COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

Kentucky Industrial Utility Customers, Inc.	)	
	)	
Complainant	)	
	)	
v.	)	Case No. 2018-00035
	)	
Kentucky Power Company	)	
	)	
Defendant	)	

Answer Of Kentucky Power Company

Kentucky Power Company states for its answer to the "Complaint And Petition For Establishment Of A Regulatory Liability To Provide Consumers A Rate Reduction Because Of Tax Expense Savings" ("Complaint") filed by Kentucky Industrial Customers, Inc. as follows:

Preliminary Matters

1. H.R. 1, formally titled "An Act to provide for the reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018" (the "Tax Cuts and Jobs Act") amended the Internal Revenue Code of 1986. The changes included a reduction in the maximum federal income tax rate from 35 percent to 21 percent, as well as other changes that increased taxable income to which the lower rate would be applied. Kentucky Power agrees that the effect of the net reduction in Kentucky Power's current federal income tax expense and the amortization of any excess accumulated deferred income taxes should be reflected accurately in the Company's rates.

2. By Order dated January 18, 2018 in Case No. 2017-00179 (the "January 18 Order"), and thus subsequent to the date of the Complaint, the Public Service Commission of

Kentucky established new base rates for Kentucky Power. In that order, the Commission found that an increase of $12.35 million in Kentucky Power's base rate revenues would result in fair, just, and reasonable electric rates. The Commission further indicated that the $12.35 million increase reflected the Commission's calculation of the reduction in the Company's current federal corporate income tax expense as a result of the Tax Cuts and Jobs Act. The order finally noted that effect of the reduction of the maximum federal corporate income tax rate on Kentucky Power's accumulated deferred income tax would be addressed in this action.

3. In calculating the effect of the reduction in the maximum federal corporate income tax rate on the Company's required revenue increase, the Commission overstated the effect of the reduction in the Company's federal corporate income tax expense, and thus understated the required increase in the Company's base rates. The Commission's January 18, 2018 Order also fails to reflect other tax expense related changes required by the Tax Cuts and Jobs Act that have the effect of increasing Kentucky Power's federal income tax expense. The Company affirmatively pleads that any change in its rates to reflect the effect of the Tax Cuts and Jobs Act on Kentucky Power's federal income tax expense should reflect the net change in the Company's cost of service related to the Tax Cuts and Jobs Act and not simply the gross change in federal corporate income tax expense as a result of the reduction from 35 percent to 21 percent. Kentucky Power anticipates filing a timely petition for rehearing in Case No. 2017-00179 to address these and other issues. Nothing in this answer should be construed as an admission, and Kentucky Power expressly disclaims any such admission, that absent the grant in full of the relief sought by Kentucky Power in its to-be-filed petition for rehearing in Case No. 2017-00179, and any subsequent appeal, that the Company's current rates (as established by the January 18 Order) are fair, just, and reasonable.

4. Many of the allegations contained in the Complaint are asserted against all defendants or defendants other than Kentucky Power. Except as otherwise expressly indicated, Kentucky Power responds only to the allegations asserted against Kentucky Power, or if asserted against some or all of the other defendants, only as to the application of the allegations to Kentucky Power. Kentucky Power lacks information sufficient to admit or deny the allegations with respect to other defendants and therefore denies the same.

5. Kentucky Power lacks information sufficient to admit or deny the allegations contained in the paragraphs labeled Introduction and accompanying footnotes, and therefore denies the same, except that:

(a) Kentucky Power admits that the Complaint names as defendants the four entities listed in the first sentence of the Introduction;

(b) With respect to the references to the Kentucky Revised Statutes and Kentucky Administrative Regulations, Kentucky Power admits their existence, refers to them for their terms, and denies any allegation inconsistent therewith;

(c) Kentucky Power admits that the Tax Cuts and Jobs Act was enacted by Congress on December 20, 2017 and signed by President Trump on December 22, 2017;

(d) The Company's current rates reflect an overstatement of the effect of the Tax Cuts and Jobs Act on the Company's cost of service. Kentucky Power thus denies the allegation that the Company's current rates are not fair, just, and reasonable because they fail to reflect the net effect of the Tax Cuts and Jobs Act on the Company's cost of service and rates;

(e) Kentucky Power denies that the calculations contained in Attachment A accurately reflect the effect of the Tax Cuts and Jobs Act on Kentucky Power's federal corporate income tax expense;

(f) Kentucky Power admits the Tax Cuts and Jobs Act lowered the maximum federal corporate income tax rate;

(g) Kentucky Power admits in response to footnote 3 that on December 21, 2017, the date the Complaint was filed, that Kentucky Power had pending before the Commission an application for a general adjustment of its rates (Case No. 2017-00179) and other relief. On January 18, 2018, the Commission entered its order in Case No. 2017-00179;

(h) Kentucky Power admits that its current rates reflect the overstatement of the effect the Tax Cuts and Jobs Act has on its federal corporate income tax expense; and

(i) Kentucky Power admits that the Complaint seeks certain relief, refers to the request for relief section of the Complaint for its terms without admitting Complainant's right to such relief, and denies any remaining allegations inconsistent therewith.

