COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC INVESTIGATION OF THE FUEL ADJUSTMENT CLAUSE REGULATION 807 KAR 5:056, PURCHASED POWER COSTS, AND RELATED COST RECOVERY MECHANISMS	))))	**CASE NO. 2022-00190**

REPLY COMMENTS ON BEHALF OF EAST KENTUCKY POWER COOPERATIVE INC. AND ITS SIXTEEN OWNER-MEMBERS

Pursuant to the Kentucky Public Service Commission's ("Commission") November 2, 2022 Order ("Order") East Kentucky Power Cooperative, Inc. ("EKPC") submits the following reply comments on behalf of EKPC and its sixteen Owner-Member Cooperatives ("owner-members").

In structuring its reply comments, EKPC and its sixteen owner-member distribution cooperatives will focus on the comments and responses provided by the other parties to this investigation where there appears to be agreement with EKPC's position. However, EKPC will also identify those comments and responses that it believes will not be beneficial in addressing the volatility concerns of fuel and purchased power costs. EKPC will not be replying to every comment and response provided by the other parties, and its silence on a particular comment or response should not be deemed to be acceptance nor rejection of the comment or response. Due to the complexity and importance of the FAC, EKPC and its owner-members reserve the right to amend these reply comments, make further comments and to participate in this case to the maximum permitted extent.

COMMENTS AND RESPONSES FROM THE PARTIES

Kentucky Utilities Company ("KU") and Louisville Gas & Electric Company ("LG&E")

Through extensive comments and responses, KU and LG&E contend that by adapting business practices and strategies to work well within the current structure of the fuel adjustment clause regulation ("FAC"), KU and LG&E have successfully reduced fuel cost volatility. KU and LG&E argue that no changes are needed to the FAC; however, if the Commission finds changes are necessary to meet the needs of other generating utilities, those changes should not be applied to KU and LG&E.

While proposing some changes to the FAC, EKPC and its owner-members wish to affirm that these changes would provide options to which the generating utilities could avail themselves. EKPC is not advocating that any of its recommended changes should become "mandatory" for any of the generating utilities.

Kentucky Power Company ("Kentucky Power")

Kentucky Power offered numerous comments in its responses to the questions posed in the November 2, 2022 Order. Kentucky Power offered five possible actions that might help reduce the volatility of the FAC for customers. One of the possible actions is to allow utilities to defer fuel costs and adjust the timing of the recovery of those costs. EKPC believes this suggestion is very similar to its proposal to allow the use of regulatory assets to defer recovery of extraordinary FAC expenses and mitigate rate volatility in fuel expenses.

To address volatility in the wholesale power market, Kentucky Power suggested physical and financial hedging contracts would be tools to manage wholesale power market volatility exposure. Consistent with its initial comments and responses, EKPC agrees with Kentucky Power that financial hedging is a valid option to manage wholesale power market volatility.

EKPC is supportive of these two options identified by Kentucky Power and would encourage the Commission to consider both as means to address the volatility issues identified in this proceeding.

<u>Duke Energy Kentucky ("Duke Energy")</u>

In its response to the question concerning changes to the FAC regulation to reduce the monthly volatility of the FAC, Duke Energy recommended that calculating the FAC on a rolling twelve-month average basis rather than the monthly price adjustment for actual fuel expense as required by the FAC regulation would be appropriate. Duke Energy had proposed this option in its last electric base rate case. EKPC and its owner-members have begun examining a rolling twelve-month average approach to determine whether such an approach would be useful and beneficial. EKPC and the owner-members have not completed its analysis as such a change could have other implications that need to be carefully modeled and understood. While there are differences between the vertically-integrated investor-owned utility and the cooperative models, EKPC supports the consideration of this option to address FAC volatility.

In its response to the question concerning changes to the FAC regulations to reduce the exposure of the FAC to volatility in the wholesale power market, Duke Energy suggested that the exposure could be reduced by increasing power price stability through the use of financial market hedging. Duke Energy also stated that allowing for financial market hedging would promote additional efficient and prudent fuel procurement practices. As indicated previously, EKPC agrees that financial hedging is a valid option to manage wholesale market volatility.

<u>Big Rivers Electric Corporation, Jackson Purchase Energy Corporation, Kenergy Corp., and Meade County Rural Electric Cooperative Corporation ("Big Rivers and its Members")</u>

Big Rivers and its Members provided comments and responses and concluded that it did not believe any changes to the current FAC regulation are warranted at this time. Big Rivers and its Members recommended that proposed changes to the FAC regulation offered by other parties should be considered utilizing a collaborative process to address the proposals. While EKPC can understand the appeal of a collaborative process to address some changes, given the differences among the six generating utilities, it has doubts of how effective a collaborative process would be to address and resolve the various proposals suggested by the parties.

