COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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| ELECTRONIC ANNUAL COST RECOVERY | ) | |
| FILING FOR DEMAND SIDE MANAGEMENT | ) | CASE NO. |
| BY DUKE ENERGY KENTUCKY, INC. | ) | 2017-00427 |

## ATTORNEY GENERAL'S BRIEF IN RESPONSE

Comes now the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention ("Attorney General"), and pursuant to the Commission's May 23, 2018 Order hereby provides his Brief in Response to Duke Energy Kentucky ("Duke" of "Company")'s June 27, 2018 Brief.

The Commission's February 14, 2018 Order in this matter, combined case nos. 2017-00324 and 2018-00009 with this matter, case no. 2017-00427. In combining the three related DSM matters, the Commission initiated an investigation into "whether or not the existing or the revised DSM programs are cost effective," and in order to "determine the reasonableness of the programs and tariffs."[1] In support of its finding that an investigation was necessary, the Commission pointed to the possibility that Duke's generating capacity would "far exceed" its target range, thus indicating "that its avoided capacity costs are at, or close to, zero."[2] Following discovery and after Duke supported their current programs with direct testimony,[3] the Commission held a hearing in this case on May 22, 2018. Following the filing of briefs, including response and reply briefs if necessary, the Commission will take the matter under submission. The Attorney General provides the Commission a direct perspective, as

[1] Order, Case No. 2017-00427 (Feb. 14, 2018) at 3.
[2] *Id*.
[3] Direct Testimonies of Timothy J. Duff and John A. Verderame (April 12, 2018).

supported further below. The Commission should continue to consider cost-effective DSM programs, particularly those that are targeted to low-income customers. Nevertheless, the Commission *must* also balance the investments in these programs with the impact on customers, including the ability of those customers to afford electricity. As Duke noted in its initial brief in this matter, "[t]he Commission has characterized this process as finding 'the proper balance between the needs of consumers for reliable power at fair, just and reasonable rates and the ability of utilities to generate, transmit and distribute that power.'"[4] Respectfully, Duke has seemingly failed to properly consider or balance the needs of its own customers in designing and implementing its programs, particularly as to what level of DSM costs customers can continue to be charged while keeping their rates affordable.

The largest benefits of Duke's current DSM programs, both for residential and commercial customers, seem to be the direct benefits to customers who directly participate. According to the information provided by the Company in describing its current DSM offerings, many of the programs depend on some sort of capital investment by the customer.[5] This means that entire subsets of customers, including low-income customers and small-businesses, continue to pay for DSM programs while they are unable to participate in many of them. In addition to not being able to directly participate in those programs for economic reasons, these customers are generally those that are least able to afford increased utility bills. As Duke's DSM spending has increased over the past few years, so has the DSM portion of their bills. For many customers, while the amount they are being charged increases, they only receive indirect benefits that may not outweigh the charges on their monthly bill. Duke has

[4] Duke Brief (June 27, 2018) at 12, (citing *Electric Utility Regulation and Energy Policy in Kentucky – A Report to the Kentucky General Assembly Prepared Pursuant to Section 50 of the 2007 Energy Act*, Report, p. 3 (Ky. P.S.C. Jul. 1, 2018)).
[5] See Duke Brief (June 27, 2018) at 16-32.

provided little evidence that it has considered this an issue, or that it balanced it against its ever-increasing DSM charges. The Companies cavalier attitude to the cost of DSM generally, regarding it as "modest", only evidences that point.[6] In 2017, DSM represented 9% of the average residential bill.[7] This is a marked increase from the 2% -3% of the average bill that DSM represented between 2010 and 2014,[8] and significantly more than the same metric that applied to Kentucky Power Company when the Commission initiated Case No. 2017-00097.[9] Interestingly, the affordability of continuing these programs is a consideration even Duke acknowledges. In supporting its current DSM offering, Duke cites and restates the DSM statute, KRS 278.285.[10] KRS 278.285 explicitly states that the Commission must consider "[t]he extent to which the plan provides programs which are available, <u>affordable</u>, and useful to <u>all</u> customers."[11] This standard must guide the Commission in determining whether it continues Duke's DSM portfolio. For instance, the Attorney General believes the record reflects that Duke's customers cannot afford for the Commission to <u>end</u> Duke's Power Manager and PowerShare programs, as they are required in order to satisfy Duke's FRR capacity plan.[12] The Attorney General understands non-compliance with that FRR plan carries with it steep penalties.

In its brief, Duke noted that it believes that by reducing capacity obligations, "thereby delaying the need for Duke Energy Kentucky to make costly investments in new electric generation, transmission and distribution resources," customers benefit.[13] The Attorney

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[6] Duke Brief (June 27, 2018) at 32.
[7] Duke response to AG-DR-1-007 (Jan. 11, 2018).
[8] *Id*.
[9] See Order, Case No. 2017-00097 (Ky. PSC, Feb. 23, 2017) at 1; Section II- Application Filing Requirements Exhibit 1, Case No. 2017-00179 (Ky. PSC, June 28, 2017) at page 1 of 1.
[10] Duke Brief (June 27, 2018) at 7-8.
[11] Duke Brief (June 27, 2018) at 8, citing KRS 278.285 (emphasis added).
[12] Duke Brief (June 27, 2018) at 26.
[13] Duke Brief (June 27, 2018) at 33-34.

