**COMMONWEALTH OF KENTUCKY**

**BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

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| The Electronic Application of Duke Energy | ) |
| Kentucky, Inc., for: 1) An Adjustment of the | ) |
| Electric Rates; 2) Approval of New Tariffs; | ) Case No. 2022-00372 |
| 3) Approval of Accounting Practices to | ) |
| Establish Regulatory Assets and Liabilities; | ) |
| and 4) All Other Required Approvals and | ) |
| Relief. | ) |

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**DUKE ENERGY KENTUCKY, INC.'S POST-HEARING REPLY BRIEF ADDRESSING ARGUMENTS MADE IN THE RESPECTIVE INITIAL POST-HEARING BRIEFS OF THE ATTORNEY GENERAL, WALMART INC., THE KROGER CO., SIERRA CLUB, AND KENTUCKY BROADBAND AND CABLE ASSOCIATION**

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Duke Energy Kentucky, Inc. (Duke Energy Kentucky or the Company), by counsel, pursuant to the May 15, 2023 Order of the Kentucky Public Service Commission (the Commission), and other applicable law, hereby tenders to the Commission its Post-Hearing Reply Brief (Reply Brief), respectfully stating as follows:

## I. INTRODUCTION

Duke Energy Kentucky seeks to increase its electric base rates by $68.82 million in this case.[1] In support of this increase, Duke Energy Kentucky filed its Initial Post-Hearing Brief on June 9, 2023, the same day that the Intervenors to this case filed their Initial Post-Hearing Briefs (each, along with the Company's Initial Post-Hearing Brief, a Brief). The Intervenors include the Office of the Attorney General (OAG), Walmart Inc. (Walmart), The Kroger Co. (Kroger), Sierra Club, and Kentucky Broadband and Cable Association (KBCA). Many of the arguments raised by

[1] Lisa D. Steinkuhl Revised Rebuttal Testimony (Steinkuhl Revised Rebuttal), p. 7 (May 5, 2023).

the Intervenors in their respective Briefs were anticipated and addressed by Duke Energy Kentucky in its Brief. As such, the Company will not re-address most of the arguments asserted by the Intervenors in their Briefs and will be content to stand upon the arguments it has previously asserted, as noted throughout this Reply Brief. The Company's silence herein on various arguments asserted by the Intervenors should be recognized as an effort to achieve administrative economy and not as acquiescence or agreement. Thus, this Reply Brief is limited to the few issues which deserve special emphasis or which were not addressed in the Company's Brief.

## II. ARGUMENT

### A. Aligning Depreciation and Decommissioning Expense for East Bend 2 (East Bend) with its Projected Useful Life

A mountain of record evidence indicates that East Bend is now projected to retire by 2035. This evidence is described in great detail in the Company's Brief.[2] That said, certain arguments presented in Intervenors' Briefs are worth addressing in further detail in this Reply Brief.

Sierra Club tries to call into question the Company's projected 2035 retirement date for East Bend by pointing out that the Company's 2021 Integrated Resources Plan (IRP) did not take into account recent environmental regulations.[3] First, the Company's 2021 IRP, by definition, could not account for specific environmental regulations that were not in effect as of 2021. Sierra Club lists a slew of "proposed rule[s]"—which, as noted by Sierra Club, are all *proposed* and not in effect—from 2023, two years after the Company was required to draft and file its 2021 IRP.[4] The Company simply could not have predicted which specific rules any given regulator would propose in the years following its 2021 IRP, and Sierra Club's suggestion otherwise is nonsensical.

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[2] *See* Duke Energy Kentucky Brief, pp. 34–45.

[3] Sierra Club Brief, p. 21; *see also id.* at p. 32 ("Duke has not performed any detailed analysis of how the IRA, proposed and final environmental regulations, and new market dynamics influences its generation portfolio, including the economic useful life of East Bend.").

[4] *Id.* at pp. 21–23.

While the Company could not have predicted the specific environmental regulations that would be implemented, the Company's 2021 IRP did in fact account for a range of environmental regulation scenarios that would impact the long-term viability of East Bend as a generating station. There are any number of laws and regulations that may be in effect in the years to come that regulate carbon emissions or fossil fuel generating resources; while, as noted above, the Company cannot predict which specific rules may go into effect in the future, it can account for—and indeed, has accounted for—environmental regulation scenarios that will impact the future viability of East Bend. The enactment of the Inflation Reduction Act of 2022 (IRA) is a prime example:

> While the Company believes that carbon regulation is likely, we do not know the form that it will take or its impact on the electrical system. The inclusion of a carbon tax in our IRP modeling provides a scenario for analysis as a proxy for other forms of regulation that may or may not be an actual carbon tax. As I mentioned previously, the IRA is one such scenario that has come to fruition. While the IRA doesn't directly tax a carbon-emitting resource, but by creating subsidies for zero emitting resource, it has an indirect effect on the future economics of a carbon-emitting resource.[5]

Sierra Club acknowledges this in its Brief.[6] It is therefore inaccurate for Sierra Club to suggest that the Company has not properly considered a number of new (and notably, only *proposed*) environmental regulations when determining that East Bend's likely retirement date is 2035.[7] The Company fully accounted for these kinds of regulations in its carbon regulation scenarios contained in its 2021 IRP that determined the 2035 probable retirement date.

