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 Natural Gas Rates; 2) Approval of New Tariffs; and 3) All Other Required Approvals and Relief.	)))))	Case No. 2021-00190

DUKE ENERGY KENTUCKY, INC.'S
POST-HEARING BRIEF

Comes now Duke Energy Kentucky, Inc. (Duke Energy Kentucky or Company), by counsel, pursuant to the October 19, 2021 Order of the Kentucky Public Service Commission (Commission) and other applicable law, and does hereby tender its post-hearing Brief in support of adoption of the Joint Stipulation and Recommendation that was filed with the Commission on October 8, 2021 (Joint Stipulation), respectfully stating as follows:

I. INTRODUCTION

As Northern Kentucky continues to experience economic growth, job creation and investment, Duke Energy Kentucky must continue to invest significant capital in its system to assure that all of its customers have safe, adequate and reasonable service. At the same time, the federal government continues to place more stringent requirements upon natural gas utilities with regard to pipeline integrity, which further requires the Company to invest in its system and – as presented in this case – to rebuild a pipeline which is the very core of its natural gas infrastructure in the region. Duke Energy Kentucky has done a very good of managing its operations and maintenance (O&M) expenses since its last natural gas base rate filing in 2018, however, the savings offered by prudent management decisions are not sufficient to absorb the large capital costs associated with maintaining and updating its natural gas infrastructure.

Duke Energy Kentucky filed the Joint Stipulation with the knowledge that the compromise reached with the Office of the Attorney General (AG) afforded it sufficient revenues and a clear path for funding the replacement of its AM07 pipeline while at the same time assuring ratepayers that no future increases in base rates would be likely to occur for at least four years and that the Company's authorized return on equity would be one of the lowest in the nation. Through considerable – often times difficult – negotiations, Duke Energy Kentucky and the AG have agreed upon and submitted a compromise that delicately balances their respective priorities and requirements. The Joint Stipulation is fair, just and reasonable in every respect. Accordingly, for the reasons set forth herein, Duke Energy Kentucky respectfully requests the Commission to accept and approve the Joint Stipulation in its entirety and without modification.

II. PROCEDURAL BACKGROUND

Duke Energy Kentucky filed its Notice of Intent to file an application to adjust its base rates for natural gas service on April 30, 2021. The application was subsequently tendered to the Commission on June 1, 2021 and accepted for filing on June 3, 2021. In its application, the Company requested a $15.228 million increase in its base rates for natural gas service. The Commission suspended Duke Energy Kentucky's proposed rates in an Order entered on June 9, 2021, with the suspension period set to expire on December 31, 2021. A motion to intervene was filed by the AG on June 2, 2021 and granted by the Commission in an Order entered on June 4, 2021.

During discovery, Duke Energy Kentucky responded to four rounds of pre-hearing information requests from Commission Staff on June 18th, July 14th, August 18th and September

13th and two rounds of information requests from the AG on July 14th and August 18th. The Attorney General submitted expert testimony from two witnesses on September 1, 2021 and provided responses to information requests from the Commission and the Company on October 1, 2021. Duke Energy Kentucky tendered rebuttal testimony on October 8, 2021. That same day, the Company and AG also filed the Joint Stipulation. Among other things, the Joint Stipulation recommends approval of a base rate increase for natural gas service of $9.360 million

A hearing was held in this case on Monday, October 18, 2021. Following the hearing, a post-hearing procedural Order was entered on October 19, 2021 and post-hearing data requests to the Company were issued on October 20, 2021. Duke Energy Kentucky tendered its responses to the post-hearing data requests on November 4, 2021. With the filing of this Brief, the matter now stands ready for final adjudication.

III. ARGUMENT

A. Standard of Review

The Commission's jurisdiction extends to the "rates" and "service" of public utilities.[1] The Kentucky Supreme Court has observed, "[t]he manifest purpose of the Public Service Commission is to require and insure fair and uniform rates, prevent unjust discrimination, and prevent ruinous competition."[2] Furthermore, the regulation of public utilities "has a substantial relation to the public welfare, safety and health and, in a real degree, promotes these objects."[3] However, in

[1] *See* KRS 278.040. *See also Public Service Comm'n v. Blue Grass Natural Gas Co.*, 197 S.W.2d 765, 768 (Ky. 1946) citing *Smith v. Southern Bell Telephone and Telegraph Co.*, 104 S.W.2d 961; *Benzinger, etc., v. Union Light, Heat, & Power Co.*, 170 S.W.2d 38 (Ky. 1943); *Peoples Gas Co. of Kentucky v. City of Barbourville*, 165 S.W.2d 567 (Ky. 1942).

