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 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

DUKE ENERGY KENTUCKY, INC.'S
MOTION FOR REHEARING

Comes now Duke Energy Kentucky, Inc. (Duke Energy Kentucky or Company), by counsel, pursuant to KRS 278.400 and other applicable law, and does hereby tender its Motion for Rehearing, respectfully stating as follows:

I. INTRODUCTION

Duke Energy Kentucky filed an Application to adjust its rates on September 3, 2019. In an eighty-eight (88) page Order entered on April 27, 2020 (Order), the Commission granted an electric base rate increase of $24.124 million. Duke Energy Kentucky appreciates the time and attention the Commission put into reviewing the Company's rate application, but respectfully suggests that, in several key aspects, the Order is based upon incorrect assumptions, analyses or understandings and therefore arrives at certain conclusions that are squarely inconsistent with the record or the underlying legal authorities. It is therefore necessary and appropriate for the Commission to grant rehearing for the reasons set forth herein.

II. ARGUMENT

Duke Energy Kentucky believes that rehearing is warranted and should be granted on the following issues: (1) removal of "excessive" plant additions; (2) disallowance of increased depreciation expense; (3) double counting of disallowed depreciation expense; (4) clarification of intent with regard to tracking certain excess Accumulated Deferred Income Taxes (EDITs); (5) the return on equity (ROE) determination; (6) a clerical error with regard to incentive compensation disallowance; and (7) the denial without prejudice of the Rate LED – LED Outdoor Lighting Service tariff.

A. Excessive Plant Additions

The Order makes two adjustments related to a reduction in net plant increases. The first adjustment lowers Duke Energy Kentucky's rate base by $45.404 million, which results in a $3.767 million reduction in the Company's revenue requirement.[1] The second adjustment is tied to depreciation expense on the reduced rate base and lowers the Company's revenue requirement by an additional $1.751 million.[2] These adjustments, which decrease Duke Energy Kentucky's revenue requirement by $5.518 million, are unreasonable. The conclusion that the Company had excessive capital was derived from comparing schedules from the Application that, as indicated on their face, contain different data sets and are used for different purposes. These schedules do not contain data that is comparable on an apples-to apples-basis. Consequently, the Order arrives at the $5.518 million reduction based upon a faulty analysis.

The Order uses the Company's response to Filing Requirement 16(7)(b) to determine the amount of the "maximum additions" that could have been placed into service as of December 31, 2020:

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[1] *See* Order, pp. 11-14.
[2] *See id.*

Description	Amount	Source
Total Cap Ex through 12-31-2020[3]	$361,812,064	Per FR 16(7)(b)
Less: Woodsdale New Generation	$ 17,225,732	Per FR 16(7)(b)
Less: Normal CWIP	$ 35,080,053	Order, p. 11, n. 36
Max additions on 12-31-2020	$309,506,279	

The Order then uses Schedule B-2.3 and the responses to several discovery requests to calculate Duke Energy Kentucky's capital expenditures from January 2019 through December 31, 2020:

Period	Amount	Source
Jan - Nov 2019	$175,595,527	Staff-DR-02-006 Attachment
Dec 19 - Mar 20	$ 73,566,174	Sch. B-2.3 (Beg of FP - End of BP)
Apr - Dec 2020	$126,668,639	Staff-DR-02-007 Attachment
Plant Additions Jan 19 - Dec 20	$375,830,340	

Based upon the difference of these two calculations ($375,830,340 less $309,506,208),[4] the Commission concluded that Duke Energy Kentucky must have excessive plant additions of $66,324,132 – calculated by subtracting plant additions from January 2019 through December 2020, from what it considered to be the maximum possible additions that could have occurred through December 31, 2020.

