

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF DUKE ENERGY)
KENTUCKY, INC. FOR (1) AN ADJUSTMENT OF)
ELECTRIC RATES; (2) APPROVAL OF NEW) CASE NO. 2022-00372
TARIFFS; (3) APPROVAL OF ACCOUNTING)
PRACTICES TO ESTABLISH REGULATORY)
ASSETS AND LIABILITIES; AND (4) ALL OTHER)
REQUIRED APPROVALS AND RELIEF)

THE ATTORNEY GENERAL’S POST-HEARING BRIEF

The Intervenor, the Attorney General of the Commonwealth of Kentucky, through his Office of Rate Intervention (“Attorney General”) submits the following Post-Hearing Brief to the Kentucky Public Service Commission (“Commission”) in the above-styled matter.

STATEMENT OF THE CASE

Duke Energy Kentucky, Inc. (“Duke Kentucky” or the “Company”) is a Kentucky corporation with its principal office and principal place of business in Cincinnati, Ohio.¹ Duke Kentucky is a wholly-owned subsidiary of Duke Energy Ohio (“Duke Ohio”). Duke Ohio is a wholly-owned subsidiary of Cinergy, and Cinergy is a wholly-owned subsidiary of Duke Energy Corporation (“Duke Energy”).² Duke Kentucky provides electric service to approximately 149,200 customers and natural gas service to approximately 103,100 customers in Bracken (natural gas only), Boone, Campbell, Gallatin (natural gas only), Grant, Kenton, and Pendleton counties in

¹ Application at 2.

² Direct Testimony of Amy B. Spiller (“Spiller Testimony”), at 6.

Northern Kentucky.³

Duke Kentucky states that it has 158 employees, comprising of 7 exempt employees and 151 non-exempt employees.⁴ Duke Kentucky further asserts that it is a party to multiple Commission-approved affiliate service agreements that provides the Company with services from attorneys, accountants, engineers, customer service representatives, and other professionals whose time and cost are shared among all utility affiliates within Duke Energy.⁵ One such service agreement is with Duke Energy Business Services, LLC (“DEBS”), which is a Federal Energy Regulatory Commission (“FERC”) authorized service company that provides various administrative and other services to Duke Kentucky and other affiliated companies of Duke Energy.⁶

On November 1, 2022, Duke Kentucky filed its notice of intent to file an application for an adjustment of electric rates with the Commission. The Company subsequently filed its application on December 1, 2022, utilizing a forward-looking test period (“forecast test year”) beginning on July 1, 2023, and ending June 30, 2024.⁷ The Company’s base period is the twelve months ending on February 28, 2023.⁸ Specifically, the application requests an increase in revenues of approximately \$75.2 million dollars per year.⁹ According to Duke Kentucky, if the Commission grants the requested rate increase then the Company’s new revenue requirement will be \$453.5 million dollars including fuel costs, which equates to an approximately 20% increase in

³ *Id.* at 5.

⁴ Direct Testimony of Jake J. Stewart (“Stewart Testimony”), at 4. Duke Kentucky states that 151 employees are union employees.

⁵ Spiller Testimony at 7 – 8; Direct Testimony of Jeffrey R. Setser (“Setser Testimony”), at 4. Mr. Setser states that Duke Kentucky has several service agreements in place that allow the company to provide services to or receive services from the Duke Energy family of companies that are incidental or necessary to the provision of utility service.

⁶ Setser Testimony at 4 – 5.

⁷ Application at 1; Spiller Testimony at 28; Direct Testimony of Sarah E. Lawler (“Lawler Testimony”), at 3.

⁸ Direct Testimony of Grady “Tripp” S. Carpenter (“Carpenter Testimony”), at 3;

⁹ Application at 5.

revenues per year.¹⁰ However, when comparing the requested rate increase of \$75.2 million dollars per year with Duke Kentucky's forecasted base revenues, before any increase, of \$248.1 million dollars, the requested rate increase represents a substantial 30.3% increase in base revenues.¹¹ Duke Kentucky's proposed electric rate increase will represent a \$25 increase, or 21.4%, for an average residential customer using 1,000 kWh of electricity per month.¹² Duke Kentucky is also requesting to increase the residential monthly customer charge from \$12.60 to \$13.00.¹³ The Company further requests approval of new tariffs, approval of accounting practices to establish regulatory assets and liabilities, and all other required approvals and relief.¹⁴

The Commission issued a deficiency letter on December 6, 2022, to which the Company filed a response on December 8, 2022. The Commission issued an Order rejecting Duke Kentucky's application on December 13, 2022. The Company filed additional information to cure the deficiency into the record on December 14, 2022. The Commission found that the application met the minimum filing requirements and it was deemed filed on December 15, 2022. The Attorney General was granted intervention on December 13, 2022. The other parties who were granted intervention into the pending case are as follows: Walmart Inc. ("Walmart"), The Kroger Co. ("Kroger"), Kentucky Broadband and Cable Association ("KBCA"), and the Sierra Club. Following the Commission's issuance of a procedural schedule, the Commission Staff and the parties issued several rounds of discovery requests, to which Duke Kentucky filed responses into the record. On March 10, 2023, the Attorney General filed direct testimony into the record of his witnesses, Messrs. Lane Kollen, Randy A. Futral, and Richard A. Baudino, and responded to both

¹⁰ *Id.*

¹¹ Application, Schedule C-2, page 1 of 1.

¹² Application at 5.

¹³ *Id.*; Application, Exhibits 3 and 7.

¹⁴ Application at 5 – 6 and 13 – 16.

Commission Staff's and Duke Kentucky's discovery requests on April 7, 2023. The Company filed a base period update and rebuttal testimony on April 14, 2023. Duke Kentucky further filed revised rebuttal testimony on May 5, 2023. An evidentiary hearing was conducted during May 9 – 11, 2023. The Company filed revised direct testimony for multiple witnesses on May 15, 2023. Duke Kentucky then filed responses to post-hearing discovery requests on May 26, 2023.

ARGUMENT

Pursuant to KRS 278.190(3), Duke Kentucky bears the burden of proof to demonstrate “that an increase of rate or charge is just and reasonable.”¹⁵ Duke Kentucky has failed to meet its burden.¹⁶ The Attorney General recommends a downward adjustment to the requested \$75.2 million dollar revenue increase because if the Company's application were accepted as is, then it would result in unjust, unfair, and unreasonable rates due to the following issues.

I. DUKE KENTUCKY'S REVISED RATE INCREASE AND REVENUE REQUIREMENT BASED UPON SPECIFIC RECOMMENDATIONS PROPOSED BY THE ATTORNEY GENERAL.

