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. 2022-00372

DUKE ENERGY KENTUCKY, INC.'S REPLY BRIEF ON REHEARING

Comes now Duke Energy Kentucky, Inc. (Duke Energy Kentucky or the Company), by counsel, pursuant to the February 15, 2024 Order of the Kentucky Public Service Commission (the Commission) and other applicable law, and does hereby submit to the Commission its Reply Brief on Rehearing (Reply Brief), respectfully stating as follows:

I. INTRODUCTION

Following the Commission's February 15, 2024 Order, Duke Energy Kentucky filed a Brief on Rehearing (Initial Brief) on March 18, 2024. The Office of the Attorney General (OAG) filed its Brief on Rehearing (Brief) on the same day. OAG's Brief only addresses one of issues raised for rehearing in Duke Energy Kentucky's Initial Brief: the removal of terminal net salvage costs from the depreciation rates of the Company's solar generating assets. OAG's Brief otherwise does not address three other issues raised in the Company's Initial Brief,[1] and indeed agrees with

[1] While noting that its "silence should not be construed as acquiescence [to], approval [of], or agreement [on]" a particular issue, OAG's Brief does not address the following issues raised by the Company on rehearing: (1) On-Site Payment Location, (2) Waiver of 807 KAR 5:006, Section 7(1)(a)(3) for Time of Use with Critical Peak Pricing, and (3) Rate Case Expense Disallowances. OAG Brief, 3.

the Company on the remaining issue, which relates to the rates contained in Appendix B of the Commission's October 12, 2023 Order (Final Order). This Reply Brief responds to the two issues addressed by OAG below.

II. ARGUMENT

A. Appendix B Rates

As stated in the Initial Brief, the rates and charges shown in Appendix B of the Final Order should be revised to apply the approved increase in revenues to the Company's current revenues that do not include the proposed (but denied) Rider Energy Surcharge Mechanism (ESM) roll-into base rates. OAG agrees with the Company on this point.[2] Detailed calculations for this revision have been provided by the Company in response to rehearing data requests,[3] although the Company reiterates here that the revised Appendix B calculations that it has provided should be further revised to reflect any additional adjustments the Commission orders in ruling on the other rehearing items presented by the Company in its Initial Brief.[4]

B. Terminal Net Salvage Adjustment for Solar Generating Assets

OAG's Brief addresses three general concepts related to the Company's requested recovery of terminal net salvage within the depreciation rates of the Company's solar generating assets. These concepts are as follows:

1. The recovery of terminal net salvage (or decommissioning costs) in general;
2. The recovery of terminal net salvage as a component of and embedded within depreciation; and

[2] *See id.* at 4.
[3] *See* Duke Energy Kentucky Response to STAFF-RHDR-01-005(a) and (b) (including STAFF-RHDR-01-005(a) Attachment and STAFF-RHDR-01-005(b) Attachments 1–3).
[4] *See* Duke Energy Kentucky Response to STAFF-RHDR-01-005(b).

3. The escalation of terminal net salvage through the end of each asset's projected service life.

The Company addresses each of these items below.

1. Recovery of Terminal Net Salvage

The Company provided extensive support for its proposed recovery of terminal net salvage (*i.e.*, decommissioning costs) within the depreciation rates of all of its generating assets—including its solar generating assets—as part of its Application, Post-Hearing Briefing, Petition for Rehearing and related filings, and, most recently, its Initial Brief. OAG's claims otherwise ignore the evidentiary support contained in the Company's relevant filings, as well as the Commission's recent rulings on the matter.

For instance, OAG claims that the Company is merely attempting to relitigate settled issues in violation of the rehearing standard, which limits rehearing to "new evidence not readily discoverable at the time of the original hearing, to correct any material errors or omissions, or to correct findings that are unreasonable or unlawful."[5] While OAG raised this same argument in its Response to the Company's Petition for Rehearing,[6] the Commission specifically granted rehearing on this issue, thereby finding that the Company satisfied the applicable rehearing standard.[7] OAG (*not* the Company) is therefore attempting to litigate issues that it previously raised—and that were rejected by the Commission in granting the Company rehearing.[8] While OAG's argument that the Company has not satisfied the rehearing standard was erroneous at the

[5] OAG Brief, 2 (citing KRS 278.400).
[6] *See* OAG's Response to Duke Energy Kentucky's Petition for Rehearing, 7–8.
[7] Rehearing Order, 12 ("The Commission grants Duke Kentucky's request for rehearing on the removal of decommissioning costs from depreciation rates for solar generation assets in order to obtain additional information.").
[8] *See id.*

time it disputed the Company's request for rehearing, it remains so now, as the Company has already been granted rehearing on the issue of terminal net salvage for its solar generating assets.

