

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:)	
)	
ELECTRONIC ANNUAL COST)	
RECOVERY FILING FOR DEMAND)	Case No. 2017-00427
SIDE MANAGEMENT BY)	
DUKE ENERGY KENTUCKY, INC.)	

DUKE ENERGY KENTUCKY, INC.'S
PETITION FOR REHEARING

Comes now Duke Energy Kentucky, Inc. (Duke Energy Kentucky or the Company), by counsel, and petitions the Kentucky Public Service Commission (Commission) for rehearing, pursuant to KRS 278.400, of the Commission's Order entered herein on February 14, 2018 (Order). Specifically, Duke Energy Kentucky seeks rehearing and clarification with respect to the Commission's directive that the Company "should take all reasonable steps to suspend additional expenditures on its demand side management (DSM) programs, except for the Low Income Services and Neighborhood Programs, until the Commission is able to determine that ratepayer benefits exceed ratepayer costs."¹ In support of this petition, the Company states as follows:

¹ See Order, ordering paragraph 1.

I. INTRODUCTION

The Commission has for many years encouraged utilities to develop and implement DSM programs and tariffs.² The Company has dutifully complied with the Commission's Orders and its DSM portfolio presently includes eleven (11) programs,³ encompassing energy-efficiency, demand side management, and load control programs for both residential and non-residential customers. Each program is Commission-approved and set forth in Duke Energy Kentucky's filed tariff. The Company's practice of formally offering DSM programs dates to the mid-1990's, following the enactment of KRS 278.285, and it has regularly sought Commission approval to revise and update its DSM portfolio to adjust to market changes and customer needs.⁴ Extensive information about the Company's existing DSM offerings, as well as detailed descriptions of amendments to certain programs proposed by the Company, form a part of the record of this proceeding as a result of the Commission's Order consolidating Case Nos. 2017-00427, 2017-00324 and 2018-00009.

As the Commission is aware, at this point DSM plays an impactful role in multiple facets of the Company's operations. Along with many other forces, DSM considerations shape the way the Company trains its employees, interacts with its customers, and plans for its future needs. Duke Energy Kentucky's DSM practices meaningfully influence the way the Company does

² See, e.g., Case No. 2008-00254, *Application of Grayson Rural Electric Cooperative Corporation for an Adjustment in Rates and in Increase in Retail Electric Rates Equal to Increase in Wholesale Power Costs*, (Ky. PSC June 3, 2009) at 4 ("Although Grayson has a number of demand-side management programs in place, the Commission believes that it is appropriate to encourage Grayson, and all other electric energy providers, to make a greater effort to offer cost-effective demand-side management and other energy efficiency programs."); PSC Case No. 2014-00339, *Application of Blue Grass Energy Cooperative Corporation for an Adjustment of Rates*, (Ky. PSC May 29, 2015) at 6 ("The Commission commends Blue Grass Energy for its DSM/EE programs and encourages it to aggressively pursue new or expanded programs of that nature.").

³ There are six technologies in the Prescriptive program, resulting in 16 total technologies/programs.

⁴ See, e.g., Case Nos. 2013-00313, 2014-00280, 2015-00277, 2016-00289, 2017-00324, and 2018-00009.

business at present; most notably, as a member of PJM Interconnection LLC (PJM) operating in PJM's capacity market as a Fixed Resource Requirement (FRR) entity, the Company relies on demand-response capacity benefits from its DSM programs to meet its load obligations each PJM planning year. In light of these issues and others as further described *infra*, the Company believes it necessary that the Commission receive evidence on and further consider the impacts which may result from sweeping changes to the Company's DSM portfolio.

In the Order, the Commission directed Duke Energy Kentucky to "take all reasonable steps to suspend all existing DSM programs, except for the Low Income Services and Neighborhood Programs, until sufficient information is filed to clearly demonstrate that all ratepayers benefit from being charged the costs of programs that are designed to reduce consumption."⁵ The Commission also stated, in ordering paragraph 1, that Duke Energy Kentucky "should take all reasonable steps to suspend additional expenditures on its DSM programs, except for the Low Income Services and Neighborhood Programs, until the Commission is able to determine that ratepayer benefits exceed ratepayer costs." These similar (though not identical) directives appear to require the effective and immediate (though ostensibly temporary) discontinuation of nearly all of Duke Energy Kentucky's DSM programs. This sudden suspension of the Company's DSM portfolio, effected without notice or hearing, will unfairly and significantly impact both the Company and its customers who rely on DSM to meet load obligations in a cost effective manner. The Order also places Duke Energy Kentucky in the untenable position of being directed to violate the Filed Rate Doctrine set forth in KRS 278.160. For these reasons, Duke Energy Kentucky petitions the Commission for rehearing of the Order,