In Duke Kentucky's rebuttal testimony, revised rebuttal testimony, and at the evidentiary hearing, the Company agreed, partially agreed, and did not object to specific recommendations and adjustments proposed by the Attorney General, as discussed below.¹⁷ According to Duke Kentucky, the acceptance of these adjustments reduces the Company's requested rate increase and proposed revenue requirement by approximately \$6,355,880, for a revised requested rate increase of \$68,821,042.¹⁸

Duke Kentucky agrees upon the following adjustments proposed by the Attorney General:

¹⁵ Kentucky-American Water Company v. Commonwealth ex rel. Cowan, 847 S.W.2d 737, 741 (Ky. 1993).

¹⁶ See KRS 278.190. “At any hearing involving the rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the utility...”; See KRS 278.030(1). “Every utility may demand, collect and receive fair, just and reasonable rates for the services rendered or to be rendered by it to any person.”

¹⁷ Lisa D. Steinkuhl Revised Rebuttal Testimony (“Steinkuhl Revised Rebuttal Testimony”), at 2 – 7.

¹⁸ *Id.* at 7.

1. Correct the Company's error in the calculation of the forecasted 13-month accumulated depreciation balance,¹⁹ which reduces rate base by \$0.121 million dollars, and is a downward adjustment of \$11,272 to the proposed revenue requirement.²⁰
2. Correct specific issues with the cash working capital lead/lag calculation for collection lag days, which reduces the requested rate base by \$4.919 million dollars, and is a downward adjustment of \$459,678 to the proposed revenue requirement.²¹
3. Reflect the amortization of the unamortized DEBS Excess Accumulated Deferred Income Taxes ("EDIT") balance over the next five years as approved by Case No. 2019-00271,²² which is a \$16,435 downward adjustment to the proposed revenue requirement.²³

Duke Kentucky partially agrees upon the following adjustments proposed by the Attorney General:

1. Revised capital structure,²⁴ which is a \$369,966 downward adjustment to the proposed revenue requirement.²⁵
2. Revised property tax expense,²⁶ which is a \$1,605,133 downward adjustment to the proposed revenue requirement.²⁷

Duke Kentucky does not object to the following adjustments proposed by the Attorney

¹⁹ *Id.* at 3; Direct Testimony of Randy A. Futral ("Futral Testimony") at 8.

²⁰ Steinkuhl Revised Rebuttal at 7; Futral Testimony at 18.

²¹ Steinkuhl Revised Rebuttal at 3 and 7; Futral Testimony at 10.

²² Steinkuhl Revised Rebuttal at 4; Futral Testimony at 11.

²³ Steinkuhl Revised Rebuttal at 7; Futral Testimony at 26.

²⁴ Steinkuhl Revised Rebuttal at 6; Direct Testimony of Richard A. Baudino ("Baudino Testimony") at 30 – 33.

²⁵ Steinkuhl Revised Rebuttal Testimony at 7.

²⁶ *Id.*; Futral Testimony at 14 – 19.

²⁷ Steinkuhl Revised Rebuttal Testimony at 7.

General:

1. Deny the Company's request to transfer the recovery of the return on and of four capital projects from the Environmental Surcharge Mechanism ("ESM" or "Rider ESM") revenues to base revenues,²⁸ including related depreciation and property tax expense, which is a \$3,289,776 downward adjustment to the proposed revenue requirement.²⁹
2. Reduce rate base by the zero-cost vendor financing for the Company's purchases of fuel and limestone included in inventories as reflected in the related accounts payable balances,³⁰ which reduces rate base by \$6.459 million dollars and is a \$603,620 downward adjustment to the proposed revenue requirement after the gross-up for Commission assessment fees and bad debt expense.³¹

II. RATE BASE ISSUES

- a. **Duke Kentucky's revenue lag days in the cash working capital calculation are excessive and should be reduced to reflect the Company's sale of customer accounts receivables.**

Duke Kentucky sells the prior day's customer accounts receivables on a daily basis to an affiliate financing entity, Cinergy Receivables Company, LLC ("CRC").³² CRC is an affiliated special purpose financing entity used to accelerate Duke Kentucky's conversion of receivables

²⁸ Direct Testimony of Lane Kollen ("Kollen Testimony"), at 40 – 43.

²⁹ Steinkuhl Revised Rebuttal Testimony at 5 and 7. It is important to note that Duke Kentucky originally stated that this specific adjustment would reduce the rate increase by \$12.076 million dollars, and thus this amount is reflected in Mr. Lane Kollen's Direct Testimony. However, Ms. Steinkuhl later stated in her rebuttal testimony that due to various errors in the original calculation the reduction associated with this adjustment should be \$9.939 million dollars. Then in Ms. Steinkuhl's revised rebuttal testimony the \$9.939 million dollars was further revised to \$3.290 million dollars.; Kollen Testimony at 43.

³⁰ Steinkuhl Revised Rebuttal Testimony at 6; Kollen Testimony at 8 – 11.

³¹ Steinkuhl Revised Rebuttal Testimony at 7; Kollen Testimony at 11.

³² Duke Kentucky's response to the Attorney General's First Request for Information ("Attorney General's First Request"), Item 94; Kollen Testimony at 11.

into cash on a daily basis rather than waiting until customers actually pay their bills.³³ CRC borrows against a short-term loan facility to obtain the cash used to acquire the receivables from Duke Kentucky and other Duke Energy affiliates.³⁴ This process recurs on a daily cycle, although Duke Kentucky only records the cumulative effects of these transactions on its accounting books at the end of each month.³⁵ The Company records the cash received as an increase to the cash balance sheet account and the receivables sold as a credit to its receivables account, which it records in a receivables contra-account.³⁶ The cash that Duke Kentucky receives from CRC for the receivables sold reflects a modest discount to compensate CRC in cash for the interest expense on the debt that CRC issues to finance its purchases of the receivables from Duke Kentucky, and for the estimated uncollectible amounts of those receivables.³⁷ The Company records the two discount amounts as interest expense and as uncollectible accounts expense, respectively.³⁸

Duke Kentucky's daily sales of customer accounts receivables accelerates the conversion of its customer receivables into cash, significantly reducing the collection lag days (the number of days between the customer billing and receipt of the customer payments) that should be reflected in the cash working capital calculations.³⁹ Absent the sales of the accounts receivables on a daily basis, the Company would wait an average of 27.02 days from the date of customer billing to the date when it receives cash payment for service.⁴⁰ However, with the sales of the receivables to CRC, the Company accelerates the conversion of the receivables to cash and waits an average of only 1.46 days from the date of customer billing to the date when it receives cash

³³ Kollen Testimony at 11.

³⁴ *Id.*

³⁵ *Id.*; Duke Kentucky's response to the Attorney General's First Request, Item 94(b) and (d).