The major flaw in the Order's logic results from failure to consider a key distinction in the data used to calculate the two figures. A note on FR 16(7)(b) clearly states that the data "*excludes* projects being recovered in the Company's Rider ESM filings." In contrast, the additions included in the response to Staff-DR-02-006 Attachment and Staff-DR-02-007 Attachment, and for that matter Schedule B-2.3, *include* additions related to environmental projects that are recovered in the Company's Rider ESM. The two schedules, therefore, are not reconcilable on their face as they contain different data sets and underlying assumptions. It is for that exact reason that the Company made an adjustment of $69,086,352 on Schedule B-2.2 to "*remove* assets recovered through the

[3] *See* Order, p. 9. CWIP as of December 31, 2018, plus capital expenditures for 2019 and 2020.

[4] The calculation also appears to be incorrect due to a mathematical computation error. *See* Order, p. 11, n 37.

ESM Rider" from the test period. In order to make an accurate apples-to-apples comparison of FR 16(7)(b), the Commission should have subtracted $69,086,352 related to assets recovered through the ESM Rider from total plant additions for January 2019 through December 2020. Subtracting $69,086,352 of assets recovered in the ESM Rider from the $375,830,340 of plant additions through December 2020 actually results in total plant additions for the relevant time period of $306,743,988, an amount that is actually *less than* the maximum possible additions of $309,506,279 the Commission calculated in its Order using the irreconcilable, unadjusted data.

Using properly reconciled data on an apples-to-apples comparison, there are no excessive plant additions. As a result, the rate base reduction of $45,403,842 for what are described as "excessive plant additions" and the corresponding adjustment to depreciation expense is unreasonable, inappropriate and clearly confiscatory. The Commission should grant rehearing, reverse its adjustment to the Company's projected plant additions and restore the entire $5,517,663 in revenue requirement that the Order eliminates.

The Order underscores the danger in giving undue weight to one data set that is not particularly useful in the context in which it was relied upon in the Order. The Order disregards the scrutiny the Company puts forth in preparing its forecasted test period and takes financial data provided in response to a filing requirement out of context. The Company's forecasted test period plant in service provided in this case is based upon the most recently available information at the time of the Application and is reasonable, reliable and made in good faith, based on all the information available as of the time of its filing. There is nothing in the record that indicates the Company erred in the creation of the forecasted test period plant in service. The Order therefore errs by arbitrarily reducing the Company's revenue requirement in this case and rehearing should be granted to correct the analytical error.

B. Increased Depreciation Expense

As part of its Application, Duke Energy Kentucky sought an increase in its revenue requirement of $7.431 million that was attributable to an increase in depreciation expense. In the Order, however, the Commission accepted a recommendation proffered by the Attorney General's expert, Mr. Lane Kollen, and reduced this amount by $7.446 million based upon a finding that the Company's depreciation rates should be held at the same rate as approved in Duke Energy Kentucky's last electric base rate case.[5]

> The Commission agrees that the requested 15 percent increase in depreciation expense is not justified because *there have been no significant known changes in the depreciation parameters, or assumptions*, for plant at the depreciation study date in this case, December 31, 2018, and parameters for plant at the depreciation study in Case No. 2017-00321, December 31, 2016. Duke Kentucky should continue to use its current deprecation rates, as approved in Case No. 2017-00321.[6]

Depreciation expense is a critical component of public utility rates. Indeed, Kentucky jurisprudence demonstrates that inadequate allowances for depreciation expense are a specific example of an unlawful, confiscatory rate:

> The rates established by the Commission will not generate sufficient revenues to enable the districts to provide for an adequate depreciation account and replacement fund. Disallowance of depreciation expense as a rate recovery permits a substantial portion of the property of the district to be consumed by present customers without requiring the customers to pay for replacement.[7]

While the Order is correct in finding that there have been no significant known changes in the depreciation *assumptions*, it is simply inaccurate for the Commission to make the same finding with regard to depreciation *parameters*. The exhibit to which the Order cites plainly evidences that

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[5] The difference in the two numbers is based upon the Commission's application of the GRCF to the Company's depreciation expense.
[6] Order, pp. 8-9 (emphasis added).
[7] *Public Service Commission of Kentucky v. Dewitt Water District*, 720 S.W.2d 725, 730 (Ky. 1986).