[2] *Simpson County Water Dist. v. City of Franklin*, 872 S.W.2d 460, 464 (Ky. 1994) citing *City of Olive Hill v. Public Service Comm'n* , 203 S.W.2d 68 (Ky. 1947).

[3] *City of Florence v. Owen Elec. Co-op., Inc.*. 832 S.W.2d 876, 882 (Ky. 1992).

setting utility rates, the Commission is "dealing with property rights of … corporations."[4] The Commission may not act in a manner that is unlawful or unreasonable.[5]

> Unreasonable has been construed in a rate-making sense to be the equivalent of confiscatory. This Court has equated an unjust and unreasonable rate to confiscation of utility property. We have declared that rates established by a regulatory agency must enable the utility to operate successfully and maintain its financial integrity in order to meet the just and reasonable nonconfiscatory tests.[6]

In light of these constitutional and statutory limits on the Commission's authority, it is well-established that the Commission "has no authority to impose a new duty on utilities when that duty has no foundation in law. To do so is an unconstitutional legislative act…."[7] In undertaking its work, the focus of the Commission's efforts are upon the outcome. As stated by the Kentucky Supreme Court: "[T]he Commission has discretion in working out the balance of interests necessarily involved and that it is not the method, but the result, which must be reasonable."[8] The Kentucky Court of Appeals offered this similar perspective:

> The teaching of these cases is straightforward. In reviewing a rate order courts must determine whether or not the end result of that order constitutes a reasonable balancing, based on factual findings, of the investor interest in maintaining financial integrity and access to capital markets and the consumer interest in being charged non-

[4] *Bobinchuck v. Levitch*, 380 S.W.2d 233, 236 (Ky. 1964).

[5] *See* KRS 278.430.

[6] *Public Service Comm'n v. Dewitt Water District,* 720 S.W.2d 725, 730 (Ky. 1986) citing *Commonwealth ex rel Stephens v. South Central Bell Telephone Co.,* 545 S.W.2d 927 (Ky. 1976).

[7] *Public Service Comm'n v. Jackson County Rural Elec. Co-op., Inc.*, 50 S.W.3d 764, 766 (Ky. Ct. App. 2000), as modified (July 21, 2000) citing *Henry v. Parrish,* 211 S.W.2d 418 (Ky. 1948).

[8] *Kentucky Indus. Utility Customers, Inc. v. Kentucky Utilities Co.*, 983 S.W.2d 493, 498 (Ky. 1998) citing *Federal Power Comm'n v. Hope Natural Gas,* 320 U.S. 591 (1944). *See also National-Southwire Aluminum Co. v. Big Rivers Elec. Corp.,* 785 S.W.2d 503, 515 (Ky. App. 1990) ("We are primarily concerned with the product and not with the motive or method which produced it.") citing *Louisville & Jefferson County Met. Swr. Dist. v. Joseph E. Seagram & Sons,* 211 S.W.2d 122 (Ky. 1948).

> exploitative rates. ... those choices must still add up to a reasonable result.[9]

In setting rates, "the future as well as the present must be considered."[10] Indeed, "rates are merely the means designed for achieving a predetermined objective, which in this instance was how much additional revenue should the Company be allowed to earn."[11] As the applicant, Duke Energy Kentucky bears the burden of proof to demonstrate that it is entitled to the relief which it seeks.[12]

B. The Joint Stipulation Provides a Fair, Just and Reasonable Resolution of all Issues in Duke Energy Kentucky's Application and Should be Approved by the Commission in its Entirety and Without Modification

Duke Energy Kentucky and the AG, each representing diverse interests and viewpoints,[13] have reached a complete settlement of all the issues raised in this proceeding and tendered the Joint Stipulation to the Commission for consideration and approval. The Company and AG acknowledge that the Joint Stipulation is not binding upon the Commission, but believe it is entitled to careful consideration. Furthermore, when viewed in its entirety, the Joint Stipulation constitutes a reasonable resolution of all issues in this proceeding.[14] Both of the AG's expert

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[9] *National-Southwire*, 785 S.W.2d at 513 citing *Jersey Central Power & Light Co. v. Federal Energy Regulatory Comm'n,* 810 F.2d 1168, 1177 (D. C. Cir. 1987).