Sierra Club's analysis of Kentucky Senate Bill 4 (SB 4) is likewise lacking in merit. While Sierra Club is correct that SB 4 "favors aligning depreciation with anticipate retirement,"[8] it offers no reason as to why its proposed earlier retirement would be favored under the law. Sierra Club

[5] Scott Park Rebuttal Testimony (Park Rebuttal), p. 12 (Apr. 14, 2023).
[6] Sierra Club Brief, p. 20.
[7] *See id.* at pp. 20–22.
[8] *Id.* at p. 25.

simply states that the retirement date is no later than 2030,[9] but ignores the substantial evidence provided by the Company that suggests that 2035 is in fact the likely retirement date.[10] Alignment of depreciation rates with a unit's anticipated retirement is important;[11] however, alignment of depreciation rates with an arbitrary retirement date that is not supported by thorough analyses and modeling is not appropriate. Indeed, the Company and this Commission may consider earlier retirement dates if, at a later point in time, circumstances arise that justify such a change. Such circumstances would be supported by a comprehensive analysis of *final* rules and regulations and a full understanding of the likelihood of final implementation of proposed regulations.

Sierra Club also argues that the Commission should require the Company to analyze in its next IRP filing how new statutes and regulations will impact the economics of East Bend.[12] Sierra Club similarly recommends that the Commission order the Company to file another rate case to adjust its depreciation schedule if an earlier retirement date for East Bend is found to be the least-cost.[13] These recommendations ignore the actions that the Company is already required to take by law and are therefore redundant. For instance, the Company already evaluates the economics of all of its generating stations, including East Bend, as part of its IRP process, in light of current and future regulatory scenarios and alternative replacement portfolios.[14] Based on the outcomes of its IRP modeling, the Company then requests adjustment of its generating asset depreciation

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[9] *Id.* at p. 26 ("As described above, that date is no later than 2030.").
[10] A summary of this evidence is available in Duke Energy Kentucky's Brief at pp. 34–45.
[11] Sierra Club Brief, p. 20.
[12] *See id.* at p. 29.
[13] *See id.* at p. 32.
[14] *See* Scott Park Direct Testimony (Park Direct), p. 3 (Dec. 1, 2022) ("The IRP planning process assesses various supply-side, demand-side and emission compliance alternatives to develop a long-term, cost-effective portfolio to provide customers with reliable service at reasonable costs. The IRP planning process involves various assumptions such as future energy prices, *future environmental compliance requirements* and reliability constraints.") (emphasis added).

schedules, as it has done in this rate case. The Company thus already performs these tasks that Sierra Club is requesting the Commission to order.

Further, Sierra Club specifically requests that the Commission order the Company to evaluate a number of *proposed* rules in its next IRP filing.[15] Sierra Club's Brief certainly makes clear that it disregards the difference between proposed rules (which are not final) and finalized rules with which the Company is required to comply, but Sierra Club's argument here is nonetheless concerning. By the time the Company is required to file its next IRP, any number of the proposed rules listed by Sierra Club may have substantively changed, not be finalized, or be scrapped completely. The Company should not be automatically required to evaluate the specific effects of these proposed rules when it is unclear whether these rules will even exist or function in the same way come next year. This recommendation is illogical.

In any event, Sierra Club's recommendations in this instance do not affect the outcome of this case. The Commission can continue to adjust the Company's depreciation schedules for its generating assets if and when needed in future rate cases. As Sierra Club notes, "[the Company] has not applied to the Commission for an order approving the retirement of East Bend. Nor is [the Company] requesting that the Commission take an 'action which authorizes or allows for the recovery of costs for the retirement of an electric generating unit, including any stranded asset recovery.'"[16] The Company is not actually proposing to retire East Bend in this proceeding,[17] but is simply seeking to align its depreciation rates for East Bend with its probable useful service life, which, according to extensive modeling and analyses provided by the Company in this case, is most likely 2035.

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[15] *See* Sierra Club Brief, p. 35.
[16] Sierra Club Brief, p. 25.
[17] Sarah E. Lawler Rebuttal Testimony (Lawler Rebuttal), p. 8 (Apr. 14, 2023); Shenstone-Harris Cross, Hearing Video Transcript (HVR) at 7:40:40 (May 11, 2023).

