COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

ATTORNEY GENERAL'S RESPONSE TO DUKE ENERGY KENTUCKY, INC.'S PETITION FOR REHEARING

The intervenor, the Attorney General of the Commonwealth of Kentucky by and through his Office of Rate Intervention ("Attorney General"), submits the following Response ("Response") to Duke Energy Kentucky, Inc. ("DEK," or "the Company")'s Petition for Rehearing ("Petition") of the Commission's Order dated April 27, 2020 ("Final Order") in the above-styled matter.

The Attorney General believes that the Final Order reflects the Commission's consideration and evaluation of the entire evidentiary record, and is properly based upon substantial evidence. Moreover, the Commission's determinations and findings regarding DEK's revenue requirement were not only reasonable and fully compliant with all applicable law, but in fact the record contains other substantial evidence upon which the Commission could have made additional adjustments and findings to reduce further the revenue requirement. If the Commission grants rehearing on any item set forth in DEK's Petition, the Attorney General expressly reserves his rights to wholly participate and object to any or all item(s) or issue(s) in this proceeding. Finally, the Attorney General requests that if DEK is granted rehearing on issues that could potentially increase the revenue requirement, he be

presented the opportunity to litigate corresponding reductions.[1] Finally, silence in this Response as to any particular subject(s) raised in the Company's Petition should not be construed as acquiescence, approval or agreement.

A. Removal of "Excessive" Plant Additions

The Commission's Final Order made two adjustments to net plant, which reduced DEK's revenue requirement by $5.518 million.[2] Although the Attorney General did not propose these adjustments and thus provided no testimony or argument regarding them, he provides the following comments.

The Petition cites a mathematical error in the calculation of the Commission's plant additions adjustment, but does not ask for rehearing on the validity of the adjustment itself. DEK apparently believes the mathematical error is the issue and correcting it eliminates the adjustment itself. The Attorney General agrees that the Commission should grant rehearing limited solely to the issue of the *calculation* of the plant additions related to the Environmental Surcharge ("ES"). The scope of the rehearing on this issue should not be open-ended because DEK did not oppose the adjustment for any other reason. The Commission should also expressly deny rehearing on whether such an adjustment should be made in the first place. No other issues pertaining to the plant additions adjustment should be allowed.

The Attorney General believes that the Commission inadvertently overstated the dollar amount of the adjustment because it failed to remove plant additions related to the ES. However, the calculations in the Company's rehearing request are incorrect. If they are

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[1] *See* Case No. 2017-00179, *Electronic Application of Kentucky Power Company for a General Adjustment of its Rates for Electric Service,* etc., Order 01 dated Feb. 27, 2018, p. 3, holding that a corresponding, but related, issue raised in a Response to a Petition for Rehearing may be properly addressed on rehearing.
[2] Final Order, at 9-14.

corrected, there still would be an adjustment for roughly one-half of the amount reflected in the Order.

The Company correctly notes that the Commission failed to remove the plant "additions" (the increase in plant in the test year over the base year) related to the ES, but the Company's calculations incorrectly remove the *entirety* of the plant related to the ES, totaling $69 million, not just the plant "additions." The entire plant related to ES in the *test* year is $69 million, while the entire plant related to ES in the *base* year is $41 million. The difference between these two figures yields the correct amount of plant additions related to the ES: $28 million.[3]

B. Reduced Depreciation Expense

Less than two years after the Commission approved new depreciation rates based upon the average life group procedure in DEK's last rate case,[4] the Company sought to increase once again its depreciation rates in the instant proceeding. As Mr. Kollen testified, ". . . the industry norm for review and reconsideration of depreciation rates is considered to be no more frequently than three to five years."[5] Even Mr. Spanos, on behalf of DEK, testified "For most plant accounts, the application of such rates . . .is reasonable for a period of three to five years."[6] In fact, DEK's proposed new depreciation rate increases would have hiked its depreciation expense by $7.431 million, related solely to the proposed rate changes applied to the Company's test year plant with no adjustments.[7] Yet that significant increase would have