[10] *Dewitt Water District,* 720 S.W.2d at 730 citing *McCardle v. Indianapolis Water Company,* 272 U.S. 400 (1926).

[11] *Kentucky Power Co. v. Energy Regulatory Comm'n*, 623 S.W.2d 904, 908 (Ky. 1981).

[12] *See Energy Regulatory Comm'n v. Kentucky Power Co.*, 605 S.W.2d 46, 49 (Ky. App. 1980).

[13] *See* Sarah Lawler Supplemental Testimony (Lawler Supp. Test.), p 5. (filed Oct. 8, 2021).

[14] *See id*., p. 6.

witnesses affirmed this.[15] For the reasons set forth herein, the Joint Stipulation should be approved in its entirety and without modification.

1. The Joint Stipulation's Proposed Revenue Increase is Fair, Just and Reasonable

The Joint Stipulation recommends a total revenue requirement of $121,059,033 for the forecasted test year, which spans from January 1, 2022 through December 31, 2022.[16] To achieve this revenue, the Joint Stipulation recommends an annual increase in Duke Energy Kentucky's base rates of $9,360,374.[17] For the average residential customer who consumes 57 CCF of natural gas in a year, this would amount to an 8.0% increase over existing rates.[18] The residential rate increase is slightly below the overall 8.4% increase which results from the Joint Stipulation's agreed-upon revenue requirement.[19] To arrive at the proposed revenue requirement, Duke Energy Kentucky and the AG agreed upon several adjustments, which are described below.

a. Working Capital

For purposes of compromise and reaching a proposed settlement, Duke Energy Kentucky agreed to reduce its Working Capital for Construction Accounts Payable included in rate base by $2.5 million which resulted in a $0.221 million decrease in the revenue requirement, an amount equal to one-half of the adjustment proposed by the AG's witness.[20]

[15] *See* Lane Kollen Cross-Examination, Hearing Video Record (HVR) 11:11:36 (Oct. 18, 2021); Richard Baudino Cross-Examination, HVR 11:19:40 (Oct. 18, 2021).

[16] *See* Joint Stipulation, p. 3.

[17] *See id.*

[18] *See id.*

[19] *See id.*, Attachment A.

[20] *See id.*, p. 4.

b. <u>CIS Development Costs Deferral and Amortization of Plant In-Service Depreciation</u>

The Joint Stipulation further recommends acceptance of the AG's expert's proposal to normalize non-developmental Customer Connect and retired CMS operations and maintenance (O&M) expense and create a regulatory asset in rate base while also deferring and amortizing this expense.[21] The impact of this recommendation is to increase the Company's rate base by $0.652 million, which results in a $0.057 increase in Duke Energy Kentucky's revenue requirement.[22] However, by removing this expense from the test year, the Company's revenue requirement is reduced by $1.740 million.[23] If the regulatory asset is not approved for some reason, then the Company's revenue requirement would need to be adjusted upward accordingly.[24]

In another adjustment related to Customer Connect, Duke Energy Kentucky and the AG agreed to modify the depreciation expense for Customer Connect's plant in-service.[25] The adjustment decreases the originally proposed revenue requirement by $0.061 million, but increases the Company's rate base by $0.023 million.[26] The increased rate base also increases the Company's revenue requirement by $0.002 million.[27]

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[21] *See id*. At the hearing, Ms. Lawler confirmed that Duke Energy Kentucky was requesting approval to establish the regulatory asset as part of the Joint Stipulation. *See* Lawler Cross-Examination, HVR 9:25:30 (Oct. 18, 2021).

[22] *See* Joint Stipulation, p. 4.

[23] *See id.*; Lawler Supp. Test., p. 9.

[24] *See* Lawler Cross-Examination, HVR 9:36:12 (Oct. 18, 2021).

[25] *See* Joint Stipulation, p. 5.

[26] *See id.*; Lawler. Supp. Test, p. 12.

