

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

In The Matter of:

The Electronic Application of Duke Energy )  
Kentucky, Inc., for: 1) An Adjustment of the )  
Electric Rates; 2) Approval of an ) Case No. 2017-00321  
Environmental Compliance Plan and Surcharge )  
Mechanism; 3) Approval of New Tariffs; 4) )  
Approval of Accounting Practices to Establish )  
Regulatory Assets and Liabilities; and 5) All )  
Other Required Approvals and Relief. )  
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**DUKE ENERGY KENTUCKY, INC.'S**  
**REPLY IN SUPPORT OF PETITION FOR REHEARING**

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Comes now Duke Energy Kentucky, Inc. (Duke Energy Kentucky or Company), by counsel, and respectfully submits the following reply in support of its May 3, 2018 Petition for Rehearing, respectfully stating as follows:

The Commission's April 13, 2018 Order (Order) awarded Duke Energy Kentucky an \$8.4 million increase in its base electric rates. In a Petition for Rehearing filed on May 3, 2018, Duke Energy Kentucky requested the Commission to grant rehearing on thirteen issues: (1) the inability to reconcile the adjustments and the total revenue requirement set forth in the Order; (2) the incorrect calculation of vegetation management expense; (3) the asymmetrical and unreasonable treatment of the capitalization adjustment for the East Bend operations and maintenance (O&M) regulatory asset; (4) the exclusion of expense associated with Restricted Stock Units (RSUs); (5) the adjustment to capitalization for excess ADITs; (6) an adjustment to rate base attributable to the switch from expected life group (ELG) depreciation to average life group (ALG) depreciation; (7)

recovery of omitted rate case expense; (8) additions to the cogeneration tariff; (9) recovery of costs associated with the mandated use of the “long” bill; (10) recovery of regulatory assets not addressed in the Order; (11) rate base adjustments attributable to the regulatory assets; (12) approval of the Company’s decommissioning study; and (13) a needed adjustment to Rider PSM to account for environmental charges attributed to wholesale margins. Only the Attorney General (AG) filed any response in opposition to the Company’s Petition and, even then, the AG only objected to five of the points raised by the Company: (1) vegetation expense; (2) the East Bend O&M regulatory asset; (3) RSU expense; (4) the cogeneration tariff; and (5) the decommissioning study. Pursuant to 807 KAR 5:001, Section 5(3), the Company’s reply is limited to addressing these five issues.

### **1. Vegetation Expense**

The AG’s objection to Duke Energy Kentucky’s request for rehearing as to the calculation of vegetation management expense is nonsensical. The AG cites two pages of testimony from Mr. Lane Kollen, two pages from his brief and one page from the Order, all of which merely point out that Duke Energy Kentucky’s vegetation expense has increased.<sup>1</sup> That is not the issue which Duke Energy Kentucky raised in its petition, however. As set forth therein, Duke Energy Kentucky did not object to the methodology chosen by the Commission to determine the Company’s reasonable costs for vegetation management, but rather noted that the Commission incorrectly followed its own methodology by failing to annualize the expense data for 2021.<sup>2</sup> Importantly, the AG did *not* object to the methodology used by the Commission. By accepting the Commission’s

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<sup>1</sup> See AG’s Response, p. 4.

<sup>2</sup> See Duke Energy Kentucky’s Petition, p. 3.

methodology, the AG can hardly now object to the correct mathematical computation of that formula. The AG's objection to the Company's Petition on this issue should be overruled.

## **2. Adjustment to Capitalization Attributed to the East Bend O&M Regulatory Asset**

Duke Energy Kentucky's Petition pointed out that the Order imposed a "double-whammy" on the Company by allowing it to earn a return on the regulatory asset at the lower long-term debt rate but then improperly reducing the revenue requirement at the much higher overall cost of capital.<sup>3</sup> The Company's request on rehearing was simple:

There must be symmetry in the adjustment - either allow the Company to earn a return on the regulatory asset at the overall cost of capital with a corresponding adjustment to overall capitalization or allow the Company to earn a return at the debt rate with a corresponding adjustment to only the long-term debt component of capitalization....Accordingly, Duke Energy Kentucky respectfully requests the Commission grant rehearing to either retain the regulatory asset in capitalization and credit the revenue requirement as proposed by Mr. Wathen or leave the regulatory asset out of capitalization and eliminate the reference to Mr. Wathen's proposed revenue requirement credit.<sup>4</sup>