⁵ Order, at 3.

pursuant to KRS 278.400.⁶

II. ARGUMENT

A. Interested Parties, including the Company, are Entitled to be Heard

The Commission's jurisdiction and authority to regulate and investigate the rates or service of any utility, whether following a complaint or on its own motion, is without question.⁷ The Commission has exercised this authority in numerous and varied circumstances, including with respect to utility DSM practices,⁸ and undoubtedly utility DSM costs and related filings have been the subject of increased scrutiny in recent proceedings.⁹ Of course, the Company does not challenge the Commission's authority to investigate and scrutinize DSM programs and their resulting costs/benefits consistent with its statutory power; however, the Company does believe certain process is due prior to Commission action that substantially affects a utility's rates and service.

⁶ As the term implies, a request for "rehearing" under KRS 278.400 presumes that a first hearing occurred during which matters affecting the parties were determined ("After a determination has been made by the commission in any hearing..."). While no hearing took place in advance of the Order in this matter, the Company seeks to conform to usual practices and has styled this filing a Petition for Rehearing.

⁷ KRS 278.040, KRS 278.260.

⁸ Nearly exactly one (1) year prior to its Order in this case, the Commission initiated an investigation to review the appropriateness of Kentucky Power Company's DSM programs, its level of spending on such programs, and the reasonableness of its resulting DSM rates. PSC Case No. 2017-00097, *Electronic Investigation of the Reasonableness of the Demand Side Management Programs and Rates of Kentucky Power Company* (Ky. PSC February 23, 2017). A final order in that case (following discovery, briefing, and a hearing) was entered on January 18, 2018, with the Commission directing Kentucky Power to eliminate offering any DSM programs, other than those programs that target income-eligible residential customers. PSC Case No. 2017-00097, *Electronic Investigation of the Reasonableness of the Demand Side Management Programs and Rates of Kentucky Power Company*, (Ky. PSC. January 18, 2018) at 13.

⁹ See, e.g., PSC Case No. 2016-00289, *Electronic Application of Duke Energy Kentucky, Inc. to Amend Its Demand Side Management Programs*, (Ky. PSC Jan. 24, 2017) at 15.

It is well-established that the Commission only possesses such powers as granted by the General Assembly and must proceed in accordance with law.¹⁰ Under the applicable statutory framework, and specifically in KRS Chapter 278, the law dictates that changes to the existing rates and services that comprise a utility's filed tariff may only be made once appropriate process is satisfied. Indeed, changes to rates require advanced notice under KRS 278.180, and KRS 278.270 requires "a hearing had upon reasonable notice" before the Commission may revise rates it determines are unjust, unreasonable, insufficient, unjustly discriminatory or otherwise in violation of KRS Chapter 278. Perhaps most relevantly, KRS 278.260(2) states explicitly that "[n]o order affecting the rates or service complained of shall be entered by the commission without a formal public hearing." Each of these provisions, as well as other statutes and the Commission's regulatory framework, help ensure appropriate due process is satisfied, including rights of discovery, meaningful participation in a noticed hearing, the ability to cross-examine an opposing party's witnesses, and the opportunity to file briefs.¹¹ Fundamentally, the process allows interested parties to participate, make known the relevant facts and authority, and provide the decision-maker an opportunity to make a determination informed by the evidence.

In this case, the Commission's Order dispensed with process and effectively ordered the Company to disregard a portion of the Company's filed tariff without notice or hearing. It did so despite the fact that the DSM programs offered by Duke Energy Kentucky achieved nearly 45

¹⁰ See *Boone Co. Water and Sewer Dist. v. Public Service Comm'n*, Ky., 949 S.W.2d 588, 591 (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).

¹¹ *Kentucky Indus. Utility Customers, Inc. v. Kentucky Utilities Co.*, 983 S.W.2d 493, 497 (Ky. 1998).

million kWh in savings during the most-recent fiscal year (July '16 – June '17),¹² without allowing customers or the Company a chance to comment or present facts or argument and, perhaps most importantly, without finding that the existing, Commission-approved DSM rates and program tariffs are unfair, unjust, or unreasonable.¹³ The timing of the Commission's directive to suspend the Company's DSM programs is particularly concerning for the Company considering the period of high bills that customers have experienced in the past few months due to extreme weather.¹⁴ Energy efficiency and demand side management are effective ways for customers to take meaningful action to control their energy usage. The incentives provided through Duke Energy Kentucky's DSM programs assist customers by making those reasonable investments more affordable. Just as the Commission should not order a utility to violate its tariff, or to order a utility to unreasonably discriminate in the application of a tariff based upon a classification not set forth in the tariff, nor should the Commission take away meaningful opportunities for customers to control their energy usage in partnership with their utility. Equally important is the capacity value of DSM as a viable cost effective alternative to constructing or purchasing generation to maintain capacity reserve obligations. The Company

¹² See Annual Status Report filed herein on November 15, 2017, at 7.

