highest cost unit available to be dispatched during an FAC expense month," it must identify the highest cost energy its generation assets could have produced during an FAC expense month. Duke Energy Kentucky's existing methodology accomplishes this task and is the best (and, in fact, only) way for the Company to remain in compliance with applicable Commission precedent and the plain language of its FAC tariff.

Importantly, in light of KRS 278.160 and the related jurisprudence of the filed-rate doctrine, the Company is not permitted to charge or collect rates different from those prescribed in its filed schedules.[21] "[T]he filed rate defines the legal relationship between the regulated utility and its customer with respect to the rate that the customer is obligated to pay and that the utility is authorized to collect."[22] The Commission has noted the relatively inflexible and dogmatic nature of the filed rate doctrine: "[w]hen enacting the filed-rate doctrine, the Legislature 'did not create a flexible standard for the courts [or this Commission] to apply in

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[20] *See, e.g.*, the Company's Response to Commission Staff's Third Request for Information, Item No. 5(c) (filed March 29, 2016).

[21] See KRS 278.160(2).

[22] *Cincinnati Bell Telephone Co. v. Kentucky Public Service Comm'n*, 223 S.W.3d 829, 837 (Ky. App. 2007) (*citing Big Rivers Elec. Corp. v. Thorpe*, 921 F.Supp. 460 (W.D. Ky.1996)).

accordance with the facts, equities, and economic realities of the particular case.' It instead fashioned a hard and fast rule which must be applied in *all* cases."[23]

As described herein, the methodology the Company utilizes to calculate its FAC-recoverable expenses is in harmony with its FAC tariff and the Commission's prior interpretations thereof. The Company's application of its FAC tariff, and particularly the manner in which it calculates its "highest cost generating unit available to be dispatched to serve native load during the reporting expense month," has been both consistent and consistently upheld by this Commission. For the Commission to now require a different ratemaking methodology, after-the-fact and without notice,[24] would not only be at variance with the plain and ordinary meaning of the Company's FAC tariff, but also represent a significant departure from the Commission's prior recognition of and acquiescence to the established legal relationship between the Company and its ratepayers. Moreover, such a new interpretation of the cost of a generation unit that is *available* to be dispatched will require Duke Energy Kentucky, and perhaps other jurisdictional utilities, to revisit the fuel costs that are currently reflected, or rather, not being reflected in base rates. The filed-rate doctrine and principles of due process set forth in KRS 278.160, KRS 278.260, KRS 278.270, and other legal precedent simply do not permit such action by the Commission.

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[23] Case No. 95-517, *In the Matter of Leslie County Telephone Company, Inc., An Investigation into the Alleged Violations KRS 278.160* , Order at p. 8 (Ky. P.S.C. June 21, 1996) (emphasis in original) (*quoting Western Transportation Co. v. Wilson and Co., Inc.*, 682 F.2d 1227, 1231 (7th Cir. 1982)); *see also Boone County Sand and Gravel Co., Inc. v. Owen County Rural Elec. Co-op. Corp.*, 779 S.W.2d 224, 225-26 (Ky. App. 1989) (upholding a utility's right to collect amounts owed pursuant to tariffed rates, despite the fact that the utility's negligence caused the under billing it was seeking to recover).

[24] It is worth noting that, prior to the present FAC review proceeding, there had been no indication from the Commission that Duke Energy Kentucky's FAC methodology as described herein was unreasonable or unacceptable. Even at the time of filing of this brief, the Company and other jurisdictional electric utilities must essentially speculate (based on nothing other than the varied inquiries of Commission Staff) as to if or how the Commission may reinterpret or change the application of the FAC Regulation. While the Company hopes it has appropriately addressed any concerns the Commission may have, it is apparent that any retroactive application of a new standard to a period of time during which a different rulebook governed would be an unfair and unreasonable exercise of the Commission's discretion and authority under law.

Even if the Commission were to adopt a new, more restrictive interpretation of the FAC regulation and the Company's corresponding tariff, applicable law restricts the Commission's ability to enforce such an interpretation retrospectively. The rule against retroactive ratemaking "prohibits a utility commission from making a retroactive inquiry to determine whether a prior rate was reasonable and imposing a surcharge when rates were too low or a refund when rates were too high."[25] Although fuel adjustment clauses contemplate that fuel costs will be subject to regulatory review after the costs are actually incurred, a utility and its ratepayers have a reasonable expectation that rates will be upheld if they are calculated pursuant to a longstanding methodology to which the Commission has previously acquiesced.[26] Put simply, an unprecedented interpretation of the Company's FAC tariff, enforced *post hoc* defies the rule against retroactive ratemaking and is not fair, just nor reasonable.