[27] *See* Joint Stipulation, p. 5.

c. Short-Term Incentive Plan Circuit-Breaker Expense

In another compromise, the AG and Company agreed to one-half of the proposed revenue adjustment proposed by the AG's expert with regard to expense associated with Duke Energy Kentucky's short-term incentive plan circuit breaker.[28] This results in a reduction of the Company's revenue requirement of $0.179 million.[29] On examination from the Commission, the AG's expert witness affirmed that the outcome of this issue in the Joint Settlement was consistent with past Commission precedent.[30]

d. Other Adjustments Proposed by the AG's Expert

In agreeing upon a proposed revenue requirement, Duke Energy Kentucky agreed to additional recommendations of the AG's expert witness for settlement purposes only, including: adjusting payroll tax expense related to the Company's incentive compensation adjustment ($0.045 million);[31] exclusion of 401(k) matching costs for employees that also participate in a defined benefit plan ($0.221 million);[32] exclusion of Supplemental Executive Retirement Plan (SERP) expenses ($0.034 million);[33] payment of dues to the American Gas Association and Interstate Natural Gas Association of America ($0.055 million);[34] forecasted interest rate expense

[28] *See id.*, p. 4.

[29] *See id*.; Lawler Supp. Test, pp. 10-11.

[30] *See* Kollen Cross-Examination, HVR 11:15:10 (Oct. 18, 2021).

[31] *See* Joint Stipulation, p. 4; Lawler Supp. Test., p. 10.

[32] *See* Joint Stipulation, p. 5; Lawler Supp. Test., p. 11.

[33] *See* Joint Stipulation, p. 5; Lawler Supp. Test., p. 11.

[34] *See* Joint Stipulation, p. 5; Lawler Supp. Test., pp. 11-12. Ms. Lawler points out that the majority of the dues payments are for a purpose other than lobbying but are nevertheless excluded as part of the Joint Stipulation.

($0.088 million);[35] increasing commercial natural gas transportation revenue as an offset to the rate increase ($0.245 million).[36] Additionally the Company agreed to reduce its revenue requirement by $0.107 million to reflect an updated capital structure for certain recent changes in the Company's financing plans.

e. Summary

As part of negotiating the Joint Stipulation, Duke Energy Kentucky offered concessions on several proposed adjustments that it otherwise disagreed with. Thus, the Joint Stipulation makes it clear that both the AG and Duke Energy Kentucky do not concede that their respective positions, had the case been fully litigated, are incorrect. Moreover, the Parties agreed that the Joint Stipulation applied only to the facts of this case and would have no precedential value in any future proceeding. Despite these caveats, the outcome of the proposed revenue adjustments is fair, just and reasonable and should be approved.

2. The Joint Stipulation Relies upon Reasonable Calculations for Rate Base & Cost of Capital

The Joint Stipulation further provides for an agreed upon thirteen-month average rate base for the forecasted test period of $466,486,600.[37] The cost of capital is further agreed to be as follows: authorized return on equity (ROE) of 9.375% for natural gas base rates; authorized ROE of 9.30% for natural gas capital riders; a long-term debt rate of 3.656%; a short-term debt rate of 1.667%; a capital structure comprised of 51.334% equity, 46.039% long-term debt and 2.617% short-term debt; resulting in a Weighted Average Cost of Capital (WACC) of 6.541%.[38]

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[35] *See* Joint Stipulation, pp. 5-6; Lawler Supp. Test., pp. 13-14.

[36] *See* Joint Stipulation, p. 6; Lawler Supp. Test., pp. 9-10.

[37] *See* Joint Stipulation, p. 3.

[38] *See id.*, pp. 3, 6.

The ROE recommendation in the Joint Stipulation is nearly a full one percent below that recommended by Duke Energy Kentucky's expert witness, Dylan D'Ascendis, but also 0.275% higher than that proposed by the AG's expert witness.[39] The proposed ROE is below the Company's current ROE for natural gas operations and even below that of the only other combination electric/gas utility in Kentucky.[40] The proposed ROE results in a $2.931 million reduction in Duke Energy Kentucky's originally proposed revenue requirement.[41] Also, in keeping with recent Commission precedent, the Joint Stipulation recommends an ROE of 9.30% for its capital riders such as the newly proposed Pipeline Modernization Mechanism (Rider PMM).[42]

As Company witness Chris Bauer explained, there is increased competition for capital and investors increasingly look toward environmental, sustainability and governance (ESG) factors when making investment decisions.[43] In fact, debt investors' ESG guidelines, portfolio limitations and restrictive covenants in proposed debt instruments prevented Duke Energy Kentucky from completing a scheduled debt placement earlier in 2021.[44] Likewise, the fact that the future disposition of the East Bend Station is unclear has placed a further limitation on Duke Energy Kentucky's ability to close financing deals.[45] These factors make it abundantly clear that strong credit support from the Commission is essential to maintaining long-term financial strength.