On pages 14 and 15 of its comments and responses, Big Rivers and its Members discuss its understanding that the FAC is essentially a formula rate which has been approved by the Commission. Although EKPC agrees with Big Rivers and its Members that the FAC is essentially a formula rate which has been approved by the Commission, EKPC believes it retains the burden of proof for the reasonableness and appropriateness of the inputs that go into that formula rate.

<u>Attorney General ("AG")</u>

In its comments, the AG states that the Commission should allow utilities flexibility to "smooth" fuel price volatility by allowing utilities to spread collection of extraordinary fuel costs over longer periods. While advocating this approach, the AG tempers its support by urging caution and stressing the need for appropriate oversight by the Commission. EKPC and its owner-members believes this approach is very similar to EKPC's proposal to allow the use of regulatory assets to defer recovery of extraordinary FAC expenses and mitigate rate volatility in fuel expenses.

The AG suggested that another approach to "smoothing" the FAC and that might address concerns over abuse of the flexibility would be to adopt a twelve-month rolling average method that Duke Energy had proposed in its last electric base rate case. As noted previously, EKPC and its owner-members have begun examining a rolling twelve-month average approach to determine whether such an approach would be useful and beneficial. EKPC supports the consideration of this option to address FAC volatility.

Throughout the AG's comments are references to utility shareholders and the ratepayers. This reflects a focus in the AG's comments on vertically-integrated investor-owned utilities. While this focus is applicable for four of the six generating utilities, two generating utilities in Kentucky are generation and transmission cooperatives. These generation and transmission cooperatives do not have shareholders and are instead owned by member distribution cooperatives. Thus, not all of the comments provided by the AG are applicable to cooperatives.

On pages 19 and 20 of the comments, the AG provides a detailed listing of 32 information items it believes should be required during a FAC review. EKPC has reviewed this detailed listing and believes that it already provides the majority of this information either monthly or in conjunction with the six-month and two-year reviews. The Commission is, of course, able to request any data that is required in the course of a review of the operation of the FAC and no additional changes to the regulation are necessary to accomplish this.

On page 21 of the comments, the AG advocates for the Commission to require the utilities to file FAC data and supporting documentation in a consistent and uniform format. While EKPC can appreciate the desire for uniform filings, from purely a practical standpoint it would be difficult when taking into consideration the differences in situation and circumstances between the six generating utilities. As previously noted, four of the utilities are investor-owned while two are cooperatives. Four of the six generating utilities are members of Regional Transmission Organizations. Based on previous Commission decisions, several of the generating utilities have unique provisions incorporated in their respective FAC mechanisms.

Kentucky Industrial Utility Customers, Inc. ("KIUC")

KIUC submitted responses to some, but not all, of the questions posed in the November 2, 2022 Order. Like the AG, the responses offered by KIUC appear to focus primarily upon the investor-owned generating utilities. KIUC acknowledged that levelizing the FAC charges would be a way to reduce monthly volatility, but also noted that customers would still ultimately remain responsible for the FAC costs. KIUC did not propose any specific approach to levelize FAC charges. EKPC believes that this is akin to the deferral authority or a form of monthly averaging as articulated in EKPC's comments.

Kentuckians for the Commonwealth, Mountain Association, Metropolitan Housing Coalition, and Earth Tools, Inc. ("Joint Movants")

Generally, the comments offered by the Joint Movants did not address the specific questions posed in the November 2, 2022 Order. The one subject the Joint Movants did respond to related to the first question, concerning changes to the FAC regulation that could reduce the monthly volatility of the FAC. In very broad and general terms, the Joint Movants urged the Commission to evaluate modifying the FAC process so that the FAC factor was based on average fuel costs over multiple months or annually. Although there is no specific proposal to consider, EKPC and its owner-members believe there is merit in this general suggestion from the Joint Movants.

The Joint Movants believe that a good way to incentivize utilities to engage in efficient and prudent fuel procurement practices would be to adopt a "sharing" formula that would split the risk of fuel cost changes between the utility and the customers. Citing examples in other jurisdictions, the Joint Movants contend a sharing mechanism with the utility bearing between 2% and 10% of the fuel and purchased power costs should be considered for Kentucky's utilities. The Joint

Movants attached to their comments a brief financial impact analysis of this cost sharing mechanism for the four investor-owned generating utilities. EKPC and its owner-members first question whether a cost sharing mechanism would provide any incentive to a utility to engage in efficient and prudent fuel procurement practices. The focus on achieving the lowest and most reasonable cost for fuel procurement is a stronger incentive. Second, and more importantly, the suggested cost sharing mechanism clearly demonstrates that the Joint Movants have only considered investor-owned utilities in their comments. Two of the six generating utilities currently subject to the FAC regulation are generation and transmission cooperatives. As noted previously, the generation and transmission cooperatives do not have shareholders, but rather are owned by their member distribution cooperatives. Without shareholders to bear the utility's share of the cost sharing mechanism, the full responsibility of the fuel and purchased power cost recovery falls back to the ultimate retail customer – the owners of the member distribution cooperatives. EKPC and its owner-members believe the cost sharing mechanism as proposed fails to provide the claimed incentives for cooperatives.