Duke Energy Kentucky's continual efforts to provide service to its ratepayers at fair, just, and reasonable rates are evidenced by both its membership in an RTO and its investment in a

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[25] Case No. 10320, *In the Matter of: An Investigation of Electric Rates of Louisville Gas and Electric Company to Implement at 25 Percent Disallowance of Trimble County Unit No. 1* (Ky. P.S.C. April 21, 1995) (*quoting State v. Public Utility Comm'n of Texas*, 883 S.W.2d 190, 199 (Tex. 1994)).

[26] In light of this fact, Commission precedent describing fuel adjustment clauses as "outside the normal operation of the rule against retroactive ratemaking" is distinguishable. *See id.*, Case No. 10320, Order at p. 9. In its Order in Case No. 10320, the Commission discussed, *inter alia*, the case of *Richter v. Florida Power Corp.*, 366 So.2d 798, (Fla. Dist. Ct. App. 1979), in which the district court examined whether the Florida Public Service Commission had the authority to order refunds of unreasonably high fuel adjustment charges that were collected as a result of an illegal scheme (known as "daisy-chaining") conducted by a fuel consultant employed by Florida Power Company. *Florida Power*, 366 So.2d at 800. The Court in *Florida Power* ultimately held that "extraordinary circumstances" existed that afforded the Florida Public Service Commission appropriate jurisdiction over the matter, *id.*, but it also cited with approval the following statement of the Supreme Court of Ohio: "[w]e perceive that the requirement of fairness which compels adjustment in rates to compensate utilities for escalating fuel costs also compels retrospective reconciliation to exclude charges identifiably resulting from unreasonable computations or inclusions." *Id.* (*quoting Ohio Power Co. v. Public Utilities Commission*, 376 N.E.2d 1337, 1338-39 (Ohio 1978)). With respect to the present case, the methodology employed by Duke Energy Kentucky is not unreasonable and it has, in fact, been regularly approved as reasonable by the Commission. Absent "extraordinary circumstances" that render unreasonable the manner in which the Company determined its FAC-recoverable expenses, it is inappropriate and in violation of the prohibition against retroactive ratemaking for the Commission to disallow recovery of costs that were calculated consistent with Commission precedent and previously-approved, established practice.

flexible, reliable generation portfolio. The security-constrained economic dispatch and commitment principles attendant to the Company's participation in PJM ensure the availability of reliable, cost-effective electricity. Moreover, the Woodsdale units' low minimum load and rapid start and ramp-up rates allow the units to provide operating reserves within and other services to the PJM marketplace;[27] of course, the value of Duke Energy Kentucky's generation activities inures to the benefit of consumers through the rates they pay for service and through their substantial share under the Company's Profit Sharing Mechanism.[28] In light of these facts, it would be unreasonable for the Commission to embrace a new, more restrictive interpretation of the FAC Regulation that punishes generational flexibility and further diminishes the efficiency and value of timely fuel cost recovery.

IV. CONCLUSION

Duke Energy Kentucky believes its long-standing methodology for calculating its "highest cost unit available to be dispatched during an FAC expense month" is both consistent with the FAC Regulation and compliant with Commission precedent regarding recovery of economy energy purchases. Should the Commission again require a change in the way Duke Energy Kentucky and other jurisdictional utilities calculate their FAC-recoverable expenses, the Company, its shareholders, and its ratepayers will be subject to unnecessary risks of regulatory lag and under-recovery. Because Duke Energy Kentucky's application of its FAC aligns with the plain language of the Commission's earlier directives on the subject, and in light of the fair,

[27] *See* HRV at 11:36:00 (John Swez, responding) (April 7, 2016); *see also* the Company's Response to Commission Staff's Third Request for Information, Item No. 3 (filed March 29, 2016).

[28] Pursuant to the Company's Profit Sharing Mechanism rider, customers receive not only the first $1,000,000 in net profits from off-system sales (including net profits from ancillary services), but also the next 75% of any net profits in excess of $1,000,000. *See 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 Transmission System Operator to the PJM Interconnection Regional Transmission Organization and Request for Expedited Treatment,* Case No. 2010-00203 (December 22, 2010).

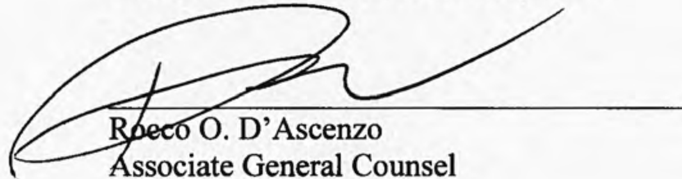
just and reasonable rates that result from said application, Duke Energy Kentucky respectfully submits that its FAC methodologies are appropriate and should remain unchanged.

WHEREFORE, on the basis of the foregoing, Duke Energy Kentucky respectfully requests that the Commission enter an Order approving the charges and credits billed by the Company through its FAC for the period May 1, 2015, through October 31, 2015.

Dated this 17th day of May, 2016.

Respectfully submitted,

DUKE ENERGY KENTUCKY, INC.



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