6. Kentucky Power admits the allegations of paragraph 1 of the Complaint except that it denies so much of paragraph 1 that alleges the Commission has jurisdiction over that portion of the Company's excess accumulated deferred income taxes that relate to the Company's transmission assets and that will be addressed in conformity with the Company's Federal Energy Regulatory Commission-approved Open Access Transmission Tariff ("OATT"). The Company further affirmatively pleads that the effect of the Tax Cuts and Jobs Act on that portion of the Company's excess accumulated deferred income taxes that relate to the Company's transmission assets is reflected in the OATT charges the Company incurs, and that Kentucky Power customers will receive the benefits of savings related to a reduction of these charges through the Company's Tariff P.P.A., and therefore it is not appropriate to double-count these savings by further reducing the Company's Commission-regulated retail rates.

7. Kentucky Power is without information sufficient to admit or deny the allegations contained in paragraph 2 of the Complaint, and therefore denies the same, except that it admits that Air Liquide Industrial U .S., LP; Air Products and Chemicals, Inc.; Airgas USA, LLC; AK Steel Corporation; Alliance Coal, LLC; and Catlettsburg Refining LLC, a subsidiary of Marathon Petroleum LP, purchase electric utility services from Kentucky Power.

8. Kentucky Power admits the allegations contained in paragraph 3 of the Complaint.

9. In response to the allegations contained in paragraphs 4 and 6 of the Complaint, Kentucky Power admits that Kentucky Utilities Company and Louisville Gas And Electric Company are utilities regulated by the Commission. Kentucky Power lacks information sufficient to admit or deny the remaining allegations of paragraphs 4 and 6 of the Complaint and therefore denies the same.

10. In response to the allegations contained in paragraphs 5 and 7 of the Complaint, Kentucky Power admits that the attorneys listed have appeared as counsel for Kentucky Utilities Company and Louisville Gas And Electric Company in this proceeding.

11. In response to the allegations contained in paragraph 8 of the Complaint, Kentucky Power admits that it is a utility subject to the jurisdiction of the Commission. Kentucky Power further admits it is a subsidiary of American Electric Power Company, Inc. and that American Electric Power Company, Inc.'s offices are located at 1 Riverside Plaza, Columbus Ohio, 43215-2372. Kentucky Power further states that its principal place of business is located at 855 Central Avenue, Suite 200, Ashland, Kentucky 41101, and that Kentucky Power maintains other places of business. Kentucky Power denies that American Electric Power Company, Inc. is subject to the jurisdiction of this Commission, and further denies all remaining allegations of paragraph 8 regarding the Company's office address.

12. In response to the allegations contained in paragraph 9 of the Complaint, Kentucky Power admits that Messrs. Overstreet and Gish are counsel for Kentucky Power in this proceeding. Kentucky Power further states that Katie M. Glass also is counsel for Kentucky Power in this proceeding. Kentucky Power denies that as of the time of the filing of this answer Mr. Garcia has entered his appearance in this proceeding as counsel for Kentucky Power.

13. In response to the allegations contained in paragraph 10 of the Complaint, Kentucky Power admits that Duke Energy Kentucky, Inc. is a utility subject to the Commission. Kentucky Power lacks information sufficient to admit or deny the remaining allegations of the paragraphs and therefore denies the same.

14. In response to the allegations contained in paragraph 11 of the Complaint, Kentucky Power admits that Ms. Spiller and Mr. D'Ascenzo have appeared as counsel for Duke Energy Kentucky, Inc. in this proceeding.

15. Kentucky Power admits paragraph 12 of the Complaint.

16. Kentucky Power admits that President Trump signed the Tax Cuts and Jobs Act on December 22, 2017 and is without information sufficient to admit or deny the remaining allegations contained in paragraphs 13 and 14 and therefore denies the same.

17. Kentucky Power admits paragraph 15 of the Complaint.

18. Kentucky Power denies the allegation in paragraph 16 of the Complaint that its current base rates and Tariff E.S. are designed to recover federal income tax expense at a 35% rate. Kentucky Power admits that Tariff D.S.M. recovers federal income tax expense to the extent such expense is implicit in the Company's retail rates used to calculate lost revenues, but denies that the effective federal corporate income tax rate is 35 percent. Kentucky Power denies all remaining allegations contained in paragraph 16 of the Complaint inconsistent with the previous two sentences.