total investment increases significantly through the end of the test year.[8] As total investment increases, depreciation expense must similarly increase, absent a change in assumptions, such as life or rates. The largest area of increased depreciation expense – which the Order acknowledges – is $4.694 million in Steam Production Plant accounts that is specifically attributable to increased investments in generation assets.[9] Other significant depreciation expense increases are tied to investments in Other Production Plant ($1.671 million) accounts and Distribution Plant ($1.245 million) accounts. The fact that Duke Energy Kentucky has made, and continues to make, significant investments in its East Bend and Woodsdale generation assets and its distribution system is clear on the record,[10] and the prudency of those investments has not been challenged. Indeed, they are vital to assuring Duke Energy Kentucky's continued ability to provide efficient and adequate service to customers.

As new investment in generation and distribution assets increases, the total amount of depreciated expense correspondingly increases.[11] Increased investment is clearly a significant known change to the parameters of the depreciation calculation and it requires a change in the depreciation rate so as to allow for the asset to be fully depreciated over the unchanged useful life, as testified to by Mr. Spanos.[12] The logic explained in the Order might apply had the useful life variable of the depreciation expense calculus also changed so as to negate the impact of the increased investment. But the Order does not endorse Mr. Kollen's suggestion that the

[8] *See* Duke Energy Kentucky Response to AG-DR-01-033, Attachment 1, p. 5.
[9] *See* Duke Energy Kentucky Response to AG-DR-01-033, Attachment 1, p. 1. The largest of these investments are found in FERC Account 311 – Structures & Improvements; FERC Account 312 – Boiler Plant Equipment; and FERC Account 314 – Turbogenerator Equipment – all of which represent investments in the Company's core electric generation assets.
[10] *See* Spanos Cross-Examination, HVR at 11:10:00 – 11:14:20; 11:21:25 – 11:22:25; and 11:38:14 – 11:41:50 (Feb. 19, 2020); Jeff Mosley Cross-Examination, HVR at 14:18:20 – 14:36-30; 14:38:18-14:47:00 (Feb. 19, 2020).
[11] *See* John Spanos Cross-Examination, HVR at 11:11:47 (Feb. 19, 2020).
[12] *See id.*, HVR at 11:27:50 (Feb. 19, 2020); Spanos Direct Testimony, Exhibit JJS, Depreciation Study, p. VI-2 (Sept. 3, 2020) ("An assumption that accrual rates can remain unchanged over a long period of time implies a disregard for the inherent variability in service lives and salvage and for the change of the composition of property in service").

aforementioned investments will somehow extend the useful life of the assets in question.[13] The omission of such a finding substantially undermines the premise that the change in depreciation rates is unwarranted.

The clear effect of the Order is to unreasonably defer the Company's recovery of its investment in electric production and distribution until some point in the future. This violates the matching principle by forcing future generations of Duke Energy Kentucky customers to pay for investments that benefitted the current generation of customers. Moreover, it substantially increases the likelihood that future customer generations will be forced to pay for undepreciated, stranded assets at the time of their retirement. Consider the following example. A utility owns a generator that is scheduled to be retired on December 31, 2025. As of December 31, 2018, assume that this asset had a remaining book value of $70 million and is being depreciated at $10 million per year. If no additional investment is made to this asset, the book value will be $0 at the end of December 31, 2025 (its scheduled retirement date). This example is consistent with the depreciation rates that were put into effect in Duke Energy Kentucky's last electric base rate case. Now, however, assume the utility prudently invested an additional $10 million in the generator on December 31, 2020; that this new investment went into service; and that this investment did not extend the life of the generation asset. If the depreciation expense does not change from the current $10 million per year, there will be a mis-matched $10 million balance of net plant remaining at retirement that will still have to be recovered from ratepayers when the asset is no longer used and useful. This is the undesirable effect of the Order and should be remedied by the Commission.

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[13] *See e.g.* Lane Kollen Direct Testimony, pp. 53-54 (Dec. 13, 2019); Kollen Cross-Examination, HVR at 14:50:00 - 14:54:00 (Feb. 20, 2020).