¹³ It should be noted, further, that the Commission's directive at the outset of this proceeding that the Company "take all reasonable steps to suspend all existing DSM programs" (with the exceptions of the Low Income Services and Neighborhood Programs) is inconsistent with the Commission's manner of proceeding to address Kentucky Power's DSM expenditures in Case No. 2017-00097. Obviously the situations presented are different—Kentucky Power's residential DSM rates experienced sharp, successive increases totaling approximately 2,000 percent in 2016; its service territory includes several economically distressed regions facing declining load; and it was confronted with a minimum annual level of DSM spending of \$6 million as a result of an earlier-approved stipulation—yet even early on in Kentucky Power's case, the Commission recognized the utility's "ongoing obligation to administer its DSM portfolio in the ordinary course of business during the pendency of this proceeding..." PSC Case No. 2017-00097, Order at 3 (Ky. PSC May 4, 2017) (also stating that Kentucky Power should not expand or increase expenditures on existing programs). Here, the Commission appears to desire to implement the conclusions of its investigation before conducting it.

¹⁴ https://psc.ky.gov/agencies/psc/press/022018/0206_r01.pdf

requests that the Commission revisit and clarify its Order to avoid further potential violations of due process.¹⁵

B. The Immediate and Substantial Suspension of the Company's DSM Portfolio Raises Significant Concerns with respect to the Company's Capacity Position in PJM

One consequence of the Company's DSM programs, unsurprisingly, is a palpable decrease in the customer load the Company must plan to serve.¹⁶ Importantly, these demand-response capacity benefits are utilized (and relied upon) by the Company as a resource to satisfy capacity supply obligations attendant to its membership in PJM, as further explained below. Because the sudden elimination of Duke Energy Kentucky's DSM portfolio will likely require the Company to utilize different, more-costly market resources to meet its PJM capacity obligations or risk significant penalty, the Company believes further examination is warranted before an informed decision can be made regarding the future of the Company's DSM programs.

Consistent with the Commission's Order in Case No. 2010-00203,¹⁷ Duke Energy Kentucky is an FRR Entity in PJM. As an FRR Entity, the Company 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 or demand response resources that will be providing the MWs of capacity to fulfill the load-serving entity's customer obligation. As stated, the FRR Plan is forward-looking in that it covers the PJM Delivery Year three (3) years into the future; for example, as part of its most

¹⁵ See *Kentucky American Water Co. v. Com. ex rel. Cowan*, 847 S.W.2d 737, 741 (Ky. 1993) (Under due process, litigants are entitled to know what evidence is being considered and are entitled to an opportunity to test, explain and/or refute that evidence) (citing *Utility Regulatory Commission v. Kentucky Water Service, Inc.*, 642 S.W.2d 591 (Ky. App. 1982); *Ohio Bell Tel. Co. v. Public Utility Comm'n of Ohio*, 301 U.S. 292 (1937)).

¹⁶ See fn. 11 and accompanying text, *supra*.

¹⁷ PSC Case No. 2010-00203, *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*, (Ky. PSC January 25, 2011).

recent FRR Plan submitted in 2017, Duke Energy Kentucky has committed the unit-specific resources (including specified demand response resources secured as part of the Company's DSM portfolio of programs) to satisfy its forecasted load requirements for the period from June 1, 2020, through May 31, 2021. Presently, the Company's PJM capacity obligations as an FRR Entity reflect both the forecasted load of Duke Energy Kentucky's customers as determined by PJM, as well as the reserve requirement mandated by PJM.