The AG's Response simply refers to the arguments he raised in his brief and claims there is no need to address the Company's "sour grapes."<sup>5</sup> The AG's Response again fails to really address the issue raised in the Petition for Rehearing. The Company acknowledged that a reduction in the revenue requirement was appropriate in this instance and, in an effort to be helpful and transparent, offered two alternative methods for accomplishing the reduction. The Order, however, effectively invoked both options, which results in a duplicate, and therefore unreasonable, reduction in the Company's revenue requirement. For the same reason that the AG's insistence that the Order's incorrect calculation of the stated methodology for ascertaining

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<sup>3</sup> See *id.*

<sup>4</sup> See *id.*

<sup>5</sup> See AG's Response, p. 5.

vegetation expense is illogical, the AG's insistence that a confiscatory, double-counting of the East Bend O&M regulatory asset revenue requirement reduction should be affirmed is also patently absurd. The AG's objection to the Company's Petition on this issue should be overruled and asymmetry should be restored to the adjustment.

### **3. RSU Expense**

Duke Energy Kentucky's Petition requested recovery of \$541,424 in expense associated with the issuance of RSUs as deferred compensation awarded to employees based upon meeting tenure milestones. The AG's objection on this point is based upon the assertion that the issuance of stock is itself a form of compensation tied to financial performance. The AG's argument fails for three reasons.

First, the AG's response primarily presents yet another strawman argument that ignores the issue at hand. The authority cited by the AG in his response is a summarization of Commission precedent on a point of law that is materially different from the expense associated with RSUs.<sup>6</sup> Contrary to the AG's intimations, Duke Energy Kentucky is not disputing that the Commission has often excluded expenses tied to meeting financial metrics, but this issue hinges upon a factual question and not a legal issue.

Second, the AG's response seeks to obfuscate the true purpose of the RSUs. As described in the testimony of Company witness, Mr. Thomas Silinski, RSUs are based upon achieving employment milestones, not achieving financial metrics.<sup>7</sup> The purpose of the RSU is to encourage skilled employees to remain with the Company over the long-term.<sup>8</sup> The issuance of RSUs is an

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<sup>6</sup> See AG's Response, pp. 5-6.

<sup>7</sup> See Thomas Silinski Rebuttal Testimony, p. 10 (filed Feb. 14, 2018).

<sup>8</sup> See *id.*

incentive to retain knowledge, experience and good judgment. It has nothing to do with the Company's financial earnings.<sup>9</sup>

Third, the AG's entire argument elevates form over substance. The AG's principal objection appears to be based upon the fact that the compensation is awarded in the form of stock. Theoretically, the Company could also award its eligible employees equivalent amounts in cash, gift cards or tangible goods. Under the AG's rationale, such awards would be acceptable because they are not stock issuances. The AG's argument is based upon a formal distinction without a difference. RSUs are an appropriate way to reward and retain employees who have contributed to the work of Duke Energy Kentucky over a long-term. There continues to be no evidence to indicate that RSUs are awarded based upon financial performance and, as such, there is no basis to exclude them from the Company's reasonable revenue requirement. Accordingly, the AG's objection should be overruled.

#### **4. Cogeneration Tariff**

Duke Energy Kentucky's Petition requested the Commission to include the updated cost of debt approved for the rate of return component and adjusted capital structure in order to avoid overstating the cogeneration tariff's capacity price. The AG indicates that he has no objection to this portion of the Petition.<sup>10</sup>

The Company also requested rehearing to confirm that it had no obligation under 807 KAR 5:054 to purchase capacity from qualifying facilities that could not satisfy the Capacity Performance (CP) requirements of PJM Interconnection, LLC (PJM). The Petition appropriately points out that if the Company is required to purchase capacity that fails to satisfy the CP

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<sup>9</sup> *See id.*

<sup>10</sup> *See AG's Response*, p. 6.

requirements, its customers will be forced to subsidize the CP failures of qualifying facilities.<sup>11</sup> The AG does not dispute any of Duke Energy Kentucky's assertions regarding the potential harm to its customers.