19. Kentucky Power denies the first sentence of paragraph 17 of the Complaint as it applies to the Company. Kentucky Power further affirmatively pleads that the rates established by the Commission by its January 18, 2018 Order in Case No. 2017-00179 overstate the effect of the Tax Cuts and Jobs Act on the Company's cost of service. In response to the remainder of the

paragraph, Kentucky Power admits the Complaint contains estimates prepared by Complainant of the effect of the Tax Cuts and Jobs Act on Kentucky Power's annual revenue requirement, but denies the estimates and their accuracy and the remaining allegations of paragraph 17 as they apply to Kentucky Power.

20. In response to paragraph 18 of the Complaint, Kentucky Power refers to KRS 278.030(1) for its terms and denies all allegations inconsistent therewith.

21. The allegations contained in paragraph 19 of the Complaint reflect a legal conclusion to which no response is required. To the extent a response is required, Kentucky Power denies the allegations, except that the Company further affirmatively pleads that the rates established by the Commission by its January 18, 2018 Order in Case No. 2017-00179 overstate the effect of the Tax Cuts and Jobs Act on the Company's cost of service and thus are unfair, unjust, and unreasonable by denying Kentucky Power the opportunity to earn its allowed return.

22. In response to paragraph 20 of the Complaint, Kentucky Power admits the rates established by the Commission by its January 18, 2018 Order in Case No. 2017-00179 overstate the effect of the Tax Cuts and Jobs Act on the Company's cost of service and thus are unfair, unjust, and unreasonable to that extent they deny Kentucky Power the opportunity to earn its allowed return. The Company further admits that the Commission's January 18, 2018 Order in Case No. 2017-00179 indicated that it would address the effect of the Tax Cuts and Jobs Act on Kentucky Power's accumulated deferred income taxes in this proceeding. Kentucky Power denies the remaining allegations contained in paragraph 20 of the Complaint.

23. Kentucky Power admits so much of paragraph 21 of the Complaint as alleges that the Kentucky Power's rates must provide the Company with the opportunity to recover the full amount of its tax expenses so as to provide the Company with the opportunity to earn its after-

tax authorized return on equity. Kentucky Power denies that the example calculation provided in paragraph 21 of the Complaint can be used to calculate the effect of the Tax Cuts and Jobs Act on the Company's cost of service and therefore denies the remaining allegations of paragraph 21 of the Complaint as it applies to the Company. Kentucky Power further specifically denies the final sentence of paragraph 21 of the Complaint.

24. Kentucky Power admits so much of paragraph 22 of the Complaint as alleges that the reduction of the maximum federal corporate income tax rate resulted in "*excess*" accumulated deferred income taxes and that the excess accumulated deferred income taxes should be returned to customers over an appropriate period. Kentucky Power further states that any excess accumulated deferred income taxes associated with the Company's transmission assets must not be returned to customers twice: once in conformity with the provisions of Kentucky Power's Federal Energy Regulatory Commission-approved Open Access Transmission Tariff and once through retail rates, and denies all allegations of paragraph 22 inconsistent therewith.

25. In response to the allegations contained in paragraph 23 of the Complaint, Kentucky Power admits that a two-page document entitled "Comprehensive Tax Reform Priorities: Excess Deferred Tax Transition Issues" and purportedly published by the Edison Electric Institute is attached to the Complaint as Attachment B, refers to Attachment B for its terms without admitting the truth of the matters contained therein, and denies the remaining allegations of the paragraph.

26. In response to the allegations of paragraph 24 of the Complaint, Kentucky Power admits that by Order dated December 11, 1986, the Commission initiated Case No. 9779 to investigate the effect of the Tax Reform Act of 1986 on the Company's rates. Kentucky Power

refers to that order for its terms and denies all allegations of paragraph 24 inconsistent therewith. Kentucky Power lacks knowledge sufficient to admit or deny the remaining allegations of the paragraph, including the allegations regarding proceedings involving utilities other than Kentucky Power, and therefore denies the same.

27. In response to paragraphs 25-27 of the Complaint, Kentucky Power admits the Commission entered the order dated June 11, 1987 in Case No. 9779 referenced in the footnotes appended to the paragraphs, refers to the order for its terms, and denies all allegations inconsistent therewith. Kentucky Power lacks knowledge sufficient to admit or deny the remaining allegations of paragraph 25-27, including the allegations regarding proceedings involving utilities other than Kentucky Power, and therefore denies the same.