### B. Return on Equity (ROE)

Intervenors' proposed ROE between 9.55 and 9.60 percent[18] significantly understates a reasonable ROE for the Company and fails to evaluate and account for relevant applicable data. As described in extensive detail in the Company's Brief, the Company's proposed ROE of 10.35 percent is fair, reasonable, and based on extensive ROE modeling that uses the appropriate data. While the Company will not reiterate every point in its Brief related to ROE here, there are certain arguments raised by various Intervenors that require attention.

First, Walmart argues that the Company should be awarded an ROE similar to those of its affiliates in the last six months.[19] But the ROEs of the Company's affiliates are not relevant here, as the Company is its own distinct organization that attains its own credit ratings. This is evidenced by the Company's reduced outlook from Stable to Negative, which Moody's Investors Services (Moody's) issued in April of 2023.[20] Moody's did not revise any of the outlooks for the Company's affiliates,[21] however, further supporting the fact that the Company's credit ratings and ROE are necessarily separate from those of its affiliates.

The ROEs for the Company's affiliates were also established at different times, under different capital market conditions, and in different regulatory environments than those relevant to the Company and this case. The Company carries a different risk profile than its affiliates. For instance, Walmart cites Duke Energy Progress LLC (Duke Energy Progress) as a vertically integrated utility like the Company, but fails to note that Moody's recently affirmed Duke Energy Progress's credit rating of A2—two notches above the Company's Baa1 rating. This suggests that Duke Energy Progress has a different risk profile than the Company, and in turn that a higher ROE

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[18] OAG Brief, p. 31 (9.55 percent); Walmart Brief, p. 1 (9.55 to 9.60 percent).
[19] Walmart Brief, p. 4.
[20] See Duke Energy Kentucky Brief, p. 57, for a discussion of the revised outlook issued by Moody's.
[21] *See* DEK Exhibit 1.

is appropriate for Duke Energy Kentucky. The Company has its own specific capital needs separate and apart from those of its sister companies and the Company can—and indeed, *should*—receive an ROE that is both different from those of its affiliates and that recognizes its own unique risk profile in reference to financial conditions that exist at the time of this proceeding.

Further, Walmart's assertions that the Commission should disregard Company witness Mr. Joshua Nowak's ROE recommendation of 10.35 percent simply because he has recommended similar ROEs for other utilities in other cases is unfounded. The ROEs awarded to utilities that have used Mr. Nowak as an ROE expert—and Mr. Nowak's recommendations in those cases—are irrelevant. Mr. Nowak provided ample support for his recommendation of 10.35 percent ROE in this proceeding by using a number of models and an appropriate proxy group and accounting for applicable risk factors.[22] That Mr. Nowak has recommended a similar ROE for a different utility as part of a separate analysis has no bearing on his analysis in this case, and the Commission should give Walmart's argument on this point no weight.

Mr. Nowak used a variety of ROE models—including the Constant Growth Discounted Cash Flow (DCF) model, the Capital Asset Pricing Model (CAPM), the Bond Yield Plus Risk Premium (Risk Premium) model, and the Expected Earnings analysis—to produce a range of a results that is fair, reasonable, and supportive of a 10.35 percent ROE.[23] Neither Walmart nor OAG did the same. For instance, OAG witness Mr. Richard Baudino completely ignored the results of his CAPM analyses, with no explanation outside of the CAPM analysis being "less reliable"[24]—

[22] *See* Duke Energy Kentucky Brief, pp. 51–53 (describing the ROE models used and risk factors accounted for by Mr. Nowak); *id.* at pp. 53–55 (describing Mr. Nowak's proxy group and important considerations for proxy group selection); Joshua C. Nowak Direct Testimony (Nowak Direct), pp. 29–48 (Dec. 1, 2022) (ROE models and risk factors); *id.* at pp. 25–29 (proxy group).
[23] Nowak Direct, pp. 3–4.
[24] OAG Brief, p. 31 ("Mr. Baudino also performed Capital Asset Pricing Model ("CAPM") analyses using both historical and forward-looking data, but did not rely upon these results due to it being a less reliable approach.").

and notably, producing a range of results with an ROE closer to that proposed by the Company.[25] Walmart witness Mr. Steve Chriss similarly omitted any current or forward-looking DCF, CAPM, Risk Premium, or Expected Earnings analyses.[26] Further, his analysis is not supported by market evidence and is limited to a review of stale rate case decisions of companies that are likely not appropriately comparable to the Company.[27] Walmart's Brief noticeably omits any discussion of Mr. Chriss's ROE analyses, and this fact is telling in context of the Company's extensive record support for its ROE analyses, including the evidence summarized in its Brief.