³⁶ Kollen Testimony at 12.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* at 13.

⁴⁰ *Id.*

for service.⁴¹ Yet, Duke Kentucky's cash working capital study reflects 27.02 collection lag days, instead of 1.46 days, in the collection lag days component of 45.91 total revenue lag days.⁴²

In rebuttal testimony, Duke Kentucky asserts that the "terms that have been used in this proceeding, sale of receivables and purchase of receivables, are a bit of a misnomer."⁴³ The Company further states that instead of being a sale and purchase of receivables, the "substance of the program is more accurately a securitization financing of the accounts receivable..."⁴⁴ Duke Kentucky reiterated these assertions at the evidentiary hearing,⁴⁵ which are in direct contradiction to the evidence in the record.⁴⁶ Duke Kentucky repeatedly stated throughout the pendency of the case that, "[t]he Company sells at a discount and without recourse, nearly all of its retail receivables to CRC on a daily basis."⁴⁷ Moreover, the contract between Duke Kentucky and CRC asserts that in order for Duke Kentucky to improve liquidity at the lowest possible cost, it desires to sell its receivables to CRC, and CRC is willing to purchase the receivables from Duke Kentucky.⁴⁸ The contract further states that Duke Kentucky and CRC intend for the transaction to be an "absolute and irrevocable true sale of [r]eceivables" and "do not intend the transactions hereunder to be characterized as a loan" from CRC to Duke Kentucky.⁴⁹

For these reasons, the Attorney General recommends the Commission reflect the actual 1.46 collection lag days in the collection component of the revenue lag days in the calculation of

⁴¹ *Id.* at 13 – 14.

⁴² Refer to the Revenues tab in Duke Kentucky's response to the Attorney General's First Request, Item 96, Excel Workbook, AG-DR-01-096_Attach_3_Revised_Duke_KY_Forecasted_Period_Lead_Lag_Summary. This Excel spreadsheet shows the Company's revised calculation of each component of the revenue lag days, including the service days lag, the billing days lag, and the collection days lag; Kollen Testimony at 14.

⁴³ Thomas J. Heath, Jr. Rebuttal Testimony ("Heath Rebuttal"), at 4.

⁴⁴ *Id.*

⁴⁵ Video Transcript of Evidence ("VTE"), at 16:44:40 – 17:04:20.

⁴⁶ Duke Kentucky's response to the Attorney General's First Request, Items 93, 94, and 95.

⁴⁷ *Id.*

⁴⁸ Duke Kentucky's response to the Attorney General's First Request, Item 93, Attachment 2, page 4 of 44.

⁴⁹ *Id.*

the cash working capital included in Duke Kentucky's rate base.⁵⁰ The effect of this recommendation is a reduction of \$1.677 million dollars in the Company's requested base revenue requirement and base rate increase.⁵¹

III. OPERATING INCOME ISSUES

a. Duke Kentucky failed to meet its burden of proof to accelerate the depreciation and decommissioning expense for East Bend 2 from 2041 to 2035.

In the pending case, Duke Kentucky requests that the depreciation and decommissioning expense of East Bend 2 Generating Station ("East Bend 2") be increased to reflect an earlier probable retirement date of 2035 compared to the probable retirement date of 2041 as currently reflected in the present depreciation rates.⁵² In Duke Kentucky's testimony and discovery responses, the Company cites to various reasons behind this request, including uncertain and unknown future economic and market conditions, environmental concerns, investor environmental, societal, and governmental ("ESG") concerns, and the industry trend to accelerate the retirement of coal-fired power plants.⁵³ However, one reason potentially behind the request that Duke Kentucky's witnesses do not discuss is that its ultimate parent company, Duke Energy, has announced plans to shut down all coal plants by 2035.⁵⁴

Even though this request to accelerate the probable retirement date for depreciation and decommissioning expense purposes will force customers to pay over \$10 million dollars extra in electric rates, Duke Kentucky currently has no present plans to actually retire East Bend 2 in 2035,

⁵⁰ Kollen Testimony at 16.

⁵¹ *Id.*

⁵² *Id.* at 27.

⁵³ Spiller Testimony at 25 – 26; Lawler Testimony at 5 – 6; Direct Testimonies of Christopher Bauer ("Bauer Testimony"), at 13, Lisa Quilici ("Quilici Testimony"), at 2 – 26, Luke Testimony at 11 – 14, John Swez ("Swez Testimony"), at 9 – 10, Scott Park ("Park Testimony"), at 3 – 11, and Joshua Nowack ("Nowack Testimony"), at 45 – 46; Duke Kentucky's response to the Attorney General's First Request, Item 19(a) and 22(b); Duke Kentucky's response to the Attorney General's Second Request for Information ("Attorney General's Second Request"), Item 13; Kollen Testimony at 27.

⁵⁴ See <https://news.duke-energy.com/releases/duke-energy-expands-clean-energy-action-plan>.

or any other date for that matter.⁵⁵ The pending case record makes it clear that the reason Duke Kentucky has not made a decision to retire East Bend 2 is because the generating facility is extremely valuable for both the Company's customers as well as for grid reliability purposes. East Bend 2 is Duke Kentucky's principal source of generation to serve its customers.⁵⁶ The Company admits that East Bend 2, "has performed well in the past and provided considerable value to customers."⁵⁷ In fact, East Bend 2 has outperformed the North American Electric Reliability Corporation's ("NERC") average Equivalent Forced Outage Rate ("EFOR"), in the past six out of seven years.⁵⁸ Duke Kentucky further acknowledges that East Bend 2, "is a value-added resource to customers in terms of reliability and resiliency."⁵⁹ As an example of East Bend 2's reliability and resiliency, Duke Kentucky states that during the December 2022 Winter Storm Elliott event when temperatures dropped below zero for multiple days in a row, East Bend 2 performed well and generated near its full load of 600 MW throughout the entire event.⁶⁰

When discussing a probable retirement date for East Bend 2 at the evidentiary hearing, Duke Kentucky admitted that you "can very easily paint a picture where East Bend retires after 2035,"⁶¹ and there are even scenarios "where East Bend probably retires well into the 40s [2040s]."⁶² The Company further asserted at the hearing that electric reliability concerns and supply chain issues can have a delaying effect on the potential retirement of East Bend 2.⁶³ Similarly, in rebuttal testimony, Duke Kentucky admitted that, "greater gas market volatility

⁵⁵ Duke Kentucky's response to the Attorney General's First Request, Item 19(a); Duke Kentucky's response to the Attorney General's Second Request, Item 13(d).

⁵⁶ Lawler Testimony at 13.VTE

⁵⁷ Duke Kentucky's response to the Attorney General's First Request, Item 55.