The tables below demonstrate the Company's historic and future FRR position and reserve as determined by PJM both with and without the inclusion of Duke Energy Kentucky's demand response programs offered as part of its DSM portfolio of programs. Table 1 below illustrates the Company's FRR Plan reserve margins with and without Demand Response resources based on planning parameters in place at the time that the initial FRR plans were submitted to PJM. It is important to note that the Unforced Capacity (UCAP) is directly impacted by the forced outage value applied. A higher forced outage value inversely impacts the capacity that Duke Energy Kentucky can utilize in its FRR plan. In the initial FRR plan, the Company must apply either the previous year's outage actual outage rate or the average of the previous five years outage rates at its discretion. The final FRR plan however, must utilize the actual previous years forced outage rate. PJM's approval of the initial FRR plan is the most significant milestone in the three year FRR planning process timeline. Table 1 clearly shows that absent additional capacity purchases, PJM could have deemed Duke Energy Kentucky's FRR plan deficient during three Planning Years. Failure to secure PJM's approval of the FRR Plan results in significant penalties on the shortfall, further additional reserve margin penalties on the entire load forecast, and forced exit from the FRR construct. For example, if Duke Kentucky had been unable to utilize its demand response resources for the 2017/2018 Planning Year, and could not purchase

unit specific capacity to include in its plan, it would have been subject to a penalty of two times the Planning Year CONE on the 41.7 MW deficiency plus an additional three percent of the load obligation penalty of 30.2 MWs.

Specifically: (Plan Deficiency+ 3% of load)* (DEOK CONE in \$/MW Year) *2.

Or: (41.7 + 30.2) * \$143,670 *2 = \$20,298,847.

TABLE 1:

DEK Initial FRR Position									
Planning Year	EFORD		Total UCAP MW		PJM Load	FRR Position		Excess Based on Load	
	East Bend	Woodsdale	Gen	DR	Obligation	w/ DR	w/o DR	w/ DR	w/o DR
2011/2012	4.4%	10.0%	947.6	42.3	(930.5)	59.4	17.1	6.4%	1.8%
2012/2013	5.4%	5.1%	980.6	42.4	(959.2)	63.8	21.4	6.7%	2.2%
2013/2014	1.7%	3.0%	1005.7	38.3	(986.5)	57.5	19.2	5.8%	1.9%
2014/2015	3.4%	4.4%	992.7	36.6	(1004.9)	24.4	(12.2)	2.4%	-1.2%
2015/2016	4.2%	3.2%	994.9	45.1	(979.9)	60.1	15.0	6.1%	1.5%
2016/2017	4.9%	6.5%	967.7	44.8	(996.1)	16.4	(28.4)	1.6%	-2.9%
2017/2018	6.8%	4.6%	964.8	31	(1006.5)	4.3	(41.7)	0.4%	-4.1%
2018/2019	9.3%	3.2%	991.6	31.9	(981.4)	42.1	10.2	4.3%	1.0%
2019/2020	3.5%	2.8%	1028.5	16.3	(944.4)	100.4	84.1	10.6%	8.9%
2020/2021	9.8%	6.2%	974.7	10.9	(974.7)	10.9	0.0	1.1%	0.0%

While the initial FRR plan is based on forecasted loads and forecasted forced outage rates, Table 2 below illustrates Duke Energy Kentucky’s capacity position at the time that the Final FRR plan was submitted to PJM.¹⁸ This table utilizes final actual PJM load obligations and unit performance metrics through the 2018/ 2019 planning year. While the plan deficiencies shift and the penalty impact is less severe (1.2 times the base residual auction clearing price for the year),

¹⁸ Table 2 does not depict the capacity purchases and sales that occurred during certain delivery years to meet the Company’s FRR Plan. The purchases and sales however, are included in the calculation of the “excess based on load” percentages in the final columns. The Company had the following capacity transactions in specific delivery years: purchased 40 MWs of capacity in 2013/2014; purchased 54 MWs in 2014/2015, purchased 3.4 MWs in 2015/2016, and sold 33 MWs in 2017/2018.

there remains three planning years where Duke Energy Kentucky would not have enough resources to meet its PJM obligation absent the ability to rely upon demand response programs.

TABLE 2:¹⁹

DEK Final FRR Position									
Planning Year	EFORD		Total UCAP MW		PJM Load Obligation	FRR Position		Excess Based on Load	
	East Bend	Woodsdale	Gen	DR		w/ DR	w/o DR	w/ DR	w/o DR
2011/2012	4.4%	10.0%	947.6	42.3	(930.5)	59.4	17.1	6.4%	1.8%
2012/2013	5.4%	5.1%	980.6	42.4	(925.0)	98.0	55.6	10.6%	6.0%
2013/2014	7.7%	12.4%	908.1	35.4	(943.3)	40.2	4.8	4.3%	0.5%
2014/2015	14.8%	5.7%	921.8	27	(972.4)	30.4	3.4	3.1%	0.3%
2015/2016	15.6%	7.9%	931.7	36.2	(955.5)	15.8	(20.4)	1.7%	-2.1%
2016/2017	3.5%	3.8%	1023.7	28.7	(918.7)	133.7	105.0	14.6%	11.4%
2017/2018	9.8%	3.2%	988.4	27	(970.5)	11.9	(15.1)	1.2%	-1.6%
2018/2019	7.2%	9.4%	975.6	15	(969.5)	21.1	6.1	2.2%	0.6%
2019/2020	9.9%	7.9%	966.4	16.3	(944.4)	38.3	22.0	4.1%	2.3%
2020/2021	9.9%	7.9%	966.4	10.9	(974.7)	2.6	(8.3)	0.3%	-0.9%