The fundamental concept of utility depreciation is to systematically and rationally recover the cost of an asset over its useful life.[14] The Kentucky Supreme Court recognizes this.[15] Even Mr. Kollen agrees.[16] In this manner, customers pay for the use of this asset while it provides service. If the cost of the asset is not fully recovered at the end of its life, then recovery must be made from customers who no longer benefit from the asset. The Order forces the Company to violate the matching principle insofar as it will ensure that the Company will under-recover its investment in utility plant.[17] The Order on this point conflicts with the basic mathematics underlying the concept and conventional ratemaking treatment of depreciation.

Since the prior rate case, the Company has increased its depreciable plant total by nearly 14 percent by investing in upgrades and additions to its various production and distribution facilities. The Order unfairly denies the Company the opportunity to fully recover this new investment made since the date of the prior rate case by precluding the Company from adjusting its depreciation to account for this new investment and forcing it to arbitrarily base its depreciation expense at 2017 filing levels. The consequence will be that assets will not be fully recovered at the time of retirement and that customers will need to continue paying for assets long after those assets have stopped providing service.

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[14] *See* Spanos Cross-Examination, HVR at 11:25:38 (Feb. 19, 2020); *See e.g. In the Matter of the Joint Application of Kentucky Utilities Co. & Louisville Gas & Elec. Co. for Approval of Depreciation Rates for Brown Solar*, Order, Case No. 2016-00063 (Ky. P.S.C. Apr. 8, 2016) ("The depreciation rates were also established based on the Companies' service lives records and historical data; the cost of the assets were then allocated over the useful lives of those assets.").

[15] *Dewitt Water District*, p. 729 ("Adequate depreciation allowance is critical in order to allot to the district sufficient revenue to provide for a replacement fund for all its plant property, contributed or noncontributed.").

[16] *See* Kollen Cross-Examination, HVR at 14:49:05 (Feb. 20, 2020).

[17] *See e.g. In the Matter of the Application of East Kentucky Power Cooperative, Inc. for an Adjustment of Electric Rates*, Order, Case No. 1994-00336 (Ky. P.S.C. Feb. 28, 1996) ("One of the well-established rate-making concepts applied in this case is the matching principle, which requires that all revenues, expenses, rate base, and capital items reflect the same time period."); *In the Matter of the Application of Kentucky Utilities Company*, 52 P.U.R. 4th 408 (Ky. P.S.C. Mar. 18, 1983) ("The commission's objective is to obtain a proper matching of revenues and expenses within the test year.").

As the Company pointed out in its Brief, Kentucky law does not impose a minimum time between depreciation studies.[18] Nonetheless, the Commission's Order rejects the Company's updated depreciation study whole cloth, without any legal basis, and despite the conclusive evidence demonstrating the increase in depreciation expense is directly a result of increases in capital investment. Updating a depreciation study to incorporate increases in capital investment is inherently reasonable. Duke Energy Kentucky's depreciation witness, John Spanos, has for more than three decades, prepared depreciation studies and has provided his expertise in rate cases in Kentucky for many utilities over many years. His credentials as a depreciation expert were not disputed. Despite offering a thorough and well documented depreciation study in this proceeding, Mr. Spanos' analysis was categorically rejected by the Commission. Instead, the Order adopts the recommendation of an individual who has never personally performed a depreciation study,[19] is not trained to do so, and imposes upon a future Commission the unsavory task of telling future generations of customers that they must pay for investments that are no longer used or useful. The Commission should reverse its decision to maintain the existing, outdated depreciation rates, as recommended by Mr. Kollen, as their continued use violates law, is inconsistent with Commission precedent and burdens future customers with costs directly out of alignment with their service.

C. Double Counting on Depreciation

The Commission's decision on the two issues relating to the calculation of depreciation expenses and excessive plant additions will have an impact upon another depreciation related issue. The Order appears to "double count" a reduction in depreciation expense when arriving at its revenue requirement reductions. If, after reviewing the facts in this request for rehearing, the

[18] *See generally* 807 KAR 5:001; Lawler Rebuttal, pp. 17-18.
[19]*See* Kollen Cross-Examination, HVR at 14:48:52 (Feb. 20, 2020); AG's Response to Duke Energy Kentucky's DR-01-0026.