Thus, both Walmart's and OAG's arguments fall flat in reference to the evidence presented in this case. The Company's requested ROE of 10.35 percent is reasonable in light of the current and forward-looking capital market environment and the Company's own specific risk factors and is supported by a variety of ROE models. That both Walmart and OAG have proposed similar ROEs for the Company in this case is irrelevant and suggests nothing about the reasonableness of those ROEs, particularly in light of the extensive analyses and support provided by the Company.

### C. Decommissioning Expense—End of Life Materials and Supplies Inventories

The record supports that decommissioning expense appropriately includes end of life materials and supplies inventories,[28] and OAG's argument to the contrary is unconvincing. Disposal of remaining inventories is as much a part of decommissioning a generating station as disposing of other equipment and plant components, as those inventories must be safely sold, moved to other locations, or scrapped, and portions of the plant housing those materials cannot be demolished until all inventory is safely removed.[29] Inventory is also necessary to maintain at each

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[25] Richard A. Baudino Direct Testimony (Baudino Direct), p. 30 (Mar. 10, 2023) ("Regarding the CAPM results, the forward-looking CAPM ROE of 12.48% is implausibly high and represents an extreme outlier. . . . Thus, I do not recommend that the Commission consider this result.").

[26] Chriss Cross, HVR at 4:43:41 (May 11, 2023).

[27] See Duke Energy Kentucky Brief, p. 55 for an overview of the issues associated with Mr. Chriss's ROE analyses.

[28] *See id.* at pp. 29–33.

[29] Jeffrey T. Kopp Rebuttal Testimony (Kopp Rebuttal), p. 2 (Apr. 14, 2023).

generating plant in order to achieve appropriate reliability metrics and perform required maintenance.[30] As such, its removal is inherently part of decommissioning a plant. OAG's Brief does nothing to negate this fact.

Instead, OAG takes issue with the timing of the Company's request, and the fact that the Company cannot predict the exact amount of end of life inventories that it will be required to remove or dispose of as part of decommissioning both East Bend and Woodsdale in the future.[31] In doing so, however, OAG fails to acknowledge the fact that decommissioning studies related to generating facilities that have *yet to be retired* must, by design, estimate decommissioning costs.[32] In this case, the Company's decommissioning study used a variety of data and information from various sources to estimate the tasks, quantities, and costs associated with decommissioning each generating facility.[33] These estimates are reasonable and include items (like removal of end of life materials and inventories) that are required to decommission a generating station.

Including these items in customer rates now also comports with principles of gradualism and avoiding intergenerational inequities, as recovering these costs in rates at a later time will increase costs to ratepayers in the future. OAG appears concerned with these principles in other sections of its Brief,[34] but its recommendation in this instance does not comport with these concepts. Decommissioning expense should include end of life materials and supplies inventories, and the Company is properly requesting authorization for recovery of these expenses in this case as part of its decommissioning expense.

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[30] *Id.*
[31] OAG Brief, p. 21.
[32] *See* Jeffrey T. Kopp Direct Testimony (Kopp Direct), pp. 4–5 (Dec. 1, 2022).
[33] *Id.*
[34] *See, e.g.*, OAG Brief, pp. 56–58.

### D. Distribution Pole Attachments (Rate DPA) Pole Attachment Charges

As noted in the Company's Brief, there is no major discrepancy between the Company's data used in calculating its pole attachment rates and the principles described by the Commission in Administrative Case No. 251 (Case No. 251). KBCA's assertions otherwise are intended to mislead the Commission as to the applicable rules and principles for pole attachment rates. KBCA makes a number of claims related to the "major discrepancy" standard outlined in the Commission's Order in Case No. 251 (Order 251), but none of these claims are based on the strictures of Order 251 itself.

KBCA substitutes its own judgment for the Commission's "major discrepancy" standard when it states that "KBCA established – and Duke did not contest – there is a major discrepancy between the actual distribution of Duke's attachments and Order 251's historic presumptions that seriously inflates Duke's rates."[35] KBCA did no such thing. Instead, KBCA has simply asserted that *any* variance from the Commission's historic presumptions outlined in Order 251 constitutes a major discrepancy, as KBCA claims that a 27 percent variance in two-user pole attachments,[36] a 10.65 percent variance in 45-foot pole attachments,[37] and a 1.47 percent variance in 40-foot attachments each constitute a "major discrepancy."[38] KBCA refuses to demarcate any line between what constitutes a major discrepancy and what does not, and contends that variances as small as 1.47 percent create a "major discrepancy" under Order 251. This cannot be true. Any variance is not a major discrepancy, despite KBCA's claims otherwise.

Further, KBCA's claims that the Company "did not contest" that a major discrepancy exists are false. The Company contested at hearing that any of the variances noted by KBCA were "major

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[35] KBCA Brief, p. 11.
[36] *Id.* at p. 12.
[37] *Id.* at p. 13.
[38] *Id.*

discrepancies" or variances, and in fact indicated that KBCA appeared to be focusing on variances in pole counts versus the ultimate pole attachment charges.[39] If KBCA's ultimate concern is the Company's pole attachment rates, it is unclear why KBCA has focused on proving discrepancies in the Company's pole counts rather than the final rates that result.