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[39] *See* Lawler Supp. Test., p. 15.

[40] *See id.*

[41] *See id.*

[42] *See id*.

[43] *See* Chris Bauer Cross-Examination, HVR 9:55:55 (Oct. 18, 2021).

[44] *See id*., HVR 9:57:20 (Oct. 18, 2021).

[45] *See id*., HVR 10:00:20 (Oct 18, 2021).

The Joint Stipulation's debt rate recommendations are based upon the most recent observations of rates in the forward-looking debt markets.[46] Finally, the recommended capital structure of Duke Energy Kentucky set forth in the Joint Stipulation is the result of the actual activities of the Company in placing debt issuances during the forecasted test year.[47] Though the Company has made significant concessions in this portion of the Joint Stipulation, the concessions are reasonable when the entirety of the Joint Stipulation is taken into account.

3. The Joint Stipulation's Proposal to Utilize Existing Depreciation Rates is Reasonable

The Joint Stipulation further recommends that, subject to the limited exception for the CIS modifications described above, the Company should continue to use the depreciation rates approved in Case No. 2018-00261.[48] Based upon the recent nature of the Company's last deprecation study and approved rates, utilizing the same depreciation rates is appropriate and reasonable. This is further confirmed by the fact that Mr. John Spanos, Duke Energy Kentucky's expert witness on depreciation, received no questions at the hearing.[49]

4. The Joint Stipulation's Recommendation of a Pipeline Modernization Mechanism is Reasonable and Appropriate

The Joint Stipulation further recommends that the Commission approve Duke Energy Kentucky's proposal to establish Rider PMM.[50] Rider PMM will be limited in scope to pipeline

[46] *See* Duke Energy Kentucky Response to AG-DR-01-046 Supp. and Chris Bauer Rebuttal Testimony, p. 6.

[47] *See* Lawler Supp. Test., p. 14.

[48] *See* Joint Stipulation, p. 6; *In the Matter of the Electronic Application of Duke Energy Kentucky, Inc. for Authority to: 1) Adjust Natural Gas Rates; 2) Approval of a Decoupling Mechanism; 3) Approval of New Tariffs; and 4) For All Other Required Approvals, Waivers and Relief*, Order, Case No. 2018-00261 (Ky. P.S.C. Mar. 27, 2019).

[49] *See* Testimony of John Spanos, HVR 9:21:15 (Oct. 18, 2021).

[50] Duke Energy Kentucky's original application was labeled as a "Government Mandate Adjustment" mechanism and included a provision for changes in federal tax rates. However, the tax portion of the proposal was withdrawn by the Company and the proposed Rider has been renamed to better reflect its narrow purpose.

replacement projects as necessitated by the Pipeline and Hazardous Materials Safety Administration (PHMSA) regulations for pipeline integrity.[51] Under the proposed tariff, the first (and perhaps only) pipeline replacement project eligible for rider recovery will be the Company's upcoming AM07 pipeline replacement project.[52] As part of that project, Duke Energy Kentucky will seek a certificate of public convenience and necessity from the Commission prior to commencing construction for each phase.[53] Moreover, Rider PMM will only be used to recover capital expenditures, not O&M expense such as for line inspections.[54] As recommended, Rider PMM shall have an initial term limit of seven (7) years, subject to renewal, that commences on the date of the Commission's final Order in this docket.[55] Rider PMM will work similarly to previously approved pipeline replacement riders approved by the Commission:

- The Rider shall be adjusted annually for capital placed into service following the test year in this case.
- The first adjustment shall be filed no earlier than July 1, 2022 with new rates effective January 1, 2023.
- Rider PMM will use forecasted 13-month average plant in-service balances for purposes of calculating the annual revenue requirement.

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[51] *See* Joint Stipulation, p. 7.

[52] *See id.*; Lawler Testimony, HVR 9:28:45 (Oct. 18, 2021) (noting that no other capital projects have been identified at this time for inclusion in Rider PMM). The AM07 pipeline is seventeen miles in length and has a 24" diameter. *See* Brian Weisker Cross-Examination, HVR 9:37:40 (Oct. 18, 2021).

[53] *See* Joint Stipulation, p. 7; Lawler Testimony, HVR 9:30:40 (Oct. 18, 2021).

[54] *See* Lawler Testimony, HVR 9:34:38 (Oct. 18, 2021).

[55] *See* Joint Stipulation, p. 7.