Commission still believes that both the adjustment for the excessive plant additions and the adjustment to maintain the Company's depreciation rates are correct, at a minimum, the calculation of the adjustment to maintain the depreciation rates at those approved in Case No. 2017-00321 must change. The adjustment in the Order was calculated based on the as-filed plant in service in this case and resulted in a $7.431 million reduction in depreciation expense. If the Commission is going to modify the Company's as-filed plant in service, then the newly adjusted plant in service balances must be used for this calculation, not the plant in service balances that the Commission considers excessive. As shown in the following table, the $7.431 million would be reduced by $200,185 for a revised adjustment to a depreciation expense of $7.231 million. The revenue requirement impact related to the depreciation expense is an increase of $200,577.

	Completed Construction Not Classified			**Depr Rate for Completed Constr Not Classified [1]**		**Diff in Depr for Completed Constr Not Classified**	
	As Filed [1]	**Inc/(Decr) Per Order[2]**	**Revised**	**As Filed (B-3.2)**	**Prior Case**	**As Filed Plant**	**Revised Plant**
	(a)	(b)	(c) = (a) + (b)	(d)	(e)	(f)=(a)*[(d)-(e)]	(g)=(c)*[(d)-(e)]
Steam Prod	$65,023,502	($20,253,210)	$44,770,292	2.950%	2.330%	$403,146	$277,576
Other Prod	19,959,856	(2,962,173)	16,997,683	3.760%	3.230%	105,787	90,088
Trans	11,109,715	5,192,807	16,302,522	2.050%	2.240%	(21,108)	(30,975)
Dist	94,687,831	(28,283,150)	66,404,681	2.430%	2.110%	303,001	212,495
General	24,799,586	(7,078,177)	17,721,409	9.310%	9.900%	(146,318)	(104,556)
Common	-	36,634	36,634	3.300%	4.130%	-	(304)
						$644,508	$444,323
				Difference			$200,185
				GRCF			1.00195983
				Revenue Requirement			**$200,577**

Note: [1] Taken from AG-DR-1-33 for Completed Construction Not Classified.
[2] Difference in "13-Month Average" balance for tables in Appendix A of the Commission's April 27, 2020, Order.

Following the methodology relied on in the Commission's Order, the impact from changes to accumulated depreciation and ADIT from correcting the double count of depreciation expense would decrease the revenue requirement by $4,165.[20] Combined, the impact of correcting the Commission's double counting the depreciation adjustment using the Attorney General's recommendation and its own adjustment to future plant is an increase of the revenue requirement by $196,412 ($200,577 - $4,165).

D. Amortization of EDITs

The Order includes a finding regarding the amortization of EDITs that appears to be unique to Duke Energy Kentucky:

> Thus, the Commission finds that requiring Duke Kentucky to attribute the amortization of excess ADIT in base rates to protected excess ADIT to the extent allowed by ARAM in the forecasted test period, to be calculated when Duke Kentucky has the information to do so, does not violate the federal normalization rules and further finds that the amortization of excess ADIT in base rates should be allocated to the amortization of protected excess ADIT in that manner with the remainder allocated to unprotected excess ADIT.[21]

The Company seeks rehearing to gain clarification as to the Commission's intention with regard to the Order. The Order notes that the 2018 Average Rate Assumption Method (ARAM) amortization was used as the forecasted ARAM amortization in the projected test year period which includes nine (9) months of 2020 and three (3) months of 2021.[22] Other related financial components of tax expense, ADIT, and book depreciation were based on the projected test period. What is unclear is whether the Order should be read to capture the difference between the 2018 ARAM amortization and the projected test period amortization, when actual ARAM is determined for the forecasted period, and hold that amount as an unprotected regulatory liability for each year rates are in effect until the next rate proceeding. This methodology would allow

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[20] This is calculated as follows: ½ the change in rate base + the depreciation adjustment times the combined effective tax rate (follows the calculation in Kollen's workpapers, see the Rate Base tab).
[21] Order, p. 34.
[22] *See id.*, p. 31.