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[3] *See generally*, FR 16(7)(b); Sch. B-2.1 pages 1 and 7; Sch. B-2.2 pages 1 and 2; DEK Response to PSC 2-6, Attachment; and DEK Response to PSC 2-7, Attachment.
[4] Case No. 2017-00321, *In Re: Electronic Application of Duke Energy Kentucky, Inc. For an Adjustment of Electric Rates,* etc., Final Order dated April 13, 2018, pp. 26-28, 79.
[5] Kollen Direct at 46.
[6] Spanos Direct, Attach. JJS-1, p. 50 of 364.
[7] Final Order at 8, *citing* DEK's response to AG DR 1-33, Attachment, page 5 of 5.

only been the beginning – indeed, the requested depreciation rate increase would have also increased depreciation expense in DEK's environmental surcharge rider ("ESR") and revenue requirement.[8]

Mr. Kollen recommended that the Commission reject the Company's proposed changes to depreciation rates and the resulting increases in depreciation expense in this proceeding, because the Company's request to increase depreciation rates only two years after the Commission approved the present depreciation rates is unduly aggressive and unnecessary.[9] The Commission's decision is entirely appropriate, reasonable and necessary to protect ratepayers. In addition, and equally important, the Commission's actions do not harm the Company. The Company is entitled to recovery of all prudent and reasonable plant costs through depreciation expense; however, the Company is not entitled to the acceleration in recovery sought through the request to increase depreciation rates. The Commission recognized that the continued use of the existing depreciation rates would increase rate base due to a reduction in accumulated depreciation, net of an increase in the related ADIT, and increased the revenue requirement to reflect the increase in these financing costs compared to the Company's filing.

However, Mr. Kollen also made two alternative recommendations, which the Commission should consider in the event it decides to grant rehearing to all or any portion of DEK's proposed depreciation rate changes. First, Mr. Kollen recommended that the Commission could revise the BMD decommissioning estimates to exclude contingencies and to reflect current dollars (no escalation to future dollars) for the terminal net salvage

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[8] Direct Testimony of Lane Kollen ("Kollen Direct") at 45. In DEK's next base rate proceeding, the Attorney General encourages the Commission to examine the combined, all-in impact of any potential depreciation rate increases in both base rates and the ESR, including the dollar impact to average customers in all rate classes.

[9] Kollen Direct at 48, 52-53.

component of the proposed depreciation rates for the East Bend and Woodsdale CTs plant accounts.[10] The effect would be a $2.111 million reduction in the revenue requirement, consisting of a reduction of $2.151 in depreciation expense, the gross up related to the PSC maintenance fees, and the return on rate base effects due to changes in accumulated depreciation and ADIT.[11] Second, Mr. Kollen recommended that the Commission extend the Woodsdale CTs probable retirement date to 2042 and increase the life span by 10 years, to 50 years. The Company offered no evidence that it actually plans to retire the Woodsdale CTs in 2032 or that those units suddenly will become uneconomic in 2032.[12] The effect would be a $5.305 million reduction in the revenue requirement, consisting of a reduction of $5.407 in depreciation expense, the gross up related to the PSC maintenance fees, and the return on rate base effects due to changes in accumulated depreciation and ADIT.[13]

Based on Mr. Kollen's testimony, [14] the Commission appropriately found [15] that there are *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.[16] The changes in parameters that the Company did submit included "changes in assumptions or estimates, including

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[10] Id. at 53.
[11] Id.
[12] Although a 2017 Burns & McDonnell decommissioning study used retirement date assumptions for the East Bend and Woodsdale facilities at 2041 and 2032, respectively, the records in both the instant case and the Company's 2018 IRP docket indicate that no official retirement dates have been set for these facilities. Moreover, Mr. Spanos merely accepted the Burns & McDonnell estimated retirement date at face value, without conducting an independent evaluation of the Woodsdale units' depreciable lives. Furthermore, it is highly unlikely that Woodsdale will be retired merely twelve years hence given: (a) DEK's recent $55 million investment to make the Woodsdale units dual-fuel capable; (b) DEK's 2018 IRP failed to reflect any retirement date for the Woodsdale CTs, which it would have had to do if the Company is intent on a 2032 retirement; and (c) many other CTs throughout the region, even some owned by other DEK affiliates, are projected to have lifespans of 50 years or longer.
[13] Id. at 56.
[14] Kollen Direct at 47.
[15] Final Order, at 8-9.
[16] Emphasis added.

estimates of future costs that have not yet been incurred, *e.g.*, increases in net negative interim and terminal salvage that are recovered pre-emptively."[17] Furthermore, the rebuttal testimony of DEK's depreciation expert John J. Spanos failed to identify any significantly changed parameters in the new depreciation study. The Company simply failed to present evidence justifying a new depreciation rate hike so soon after rates were set based on estimates for the same expenses the Company requested in the last case.