⁵⁸ Luke Testimony at 6 – 7; Duke Kentucky's response to the Attorney General's First Request, Item 55.

⁵⁹ Duke Kentucky's response to the Attorney General's First Request, Item 63(b).

⁶⁰ Duke Kentucky's response to the Attorney General's First Request, Item 85(a).

⁶¹ VTE at 12:25:00 – 12:25:11.

⁶² VTE at 12:26:14 – 12:26:21.

⁶³ VTE at 12:22:15 – 12:22:29.

highlights the value of coal resources, and as a result, in a silo, would likely support a later economic retirement of coal generation.”⁶⁴ Further, the large majority of the new environmental regulations discussed at the evidentiary hearing that could potentially affect a retirement date for East Bend 2, are proposed rules and not final rules.⁶⁵ Additionally, it is highly probable that the newly proposed environmental regulations will not go into effect for years to come, if ever, due to the inevitable legal appeals that will be filed once the proposed rules are finalized. With that said, if any of the newly proposed environmental regulations are finalized and survive the litigation process then Duke Kentucky can analyze the same and advise the Commission how it will affect its generating facilities at that time.

Additionally, after witnesses for both Duke Kentucky and the Attorney General filed their respective testimonies in the pending case, the General Assembly of the Commonwealth of Kentucky enacted Senate Bill 4,⁶⁶ which requires a utility to obtain Commission approval before retiring a fossil fuel-fired generating unit.⁶⁷ Senate Bill 4, Section 2(2), states that there is a rebuttable presumption *against* the retirement of a fossil fuel-fired electric generating unit, and the Commission shall not approve the retirement unless the utility can rebut the presumption against retirement with sufficient evidence.⁶⁸ Duke Kentucky admits that it has not filed an application pursuant to Senate Bill 4 to request authorization from the Commission to retire East Bend 2, nor does the Company envision doing so in the near future.⁶⁹ The Company has also not filed an application for a Certificate of Public Convenience and Necessity (“CPCN”) with the Commission

⁶⁴ Scott Park Rebuttal Testimony (“Park Rebuttal”), at 6.

⁶⁵ See Sierra Club’s Hearing Exhibits 3, 4, 5, 6, 7, and 8.

⁶⁶2023 Kentucky Senate Bill No. 4, Section 2(2), Kentucky 2023 Regular Session, <https://apps.legislature.ky.gov/law/acts/23RS/documents/0118.pdf>.

⁶⁷ *Id.*

⁶⁸ *Id.* (emphasis added).

⁶⁹ VTE 12:01:00 – 12:01:53.

to request the necessary approval for replacement capacity.⁷⁰ In fact, Duke Kentucky has not even identified or decided upon a replacement generation resource for East Bend 2 as of yet.⁷¹

Further, the Company persistently argues throughout the rebuttal testimony that it is seeking to accelerate the depreciation and decommissioning cost of East Bend 2 in order to prevent intergenerational inequities so that future customers are not paying for stranded costs of the asset.⁷² But, if East Bend 2 continues to operate and provide electricity to customers past 2035, or into the 2040s, as Duke Kentucky has admitted is a realistic possibility, then current customers will have subsidized future customers, thereby causing intergenerational inequities to the detriment of current customers. Interestingly, Duke Kentucky does not discuss or appear to have any concern with current customers potentially overpaying for electric rates and subsidizing the rates of future customers.

Duke Kentucky's goal of accelerating and increasing the depreciation and decommissioning expense of East Bend 2 based on a probable retirement date of 2035 will increase customer rates by over \$10 million dollars, even though the Company admits East Bend 2 could realistically operate into the 2040's. Moreover, the Commission has not granted approval pursuant to Senate Bill 4 for Duke Kentucky to retire East Bend 2 at a date certain, and no replacement generation resource(s) has been identified. Thus, the Commission must deny the Company's request until Duke Kentucky can demonstrate that East Bend 2 will be retired before 2041 in accordance with applicable law. If the Commission accepts this recommendation then it will

⁷⁰ Park Rebuttal at 22; VTE at 12:00:25 – 12:01:22.

⁷¹ Duke Kentucky's response to the Attorney General's First Request, Item 54; VTE at 11:54:00 – 11:55:01; VTE at 12:00:00 – 12:01:25.

⁷² Jeffrey T. Kopp Rebuttal Testimony ("Kopp Rebuttal"), at 4; Sarah E. Lawler Rebuttal Testimony ("Lawler Rebuttal"), at 13 – 15; Park Rebuttal at 21 – 22; Duke Kentucky's response to the Attorney General's Second Request, Item 13(d).

reduce the Company's requested base revenue requirement and base rate increase by \$10.208 million dollars.⁷³

b. East Bend 2 deferred operations and maintenance expense regulatory asset amortization period should be extended to align with the probable life of the generating facility.

Duke Kentucky requests to include \$4.498 million dollars for recovery of the East Bend 2 deferred Operations and Maintenance ("O&M") expense regulatory asset in its base revenue requirement.⁷⁴ The Commission previously authorized the Company to defer incremental East Bend 2 O&M expense to a regulatory asset from the date it acquired the remaining ownership of that generating unit until the O&M expense was included in and recovered through base rates.⁷⁵ The Commission subsequently authorized recovery of the East Bend deferred O&M expense regulatory asset on a levelized basis using a debt only rate of return over ten years.⁷⁶ But, the ten-year amortization period was not connected to any specific date, such as the probable retirement date of East Bend 2.⁷⁷ It is more reasonable to extend the amortization period for this regulatory asset until the probable retirement date of East Bend 2, whether the Commission finds that to be 2041 as the Attorney General recommends, or 2035 as the Company proposes.⁷⁸

Duke Kentucky states in rebuttal testimony that the ten-year amortization period of this regulatory asset was previously approved by the Commission, and therefore should not be

⁷³ Kollen Testimony at 31.

⁷⁴ *Id.* at 24.

⁷⁵ Case 2014-00201, Application of Duke Energy Kentucky, Inc. for (1) A Certificate of Public Convenience and Necessity Authorizing the Acquisition of the Dayton Power & Light Company's 31% Interest in the East Bend Generating Station; (2) Approval of Duke Energy Kentucky, Inc.'s Assumption of Certain Liabilities in Connection with the Acquisition; (3) Deferral of Costs Incurred as Part of the Acquisition; And (4) All Other necessary Waivers, Approvals, and Relief (Ky. PSC Dec. 4, 2014), Order at 10 – 11; Kollen Testimony at 24.

⁷⁶ Case No. 2017-00321, 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 (Ky. PSC Apr. 13, 2018), Order at 25; Kollen Testimony at 24.

⁷⁷ Kollen Testimony at 25.