For the 2019/2020 and 2020/2021 delivery years, the Company used the lower of EFORD and EFORD-5YR in its initial FRR Plan. This is because PJM’s tariff provides this flexibility for determining the initial FRR Plan. However, the Final FRR Plan does not provide such flexibility and thus the Company has used the EFORD-5YR to better reflect our FRR position.

As is clearly indicated, even with demand response programs, the Company’s actual operating capacity position in PJM is razor thin at best.

Should the Company immediately lose the ability to recognize its DSM programs (and their resulting demand-response capacity benefits) as part of the Company’s FRR Plan, it will come dangerously close to falling short of its PJM capacity obligations and be required to

¹⁹ For purposes of reconciling PJM FRR reserve margins with IRP level reserve margins, the margin percentages were calculated as a percentage of the load requirement. This methodology creates a deviation from the margins provided in STAFF Data Request DR-01-011. In responding to that request the Company interpreted the request as a calculation based on percentage of generation resources. The reserve MW amounts reconcile; however the load obligation methodology produces slightly different reserve margin percentages.

purchase unit-specific capacity from the market at a premium calculated at PJM's tariffed shortfall penalty of a multiple of the base residual auction clearing price. While deviations from an FRR Plan, often driven by changes to load requirements, resource capability or resource unforced capacity, do sometimes occur as part of the forward-looking construct, capacity acquired to rectify near-term deficiencies in the Company's FRR Plan can be expected to be purchased at an increased expense. This is because, as an FRR entity, the Company is limited to the bilateral capacity market to meet any capacity shortfalls. The bilateral markets characteristically lack liquidity as uncommitted unit-specific capacity resources, that would be required to meet any FRR plan deficiencies are scarce in the short-term. Moreover, as this Commission is aware, based upon recent capacity market activity in PJM, the DEOK zone in which Duke Energy Kentucky's generation and load are situated separated from the rest of PJM for the 2020/2021 delivery year. This means that for that delivery year, unless the Company exited the FRR and participated in the base residual auction construct, Duke Energy Kentucky would be required to purchase any capacity to meet its FRR obligation from inside of the zone. The DEOK zone has limited generation resources available as only Duke Energy Kentucky and Dynegy have stations situated therein.

It is further worth noting that 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 its generation otherwise non-compliant with PJM requirements. For these reasons, the Company strongly urges the Commission to grant rehearing and allow further discussion about the potential implications of substantially eliminating the Company's DSM portfolio.

Notably, in support of the Order's directive to Duke Energy Kentucky to suspend the bulk of its DSM programming, the Commission chiefly relied on accurate but incomplete, capacity position information the Company previously submitted in response to a request for information in this proceeding.²⁰ The evaluation of the utility's capacity needs by this single metric is incomplete as it does not factor in the utility's capacity obligation to PJM as discussed above. Specifically, the Commission pointed to Duke Energy Kentucky's response to questions posed by the Attorney General concerning the Company's 2014 Integrated Resource Plan (IRP) and its expected/actual reserve margins as support for suspending the DSP programs.²¹ In that response, Duke Energy Kentucky offered the reserve margin calculations it utilizes in connection with its long-term planning, specifically the quotient of "ICAP Generation divided by peak load."²² ICAP refers to the maximum amount of electricity a generator is designed to produce, or what is sometimes referred to as the boilerplate (or nameplate) rating. As aforementioned, Duke Energy Kentucky PJM FRR capacity obligations reflects both the forecasted load of Duke Energy Kentucky's customers as calculated by PJM and the reserve requirement mandated by PJM. When PJM calculates the amount of capacity a load-serving entity is required to commit as part of its FRR Plan, it utilizes "UCAP." UCAP refers to the electric generation capacity that is actually available as a resource in PJM at any given time after discounting for historical facility unavailability due to outages or derating to determine minimum requirements.

²⁰ Order at 3.