consistency in rates for EDIT, ADIT, tax expense, and book depreciation since they would all be based on data from the projected test period.[23]

On the other hand, the Order can also be read to capture the difference between the 2018 ARAM amortization and the actual amortization for all future periods (*e.g.*, 2022, 2023.) as an unprotected regulatory liability to be addressed in a future rate proceeding. If this understanding is the one intended by the Commission, the Company believes this option requires extra steps to be performed under the "consistency principal" from IRC Sec. 168(i)(9)(B), which would require a similar true-up for ADIT, tax expense, and book depreciation. These changes would also need to be tracked as a regulatory asset or liability so that all four of the related financial components are treated consistently to avoid a tax normalization violation. This scenario results in a significant additional administrative burden that includes the tracking of ADIT, tax expense and book depreciation on an annual basis to create the new regulatory assets and/or liabilities. In other words, this understanding of the Order essentially creates a tracker for EDIT, book depreciation, tax expense, and ADIT. Duke Energy Kentucky is unaware of any other regulated utility that has been required to undertake this effort, which makes the Commission's intention and desire even less certain. Rehearing is requested so that the Company may fully understand the intention of the Order in this regard.

E. Return on Equity

In determining the ROE, the Commission agreed with Duke Energy Kentucky that "it is appropriate to present multiple methodologies to estimate ROEs…."[24] However, the Commission

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[23] As an example: Rates reflect 2018 ARAM of $5. Projected test period amortization in actuals is determined to be $6. Therefore, each year, $1 of protected EDIT regulatory liability is transferred and held as an unprotected EDIT regulatory liability to be addressed in a future rate proceeding. Under this scenario, if 2022 ARAM is $5.5, the protected regulatory liability would be debited for $5.5, an unprotected regulatory liability would be credited for $1, and tax expense would be credited for $4.5.

[24] Order, p. 46.

agreed with the AG "that Duke Energy Kentucky participates in a relatively low-risk regulatory industry," is able to mitigate financial risk by filing forecasted test year rate cases and any risks associated with the Company generation mix are factored into its current credit rating.[25] The Company acknowledges that a 9.25 percent ROE was within the range of possible outcomes predicted by Dr. Roger Morin's analysis, however, it is among the lowest (if not the absolute lowest) ROE awarded to any vertically integrated utility in the country during the first quarter of 2020. Moreover, it is substantially below (25 basis points) what Dr. Morin considered to be an updated "bare bones" award – even when flotations costs are excluded. Indeed, Dr. Morin's range, even as revised in rebuttal, demonstrated that there were appropriate and reasonable ROEs higher than what he was recommending as a bare bones authorized return.

The Order abandons the Commission's past reliance upon ROE awards from around the country, much less from the Commonwealth of Kentucky, as a key consideration in ascertaining the expectations of investors who have multiple investment opportunities, not only within the utility industry sector, but within the broader capital market:

> For 2017, the average authorized ROE in the electric utility industry as reported in the Regulatory Research Associates ("RRA") quarterly review was 9.80 percent, and the average of allowed ROEs for the proxy group of 19 companies is 9.88. Further, the Commission notes its last award of 9.7 percent for an investor-owned electric utility. *The Commission believes these ROE reports are benchmarks worthy of consideration in determining a reasonable ROE.* The Commission believes that since its last award of 9.7 percent, the economy has shown quantifiable signs of improvement. *Further, the Commission recognizes the risk inherent to Duke Kentucky's lack of diversity in its generation fleet.* Based on the entire record developed in this proceeding, we find that the approved ROE of 9.725 falls within the range of Duke Kentucky's proposed ROE of 8.86 percent to 10.5 percent, adjusted for flotation costs. While the ROE of 9.725 exceeds the Attorney General's range of 8.2 percent to 9.2 percent, the Commission believes that the Attorney General recommended