⁷⁸ *Id.*

modified in the pending case.⁷⁹ Duke Kentucky's rebuttal testimony assertions merely reflect its preferred outcome, but is not a valid reason for retaining the present amortization period. The extension of the amortization period is appropriate and reasonable from the perspective of consistent amortization and recovery periods that align with the life of East Bend 2.⁸⁰ Additionally, the deferred O&M expense was incurred in conjunction with the acquisition of complete ownership of East Bend 2, effectively a cost of the acquisition of that full ownership, which should be paid for over the life of East Bend 2, similar to the recovery of plant costs incurred for the acquisition.⁸¹

The Attorney General recommends the Commission extend the amortization period and recalculate the levelized recovery to reflect a probable retirement date of mid-year 2041, which is the probable retirement date reflected in the presently approved depreciation rates of East Bend 2.⁸² The effect of this recommendation would be a reduction in Duke Kentucky's revenue requirement and base rate increase of \$2.764 million dollars after gross-up for Commission assessment fees and bad debt expense.⁸³

In the alternative, if the Commission grants the Company's request to accelerate the probable retirement date for depreciation and decommissioning expense purposes of East Bend 2, then the Attorney General recommends to extend the amortization period and recalculate the levelized recovery to reflect a probable retirement date of mid-year 2035.⁸⁴ The effect of this alternative recommendation is a reduction of \$2.181 million dollars in the revenue requirement and base rate increase after gross-up for Commission assessment fees and bad debt expense.⁸⁵

⁷⁹ Steinkuhl Revised Rebuttal at 17.

⁸⁰ Kollen Testimony at 25.

⁸¹ *Id.* at 26.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

c. Duke Kentucky's decommissioning expense should be included and recovered as a separate standalone expense instead of embedded in depreciation rates and expenses.

Duke Kentucky incorporates an estimate of the future decommissioning costs for East Bend 2, Woodsdale Combustion Turbines ("Woodsdale"), Crittenden Solar Project ("Crittenden Solar"), and Walton Solar Project ("Walton Solar"), as well as the retired Miami Fort Unit 6 Generating Station ("Miami Fort 6") ("collectively the generating facilities") into the calculation of the proposed depreciation rates for the operating generating facilities.⁸⁶ The Company estimated the decommissioning costs for the operating and retired generating facilities in 2022 dollars.⁸⁷ Due to the estimated decommissioning costs including no assumptions as to the probable retirement dates for the generating facilities, Duke Kentucky then escalated the decommissioning costs in 2022 dollars to future probable retirement date dollars using a 2.5% escalation rate.⁸⁸ The Company added the decommissioning cost estimate in future dollars to each of the generating facilities' actual remaining net book values at December 31, 2021 (the date of the depreciation study), and then divided this sum by the average remaining service lives for each plant account pertaining to each of these generating facilities to calculate the proposed depreciation rates.⁸⁹ Duke Kentucky then utilized the proposed developed depreciation rates to calculate the depreciation expense for each month during the test year.⁹⁰ The Company applied the proposed depreciation rates to the gross plant, including capital additions, less retirements, for each operating generating facility for each month during the test year.⁹¹

⁸⁶ Direct Testimony of Jeffrey T. Kopp ("Kopp Testimony"), at 3 – 10; Kollen Testimony at 32.

⁸⁷ Kollen Testimony at 32.

⁸⁸ Duke Kentucky's response to the Attorney General's First Request, Item 118; Kollen Testimony at 32.

⁸⁹ Kollen Testimony at 33.

⁹⁰ *Id.*

⁹¹ *Id.*

The aforementioned methodology that Duke Kentucky utilized results in the overstatement of decommissioning expense in the test year when compared to calculating and reflecting that expense as a separate and standalone expense.⁹² The error occurs when Duke Kentucky includes the decommissioning expense as a component of the depreciation rates calculated using the gross plant at December 31, 2021, the date of the depreciation study, but then the depreciation rates are applied to the gross plant in the test year ending June 30, 2024.⁹³ To the extent that the test year's gross plant is greater than the gross plant at December 31, 2021, the decommissioning component in the depreciation rate expense applied to the gross plant in the test year results in a proportionately greater decommissioning expense than if the decommissioning costs were calculated and reflected as a separate and standalone decommissioning expense.⁹⁴

Duke Kentucky contends in rebuttal testimony that when the following sections of the Federal Energy Regulatory Commission's Uniform System of Accounts ("FERC USOA") are "read together" then it is "clear" that the decommissioning costs "must be recovered through depreciation expense."⁹⁵

FERC USOA 19. Net salvage value means the salvage value of property retired less the cost of removal.

FERC USOA 10. Cost of removal means the cost of demolishing, dismantling, tearing down or otherwise removing electric plant, including the cost of transportation and handling incidental thereto. It does not include the cost of removal activities associated with asset retirement obligations that are capitalized as part of the tangible long-lived assets that give rise to the obligation.

FERC USOA 9. Cost means the amount of money actually paid for property or services. When the consideration given is other than cash in a purchase and sale transaction, as distinguished from a transaction involving the issuance of common

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.* at 33 – 34.

⁹⁵ John J. Spanos Rebuttal Testimony ("Spanos Rebuttal"), at 8.

stock in a merger or a pooling of interest, the value of such consideration shall be determined on a cash basis.⁹⁶

This assertion is simply inaccurate. None of the above cited FERC USOA sections specifically state that depreciation rates must include decommissioning costs. At the evidentiary hearing, when Duke Kentucky's witness was questioned upon this issue, he stated that recovering decommissioning expense on a standalone basis, instead of being included in the depreciation rates, is "not the standard practice."⁹⁷ The witness further admitted at the hearing that although the "specific words" are not stated in FERC USOA, in his opinion the decommissioning expense should be included in the depreciation rates, and not recovered on a standalone basis.⁹⁸ The FERC USOA's requirements should not be conflated with a witness' opinion or standard practice. The FERC USOA simply requires that the decommissioning expense be recovered, and does not identify the specific means of such recovery. Regardless, the FERC USOA dictates accounting for FERC reporting purposes; *it does not dictate state ratemaking*. FERC USOA also does not mandate how depreciation rates and decommissioning expense are recovered at the retail level, and it certainly does not direct this Commission to set rates that provide excessive recovery of decommissioning expense.

To rectify the overstatement of decommissioning expense, the Attorney General recommends the Commission remove the decommissioning expense from the East Bend 2, Woodsdale, Crittenden Solar, and Walton Solar depreciation rates and the resulting calculations of depreciation expense for the test year, and instead simply include the decommissioning expense as a separate and standalone expense in the base revenue requirement.⁹⁹ This will ensure that the

⁹⁶ FERC USOA, <https://www.ecfr.gov/current/title-18/chapter-I/subchapter-C/part-101>.