²¹ PSC Case No. 2017-00047, Duke Energy Kentucky's Response to the Attorney General's First Request for Information, Item No. 1 (filed January 11, 2018) (*note*: the Attorney General's question references PSC Case No. 2017-00273, but the reference should presumably be to PSC Case No. 2014-00273, *2014 Integrated Resource Plan of Duke Energy Kentucky, Inc.* (Ky. PSC September 23, 2015)).

²² *Id.* at 2.

While the Commission's Order accurately observes that in its response, Duke Energy Kentucky indicated it's "generating capacity will exceed its projected load by 31 percent in 2018 and 2019, and by 29 percent in 2020," the Order does not acknowledge that calculation was on an ICAP basis. The capacity figures cited in the Order does not fully or relevantly reflect the Company's true capacity needs with respect to meeting its PJM derived load obligation. It also does not consider the additional information the Company provided to the Commission in response to Staff Data Request Number 11 that shows the Company's capacity position as it relates to the short-term planning in the FRR plan.²³

Reconciling the IRP reserve margin (ICAP) with the PJM obligation reserve margin requires adjustments on both the generation and load sides of the equation. On the resource side of the equation is the IRP metric reflects "ICAP," rather than PJM's "UCAP," to reach the calculation's result. The reserve margin calculation performed in response to the AG's data request was on an installed capacity basis, consistent with how the reserve was performed in the 2014 IRP. Further complicating the issue, the load calculation was understated in that it did not include the portion of the Company's load related to the Longbranch circuit, that is planned for and served by Duke Energy Kentucky, but technically is connected to East Kentucky Power Cooperative's transmission system.

Duke Energy Kentucky believes the ICAP calculation it utilizes as part of its IRP process is primarily a metric used for long term planning as opposed to near term planning where using UCAP is the more appropriate measure. Any discussion of the Company's capacity position is woefully incomplete unless it includes the obligations which result from PJM's FRR calculation

²³ See *Company's response to Staff DR-01-011*. The Company's capacity position, including Demand Response (DR) and Energy Efficiency (EE) resources, is nearly flat to its PJM FRR obligation: 1) less than 2 percent excess capacity in the 2017/2018 delivery year; 2) less than 1 percent excess capacity in the 2018/2019 delivery year; 3) less than 4 percent excess capacity in the 2019/2020 delivery years; and 4) less than one-third a percent excess capacity in 2020/2021. This calculation was performed based upon a ratio of generation, not to load.

utilizing UCAP and its calculation of the Load Serving Entity's load obligation.²⁴ Rehearing of the Commission's Order is appropriate so that decisions regarding the necessity and reasonableness of the Company's DSM portfolio can be made on a complete and developed record using the correct data.

The Commission's Order unnecessarily creates risk for the Company to meet its load serving obligations in PJM, wherein the Company includes and relies upon its DSM programs as part of its three-year FRR Plan. Absent the ability to include and rely upon demand response programs like PowerShare® and Power Manager®, the Company's capacity position in PJM will likely fall short of its requirement, necessitating bilateral purchases that may be more expensive to customers.

Duke Energy Kentucky has already executed contracts under its PowerShare® program where customers commit to load curtailment, if needed, during the Company's peak operating periods. These demand response load management programs are includable in the Company's FRR plan and enable the Company's customers to have an opportunity to participate, albeit through the Company's own DSM programs, in the PJM markets. Duke Energy Kentucky currently has approximately 18MWs of PowerShare® capacity under contract for the 2018/2019 delivery year in addition to 14MWs from Power Manager®, which is embedded in the demand response component of its FRR Plan. Loss of these MWs of capacity in the short and long term will mean the Company will have to find other unit-specific capacity resources that have not otherwise been committed in a base residual auction to fill the void in the FRR Plan. Suspension and elimination of the PowerShare® and Power Manager® program that is offered as part of the Company's DSM portfolio, will have a substantial impact on the Company's ability to satisfy its

²⁴ See fns. 16, 18.

obligations in PJM.

Additionally, recent litigation at the DC Circuit Court of Appeals regarding PJM's capacity market and specifically the Minimum Offer Price Rule (MOPR) introduce significantly more risk to Duke Energy Kentucky and its customers if it were forced into full participation in the base residual auction construct. If the suspension of these programs and the resulting impact to the Company's FRR Plan necessitates the Company leaving the FRR obligation and transitioning to the PJM base residual auction process where all capacity is purchased from PJM Duke Energy Kentucky's customers may be adversely impacted. In the BRA construct, LSE's are required to purchase all capacity from the market, and all owned generation must be offered into the capacity market. However, with the potential price restrictions of the MOPR, Duke Energy Kentucky's customers could potentially face the situation of being forced to purchase capacity in the market with no offsetting benefit of the revenues from generating resources that are able to clear the auction.