There are also no errors in the Company's calculation of pole attachment charges. As indicated in its Brief, the Company updated its unitized pole counts when updating its pole attachment charges in rebuttal testimony; as such, all poles that were non-unitized as of year-end 2021 but that were subsequently unitized in 2022 are reflected in the Company's pole attachment charges.[40] This did not change the appropriate charges.[41] The only erroneous calculations for pole attachment rates come from KBCA witness Ms. Patricia Kravtin, who made two notable errors in her analysis.[42]

Finally, the Company notes that KBCA's argument that the Company's pole attachment charges will have a significant impact on the costs of KBCA members to deploy broadband in "rural areas" is irrelevant here,[43] as the Company's service territory in Kentucky is highly urban. It is unclear why KBCA believes that its operations in rural areas would be germane to this proceeding and the pole attachment rates charged by the Company. Regardless, the fact remains

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[39] Sailers Cross, HVR at 2:27:33 (May 11, 2023).
[40] *See* Duke Energy Kentucky Brief, p. 64.
[41] Bruce L. Sailers Rebuttal Testimony (Sailers Rebuttal), pp. 13–14 (Apr. 14, 2023).
[42] *See* Duke Energy Kentucky Brief, pp. 64–65 ("However, KBCA witness Ms. Patricia Kravtin's proposed calculations of $9.62 for two-user poles and $7.96 for three-user poles differ from the Company's proposed charges because Ms. Kravtin's analysis contains calculation errors. First, Ms. Kravtin recommends the addition of 2,464 poles to the calculation,[42] but these poles are not unitized and do not represent only 35-, 40-, and 45-foot poles. Of the non-unitized poles as of the end of 2021, the correct number of poles for these heights that were not unitized but were unitized during the year 2022 are 71, not 2,464. Ms. Kravtin also adds additional poles to the 35-, 40-, and 45-foot pole counts, but neglects to add the corresponding investment associated with those poles of $15,727.20, $15,325.25, and $74,647.88, respectively. The Company's analysis does not contain these errors, and its pole attachment charges have therefore been calculated correctly.").
[43] KBCA Brief, pp. 1–2, 3, 4–5, 10.

that the Company has properly calculated its pole attachment rates using the guidance provided by the Commission in Order 251. KBCA's arguments to the contrary are meritless.

### E. Electric Vehicle Site Make Ready Credit (MRC) Program—Consumer Protections

As summarized in the Company's Brief, the Company has provided extensive information and made commitments to protecting customer usage data and information for participants in its proposed MRC program. The Company agrees that data protection and privacy are of the utmost importance, and has indicated in rebuttal testimony that it will never use customer data from the MRC program for competitive reasons.[44] The Company has also stated that it will not use metering and load research devices to expose proprietary and confidential customer electric vehicle (EV) charging data to outside parties.[45]

While it appears that the Company's assurances related to customer data protections are substantively sufficient for Walmart, Walmart argues that these assurances should be incorporated into the tariff language. Because the MRC program will contain terms and conditions that will provide extensive information on how the Company may or may not use customer program data,[46] the Company believes that revision of the tariff language is unnecessary and redundant. While the Company agrees with Walmart that protections of participants' data is critical, the Company already has in place standard procedures that will adequately protect the usage information of consumers who participate in the MRC program, and the Company will ensure that the terms of the program make adequate protections for and disclosures to consumers.[47] Revisions to the tariff are therefore an unnecessary exercise at this time.

[44] Cormack "Cory" C. Gordon Rebuttal Testimony (Gordon Rebuttal), p. 3 (Apr. 14, 2023).
[45] *Id.*
[46] Gordon Cross, HVR at 9:15:46 (May 10, 2023).
[47] *Id.*

### F. Local Government Fee Tariff and Incremental Local Investment Charge (Rider ILIC)

The Company has only proposed limited modifications to its Local Government Fee Tariff in this case to acknowledge recent developments surrounding potential franchise requirements and localities exercising their statutory rights to control their own rights of way. OAG provides no argument as to why these modifications should be rejected. The Company makes clear statements that its Local Government Fee Tariff addresses the application of simple fees required by a local public authority and recognizes more complicated construction related requirements that are addressed in Rider ILIC.

OAG, in recommending denial of the Company's proposed changes to the Local Government Fee Tariff and the newly proposed Rider ILIC in the same section of its Brief, only addresses the provisions of Rider ILIC.[48] Denial of Rider ILIC does not necessitate denial of the changes to the Local Government Fee Tariff, in particular when the Local Government Fee Tariff has only been modified to provide clarity as to its application and indicate how it differs from Rider ILIC. OAG provides no rationale for rejecting this minor modification. Thus, at the outset, the Commission should reject OAG's recommendation to deny the proposed changes to the Local Government Fee Tariff.