28. In response to the allegations contained in paragraph 28 of the Complaint, Kentucky Power admits that a 20-page document entitled "The past sheds light on how utility regulators may address tax changes" and purportedly published by the SNL: RRA Regulatory Focus is attached to the Complaint as Attachment C, refers to Attachment C for its terms without admitting the truth of the matters asserted therein, and denies the remaining allegations of paragraph 28 of the Complaint.

29. Kentucky Power is without knowledge sufficient to admit or deny the allegations contained in paragraph 29 of the Complaint and therefore denies the same; except that, Kentucky Power denies that paragraph 29 accurately reflects the Commission's November 3, 2016 Order in Case No. 2016-00180. Kentucky Power refers to the Order for its terms and denies all allegations inconsistent therewith. Further, Case No. 2016-00180 was initiated on application by Kentucky Power seeking accounting authority to establish a regulatory asset in connection with

the major storm damage suffered by the Company. Kentucky Power further notes that the Commission's order denied a portion of the relief sought by the Company in that case.

30. Kentucky Power is without knowledge sufficient to admit or deny the allegations contained in paragraph 30 of the Complaint and therefore denies the same.

31. In response to paragraph 31 of the Complaint, Kentucky Power refers to the Commission's November 3, 2016 Order in Case No. 2016-00180 for its terms and denies all allegations of paragraph 31 inconsistent therewith.

32. In response to paragraph 32 of the Complaint, Kentucky Power admits that by Order dated December 27, 2017 in this case the Commission directed Kentucky Power to "commence recording on ... [its] books for electric ... service ... to reflect the reduction in the federal corporate tax rate to 21 percent and the associated savings in excess deferred taxes on an interim basis until utility rates are adjusted to reflect the federal tax savings." The remaining allegations of paragraph 32 of the Complaint are a statement of law to which no response is required. To the extent these remaining allegations require a response, Kentucky Power refers to the Commission's Order dated December 27, 2017 in this case for its terms and denies all allegations inconsistent therewith.

33. Kentucky Power denies the allegations contained in the first sentence of paragraph 33 of the Complaint. With respect to the remaining allegations of paragraph 33 of the Complaint, Kentucky Power refers to the opinion of the Supreme Court of Kentucky in *Kentucky Public Service Com'n v. Commonwealth ex rel. Conway*, 324 S.W.3d 373 for its terms and denies all allegations inconsistent therewith.

34. In response to paragraph 34 of the Complaint, Kentucky Power affirmatively pleads that by Order dated December 27, 2017 in this case the Commission directed Kentucky

Power to "commence recording on ... [its] books for electric ... service ... to reflect the reduction in the federal corporate tax rate to 21 percent and the associated savings in excess deferred taxes on an interim basis until utility rates are adjusted to reflect the federal tax savings." The remaining allegations of paragraph 34 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, Kentucky Power is without information sufficient to admit or deny the remaining allegations contained in paragraph 34 of the Complaint and therefore denies the same.

35. Kentucky Power denies the allegations contained in paragraph 35 of the Complaint as they apply to Kentucky Power. Kentucky Power lacks knowledge sufficient to admit or deny the remaining allegations of the paragraph, including the allegations regarding defendants other than Kentucky Power, and therefore denies the same.

First Affirmative Defense

36. The Complaint and its calculations do not reflect all effects of Tax Cuts and Jobs Act on Kentucky Power's revenue requirement and corresponding rates. Failure to reflect the effects in full of Tax Cuts and Jobs Act on Kentucky Power's revenue requirement and rates, as well as the overstatement in Case No. 2017-00179 of the effect of the Tax Cuts and Jobs Act on the Company's cost of service, unless otherwise addressed in full in that case, will produce unfair, unjust, and unreasonable rates.

Second Affirmative Defense

37. The Company further affirmatively pleads that the effect of the Tax Cuts and Jobs Act on that portion of the Company's excess accumulated deferred income taxes that relate to the Company's transmission assets is reflected in the OATT charges the Company incurs, and that Kentucky Power customers receive the benefits of savings related to a reduction of these charges

through the Company's Tariff P.P.A., and therefore it is not appropriate to double-count these savings by further reducing the Company's Commission-regulated retail rates.

Wherefore, Kentucky Power respectfully requests the Commission to enter an order:

1. Denying Kentucky Industrial Utility Customers' claims to the extent they are inconsistent with Kentucky Power Company's answer;

2. Establishing a procedural schedule to permit the filing of testimony and the taking of discovery; and

3. Granting Kentucky Power all other relief to which it may appear entitled.

Respectfully submitted,

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