Duke Energy Kentucky regularly evaluates the merits and risks of full participation in the capacity construct; and exposure to the MOPR has always ranked high on the potential risk side of the equation. To date the Company has assumed that it would have protection from the MOPR and its pricing restrictions through the self-supply exemption. That exemption was eliminated through the recent litigation, significantly impacting the calculus of FRR value to Duke Energy Kentucky's customers. While maintaining the capacity value of the demand response programs may not guarantee that Duke Energy Kentucky will never have to leave the FRR construct, losing the ability to rely upon these assets to meet our FRR plan obligations does increase the risk of an untimely FRR exit. A poorly timed or forced exit from FRR that exposes Duke Energy Kentucky's customers to full MOPR price mitigation could have a significant impact to

customers.²⁵

Even if fully-examined and determined to be beneficial to the Company and its customers, even a voluntary move cannot and should not happen overnight. Indeed, even if the Company were in a position to exit the FRR participation and enter into the PJM Base Residual Auction construct, the earliest the Company could make such a transition would be June 1, 2022. The Commission's Order should be reconsidered. The Company's DSM programs that qualify for demand response in PJM are an integral part of the Company's ability to serve its customer load in PJM.

C. The Reasonableness of the Company's DSM Portfolio Should be Determined Following an Appropriate Investigation

In the Order, the Commission stated that it intended to examine "whether or not the existing or the revised DSM programs [of Duke Energy Kentucky] are cost effective" and investigate "the reasonableness of the programs and tariffs."²⁶ The Company supports the Commission's desire to ensure that utility demand response and energy efficiency programs are actually producing benefits, and the Company regularly undertakes evaluation, measurement, and verification (EMV) analyses to examine and re-examine the costs and rewards of its DSM programming and files them for Commission review.²⁷ Most recently, the Company submitted the EMV reports for its PowerShare®, Small Business Energy Saver, and Energy Education and Schools Programs as part of its August 15, filing in Case No 2017-00324, which has now been

²⁵ As example if customers were fully exposed to an average PJM capacity clearing price of \$100/ MW Day, while being forced to offer its generation capacity at a level above that which did not clear the market, the resulting cost/revenue mismatch would be roughly \$17 Million per year.

²⁶ Order at 3.

²⁷ See e.g., Appendices D - F, of the Company's Application in this proceeding. The Company most recently filed its EM&V report of its PowerShare® program, Small Business Energy Saver, and Energy Education and Schools programs as part of its Application in Case No. 2017-00324, which has been consolidated into this proceeding.

consolidated into this proceeding. Each of these programs was shown to be cost effective. Additionally, as part of its Application in this case, Duke Energy Kentucky submitted current cost-effectiveness test results for each of its DSM programs,²⁸ and the Company remains committed to providing such other information as the Commission considers necessary or appropriate in the course of its investigation. Put simply, the Company believes its DSM portfolio, as approved by the Commission and as improved by amendments previously proposed, is fair, just and reasonable and that the Company and its customers benefit therefrom. In fact, even though the Company does not agree with the Commission's contention that the Company is long capacity, if the Company removed the avoided capacity values used in the cost effectiveness evaluation of its programs that was presented to the Commission in Case No. 2017-00427, only its Low Income Neighborhood Program would no longer be deemed cost effective under the Utility Cost Test. While the Commission may ultimately conclude otherwise, Duke Energy Kentucky requests that the Commission conduct the investigation it has called for prior to determining whether to order the substantial elimination or abandonment of the Company's DSM tariff, as Kentucky law requires.

While Duke Energy Kentucky urges the Commission to reconsider and clarify its directive to the Company to take all reasonable steps to suspend most of its DSM programming, the Company also recognizes that it must take concrete action to minimize DSM expenditures now that an investigation and suspension has been directed. The Company has taken the following steps in this regard: 1) The Company has ceased all advertising of its DSM programs on its website and through bill usage messages; 2) the Company has notified all vendors and trade allies of the Commission's Order and directed them to cease scheduling new installations;

²⁸ See Duke Energy Kentucky's Annual Status Report, Appendix A (filed November 15, 2017).