The Company incorrectly claims that the failure to adopt its proposed depreciation rates "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."[18] This statement is fundamentally incorrect. The depreciation expense in the test year reflects the existing depreciation rates applied to all plant in service in the test year, including all plant additions since the 2017 case; it is not limited to the "2017 filing levels."

Despite the fact that no firm dates for the retirement of the Company's generation units have been established, nonetheless DEK's Petition would have the Commission believe that unless the Company is allowed to immediately begin recovery of depreciation expense on new investments in the instant proceeding, the result will be a dire picture of denied recovery of investments and generational inequities. Yet Mr. Kollen never recommended that DEK should not be allowed to recover depreciation expense, nor can the Commission's Final Order in any way be construed as unreasonably denying recovery of that expense. The Commission's actions merely delayed that recovery until a more appropriate time, which

[17] Kollen Direct at 47.
[18] Petition, at 8.

likely will be when DEK files its next base rate case, and not, as the Company suggests, until a new generation of ratepayers comes on line. No action of the Commission in this case will prevent the systematic and rational recovery of an asset's costs over its useful life, as DEK states it must be allowed to do.[19] Indeed, as Mr. Kollen testified:

> The recovery of actual plant costs and estimated terminal and interim net salvage costs through depreciation expense ***is a matter of timing***. The Commission must determine reasonable recovery of these actual and estimated costs, which necessarily includes a review and assessment of all parameters included in a depreciation study, such as service lives, interim retirement patterns (survivor curves), and interim and terminal net salvage. The actual depreciation expense is accumulated in the accumulated depreciation accounts and can be compared at any time to the actual plant costs. The remaining net book value (plant costs less accumulated depreciation) is included in rate base and earns a rate of return until it is recovered through depreciation expense.[20]

The Commission has plenary authority over DEK's rates.[21] The Company simply failed to introduce any evidence that the use of existing depreciation rates is in any manner unlawful, unreasonable or otherwise inappropriate. Given that the proposed new rates lack any significant changes in the parameters reflected in existing rates, the Commission appropriately, reasonably and lawfully found and held that DEK's requested 15 percent increase in depreciation expense is not justified.[22]

C. Alleged Double Counting of Disallowed Depreciation Expense

The Company asserts that there is a double counting of the Commission's adjustments to depreciation expense. However, this assertion is dependent on whether the Commission used the Company's proposed depreciation rates in its calculation of the depreciation expense

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[19] Petition, at 8. Curiously, DEK even acknowledges Mr. Kollen agrees with the Company on this point. Id.
[20] Kollen Direct at 47-48 (emphasis added).
[21] *See, e.g. Kentucky Pub. Serv. Comm'n v. Conway*, 324 S.W.3d 373, 383 (Ky. 2010).
[22] Final Order, at 8-9.

on the disallowed plant additions or the existing depreciation rates. If the former, then the Company is correct. If the latter, then the Company is incorrect.

D. Amortization of EDITs

The Company seeks clarification on the Commission's Order regarding the amortization of protected EDIT amounts in the test year due and the creation of a regulatory liability for differences in the actual amortization compared to the estimate reflected in the Company's filing. While the Attorney General does not believe that a rehearing is necessary in this matter generally, he takes no specific position with regard to the request for clarification on this issue. However, if the Commission does agree to rehearing for purposes of clarification, then the Attorney General would oppose any true-up to "ADIT, tax expense, and book depreciation," which the Company asserts is necessary to avoid an alleged normalization violation.