OAG's assertion that the Commission denied the Company its requested recovery of decommissioning costs for its solar generating assets under its plenary ratemaking authority is likewise incorrect. The Final Order, in relevant part, states as follows:

> The Commission also finds that terminal net salvage should be removed from the depreciation rates *due to the requirements of KRS 278.264(2)* that the Commission "shall not . . . take any other action which authorizes or allows for the recovery of costs for the retirement of an electric generating unit . . . unless the presumption created by this section is rebutted."[9]

The Final Order was clear: the Commission denied terminal net salvage recovery *because of* the recently enacted KRS 278.264(2). The Commission's November 21, 2023 Order (Rehearing Order) confirmed that it made its Final Order terminal net salvage finding specifically with regard to KRS 278.264(2), stating that it "agrees . . . that KRS 278.264 does not apply to solar generation assets" and "grant[ing] Duke [Energy] Kentucky's request for rehearing on the removal of decommissioning costs from depreciation rates for solar generation assets in order to obtain additional information."[10] OAG ignores this language from the Commission's Rehearing Order.

Further, because—as confirmed by the Commission—"KRS 278.264 does not apply to solar generation assets,"[11] the Commission's denying the Company recovery of decommissioning costs for its solar generation assets under this law was unlawful. As described in its Initial Brief, the Company provided ample support for its recovery of decommissioning costs in the depreciation rates for its solar generating assets, and submitted these costs for recovery in this pursuant to past approved practice, applicable Commission precedent, and other legal requirements, such as the

[9] Final Order, 14 (emphasis added).
[10] Rehearing Order, 12.
[11] *Id.*

Federal Energy Regulatory Commission (FERC) accounting requirements outlined in the Uniform System of Accounts (USoA).[12] The Company's proposed recovery of decommissioning costs is consistent with—and in many cases, required by—this precedent, and denial of this recovery was improper.

OAG's arguments that the Company should not be allowed to recover decommissioning costs for its solar generating assets—assets which are used to safely and reliably serve Kentucky customers—are therefore unconvincing. OAG's claims stand in stark contrast to the record in this case (including the Commission's own findings contained in the Final Order and Rehearing Order), settled past ratemaking practice, and various legal and regulatory requirements. Even more, they plainly conflict with the dictates of KRS 278.264, which, by its own terms, does not apply to solar generating assets.[13] The Commission should therefore permit the Company to recover decommissioning costs within the depreciation rates of the Company's solar generating assets and should disregard OAG's arguments otherwise.

2. Terminal Net Salvage as a Component of Depreciation

OAG next asserts that if the Company is permitted to recover decommissioning costs for its solar generating units—which, as described above, should be the case—those costs should be recovered as a standalone expense. The Company proposed to recover decommissioning costs as a component of, and embedded within, each generating asset's depreciation rate, as has been the practice for decades of ratemaking before the Commission. OAG's recommendation flies in the

[12] For a summary of the evidence supporting the Company's recovery of decommissioning costs, see Initial Brief, 10–12.

[13] As described in the Initial Brief, KRS 278.264 applies only to "electric generating unit[s]," which it defines to include only "fossil fuel-fired combustion or steam generating sources," not renewable energy facilities like the Company's solar generation assets. *See* Initial Brief, 11 (citing KRS 278.264 and 278.262(a)).

face of Commission precedent and established ratemaking practice and should be rejected by the Commission.

OAG argues that the Company "improperly compounded and increased the estimated decommissioning expense by including the costs in the depreciation rates rather than as a separate and standalone expense."[14] However, it is also widely accepted that depreciation should include future decommissioning costs as part of net salvage costs, which are recovered on a straight-line basis, and that those costs should be based on the expected cost to retire an asset at the time of retirement or removal.[15] This principle applies all plant assets, not just decommissioning costs,[16] and the Commission has previously approved the Company's use of this method as a fair and reasonable treatment of decommissioning costs.[17] Because terminal net salvage must, by definition, be based on future costs, decommissioning costs for terminal net salvage must also be estimates of the future cost at the time of decommissioning.[18]

The Company's estimation of the costs to decommission its plant today and subsequent escalation of these costs to the time period in which they are expected to be incurred is therefore necessary because the costs will in fact be incurred at some future time when the plant inevitably retires.[19] It is also necessary to ensure adequate recovery for the full service value of the assets used to provide safe and reliable service to customers.[20] These values are not improperly compounded or artificially inflated, as OAG claims, but are an inherent component of depreciation

