COMMONWEALTH OF KENTUCKY
BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION

The Electronic Application of Duke Energy Kentucky, Inc., for: 1) An Adjustment of the Electric Rates; 2) Approval of New Tariffs; 3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; and 4) All Other Required Approvals and Relief.	))))))	**Case No. 2019-00271**

BRIEF OF THE KROGER CO.

The Kroger Co. ("Kroger") submits this Brief in support of its recommendations with respect to Duke Energy Kentucky, Inc.'s ("Duke") Application for an adjustment of its electric rates.

ARGUMENT

I. REVENUE REQUIREMENT

1. Duke's Load Forecast Shows A Substantial Increase In MWH Sales Just As The Test Year Closes.

Duke's requests for a $45.6 million rate increase is based on a forecasted test year that spans the twelve months between April 1, 2020 and March 31, 2021.[1] That forecasted test year assumes total MWH sales of 4,045,003 MWH for the Duke service territory[2] and uses this projection as the general denominator for setting rates. However, Duke's load forecast projects that total sales will significantly increase over and above its projected test year sales just as the test year concludes in March of 2021. As explained below, the stark increase in projected MWH sales that is not factored into Duke's proposed new rates could cause Duke to be in an over-earning position (and customers in an over-paying position) shortly after new rates go into effect.

[1] Direct Testimony of Amy Spiller, p. 25.
[2] Schedule M-2.1, line 29(D).

Duke witness Benjamin Passty's load forecast projects an approximate 30% increase in industrial MWH sales between 2020 and 2022.[3] Mr. Passty explains that the dramatic increase in projected industrial sales is due to the addition of *"one very large customer that has committed to begin doing business within the region…"*[4] Mr. Passty confirmed that the 30% increase in industrial sales that coincides with the end of the test period is the primary factor in an approximately 6.5% increase in total MWH sales between 2020 and 2022[5] as shown in Mr. Passty's load forecast, excerpted below:

Duke Energy Kentucky
Service Area Energy Forecast (Megawatt Hours) (a)[6]

Year	Residential	Commercial	Industrial	Street Highway Lighting	OPA	Other	Total Consumption
2019	1,457,669	1,436,730	**813,219**	14,960	278,420	715	**4,001,713**
2020	1,465,953	1,448,900	**815,469**	14,901	279,845	717	**4,025,786**
2021	1,466,896	1,458,281	**897,224**	14,868	278,122	715	**4,116,106**
2022	1,473,531	1,465,081	**1,056,481**	14,871	279,172	715	**4,289,852**
2023	1,483,281	1,468,640	**1,075,610**	14,887	280,639	715	**4,323,772**
2024	1,493,303	1,474,308	**1,095,956**	14,916	282,008	717	**4,361,207**

*Bold added for emphasis.

Duke's actual test year MWH sales projection is slightly higher than Duke's 2020 annual projection, but still does not take into account the vast majority of the increase in MWH sales that Duke will experience with the addition of the new, very large industrial customer. According to Duke's Schedule M, the test year projected MWH sales that is used to formulate new rates is 4,045,003 MWH.[7] Duke's forecasted 2022 sales of 4,289,852 MWH is approximately 6% higher than projected sales used to formulate new rates.[8] If rates are calculated based on a test year that is not representative of future sales Duke will over-collect costs and will over-earn shortly after rates go into effect. Mr. Passty acknowledged this over-earning risk during cross-examination.[9]

---

[3] Direct Testimony of Benjamin Passty, Attachment BWP-2. See also, Cross-examination of Benjamin Passty (Video Transcript 12/19/20, 17:01:50- 17:02:03).
[4] Direct Testimony of Benjamin Passty, p. 10. See also, Cross-examination of Benjamin Passty (Video Transcript 12/19/20, 17:01:10- 17:01:45).
[5] Video Transcript 12/19/20, 17:00:00- 17:02:15.
[6] This Table is an excerpt from Attachment BWP-2.
[7] Schedule M-2.1, line 29(D).
[8] Cross examination of Jeff Kern (Video Transcript 12/20/20, 13:25:00- 13:26:29).
[9] Video Transcript 12/19/20, 17:02:50-17:04:31.