Further, OAG's discussion of Rider ILIC is misguided. In recommending that the Commission deny Rider ILIC, OAG admits that the Company "has raised an important issue concerning potentially unreasonable and economically unfeasible proposed franchises, ordinances, and/or permitting requirements,"[49] but argues only in terms of hypothetical scenarios that do not align with evidence in the record. For instance, OAG opines:

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[48] In fact, the heading for this section indicates that it is for Rider ILIC only, and OAG addresses the Local Government Fee Tariff in only cursory terms throughout this section. *See* OAG Brief, pp. 49–53.
[49] *Id.* at pp. 50–51.

> But, if the large city in the Company's territory passes the proposed franchise ordinance requiring the undergrounding of the entire electric delivery system, and Duke Kentucky can recoup these costs through the Rider ILIC, then the Company will have no economic incentive to seek legal redress against this project. If the new Rider ILIC is implemented then it could act as an economic disincentive for Duke Kentucky to challenge the cost prohibitive or unreasonable requirements imposed by a city, to the benefit of the Company's shareholders, but to the detriment of its customers. If in the future, this large city in Duke Kentucky's service territory were to pass the aforementioned franchise ordinance, and Duke Kentucky is unable to obtain a favorable legal outcome, then Duke Kentucky can submit a filing with the Commission and raise the issue at that time.[50]

This scenario is entirely hypothetical and notably does not cite to the record at all. It also ignores evidence in the record to the contrary. While the Company will indeed challenge ordinances that are onerous and unsupported under or in conflict with Kentucky law, the Company will not engage in frivolous litigation. OAG ignores the fact that Kentucky law clearly allows cities to enact ordinances that, among other things, expressly include relocation and undergrounding of utility infrastructure without limitation,[51] and that Kentucky legal precedent also supports a locality's ability to take similar actions.[52] The Company has indicated that it has always (and will continue to) negotiate with localities imposing costs that would be subject to Rider ILIC,[53] and that it will continue to discuss the impact of a proposed action with those localities—whether by local ordinance, franchise, or a similar mechanism—and whether that action is practical and feasible.[54] Additionally, the Company retains its obligation as a regulated utility in Kentucky to prudently incur costs regardless of whether it can recover costs through Rider ILIC. The Company therefore retains its incentive to negotiate with localities to the benefit of the customers it serves. OAG's Brief addresses none of this.

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[50] *Id.* at p. 51.
[51] *See* KRS 96.050(9)
[52] *See Benzinger v. Union Light, Heat & Power Co.*, 170 S.W.2d 38 (Ky. 1943).
[53] *See* Spiller Examination, HVR at 1:03:34 (May 9, 2023).
[54] *See id.*

The Company has responded to OAG's other concerns in rebuttal testimony, contrary to OAG's assertions otherwise. With regard to how a determination will be made as to whether a project is included in the Company's system-wide construction plans, the Company has stated that:

> [U]pon approval, Duke Energy Kentucky will file a separate application to implement Rider ILIC as necessary in response to a local government mandate such as an ordinance or franchise. This application would be filed prior to the Company commencing work on the mandated project and subject to Commission determination of reasonableness. Rider ILIC charges will not appear on a customer's bill until such applications *are approved by the Commission*. Going forward, the Company will make annual applications with the Commission to update Rider ILIC, reflecting any new proposed capital projects and the depreciation of previously approved capital projects as well as any other necessary data input changes supporting the rider calculation.[55]

OAG complains that the Company "fails to explain the objective process that the Company itself would use to determine" whether a project would or should be included in its system-wide construction plans,[56] but fails to acknowledge that Commission approval would be required for all projects included in Rider ILIC for recovery—both per the tariff[57] and under the Commission's inherent authority to regulate the Company's rates.[58] In those applications, the Company will necessarily be required to submit its "objective process" for determining which capital projects it believes should be included for rider recovery, and the Commission will necessarily exercise its authority to determine fair, just, and reasonable rates, which will include determining whether the Company has adequately supported the projects it has included for recovery and the process by which it did so. OAG ignores this principle that is inherent in Commission proceedings. Additionally, while the Company has provided record evidence showing why a levelized fixed charge is an appropriate recovery mechanism under Rider ILIC, the Commission will also

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[55] Lawler Rebuttal, pp. 25–26.
[56] OAG Brief, p. 52.
[57] *See* Application of Duke Energy Kentucky, Inc. (Application), Schedule L-1, pp. 185–86 (Dec. 1, 2022) (Sheet No. 126, Rider ILIC).
[58] Spiller Examination, HVR at 1:04:25 (May 9, 2023); Lawler Direct, p. 21; Lawler Rebuttal, pp. 25–26.

determine the appropriate rate design for Rider ILIC in this proceeding, and annual adjustments to the rider will be subject to Commission approval.[59] This should relieve OAG's concerns on this point.[60]

OAG provides no legitimate basis as to why this Commission should reject Rider ILIC, much less the minor updates proposed for the Local Government Fee Tariff that recognize more complicated franchise requirements than Rider ILIC addresses. As such, the Commission should reject OAG's recommendations and approve both Rider ILIC and the proposed updates to the Local Government Fee Tariff.