[14] OAG Brief, 8.
[15] John J. Spanos Rebuttal Testimony (Spanos Rebuttal), 5 (Apr. 14, 2023).
[16] *Id.* at 6.
[17] *See Electronic Application of Duke Energy Kentucky, Inc. for: 1) An Adjustment of the Electric Rates; 2) Approval of an Environmental Compliance Plan and Surcharge Mechanism; 3) Approval of New Tariffs; 4) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; and 5) All Other Required Approvals and Relief,* Case No. 2017-00321, Order, 27 (Apr. 13, 2018).
[18] Spanos Rebuttal, 7.
[19] *See id.*
[20] *See id.*

and are calculated accordingly, using reliable and approved methods. OAG provides no convincing evidence otherwise.

Further, OAG's assertions related to FERC's USoA are misleading for several reasons. First, USoA specifies that the cost of removal, as part of net salvage, must be recovered through depreciation expense and equals the actual amount paid at the time of the transaction.[21] Because, as described above, net salvage necessarily occurs in the future, it is, by definition, an estimate of the future cost that must be included in asset depreciation.[22] The fact that several items within USoA must be read together to arrive at this requirement does not invalidate it,[23] and OAG's argument that each of USoA's provisions should be construed in isolation from one another ignores the comprehensive nature of USoA and its broad accounting requirements with which the Company is required to adhere.

Second, OAG's claim that USoA only "dictates accounting for FERC purposes"[24] but "does not dictate state ratemaking"[25] is misleading insofar as it suggests that both the Company and the Commission may ignore federal requirements. As a public utility subject to the Federal Power Act and FERC jurisdiction, the Company is required to adhere to certain FERC rules and may not simply change its accounting practices in contravention of applicable federal requirements. The Company also adheres to these FERC requirements consistent with KRS 278.220, which authorizes the use of USoA for electric utilities like the Company. The Company therefore submitted embedded decommissioning costs for recovery in this proceeding consistent

[21] *See id.* at 8.
[22] *Id.*
[23] *See id.* (citing several USoA provisions related to net salvage accounting requirements).
[24] OAG Brief, 9.
[25] *Id.*

with FERC-required accounting rules and Kentucky law, and the Company disputes OAG's argument on this point to the extent it suggests that these requirements should be wholly ignored.

Thus, the inclusion of decommissioning costs for recovery within generating asset depreciation is consistent with federal and state requirements, Commission precedent, and decades of established ratemaking practice. OAG's proposed method of segregating decommissioning from the calculation of depreciation deviates from each of these authorities. The Commission should therefore deny this recommendation and, consistent with its past decisions, permit recovery of decommissioning costs within each generating asset's depreciation rate.

3. Escalation of Terminal Net Salvage Through Asset Retirement

OAG's final recommendation to limit the escalation of decommissioning expense to the test year in this case is likewise without merit, as it misapplies Kentucky rules and ignores fundamental depreciation concepts. It also significantly and unjustifiably underestimates the full cost of decommissioning each unit at the end of its useful life, and should therefore be rejected.

OAG argues that the Company's escalation of decommissioning expense through the date of each asset's retirement violates 807 KAR 5:001, Section 16(6)(b) (Section 16), but this ignores the fundamental concepts of asset depreciation and ratable recovery of depreciation expense over an asset's useful life. Section 16 provides that "[f]orecasted adjustments shall be limited to the twelve (12) months immediately following the suspension period."[26] The Company's requested recovery of decommissioning expense, escalated through the date of asset retirement, is consistent with this requirement, as the Company is only seeking recovery of test year portions of decommissioning costs.

[26] 807 KAR 5:001, Section 16(6)(b).

As noted above, decommissioning costs must be escalated through the date of retirement so that the correct amounts are allocated over each plant's service life.[27] This escalation is not inconsistent with or prohibited by Section 16, and the straight-line method of depreciation—which the Company used for its generating assets in this case—adheres to this principle by allocating the projected costs evenly among each year of the asset's service life. Consistent with this method, which the Commission has previously approved,[28] the Company has not proposed recovering *all* decommissioning costs associated with each generating asset in the twelve-month period immediately following the suspension period, but has proposed to only recover an allocable test year fraction during that time. This does not violate Section 16, and OAG's arguments otherwise misapply the rule.