According to Duke witness Sarah Lawler, setting rates based on a future test year is good policy because, "*you are setting the rates for that future period and so the costs better match the period of time that you are collecting those rates…*"[10] But in this case, Duke's MWH sales reflect a snapshot in time in which MWH sales are known to be significantly lower than MWH sales in the near future. This is particularly concerning because Duke's has included costs associated with the new, large industrial customer in its test year.[11] When approving new rates in this proceeding, the Commission should be cognizant of the fact that the test year that was selected represents a period of time immediately prior to a large, known and measurable, increase in total MWH sales. That factor will likely cause the Company to over-earn and customers to over-pay shortly after rates go into effect.

2. <u>Kroger Generally Supports The Adjustments Recommended By AG Witness Lane Kollen.</u>

Attorney General ("AG") witness Lane Kollen submitted extensive testimony recommending a series of reductions to Duke's proposed revenue requirement in this case. These adjustments are summarized on page 5 of Mr. Kollen's Direct Testimony. Kroger generally supports Mr. Kollen's adjustments and recommends that the Commission consider adopting a rate increase consistent with the AG's recommendations.

3. <u>Duke's Transaction Fee-Free Program Proposal Includes Program Costs Without Offsetting Program Savings.</u>

Duke witness Lesley Quick proposes that the Commission approve a Transaction Fee-Free Program that would eliminate the current $1.50 per transaction fee for residential customers using a credit card, debit card or electronic check to pay their bill. The $1.50 fee that is charged by a third-party vendor would instead be recovered from all customers through base rates.[12] Duke has added $0.493 million in additional expenses associated with the Fee-Free Program.[13]

In settling on a $0.493 million addition to the revenue requirement, Duke started by taking the prior year actual total transaction charges and then assumed, based on the average growth rate over the last 5 years, that credit card transactions would increase by an additional 13% per year even absent a Fee Free Program. Then Duke

---

[10] Video Transcript 12/20/20, 10:41:30-10:41:42.
[11] See Kroger-Post-Hearing-DR-01-001
[12] Direct Testimony of Lesley Quick, pp. 8-9.
[13] Direct Testimony of Lane Kollen, p. 28.

consulted a "*white paper*" from a "*third party process payment vendor*" that estimated that allowing customers to make payments without a fee would double the growth rate of electronic payments, resulting in a 26% increase in total costs from the prior year.[14] Duke contends that the projected growth of credit card charges is known and measurable and should be included in the test year.[15]

AG witness Lane Kollen argued that Duke's proposed Fee-Free Program accounts for projected program costs, but fails to account for the costs saving associated with customers using electronic payment methods such as customer payment processing expense, call center expense, uncollectible accounts expense and interest expense.[16] Duke acknowledges that Mr. Kollen is correct that there will be offsetting costs associated with the Fee Free Program.[17] In support of the Fee Free Program, Ms. Quick states that:

> "*The more convenient the Company can make the bill paying process for customers to pay bills, the more all customers will benefit... Customers who do not pay on time and enter the credit collection cycle drive increased cost, which are paid for by all customers... customer who are not satisfied tend to call the Customer Care Center more often... This means that every call that can be avoided leads to savings for all customers.*"[18]

Despite justifying the program based on customer savings, none of the projected savings cited by Ms. Quick are actually passed on to customers in Duke's proposal. Duke explains that there are no projected savings used to offset costs because "*the savings are not known and measurable at this time.*"[19]

Duke has made several projections and assumptions concerning the costs associated with offering a fee free payment method but has opted to not make any projections or assumptions associated with cost savings. The Commission should not approve this program unless costs and savings are both factored into the revenue increase resulting from the Fee Free Program. If the Commission approves a Fee Free Program, costs and cost-saving should be netted out.

---

[14] Video Transcript 12/19/20, 11:52:23-11:53:20.
[15] Video Transcript 12/19/20, 12:04:34-12:05:56.
[16] Direct Testimony of Lane Kollen, p. 28.
[17] Rebuttal Testimony of Lesley Quick, p. 3.
[18] Direct Testimony of Lesley Quick, pp. 12-13.
[19] Rebuttal Testimony of Lesley Quick, p. 3.