**G. Rate Case Expense—Corrective Customer Notice**

All rate case expenses associated with and included for recovery in this case have been incurred reasonably and prudently. This includes those associated with the publication of the corrective customer notice referenced by OAG. The Company strives to avoid errors in its filings, and makes every effort to do so, but they are not entirely avoidable given the complexity of cases like this one. The fact that the Company may make correctable errors in its filings does not necessarily imply that the proposed rates to be charged would be unfair, unjust, or unreasonable. The standard for recovery is reasonableness, not perfection, and the Company has met this standard for its rate case expense associated with the corrective customer notice. OAG's argument that the Company should be denied recovery of this expense purely because it made a filing error that it swiftly corrected is therefore in conflict with the applicable standard.

Additionally, while the Company understands that recovery of rate case expense "is not guaranteed,"[61] the Company made attempts to limit any potential rate case expense that would be

[59] *Id.* at pp. 27–28.
[60] *See* OAG Brief, pp. 52–53.
[61] *Id.* at p. 59.

recoverable from customers associated with the 807 KAR 5:001, Section 17(2)(b)(3) customer notice publication requirement. As OAG notes, the Company stated that "because th[e customer notice publication] requirement is costly and generally recoverable as a rate case expense, the Company should not be required to publish the corrected customer notice three consecutive weeks."[62] Under 807 KAR 5:001, Section 17(2)(b)(3), the Company published its first required notice before it filed its Application.[63] The Commission issued its deficiency notice after the Company had already published its second of the required notices under the rule.[64] Despite the Company's correcting its third publication according to the deficiency notice and requesting a rule variance, the Commission required two additional weeks of publication of the corrected notices which amounted to approximately $62,000 in additional publication costs.[65] By requesting a variance of the rule, the Company attempted to limit any expense associated with additional publications that could be charged to customers. However, when that request for a variance was denied, the Company abided by the Commission's order and ran the additional two weeks of notices. The fact that these expenses were incurred related to corrective filings and publications ordered by the Commission means that the Company should be allowed recovery of those expenses. The Commission should therefore reject OAG's argument on this point.

**H. Average Increase in Residential Customer's Monthly Electric Bill**

OAG's argument related to the proposed rate increase in this case constituting rate shock is misleading. While the Company initially filed its Application with a revenue requirement increase of $75.2 million,[66] the Company reduced this to $68.8 million in rebuttal testimony filed

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[62] *Id.*
[63] *See* Duke Energy Kentucky, Inc.'s Response to the December 6, 2022 Deficiency Notice, p. 5 (Dec. 8, 2022).
[64] *Id.*
[65] Order, p. 2 (Dec. 13, 2022).
[66] Application, p. 5.

in this case.[67] OAG has entirely disregarded the Company's reduced revenue requirement when arguing that a Residential customer's average monthly electric bill increase of $25 dollars constitutes rate shock, as this average increase is no longer anticipated after the reduction described above. Notably, OAG does not cite to the reduced revenue requirement or any rebuttal testimony explaining the revenue requirement adjustments, and instead cites to the figures provided in the Application. OAG's cited figures are therefore incorrect.

Further, the fact that customers may experience an increase in their rates does not necessarily mean that customers will experience rate shock. OAG appears to argue that rate shock will occur simply by virtue of rates increasing. This argument is inherently flawed, as the Company is permitted to recover its reasonably and prudently incurred costs to provide safe and reliable electric service to customers. That it is seeking to recover those costs in this case, and that recovery of those costs will increase rates for customers, does not mean that the increase that results constitutes rate shock or violates important regulatory principles. The Company has provided ample support for its costs included in this case, and as such should be awarded its requested revenue requirement increase.

**I. Kroger's Proposed Multi-Site Aggregation Commercial Rate**

Kroger's proposed multi-site commercial rate aggregation program is infeasible and should be rejected. While the Company has already discussed many of the infeasibilities associated with this proposed program in its Brief,[68] the Company feels compelled to call attention to the fact that Kroger is proposing that Duke Energy Kentucky both study *and* propose a conjunctive billing demand pilot program in its next case.[69] This recommendation is nonsensical.

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[67] Steinkuhl Revised Rebuttal, p 7.

[68] *See* Duke Energy Kentucky Brief, pp. 89–91.