Removal of escalation to the date of retirement would also result in insufficient recovery of the Company's actual costs in violation of the principle that a utility be permitted to recover its reasonable and prudently incurred costs to provide safe and reliable service to customers. As explained above, because net salvage must be based on future costs, decommissioning costs for net salvage must also be based on estimates of the future cost at the time of decommissioning.[29] For this reason, if decommissioning estimates are developed using the cost to decommission a plant today, then these costs must be escalated to the time period in which they are expected to be incurred to achieve adequate recovery.[30] In order to recover the service value of the Company's assets, net salvage must be determined at the cost that will be incurred in the future, which requires

[27] *See* Spanos Rebuttal, 6.
[28] *See Electronic Application of Duke Energy Kentucky, Inc. for: 1) An Adjustment of the Electric Rates; 2) Approval of an Environmental Compliance Plan and Surcharge Mechanism; 3) Approval of New Tariffs; 4) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; and 5) All Other Required Approvals and Relief,* Case No. 2017-00321, Order, 27 (Apr. 13, 2018).
[29] Spanos Rebuttal, 7.
[30] *Id.*

escalation.[31] Removing this escalation would therefore result in significant under-recovery for assets consistently used to serve customers.

OAG's arguments that escalation should be limited to the test year in this case would therefore deny the Company full recovery of its costs without any justification in law, policy, or principle. Once again, OAG's recommendation is inconsistent with Commission-approved practice and principles inherent in the broader concept of asset depreciation. Like OAG's other arguments addressed above, the Commission should reject OAG's recommendation to remove escalation through each asset's retirement.

III. CONCLUSION

WHEREFORE, on the basis of the foregoing, Duke Energy Kentucky respectfully requests that the Commission grant the relief prayed for in the Company's Initial Brief.

[31] *See id.*

This 1st day of April, 2024.

Respectfully submitted,

DUKE ENERGY KENTUCKY, INC.

/s/Rocco D'Ascenzo

Rocco O. D'Ascenzo (92796)
Deputy General Counsel
Larisa Vaysman (98944)
Senior Counsel
Duke Energy Business Services LLC
139 East Fourth Street
Cincinnati, OH 45202
Phone: (513) 287-4320
Fax: (513) 370-5720
Rocco.D'Ascenzo@duke-energy.com
Larisa.Vaysman@duke-energy.com

and

Elizabeth M. Brama, *Pro Hac Vice*
Valerie T. Herring (99361)
TAFT STETTINIUS & HOLLISTER LLP
2200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
Phone: (612) 977-8400
Fax: (612) 977-8650

Counsel for Duke Energy Kentucky, Inc.

CERTIFICATE OF SERVICE

This is to certify that the foregoing electronic filing is a true and accurate copy of the document in paper medium; that the electronic filing was transmitted to the Commission on April 1, 2024; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that submitting the original filing to the Commission in paper medium is no longer required as it has been granted a permanent deviation.[32]

Angela M. Goad
J. Michael West
Lawrence W. Cook
John G. Horne II
Assistant Attorneys General
1024 Capital Center Drive, Suite 200
Frankfort, KY 40601
Angela.Goad@ky.gov
Michael.West@ky.gov
Larry.Cook@ky.gov
John.Horne@ky.gov

Joshua Smith
Sierra Club
2101 Webster Street, Suite 1300
Oakland, CA 94612
Joshua.Smith@sierraclub.org

Joe F. Childers, Esq.
Childers & Baxter, PLLC
The Lexington Building
201 West Short Street, Suite 300
Lexington, KY 40507
Joe@Jchilderslaw.com

Carrie H. Grundmann
110 Oakwood Drive, Suite 500
Winston-Salem, NC 27103
cgrundmann@spilmanlaw.com

Steven W. Lee
1100 Bent Creek Boulevard, Suite 101
Mechanicsburg, PA 17050
slee@spilmanlaw.com

Kurt J. Boehm, Esq.
Jody Kyler Cohn, Esq.
BOEHM, KURTZ & LOWRY
36 East Seventh Street, Suite 1510
Cincinnati, OH 45202
kboehm@bkllawfirm.com
jkylercohn@bkllawfirm.com

James W. Gardner
M. Todd Osterloh
Sturgill, Turner, Barker & Moloney, PLLC
333 West Vine Street, Suite 1500
Lexington, KY 40507
jgardner@sturgillturner.com
tosterloh@sturgillturner.com

Paul Werner
Hannah Wigger
Maria Laura Coltre
Sheppard Mullin Richter & Hampton LLP
2099 Pennsylvania Avenue NW, Suite 100
Washington, DC 20006
pwerner@sheppardmullin.com
hwigger@sheppardmullin.com
mcoltre@sheppardmullin.com

/s/Rocco D'Ascenzo
Counsel for Duke Energy Kentucky, Inc.

[32] *In the Matter of Electronic Emergency Docket Related to the Novel Coronavirus COVID-19*, Case No. 2020-00085, Order (July 22, 2021).