⁹⁷ VTE at 10:54:57 – 10:55:07; VTE at 11:06:00 – 11:21:00.

⁹⁸ VTE 11:19:00 – 11:21:00.

⁹⁹ Kollen Testimony at 34.

test year's decommissioning expense is not incorrectly increased and overstated by the percentage increase in the generating facilities' gross plant during the test year as compared to the gross plant balances at the date of the depreciation study.¹⁰⁰ If the Commission accepts this recommendation then it will reduce Duke Kentucky's requested base revenue requirement and base rate increase by \$0.839 million dollars.¹⁰¹

d. Duke Kentucky's decommissioning expense should be reduced to limit the escalation to the Company's test year.

Pursuant to 807 KAR 5:001, Section 16(6)(b), forecasted adjustments in a rate case shall be limited to the twelve months immediately following the suspension period.¹⁰² In the pending case, pursuant to KRS 278.190(2), the Commission suspended the effective date of Duke Kentucky's proposed rates to July 14, 2023. Yet, as previously discussed, Duke Kentucky escalated decommissioning expense well beyond the fully forecasted test year ending on June 30, 2024.¹⁰³ For example, Duke Kentucky includes forecasted decommissioning costs for East Bend 2 that are extrapolated out to 2035, eleven years after the test year in the pending case.¹⁰⁴ In the case of Woodsdale, the decommissioning expense is based on a forecasted decommissioning cost extrapolated out to 2040, sixteen years after the test year in the pending case.¹⁰⁵ The forecasted decommissioning costs included for Crittenden Solar and Walton Solar are extrapolated out to 2047, twenty-three years beyond the test year.¹⁰⁶ Thus, the Company's forecasted adjustments to the decommissioning expense, which occur decades past the test year are not in compliance with 807 KAR 5:001, Section 16(6)(b).

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² 807 KAR 5:001, Section 16(6)(b).

¹⁰³ Kollen Testimony at 35.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* at 37.

In contrast to how Duke Kentucky calculated its decommissioning cost, the gross plant included in the Company's rate base used to calculate depreciation expense is limited to the capital expenditures through the end of the test year, and does not reflect a forecast of future costs after the test year.¹⁰⁷ Moreover, the retirement dates being used for the Company's generating units to escalate the decommissioning costs are not known and measurable because there are no official retirement dates for East Bend 2, Woodsdale, Crittenden Solar, or Walton Solar.¹⁰⁸

Duke Kentucky asserts in rebuttal testimony that the decommissioning costs "need to be escalated so that the correct amounts are allocated over the lives of the plants,"¹⁰⁹ and that, "Mr. Kollen's proposal to remove escalation to the date of retirement from the decommissioning costs would result in insufficient recovery of the Company's actual costs."¹¹⁰ At the evidentiary hearing, Duke Kentucky further discussed its concern with future customers being required to pay for the insufficient recovery of the decommissioning costs; however, once again the Company did not seem to be concerned if current customers overpay for decommissioning costs to the benefit of future customers.¹¹¹

The assertion that the Company will receive insufficient recovery of its decommissioning costs is incorrect. For example, in the pending case Duke Kentucky proposes a Generation Asset True-Up Mechanism that would expressly include recovery of any remaining undepreciated net book value as well as any remaining unrecovered decommissioning costs.¹¹² The Company will have future opportunities to update its decommissioning cost estimates to reflect changes in

¹⁰⁷ *Id.* at 36.

¹⁰⁸ *Id.*; Duke Kentucky's response to the Attorney General's First Request, Item 51.

¹⁰⁹ Spanos Rebuttal at 6.

¹¹⁰ *Id.*

¹¹¹ VTE at 11:28:00 – 11:30:05.

¹¹² Lawler Testimony at 17.

assumptions, and subsequently, to true-up the costs recovered to its actual costs incurred. Thus, Duke Kentucky will receive sufficient recovery of their actual decommissioning costs.

The Attorney General recommends the Commission limit the escalation of the decommissioning cost and related expense to the test year and reject the Company's request to escalate the cost through the speculative, probable retirement dates.¹¹³ The effect of this recommendation would be a \$1.529 million dollar reduction in Duke Kentucky's requested base revenue requirement and the requested base rate increase.¹¹⁴

e. Decommissioning expense should be reduced to remove estimated end of life materials and supplies inventories.

Duke Kentucky's decommissioning study includes \$8.176 million dollars for East Bend 2 and \$4.475 million dollars for Woodsdale in estimated end of life materials and supplies inventories, net of salvage.¹¹⁵ These referenced amounts are in 2022 dollars.¹¹⁶ The end of life materials and supplies inventories comprise 21% of the East Bend 2 decommissioning cost estimate and 40% of the Woodsdale decommissioning cost estimate.¹¹⁷ Duke Kentucky includes these amounts even though it is impossible to know either the inventory items or the dollar amount of those inventory items that cannot be salvaged at the end of life for each of the Company's generating facilities.¹¹⁸ In other words, almost \$13 million dollars is included in Duke Kentucky's decommissioning expense based on sheer speculation, which are neither known or measurable at this time. Relying on such speculation would not lead to fair, just, and reasonable rates.

¹¹³ Kollen Testimony at 37.

¹¹⁴ *Id.*

¹¹⁵ Kopp Testimony at 17, Attachment JTK-1; Kollen Testimony at 37.

¹¹⁶ Kollen Testimony at 37.

¹¹⁷ *Id.* at 38.

¹¹⁸ *Id.*

At the end of life for each of the Company’s generating facilities, any remaining inventory items that cannot be salvaged will be included in the remaining undepreciated net book value, and recovered from the customers.¹¹⁹ Only at that point will the inventory, supply items and dollar amounts be known and measurable.¹²⁰ In fact, end of life remaining inventory amounts that cannot be salvaged are included as recoverable retirement costs in Kentucky Power Company’s Decommissioning Rider (D.R.), as authorized by the Commission in Case No. 2012-00578,¹²¹ as well as in the Kentucky Utility (“KU”) and Louisville Gas & Electric (“LG&E”) Retired Asset Recovery Riders as authorized by the Commission in Case Nos. 2020-00349¹²² and 2020-00350, respectively.¹²³

Duke Kentucky argues in rebuttal testimony that these end of life materials and supplies costs exist and should be recoverable, net of salvage.¹²⁴ The Attorney General agrees with this premise, but disagrees with the Company as to the proper time to recover these costs. Duke Kentucky further argues that if these costs are not recovered now, it will “push the cost off to future rate payers, creating intergenerational inequity issues.”¹²⁵ This argument does nothing to negate the fact that end of life materials and supplies’ costs should not be based on speculation, but instead

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ Case No. 2012-00578, Application of Kentucky Power Company for (1) A Certificate of Public Convenience and Necessity Authorizing the Transfer to the Company of an Undivided Fifty Percent Interest in the Mitchell Generating Station and Associated Assets; (2) Approval of the Assumption by Kentucky Power Company of Certain Liabilities in Connection with the Transfer of the Mitchell Generating Station; (3) Declaratory Rulings; (4) Deferral of Costs Incurred in Connection with the Company’s Efforts to Meet Federal Clean Air Act and Related Requirements; And (5) All Other Required Approvals and Relief (Ky. PSC Oct. 7, 2013).