General agrees. The issue with Duke's statement is that it is not in harmony with its actions. Although Duke's attempted narrative is that DSM is necessary to ensure more supply-side resources are not needed, the Companies actions are contradictory.

First, Duke ignores that it has installed tens-of-thousands of smart meters, based considerably on Duke's testimony that it will help customers lower their bills through reduced consumption. Duke's cost-benefit analysis, which was the basis for the smart meter CPCN, estimated that customers would save nearly $14M over a 17-year period just from conservation made possible by smart meter data.[14] The Company now claims that DSM is necessary for cost-effective customer conservation, stating "[w]ithout incentives such as those available through the DSM portfolio, it would be financially difficult for many . . . customers to invest in the energy efficiency products and treatments that serve to lower their overall energy costs."[15] The Company should not be allowed to present DSM and EE as the *only* option for customer conservation when Duke conversely used conservation as a basis for installing smart meters. In fact, the availability of savings from smart meters was virtually ignored in this matter as a cost-effective option for customer energy reduction, and thus a reduced need for future supply-side investment. Importantly, the cost of smart meters is already included in rates, thus providing the ultimate cost-effective measure moving forward: free.

[14] Case No. 2017-00321, In the Matter of: *Electronic Application of Duke Energy Kentucky, Inc. for: 1) An Adjustment of the Electric Rates; 2) Approval of an 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*, Duke Response to AG-DR-1-74(a) Conf. Attachment (Ky. PSC, Nov. 13, 2018) at 8-9 of 13. (This attachment was provided under a petition of confidentiality that was subsequently denied by Commission Orders on May 3, 2018 and June 12, 2018. Duke has not yet provided in the record non-confidential versions and the Attorney General is unaware of any appeal of the Commission's Orders.)

[15] Duke Brief (June 27, 2018) at 33.

Next, the Attorney General is confused at Duke's claim that DSM is necessary to ensure more supply-side resources are not required in the near future while the Company simultaneously invests in supply side resources, namely 10MW of solar and 2MW of batteries every year starting in 2019.[16] If DSM is necessary to delay costly investment in generation, and that is a benefit of customers' investment in DSM, then why is Duke allowed to continue to incrementally invest in generation? Although Duke states that "[t]he value of avoiding need to make incremental investments in new utility resources remains valid and valuable," the record does not support this assertion.[17]

Furthermore, the Attorney General has two additional concerns he would like to address, although neither have been significantly discussed throughout the proceeding. Initially, the Attorney General feels it is necessary to discuss the use of data in supporting DSM programs before the Commission. For instance, the "mixed bag" of data used in the Company's application in the 2017-00427 matter included numbers from a 2016 study and a 2011 study with an estimated escalation.[18] In that application, 2018-2019 projections are based off 2016 avoided costs.[19] This is unacceptable, and the Company is not necessarily to blame. In the Commission's continuing effort to ensure that customers' investments in DSM and EE are fair, just and reasonable, it should endeavor to confirm that the data utilities use to support those programs are current enough to rely upon. The possibility that a utility uses 1-2 year old avoided cost data to support a DSM suite it would like to implement for the next three years is very real.

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[16] Case No. 2018-00195 In the Matter of: *Electronic 2018 Integrated Resource Plan of Duke Energy Kentucky, INC.*, Duke's 2018 Integrated Resource Plan (Ky. PSC, June 21, 2018) at 11.
[17] Duke Brief at 34.
[18] May 22, 2018 Video Testimony Evidence ("VTE") at 12:05:25.
[19] *Id.*

Lastly, the Attorney General is concerned around the requirements for customer involvement in Duke's Low Income Services Program. For instance, the Company's Payment Plus Program is tied to participation in the Low Income Weatherization program.[20] Effectively, customers have to start in the hole and owe significant arrears, while also participate in the LIHEAP program, before they are "offered" to participate in the weatherization program.[21] This must change, and the Company's own witness agreed that changing the arrears portion would "be a good step."[22] The Commission should take heed of the testimony Ms. Lorrie Maggio provided at the May 22, 2018 hearing and direct Duke to 1) reduce the barriers of participation in the Low Income programs and 2) increase the benefit levels and offerings to Low Income customers. The Attorney General's overall concern about DSM offerings is that those who are unable to participate in many of the offerings due to economic reasons are those least able to afford the cost of programs on their bill. Whether or not the Commission orders Duke to move forward with its DSM programs as currently provided, the Attorney General trusts the Commission and Duke will continue to explore energy efficiency programs directed at those most vulnerable customers. The Attorney General stands willing to act as a partner in that endeavor.

[20] May 22, 2018 VTE at 1:12:00.
[21] *Id*.
[22] *Id*.

Respectfully submitted,

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