Instead, the AG claims that the impact of CP was not introduced into the record of this case and is not appropriately before the Commission from a procedural point of view. The claim that the impact of the CP mandate upon the Company is not in the record is inaccurate.<sup>12</sup> Moreover, the fact that the issue may not have been discussed at the hearing, as the AG claims, is simply the product of the fact that no questions were apparently asked of the Company's witnesses. The record is not disputed and includes considerable evidence as to the impact of CP. Likewise, Duke Energy Kentucky is simply requesting clarification on a point of law, not a factual issue. The Commission can confirm the Company's understanding of its precedent in this proceeding or it could, as the AG suggests, require Duke Energy Kentucky to file a new application requesting a declaratory order to arrive at the same point. Since there are no factual issues in dispute, and because the requested clarification of law applies precisely to the cogeneration tariff approved by the April 13, 2018 Order, rehearing should be granted and the AG's objection should be overruled.

### **5. The Decommissioning Study**

The Company's Petition requested the Commission to formally approve the decommissioning study submitted as part of its Application. The AG's objection fails to cite a single provision of the Kentucky Constitution, any act contained within the Kentucky Revised Statutes, any judicial precedent, any Commission regulations or orders; any portion of the extensive record of this proceeding (including that portion of the record created by the AG

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<sup>11</sup> See Duke Energy Kentucky's Petition, p. 11.

<sup>12</sup> See e.g. John Verderame Direct Testimony, pp. 21-23 (filed Sep. 1, 2017); Bruce Sailors Direct Testimony, pp. 17-18 (filed Sep. 1, 2017); HVR 3:57:18 (Mar. 7, 2018); HVR 4:04:00 (Mar. 6, 2018).

himself); any learned treatises or texts; or even a recognized public policy. The AG's entire argument is nothing more than repetitive appeals to policy arguments. By contrast, Duke Energy Kentucky presented a witness, Mr. Jeffrey Kopp, whose testimony focused exclusively upon supporting and explaining the thirty (30) page decommissioning study prepared and tendered by the Company.<sup>13</sup> That witness responded to information requests from Commission Staff and the AG in preparation for the hearing and, when the hearing came, not a single party had a single question for this witness.<sup>14</sup> The AG's objection includes zero factual support and should be rejected on that basis alone.

Notwithstanding the AG's lack of evidentiary foundation to now object to the approval of the decommissioning study, his policy argument is nothing more than an obvious effort to undo the effect of what the Commission has already ordered. The Order approves Duke Energy Kentucky's inclusion of net salvage expense and interim net salvage expense in base rates.<sup>15</sup> Withholding approval of the decommissioning study would effectively nullify the significance of the Order with regard to this category of expense – which is exactly what the AG advocates.<sup>16</sup> There is no constitutional, statutory or regulatory requirement to seek Commission approval prior to decommissioning the type of assets described in the Company's decommissioning study. The Commission cannot sanction the AG's efforts to create such a requirement out of thin air. Accordingly, the AG's objection to the Commission granting rehearing to approve the decommissioning study should be overruled.

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<sup>13</sup> See Mr. Jeffrey Kopp Direct Testimony, Attachment JK-1 (filed Sep. 1, 2017).

<sup>14</sup> See Duke Energy Kentucky Response to Staff DR-02-032; Staff DR-03-002; AG DR-01-025; AG DR-01-026; HVR 10:22:30 (Mar. 6, 2018).

<sup>15</sup> See Order, p. 78.

<sup>16</sup> See AG's Response, p. 7.

## 6. Other Issues

The AG makes no substantive arguments in response to the Company's request for rehearing on: 1) the inability to reconcile the adjustments and the total revenue requirement set forth in the Order; (2) the adjustment to capitalization for excess ADITs; (3) an adjustment to rate base attributable to the switch from expected life group (ELG) depreciation to average life group (ALG) depreciation; (4) recovery of omitted rate case expense; (5) recovery of costs associated with the mandated use of the "long" bill; (6) recovery of regulatory assets not addressed in the Order; (7) rate base adjustments attributable to the regulatory assets; and (8) a needed adjustment to Rider PSM to account for environmental charges attributed to wholesale margins. Accordingly, rehearing should be granted on each of these issues as well.

WHEREFORE, Duke Energy Kentucky respectfully requests that the Commission grant the Company's Petition for Rehearing and award the relief requested therein.

This 15<sup>th</sup> day of May, 2018.

Respectfully submitted,  
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CERTIFICATE OF SERVICE

This is to certify that the foregoing electronic filing is a true and accurate copy of the document being filed in paper medium; that the electronic filing was transmitted to the Commission on May 15, 2018; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that a copy of the filing in paper medium is being hand delivered to the Commission on the 16<sup>th</sup> day of May, 2018.



*Counsel for Duke Energy Kentucky, Inc.*