[25] *See id.*

> range is unreasonably low. *The Commission agrees with Duke Kentucky that awarding an ROE that is significantly lower than other electric utility authorized ROEs may cause it financial stress and fails to take into account Duke Kentucky's highly concentrated generation portfolio.* Additionally, an ROE of 9.725 is within the range of the benchmarks provided by RRA and approved for the proxy group, and recognizes the economic improvements since the last Commission decisions involving rate cases of other investor-owned electric utilities in Kentucky.[26]

Dr. Morin's recommended 9.7 percent ROE was squarely in line with the national trend.[27] Moreover, the record reflects that the decrease in interest rates during the period following the filing of the Company's application did not correlate to lower ROE determinations. In fact, the opposite is true as ROE awards rose even as interest rates fell in the latter half of 2019.[28] And the Commission's recognition in 2018 that "awarding an ROE that is significantly lower than other electric utility authorized ROEs may cause it financial stress and fails to take into account Duke Kentucky's highly concentrated generation portfolio,"[29] is irreconcilable with the Order's contrary conclusions. The Company's "highly concentrated generation portfolio" has not changed in two years, thus, it was just as factored into credit ratings in 2018 as it is in 2020 – yet the Order reduces the ROE to the lowest of any approved in decades for investor-owned, vertically integrated electric utilities in Kentucky and, perhaps, the lowest current ROE approved in the nation.[30]

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[26] *In the Matter of the Electronic Application of Duke Energy Kentucky, Inc. for: 1) an Adjustment of the Elec. Rates; 2) Approval of an Environmental Compliance Plan & Surcharge Mechanism; 3) Approval of New Tariffs; 4) Approval of Accounting Practices to Establish Regulatory Assets & Liabilities; & 5) All Other Required Approvals & Relief*, Order, Case No. 2017-00321 (Apr. 13, 2018); *see also In the Matter of Electronic Application of Atmos Energy Corp. for an Adjustment of Rates*, Order, Case No. 2018-00281 (May 7, 2019) (citing RRA's national data as an element of its ROE determination).

[27] *See* Duke Energy Kentucky Confidential hearing Exhibit 1 (Feb. 19, 2020).

[28] *See id.*

[29] Order, Case No. 2017-00321 (Apr. 13, 2018).

[30] Pursuant to KRS 278.400, the Commission may take notice of a recent order from the Michigan Public Service Commission authorizing DTE a 9.9 ROE, a ten (10) basis point decline from its prior 10.0 authorized ROE. (https://www.michigan.gov/mpsc/0,9535,7-395-93307_93313_17280-528575--,00.html) (accessed May 8, 2020).

Duke Energy Kentucky must compete to attract capital to make necessary investments. An unreasonably low ROE will make the Company's ability to attract investors all the more difficult as compared to its peers. The ROE authorized in the Order falls significantly below that which was recently awarded for a much less risky water utility and a natural gas utility in the Commonwealth, both less than a year ago.[31] The risk of financial stress is also greater in 2020 in light of an ongoing state of emergency occasioned by a significant reduction in load and administrative orders that, while no doubt well-intentioned, effectively allow consumers to avoid paying electric bills without consequence even when they have the ability to pay. The Order *will* make it more likely that the Company will experience financial stress and *will* make it much more difficult for Duke Energy Kentucky to be competitive in capital markets. Over the long-term this will again tend to make the cost of doing business unnecessarily more expensive for future generations of customers. Duke Energy Kentucky respectfully requests the Commission to grant rehearing so that the authorized ROE may be reconsidered.

F. Incentive Compensation

The Order makes an adjustment of $0.661 million to account for certain incentive compensation for executives. The Order includes a clerical error and the adjustment should be $0.611 million based upon the data request response cited in the Order.[32]

[31] *See In the Matter of the Electronic Application of Kentucky-American Water Company for an Adjustment of Rates*, Order, Case No. 2018-00358 (Ky. P.S.C. June 27, 2019). The Commission awarded Kentucky-American an ROE of 9.70 percent, finding it appropriately balances the needs of Kentucky-American and its customers, is within the range of recent awards to comparable companies. and is compatible, if not slightly larger than, the industry average and American Water average. *See also In the Matter of the Electronic Application of Atmos Energy Corp. for an Adjustment of Rates*, Order, Case No. 2018-00281 (May 7, 2019) (authorizing a 9.66% ROE).