II. COST ALLOCATION

1. **The Commission Should Adopt Duke's Proposed Average Of 12 CP Cost Of Service Methodology.**

Duke witness James Ziolkowski recommended that the Commission adopt the Average 12 CP methodology which allocates production costs based on the class contribution to the 12 monthly system peaks. Mr. Ziolkowski recommends that the Commission approve the 12 CP methodology for three reasons. First, the 12 CP method is a generally accepted method in the industry and was approved by the Commission in Duke's last electric base rate case. Second, this methodology recognizes that Duke's generating facilities are in place to meet the monthly maximum demands of its customers. Finally, Mr. Ziolkowski states that there is not a compelling reason to adopt a new methodology.[20]

As explained in greater detail in the Direct Testimony of Kroger witness Justin Bieber, Kroger agrees that the Commission should adopt Duke's proposed 12 CP methodology for the reasons cited by Mr. Ziolkowski.[21] Additionally, Mr. Bieber examined the monthly system peaks for Duke's system and observed that the peaks generally fall within a narrow range which would indicate that the 12 CP Methodology is appropriate for Duke's load profile.[22]

2. **Kroger Recommends That The Commission Take The Level Of The Final Approved Increase Into Account When Determining The Level Of Subsidy-Reduction.**

In his Direct Testimony, Mr. Ziolkowski, states that the class cost of service studies submitted in this case reveal that there are significant differences among the rate classes when comparing the actual return earned by each rate class to the overall system rate of return being requested in this case. If class revenue responsibility was matched with underlying cost-causation it would require much greater increases for some rate classes than others, in terms of the percentage increase. Given the wide disparity among rate classes, complete elimination of subsidies would cause a dramatic swing in rate impacts between and among the rate classes. [23] At Duke's proposed rate increase of $45.6 million, the Company is proposing a two-step process to distribute the revenue allocation between

---

[20] Direct Testimony of James Ziolkowski, p. 6.
[21] Direct Testimony of Justin Bieber, pp. 4-8.
[22] Direct Testimony of Justin Bieber, pp. 5-6.
[23] Direct Testimony of James Ziolkowski, p. 27.

rate classes. The first step eliminates 5% of the current subsidy/excess revenues between rate classes. The second step allocates Duke's proposed rate increase to customer classes based on the original cost depreciated rate base.[24]

Duke's proposal to eliminate just 5% of the existing subsidies in this case would constitute only half of the 10% subsidy reduction that the Commission approved in Duke's prior general rate case. If the Commission approves a $45.6 million rate increase Kroger agrees that the rate impact on the subsidized customer classes would not allow significant movement toward reducing subsidies. However, to the extent that the Commission approves a revenue increase for Duke that is less than its proposed increase, then Kroger recommends that the Commission take advantage of the opportunity to improve the alignment between revenue responsibility and cost-causation while still reducing the requested rate increase for *all* rate classes.

At hearing, Mr. Ziolkowski indicated that he would support a greater than 5% movement toward cost of service if the rate increase requested by Duke was lowered in the Commission's final order. Mr. Ziolkowski stated that "*to the extent that the approved final order authorizes a lower increase then we would be amenable to changing the subsidy elimination from 5% to 10% or even a higher number.*"[25]

Kroger recommends that the Commission approve rates that make a reasonable movement toward reducing inter-class subsidies in this case. In Duke's last rate case, the Commission approved a 10% movement toward eliminating subsidies. The Commission stated in its Final Order:

> *"The Commission also accepts Duke Kentucky's proposed revenue allocation and finds that the proposed revenue allocation, which reduces class subsidies by 10 percent, conforms to the principle of gradualism. As previously stated, the Commission is granting less of an increase than that requested by Duke Kentucky. Therefore, the Commission will allocate the increase granted herein on a proportional basis to each of the rate classes, based generally on Duke Kentucky's proposed revenue allocation."*[26]

[24] Direct Testimony of James Ziolkowski, p. 25.
[25] Video Transcript 2/20/20 at 12:10:49-12:11:10.
[26] Case No. 2017-00321, Order of April 13, 2018. p. 44.

Consistent with Duke's previous Order, the Commission should take the magnitude of the final approved increase into account when determining the level of subsidy-reduction, with the understanding that a lower rate increase should allow greater movement toward cost of service.

Respectfully submitted,

Kurt J. Boehm, Esq.
Jody Kyler Cohn, Esq.
BOEHM, KURTZ & LOWRY
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202
Ph: 513.421.2255 Fax: 513.421.2764
kboehm@bkllawfirm.com
jkylercohn@bkllawfirm.com

COUNSEL FOR THE KROGER CO.

March 16, 2020