- The rate base included in the Rider filing will not include Construction Work In Process (CWIP) and plant in-service will include Allowance for Funds Used During Construction (AFUDC) consistent with rate base calculations included in the Company's base rate case filings.
- Duke Energy Kentucky will make annual Rider PMM adjustment filings on or before July 1st with rates to be implemented the following January.
- The Company shall file a CPCN for each phase of the AM07 replacement project, but shall not be required to file a CPCN for Rider PMM projects, if any, that qualify as an ordinary extension of the existing system in the ordinary course of business.[56]
- Rider PMM shall be calculated as a per-bill monthly charge for residential and general service rates. Rider PMM shall be calculated on a per ccf charge for transportation rates. The revenue requirement calculated in Rider PMM will be allocated between the rate classes as outlined in Attachment D to the Joint Stipulation.
- Rider PMM shall be subject to an annual revenue requirement cap of no more than a 5% increase in natural gas revenues per year. For purposes of determining the 5% cap, natural gas revenues, including base revenues, gas cost revenues and miscellaneous revenues of $121,059,033 shall become the baseline for measuring the 5% annual cap on increases for the duration of the rider.
- Any additional capital placed into service that would result in an increase over 5% shall be eligible for the creation of a regulatory asset for recovery of the deferral of property taxes, depreciation, and post-in-service carrying costs (PISCC) for that

[56] *See id.*; Lawler Testimony, HVR 9:28:20 (Oct. 18, 2021).

incremental capital (PISCC based on approved WACC). Such deferral shall be eligible for amortization in the Company's next natural gas base rate proceeding.

- The rate of return used for calculating the Rider PMM (and any other capital-related natural gas adjustment mechanism) shall include a ROE of 9.30% and the long-term and short-term debt rates approved in this proceeding.[57]

Rider PMM is essential to maintaining service throughout Duke Energy Kentucky's service area.[58] If AM07 is required to reduce operating pressure, it would negatively impact the Company's ability to fully serve customers during winter months, and would likely lead to outages.[59] The type of pipe originally used to construct AM07 several decades ago is known within the industry to have defects.[60] While the Company has additional pipelines that have considerable distance, the threat level for those lines is less.[61] Duke Energy Kentucky believes that the 5% cap on recovery will still allow it to complete the AM07 project on a timely basis.[62] On cross-examination, the AG's expert witness agreed that his initial concerns with the proposed capital rider had been addressed through the Joint Stipulation.[63] In light of the enormous consequences of a failure of AM07 and the specific limitations placed on Rider PMM in the Joint Stipulation, the rider is reasonable and should be approved.

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[57] *See* Joint Stipulation, pp. 7-9.

[58] *See* Weisker Testimony, HVR 9:42:20 (Oct. 18, 2021).

[59] *See id*., HVR 9:48:45 (Oct. 18, 2021).

[60] *See id*., HVR 9:49:00 (Oct. 18, 2021).

[61] *See id*., HVR 9:46:30 (Oct. 18, 2021).

[62] *See id*., HVR 9:47:45 (Oct. 18, 2021).

[63] *See* Kollen Cross-Examination, HVR 11:16:50 (Oct. 18, 2021).

5. The Joint Stipulation's Proposed Rate Design is Fair, Just and Reasonable

As part of the Joint Stipulation, the Company and AG agreed to allocate the recommended revenue increase as follows: 67.40% to Rate RS; 26.04% to Rate GS; 4.97% to Rate FT-L and 1.59% to Rate IT.[64] Moreover, an agreement was reached that, with regard to the residential class, the monthly customer charge should increase by $1.00 per month from $16.50 to $17.50.[65] All of this is reflected in Attachments C and D to the Stipulation.[66]

6. The Proposed Four-Year Stay-Out Provision is Unique to a Settled Case

A term of the Joint Stipulation that can be imposed in no other manner is a "stay-out" provision, in which a utility voluntarily foregoes its right to seek an adjustment of its rates for a pre-determined period of time. In this case, Duke Energy Kentucky and the AG were able to agree to a four-year stay-out provision by which the Company agrees not to file an application to adjust its base rates for natural gas service until such time as any proposed adjustment would only become effective, upon the conclusion of the Commission's statutory suspension period under KRS 278.190, on or after January 1, 2026.[67] In other words, Duke Energy Kentucky may make a filing for a rate adjustment prior to that date, however, its proposed rates would not be able to become effective prior to January 1, 2026.[68] The only exceptions to this stay-out provision are: the deferral of costs as permissible under the Commission's standards for such deferrals;[69] emergency rate

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[64] *See* Joint Stipulation, pp. 10-11.