[32] *See* Duke Energy Kentucky Response to STAFF-DR-03-008(b) ("If EPS is less than the circuit breaker value, the adjustment to remove the portions of the STI Plans from test-year expenses that would not be paid out equals $611,335.").

G. Rate LED – LED Outdoor Lighting Service

The Order also expresses a concern regarding a perceived inequity between Rate LED customers who choose to pay for additional necessary facilities on an upfront basis and those who choose to pay on a recurring monthly basis.[33] The basis for the distinction is to allow customers without the funds available to be able to pay for the cost of LED outdoor lighting to still obtain such lighting, including any additional facilities required or desired by the customer. The disparity in total amounts paid by these two customers is intended to account for the fact that the Company invested capital and the customer needs to pay all costs associated with the Company's investment, including financing costs when applicable. In the case of an upfront payment, the Company is immediately compensated for its costs of purchasing and installing the required facilities, eliminating the need to charge financing costs, and the customer's payments are credited to expenses accordingly. In the context of a monthly paying customer, however, the customer receives the full benefit of the lighting service before the Company recovers its investment.[34] As set forth in the proposed tariff, the term of a Rate LED agreement is at least ten years.[35]

The objective is for both the upfront-paying customer and the monthly paying customer to receive a substantially similar service over the full period of such an agreement without the upfront paying customer having to subsidize the deferred paying customer. The differentiation between payment methods is attributable solely to the customer's willingness and ability to pay for the Company's investment upfront or over time. Neither the upfront payment nor the monthly payment options change ownership of the facilities. Duke Energy owns the equipment throughout

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[33] *See* Order, pp. 55-56. It is worth repeating that the costs at issue are customer specific. For instance, poles used to serve other customers that are also used to provide service under Rate LED are not included within the charges applied under Rate LED. *See* Application, Schedule L-1, pp. 69-70.

[34] *See* Duke Energy Kentucky Response to STAFF-PH-DR-01-023 ("The monthly rate was calculated using the same Levelized Fixed Charge Rate formula that was used to set the rates for the proposed new equipment that are listed in the tariff, using a 15-year useful life.").

[35] *See* Application, Schedule L-1, p. 68.

the term of an agreement and the Company retains the risk for keeping the poles, fixtures and additional distribution facilities operational throughout. Because the "costs" are higher for the Company when a customer defers paying the costs of an investment made on the customer's behalf, and that cost is no different than the investment made by the Company for fixtures, poles, pole foundations, brackets and wiring listed on Rate LED, the provision that requires a monthly payment as long as a lighting fixture is in place is reasonable. Further, these additional facilities will be part of the distribution system and will be maintained by the Company over their useful life just like any other part of the distribution system (e.g. poles, conductor, transformers, etc.) which would include replacement as necessary.

The Company also notes that the Commission did not adjust the rates for Rate LED based upon the newly authorized ROE. Should the Commission grant rehearing on this issue, Duke Energy Kentucky respectfully requests that the Commission update the ROE. Since there were no customers on Rate LED included in the test period, it will have no impact to the Company's revenue requirement, however, the update will likely avoid confusion in the future.

III. CONCLUSION

The Company respectfully suggests that rehearing is warranted on each of these issues. In addition to the property and substantive rights of utility investors that are always implicated in any rate case proceeding, it is important to fully understand the rationale for certain of the Commission's findings. Other issues presented herein arise from apparent clerical missteps. The rehearing process is appropriate for this kind of situation and the Company requests and appreciates the Commission's further consideration of these issues.

WHEREFORE, on the basis of the foregoing, Duke Energy Kentucky respectfully petitions the Commission to issue an Order granting rehearing and awarding the relief requested herein.

This 18th day of May 2020.

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 18, 2020; 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 will be hand delivered to the Commission within thirty (30) days of the end of the current state of emergency.

Counsel for Duke Energy Kentucky, Inc.