3) The Company has stopped processing new residential incentive applications effective February 15, 2018; 4) Consistent with the terms of the Company's existing non-residential SmartSaver Prescriptive® DSM program tariff, the Company will cease honoring any non-residential incentive applications received on or after February 15, 2018. The Company will continue to accept, on a limited basis, non-residential incentive applications that are submitted within 90 days of installation, for any installation that is verified as completed on or before February 15, 2018 providing funds that have already been approved by the Commission remain;²⁹ 5) the Company will honor any previously scheduled audits, school programs and any other DSM contractual obligations entered into with customers prior to February 15, 2108 for the remainder of the fiscal year, but will not schedule any new programs; 6) The Company will honor all PowerShare® contracts entered into with customers for the PJM delivery year 2018/2019 and that have already been contemplated to be part of the Company's FRR Plan; 7) The Company will continue to operate the over 12,000 air conditioning load control devices currently installed on residential air conditioning systems as part of the Power Manager® program. Enrolled customers will also receive the credits for the summer. This program is also part of the Company's FRR Plan; and 8) the Company will continue already in progress EMV analysis but will not institute any new evaluation, measurement, and verification (EMV) analysis. Additionally, unless otherwise directed by the Commission, the Company will continue

²⁹ Per the terms of the current tariff on file with the Commission, customers have 90 days to submit an incentive application for a qualifying installation.

to evaluate and develop a Peak-Time Rebate DSM program as was committed to as part of the Commission-approved settlement in Case No. 2016-00152³⁰

Of course, Duke Energy Kentucky already has DSM incentive commitments that have been made to, and applications that have been submitted by, customers who have relied upon the Company's tariffs and DSM programs in making their investments. In addition, the Company has existing contracts with vendors for services and EMV analyses that are already underway. The Company proposes to continue to honor these commitments and contracts so to avoid potential adverse impacts such as litigation or contractual breach. However, the Company will not enter into any new contracts until the Commission completes its investigation and issues a final order in these proceedings permitting the Company to proceed.

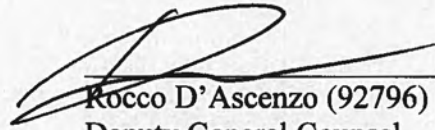
III. CONCLUSION

Duke Energy Kentucky's commitment to DSM has developed over decades, influenced by, among other things, the needs and wants of its customers, the costs and benefits expected to be realized, and the sentiments of relevant stakeholders (including, undeniably, those of the Commission). The Order entered herein on February 14, 2018, ostensibly includes directives that will immediately and substantially impact the Company and its customers, and it was entered without adequate process or hearing and without the information necessary to fully consider the continued reasonableness of the Company's DSM portfolio. Therefore, Duke Energy Kentucky respectfully requests that the Commission grant rehearing of the Order and revisit and clarify the actions the Company must take with respect to its DSM programming during the pendency of the Commission's investigation in this proceeding.

³⁰ *In the Matter of the Application of Duke Energy Kentucky, Inc., for (1) A Certificate of Public Convenience and Necessity Authorizing the Construction of an Advanced Metering Infrastructure; (2) Request for Accounting Treatment; and (3) All Other Necessary Waivers, Approvals, and Relief* Case No. 2016-00152, (Ky.P.S.C. May 25, 2017). Stipulation at 9.

This 2nd day of March, 2018.

Respectfully submitted,



Rocco D'Ascenzo (92796)
Deputy General Counsel
Duke Energy Kentucky, Inc.
139 East Fourth Street, 1313 Main
Cincinnati, Ohio 45201-0960
(513) 287-4320
(513) 287-4385 (f)
Rocco.D'ascenzo@duke-energy.com

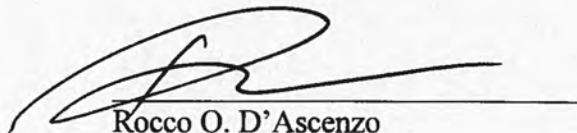
and

David S. Samford
L. Allyson Honaker
M. Evan Buckley
GOSS SAMFORD, PLLC
2365 Harrodsburg Road, Suite B-325
Lexington, KY 40504
(859) 368-7740
David@gosssamfordlaw.com
Allison@gosssamfordlaw.com
Ebuckley@gosssamfordlaw.com

Counsel for Duke Energy Kentucky, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing filing was served on the following via overnight mail,
this 2nd day of March, 2018.



Rocco O. D'Ascenzo

Kent Chandler
The Office of the Attorney General
Utility Intervention and Rate Division
700 Capital Avenue, Suite 20
Frankfort, Kentucky 40601-8204

Florence W. Tandy
Northern Kentucky Community Action Commission
717 Madison Avenue
Covington, Kentucky 41011
ftandy@nkcac.org

Peter Nienaber
Northern Kentucky Legal Aid, Inc.
302 Greenup
Covington, Kentucky 41011
pnienaber@lablaw.org