¹²² Case No. 2020-00349, Electronic Application of Kentucky Utilities Company for an Adjustment of its Electric Rates, A Certificate of Public Convenience and Necessity to Deploy Advanced Metering Infrastructure, Approval of Certain Regulatory and Accounting Treatments, and Establishment of a One-Year Surcredit (Ky. PSC June 30, 2021).

¹²³ Case No. 2020-00350, Electronic Application of Louisville Gas and Electric Company for Adjustment of its Electric and Gas Rates, A Certificate of Public Convenience and Necessity to Deploy Advanced Metering Infrastructure, Approval of Certain Regulatory and Accounting Treatments, and Establishment of a One-Year Surcredit (Ky. PSC June 30, 2021).

¹²⁴ Kopp Rebuttal Testimony at 4.

¹²⁵ *Id.*

should be recovered when they are actually known and measurable. Stated differently, Duke Kentucky's current customers should not be required to pay for unknown and unmeasurable end of life materials and supplies costs in current electric rates. Finally, to the extent that end of life materials and supplies costs do arise when the generating facilities actually retire, then those costs should be trued-up and recovered through the Company's proposed Generation Asset True-Up Mechanism, whether that mechanism is approved in the pending case or in a future case.¹²⁶

The Attorney General recommends the Commission remove the estimated end of life materials and supplies from the decommissioning cost estimate and instead allow any future recovery of these costs to occur when they are known and measurable.¹²⁷ The effect of this recommendation would reduce Duke Kentucky's requested revenue requirement and rate increase by \$0.740 million dollars.¹²⁸

f. The amortization period for Duke Kentucky's remaining case expense from Case No. 2019-00271, should be extended to prevent an unfair result.

Duke Kentucky proposes to include \$0.068 million dollars in rate case amortization expense from Case No. 2019-00271 in the base revenue requirement.¹²⁹ The Company adds the \$0.068 million dollars to the \$0.227 million dollars of rate case amortization expense related to the pending case, for a total of \$0.295 million dollars for rate case amortization expense in the base revenue requirement.¹³⁰ In Case No. 2019-00271, the Commission authorized recovery of \$0.068 million dollars annually based on a five-year amortization of the \$0.339 million dollars in rate case expense incurred during the pendency of that case.¹³¹ Duke Kentucky began amortizing that rate

¹²⁶ Kollen Testimony at 38.

¹²⁷ *Id.* at 39.

¹²⁸ *Id.*

¹²⁹ Futral Testimony at 12.

¹³⁰ *Id.*

¹³¹ Case No. 2019-00271, 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

case expense balance in May of 2020, and the remaining unamortized balance will be \$0.124 million dollars as of June 30, 2023, which is one day prior to the forecasted test period in the pending case.¹³²

It is unreasonable to include the entire rate case amortization expense currently being recorded for Case No. 2019-00271 in the base revenue requirement, because the asset will be fully recovered approximately ten months after the end of the test year.¹³³ This would produce an unfair result of allowing the Company to over recover these costs until base rates are reset through a future rate case.¹³⁴ This issue was addressed in Duke Kentucky's prior electric rate case, Case No. 2019-00271, in which the Commission authorized the recovery of the unamortized balance of rate case expenses from Duke Kentucky's prior Case No. 2017-00321 over a new five-year period.¹³⁵ It is important to note that Duke Kentucky did not provide rebuttal testimony on this issue. Moreover, the Attorney General's recommendation on this issue is in line with Duke Kentucky's proposal to amortize the remaining June 30, 2023 balance in DEBS EDIT, which acts as a revenue reduction to the customers, over five years.¹³⁶

Thus, the Attorney General recommends the Commission to follow precedent and authorize amortization of the unamortized balance of \$0.124 million dollars for this asset as of June 30, 2023, over five years.¹³⁷ If the Commission accepts this recommendation, then the amortization expense will be \$0.25 million dollars compared to the \$0.68 million dollars included

Liabilities; and 4) All Other Required Approvals and Relief (Ky. PSC Apr. 27, 2020), Order at 15; Futral Testimony at 12 – 13.

¹³² Futral Testimony at 13.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ Case No. 2019-00271, 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 (Ky. PSC Apr. 27, 2020), Order at 15; Futral Testimony at 13.

¹³⁶ Futral Testimony at 14.

¹³⁷ *Id.*

by the Company in the base revenue requirement in the pending case.¹³⁸ The effect of this recommendation would be a reduction of \$.043 million dollars to the Company's requested base revenue requirement and base rate increase, after the gross-up for Commission assessment fees and bad debt expense.¹³⁹

g. Duke Kentucky's amortization periods for planned outage expense and forced outage expense regulatory assets should be extended.

Duke Kentucky presently defers its actual planned outage expense to a regulatory asset and reduces the regulatory asset by the expense accruals recovered through base revenues.¹⁴⁰ The Company currently recovers \$7.177 million dollars for these expense accruals through base revenues, and proposes to continue to recover this same amount in the test year.¹⁴¹ Duke Kentucky also presently defers its forced outage expenses not recoverable through the Fuel Adjustment Clause ("FAC") to a regulatory asset and reduces the regulatory asset by the expense accruals recovered through base rates.¹⁴² The Company currently recovers \$1.610 million dollars for these expense accruals through base revenues.¹⁴³ The Commission authorized both deferrals in Case No. 2017-00321 and adopted certain adjustments proposed by the Attorney General to reduce the expenses included in the base revenue requirement.¹⁴⁴ Duke Kentucky did not seek any modification in the expense accruals and no amortization or recovery of the regulatory assets in Case No. 2019-00271.¹⁴⁵

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ Kollen Testimony at 16.

¹⁴¹ Lisa D. Steinkuhl Testimony ("Steinkuhl Testimony"), at 18 – 19; Kollen Testimony at 17.

¹⁴² Kollen Testimony at 17.

¹⁴³ *Id.*; Steinkuhl Testimony at 18 – 19.

¹⁴⁴ Case No. 2017-00321, 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 (Ky. PSC Apr. 13, 2018), Order at 15 – 16.