[69] Kroger Brief, p. 5 ("Kroger recommends that the Commission order the Company to study the feasibility of a multi-site aggregated demand commercial rate and propose a pilot program in its next rate case . . . .").

Requiring the Company to both study and propose such a program fails to account for the fact that the study which the Company would undertake may indicate that the proposed program is entirely infeasible. That the Company could be required to propose and potentially implement a program that it determines is unworkable is absurd. Kroger witness Mr. Justin Bieber agreed at Hearing that the Company should not be required to propose a pilot program if it determines, after a study, that one would be infeasible.[70] It is therefore unclear why Kroger would recommend in its Brief that the Company both study and propose a pilot program, regardless of the results of said study.

Further, record evidence indicates that such a program would indeed likely be infeasible, and the Company has summarized this evidence in its Brief.[71] Such a program raises discrimination concerns,[72] as well as potential issues with implementing a program into and using the Company's billing system.[73] The Company also already offers existing energy efficiency programs to its commercial customers to reduce their peak demands, and implementing another program that serves the same function—particularly in light of the administrative burdens of the Company to do so—creates an even greater unworkability and futility in Kroger's proposal.[74] As such, the Company opposes Kroger's recommendation that the Company be required to study and propose a multi-site aggregation commercial rate program as part of its next rate case, and recommends that the Commission accordingly deny this proposal.

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[70] *See* Bieber Cross, HVR at 3:21:18 (May 10, 2023).
[71] *See* Duke Energy Kentucky Brief, pp. 89–91.
[72] *Id.* at pp. 89–90.
[73] *Id.* at p. 90.
[74] *Id.* at pp. 90–91.

### J. The Intervenors' Remaining Arguments

Each of the remaining arguments asserted in the Intervenors' Initial Briefs have been addressed in Duke Energy Kentucky's Brief, and as such will not be repeated here at length. However, as a convenience to the Commission, the portions of the Company's Brief which address the various Intervenors' arguments are catalogued as follows:

1. Walmart's argument related to the Company's use of the 12 CP method in its CCOSS is addressed on pages 59 through 61 of the Company's Brief;

2. OAG's argument related to revenue lag days in cash working capital is addressed on pages 17 through 20 of the Company's Brief;

3. OAG's argument related to the amortization period of East Bend deferred operations and maintenance (O&M) expense is addressed on page 28 of the Company's Brief;

4. OAG's arguments related to calculating decommissioning expense as a standalone expense and escalation of decommissioning expense are addressed on pages 29 through 33 of the Company's Brief;

5. OAG's argument related to recovery of the unamortized balance of rate case expense from Case No. 2019-00271 is addressed on page 47 of the Company's Brief;

6. OAG's arguments related to the amortization periods for and recovery of planned generation outage expense and forced outage purchased power expense are addressed on pages 21 through 24 and 24 through 27, respectively, of the Company's Brief;

7. OAG's argument related to property tax expense is addressed on pages 47 through 50 of the Company's Brief;

8. OAG's argument related to the Company's capital structure and common equity ratio is addressed on pages 56 through 59 of the Company's Brief;

9. OAG's argument related to the amortization period of the coal ash asset retirement obligations (ARO) included in the Environmental Surcharge Mechanism (Rider ESM) is addressed on pages 28 through 29 of the Company's Brief;

10. OAG's argument related to Generation Asset True-Up Mechanism (Rider GTM) is addressed on pages 91 through 92 of the Company's Brief;

11. OAG's arguments related to the MRC program and the Electric Vehicle Service Equipment (EVSE) program are addressed on pages 75 through 78 and pages 75 and 78 through 79, respectively, of the Company's Brief;

12. OAG's argument related to the Clean Energy Connection (CEC) proposal is addressed on pages 72 through 74 of the Company's Brief;

13. OAG's argument related to the Company's comprehensive hedging program proposal is addressed on pages 79 through 82 of the Company's Brief;

14. OAG's argument related to the Company's fee-free payment offerings and locations is addressed on pages 87 through 89 of the Company's Brief;

15. Sierra Club's argument related to Experimental Residential Service – Time of Use with Critical Peak Pricing (Rate RS-TOU-CPP) is addressed on pages 61 through 63 of the Company's Brief;

16. Sierra Club's argument related to Time-of-Day Rate for Service at Distribution Voltage (Rate DT) is addressed on pages 66 through 69 of the Company's Brief; and

17. Sierra Club's argument related to Load Management Rider (Rider LM) is addressed on pages 69 through 71 of the Company's Brief.

## 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 June 9, 2023 Brief.

This 19th day of June 2023.

Respectfully submitted,

DUKE ENERGY KENTUCKY, INC.

*/s/Rocco D'Ascenzo*

Rocco O. D'Ascenzo (92796)
Deputy General Counsel
Larisa M. 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 June 19, 2023; 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.[75]

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.*

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