The Joint Movants' primary suggestion to address fuel cost volatility is to require a robust evaluation of the avoidance of fuel cost volatility risks in the resource decisions made and reviewed in future Integrated Resource Plan ("IRP") filings, Certificates of Public Convenience and Necessity ("CPCN") applications, Demand Side Management and Energy Efficiency ("DSM/EE") filings, and other Commission proceedings. The Joint Movants believe such robust evaluations should be a core element of any Commission effort to address fuel price and volatility risks.

EKPC and its owner-members strongly oppose this suggestion as it will not address the current concerns over the volatility of fuel cost and purchased power cost. The current approach to IRP filings, CPCN applications, and DSM/EE filings is more than adequate when determining resource decisions. Resource decisions that are part of these proceedings today evaluate the reasonableness of the alternatives of energy efficiency, renewable resources, and distributed energy resources. As these alternatives continue to develop, they certainly will be part of the evaluation process in future IRP filings, CPCN applications, and DSM/EE filings. The incorporation of a "robust evaluation" of the avoidance of fuel cost volatility risks in these proceedings would unduly complicate these proceedings with debate and disagreements over what fuel cost volatility risks exist, both at the time the resource decision is being made and for the operational future of the resource. The Joint Movants' proposal is nothing more than an attempt to promote its vested policy agenda rather than addressing the concerns identified in this investigation.

COMMENTS FROM NON-PARTIES

The Kentucky Solar Industries Association, Inc. ("KYSEIA") and the Kentucky Office of Energy Policy ("KOEP") did not seek intervenor status in this proceeding, but did file comments on a timely basis.

KYSEIA

KYSEIA contends that it is no longer reasonable to consider only the short-term benefits of the FAC that flow to the utilities through assigning the entire risk of price increases and price volatility to customers. KYSEIA states that requiring ratepayers to bear the full costs of fuel without risk to the utility is an outdated, inefficient, and unfair practice that provides no incentive for utilities to pursue least cost alternatives in the long-run. KYSEIA argues that reform is necessary to remove the "moral hazard" present in the FAC and at a minimum there is a need for a more robust IRP process and a removal of the ability of a utility to be indifferent to pursing no cost and low cost fuel alternative strategies for generation.

EKPC and its owner-members do not agree with the evaluation of the FAC by KYSEIA and its call for a more robust IRP process. As with several intevenors' comments, KYSEIA's position does not take into account the fact that two of Kentucky's generating utilities are not-for-profit cooperatives. Furthermore, the comments offered by KYSEIA fail to address the concerns identified in this investigation. They more generally reflect the particularized policy agenda of a trade organization seeking to advance its members pecuniary interests and should be accorded lesser weight.

KOEP

KOEP clearly states that it does not offer any position on a path forward for the issues identified in this investigation, but rather offers questions for consideration. As noted with the comments of KYSEIA, KOEP did not seek intervenor status in this investigation.

KOEP asks whether the FAC remains relevant today if the base rate case proceedings offered such flexibility to include automatic rate adjustment mechanisms, streamlined proceedings, or multi-year rate plans. EKPC and its owner-members do not believe reply comments can be offered on this question without more specific details being provided on the alternatives mentioned. KOEP also asks whether issues such as fuel procurement practices, fuel security and diversity, and fuel economic development criteria might be better addressed under the "reasonableness" criteria contained in the IRP process, CPCN applications, and fuel contract reviews. EKPC and its owner-members do not believe these issues would be better addressed in the IRP process, CPCN applications, or fuel contract reviews. EKPC does support the KOEP's supposition that the definition of "fuel" under the FAC should be broadened to include non-fossil fuel sources.

<u>SUMMARY</u>

EKPC and its owner-members appreciate the Commission's review of this very important issue and the opportunity to provide both initial and reply comments. EKPC and its owner-members remain ready and available to the Commission in the event it has additional questions or desires clarification of any previously articulated comment or position.

Respectfully submitted,

L. Allyson Honaker
Brittany Hayes Koenig
HONAKER LAW OFFICE PLLC
1795 Alysheba Way, Suite 6202
Lexington, KY 40509
(859) 368-8803
allyson@hloky.com
brittany@hloky.com

Counsel for East Kentucky Power Cooperative, Inc.

<u>CERTIFICATE OF SERVICE</u>

This is to certify that the foregoing electronic filing was transmitted to the Commission on December 20, 2022 and that there are currently no parties that the Commission has excused from electronic participation. Pursuant to prior Commission Orders, no paper copies of this filing will be made.

Counsel for East Kentucky Power Cooperative, Inc.