E. Return on Equity

The Attorney General strongly objects to a rehearing on the issue of Return on Equity. As acknowledged by the Company in its Petition for Rehearing, the 9.25% rate of ROE awarded to the Company, "was within the range of possible outcomes predicted by," its own expert witness. Indeed, the Commission presented the revised range of Company witness Morin's ROE estimates on page 44 of its Order. The revised ROE range, which includes Dr. Morin's estimate for flotation costs, is 8.40% to 10.2%. The midpoint of this range is 9.30%. Moreover, the award of a 9.25% ROE exceeded that requested by the Attorney General, which requested that the rate of ROE be set at a rate of 9.0%. The Commission Final Order provides lengthy treatment of this issue, which documents that the Commission fully considered the complex evidence offered by all of the parties at the hearing in Post-Hearing

Briefing.[23] The Company's arguments in support of rehearing allege no error in that analysis. The Company simply does not like the Commission's conclusion, one that was clearly within the Commission's discretion to make based on its consideration of the evidence presented at the hearing. Inasmuch as the Company has failed to identify any error in the Commission's findings on this issue, it is attempting to attack the finding as a purported deviation from previous orders.

In its Petition for Rehearing, the Company asserts that the, "Order abandons the Commissions past reliance upon ROE awards from around the country…"[24] However, the Commission Order actually agreed with the Company "that it is appropriate to present multiple methodologies to estimate ROEs, and it is the Commission's role to analyze the various approaches as presented by the two parties."[25] As noted by the Attorney General's expert at the Hearing, the ROE awarded to other utilities, while a consideration, should not be the determining factor for this Commission awarding an ROE.[26] Other variables must be considered, as discussed at length in the evidence and arguments presented during the litigation of this Hearing. Toward this end, the Commission's Order properly considered the effect of "sustained downward adjustments of both the short-term and long-term interest rates, which signal past-awarded ROEs may have been not truly reflective of alternative investments rates."[27] As a practical matter, if this Commission relied solely on an average ROE awarded by other commissions, consideration of these complex factors would be unnecessary and ROE would remain largely fixed. Furthermore, the Company's arguments in support of rehearing

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[23] See Final Order, at 38-47.
[24] Petition, at 13.
[25] See Final Order, at 46.
[26] Video Transcript of Evidence, February 19, 2020, at 9:37:52 — 10:25:15; 10:42:50 — 10:45:00; Baudino Direct at 32.
[27] See Final Order, at 46.

fail to acknowledge an important and binding aspect of the legal authority governing this matter; the Kentucky Supreme Court has opined, "one of the important objectives considered by the commission … is providing the lowest possible cost to the ratepayers."[28]

The Commission has given due consideration to all relevant factors affecting this issue. A rehearing is unnecessary.

F. Incentive Compensation

While the Attorney General suggests that a rehearing is unnecessary in this matter generally, to whatever extent a clerical error has or has not been made with respect to the adjustment at issue, the record speaks for itself. The Attorney General yields to the Commission's review and decision on this issue.

G. Rate LED – LED Outdoor Lighting Service

A rehearing is unnecessary as it relates to charges made of the Rate LED customers. The Commission's Final Order addresses an inequity for those who would pay for additional facilities investment under Rate LED upfront when compared to those who would pay for those costs on a monthly basis, which would have been charged at a monthly rate of 1.0117 percent of the total cost of the investment under the proposal. The proposed design of this rate structure clearly would have created a system where customers would have been charged potentially differing amounts based on whether the charges were paid upfront or over time. The amount of the total difference would have depended largely on the useful life of the fixture. While it is certainly true that upfront payment likely results in a lower cost for the Company due to savings on financing costs, allowing a monthly charge to be made of customers in perpetuity is an inequitable way to compensate the Company for those financing

[28] *Public Service Comm'n of Kentucky v. Continental Telephone Co. of Kentucky*, 692 S.W.2d 794, 799 (Ky. 1985).

costs. The Attorney General agrees with this finding in the Commission's Order; a rehearing is unnecessary as it relates to this issue.

CONCLUSION

WHEREFORE, the Attorney General respectfully requests that the Commission rule upon DEK's Petition in accordance with his response as set forth herein.

Respectfully submitted,
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Certificate of Service and Filing

Pursuant to the Commission's Orders dated March 17, 2020 and March 24, 2020 in Case No. 2020-00085, and in accord with all other applicable law, Counsel certifies that an electronic copy of the forgoing was served and filed by e-mail to the parties of record. Further, the Attorney General will submit the paper originals of the foregoing to the Commission within 30 days after the Governor lifts the current state of emergency.

This 26th day of May, 2020.

Assistant Attorney General