[65] *See id.*, p. 9; Lawler Supp. Test., p. 21.

[66] *See* James Ziolkowski Cross-Examination, HVR 9:56:20 (Oct. 18, 2021).

[67] *See* Joint Stipulation, pp. 9-10.

[68] *See id*.

[69] *See id.*, p. 10; *See In the Matter of the Application of East Kentucky Power Cooperative, Inc. for an Order Approving Accounting Practices to Establish a Regulatory Asset Related to Certain Replacement Power Costs Resulting from Generation Forced Outages*, Order, Case No. 2008-00436 (Ky. P.S.C. Dec. 23, 2008).

relief to avoid a material impairment or damage to the Company's credit or operations;[70] adjustments of the operation of any of Duke Energy Kentucky's cost recovery surcharge mechanisms;[71] or rate relief or accounting treatment for costs or programs required due to changes in law or regulations, such as changes in tax rates and environmental compliance costs.[72]

7. The Remaining Terms of the Joint Stipulation Reasonably Resolve All Remaining Issues

The Joint Stipulation's terms reasonably resolve all remaining issues set forth in Duke Energy Kentucky's application. All tariff changes to the language of various tariffs that were include in the Company's application should be approved as proposed.[73] These include:

- Clarifying changes to the Company's Rate FRAS to specify the nomination deadline for suppliers scheduling natural gas deliveries.
- Correcting language in the Company's Rate IMBS regarding the daily trade and nomination deadlines to make it consistent with Rates GTS and FRAS.
- Changing Rate GTS to align the service with new system capabilities and to delete the two-business day deadline for daily trades to provide more flexibility to suppliers.
- Adding clarifying language to the Company's franchise fee tariff to make it consistent with the Company's electric franchise fee tariff.
- Approving the Company's Revert-to-Owner Program, which replaces the Company's current Automatic Landlord Program. The Revert-to-Owner allows property

[70] *See* Joint Stipulation, p. 10; KRS 278.190(2).

[71] *See* Joint Stipulation, p. 10. Examples include the Company's Goas Cost Adjustment, Weather Normalization Adjustment, Demand-Side Management tariff, Rider PMM, etc.

[72] *See* Joint Stipulation, p. 11.

[73] *See id*. These include correcting an error in the calculation of charges for pulse meters and imposing a $15 charge for field collections. *See* Duke Energy Kentucky, Inc. Response to Staff-DR-03-016 and Staff-DR-03-025(d).

owners/management companies to better manage the utility service to their properties, including the ability to elect to automatically have utility service revert to their name when tenants move out.

- Changing the description of the Annual Plan for Budget Billing to reflect how the calculation will work when Customer Connect is implemented.
- Revising the description of "satisfactory payment record" for determining whether a deposit may be required to reflect how this will be determined when Customer Connect is implemented.[74]

Finally, the Joint Stipulation appropriately recommends that rate case expense should be amortized over a five-year period, without carrying charges, beginning with the effective date of the revised tariffs.[75]

V. CONCLUSION

Duke Energy Kentucky respectfully requests that the Commission issue an Order approving the Joint Stipulation in its entirety and without modification. The compromises made and balances struck in the Joint Stipulation are fair, just and reasonable. They allow Duke Energy Kentucky to move forward with critical replacement of pipeline infrastructure in order to comply with federal regulations and will assist the Company in maintaining its financial condition and assuring that base rates will not change, subject to limited exceptions, for four years. Duke Energy Kentucky appreciates the time and attention the Commission, Staff and the AG have devoted to this matter and expresses its willingness to continue to be a constructive partner in assuring that Kentuckians' energy needs are adequately and safely served at fair, just and reasonable rates.

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[74] *See* Application, pp. 15-16.

[75] *See* Joint Stipulation, p. 11.

WHEREFORE, on the basis of the foregoing, Duke Energy Kentucky, Inc., respectfully requests that the Commission to:

1) Approve the Joint Stipulation in its entirety and without modification;

2) Grant all other relief to which Duke Energy Kentucky may be entitled.

This 10th day of November 2021.

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 electronic filing that was transmitted to the Commission on November 10, 2021 and that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding.

Counsel for Duke Energy Kentucky, Inc.