¹⁴⁵ Duke Kentucky's response to the Attorney General's Second Request, Item 56(c); Case No. 2019-00271, *Electronic Application of Duke Energy Kentucky, Inc. for 1) An Adjustment of the Electric Rates; 2) Approval of New*

In the pending case, Duke Kentucky requests to amortize and recover a planned outage expense regulatory asset in the amount of \$1.662 million dollars over five years.¹⁴⁶ Similarly, the Company requests to amortize and recover the forced outage expense regulatory asset in the amount of \$0.364 million dollars over five years.¹⁴⁷ The Company did not include either of these regulatory assets or the related liability accumulated deferred income taxes (“ADIT”) in rate base.¹⁴⁸

Duke Kentucky’s planned outage expense regulatory asset could be positive or negative depending on the cumulative actual planned outage maintenance expenses as compared to the cumulative expense accruals already recovered through the revenue requirement.¹⁴⁹ The Company’s actual planned outage maintenance expense varies from year to year due to the scope and frequency of the actual planned outage activities.¹⁵⁰ As an example, in response to the Attorney General’s discovery, the Company’s forecasted planned outage expenses in 2023 and 2024 are less than the authorized expense accruals already included in the revenue requirement.¹⁵¹ This will have the effect of reducing the deferrals accumulated to the planned outage regulatory asset that Duke Kentucky is requesting to amortize and recover in the pending case.¹⁵² All else equal, the deferral mechanism should net to zero over the planned maintenance cycles unless there are exceptional circumstances.¹⁵³

Tariffs; 3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; and 4) All Other Required Approvals and Relief (Ky. PSC Apr. 27, 2020).

¹⁴⁶ Steinkuhl Testimony at 17 – 18; Application at Schedule WPD-2-27a; Kollen Testimony at 17 – 18.

¹⁴⁷ Steinkuhl Testimony at 17 – 18; Application at Schedule WPD-2-27a; Kollen Testimony at 18.

¹⁴⁸ Kollen Testimony at 18.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.* at 20.

¹⁵² *Id.*

¹⁵³ *Id.* at 18.

Furthermore, Duke Kentucky seeks recovery of the additional planned outage maintenance expenses, but has not provided evidentiary proof that these expenses were prudent, reasonable, or necessary.¹⁵⁴ In Duke Kentucky's rebuttal testimony, the Company states that it provided a listing of all planned outages performed including their descriptions.¹⁵⁵ However, this list does not provide the detail necessary to justify that each planned outage maintenance expense was prudent, reasonable, or necessary.¹⁵⁶

The Attorney General recommends the Commission deny the Company's request to amortize and recover the planned outage expense regulatory asset in the pending case, and wait until the next base rate case to determine whether the subject deferral account has netted to zero.¹⁵⁷ This recommendation will reduce the revenue requirement and base rate increase by \$1.665 million dollars after gross-up for Commission assessment fees and bad debt expense.¹⁵⁸ In the alternative, if the Commission were to grant Duke Kentucky's request to amortize and recover the planned outage expense regulatory asset, the Attorney General recommends setting the amortization period to ten years.¹⁵⁹ The effect of this recommendation would be a reduction of the revenue requirement and base rate increase of \$0.832 million dollars after gross-up for Commission assessment fees and bad debt expense.¹⁶⁰

In a similar vein, the Company has not provided evidentiary proof demonstrating that the forced outages and related incremental expenses deferred to the regulatory asset were prudent, reasonable, or necessary.¹⁶¹ There is no ratemaking incentive to minimize either forced outages,

¹⁵⁴ *Id.* at 19.

¹⁵⁵ William Luke Rebuttal Testimony ("Luke Rebuttal"), at 6.

¹⁵⁶ Kollen Testimony at 21.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

or the incremental expense that cannot be recovered through the FAC, if Duke Kentucky can simply defer and recover these expenses without proper justification.¹⁶² Indeed, the Commission has identified this as an issue in the pending FAC investigation in Case No. 2022-00190.¹⁶³

The Attorney General recommends the Commission deny Duke Kentucky's request to amortize and recover the forced outage expenses in the pending case.¹⁶⁴ After the FAC investigation has been completed in Case No. 2022-00190, the Commission can consider recovery of any remaining deferred forced outage expenses in a future base rate case proceeding.¹⁶⁵ This recommendation will reduce the revenue requirement and base rate increase by \$0.365 million dollars after gross-up for Commission assessment fees and bad debt expense.¹⁶⁶ In the alternative, if the Commission were to grant Duke Kentucky's request to amortize and recover the forced outage expense regulatory asset, the Attorney General recommends setting the amortization period to ten years.¹⁶⁷ The effect of this recommendation would be a reduction of the revenue requirement and base rate increase of \$0.182 million dollars after gross-up for Commission assessment fees and bad debt expense.¹⁶⁸

h. Duke Kentucky's proposed property tax expense in the revenue requirement is excessive and should be reduced.

Duke Kentucky initially proposed to include \$19.741 million in property tax expense, which does not include a reduction of \$0.754 million dollars related to the Attorney General's recommendation to retain the costs of four capital projects in the ESM rather than including those

¹⁶² *Id.* at 22

¹⁶³ Case No. 2022-00190, Electronic Investigation of the Fuel Adjustment Clause Regulation 807 KAR 5:056, Purchased Power Costs, and Related Cost Recovery Mechanisms (Ky. PSC Nov. 2, 2022), Order at 7 – 10; Kollen Testimony at 22.

¹⁶⁴ Kollen Testimony at 23.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.* This amount is calculated based on \$4.490 million dollars in amortization expense grossed up for Commission assessment fees and bad debt expense.

¹⁶⁷ Kollen Testimony at 21.

¹⁶⁸ *Id.* at 23.

costs in the base revenue requirement.¹⁶⁹ Duke Kentucky's actual recorded property tax expense for its electric division in 2021 was \$14.498 million dollars, and in 2022 it was \$15.510 million dollars.¹⁷⁰ Duke Kentucky's proposed property tax expense for the test year represents a 27.3% increase over the 2022 tax expense that was actually recorded by Duke Kentucky.¹⁷¹ The Company's net electric plant has increased, and is projected to increase, at moderate levels, an average of approximately 4% per year, from the end of 2022 until the end of 2024. Thus, the large, proposed increase in property tax expense is not the result of greatly increased net plant balances.¹⁷²

The Company used a starting point of \$15.653 million dollars for 2021 tax levels and escalated property tax expense from that point to the end of the test year, instead of starting with the \$14.498 million dollars of actual recorded property tax expense in 2021 and then escalating expense out to the end of the test year.¹⁷³ Duke Kentucky asserts that the \$15.653 million dollars is an "estimated property tax expense related to 2021."¹⁷⁴ The Company using the wrong starting point to escalate the property taxes is one of the errors that lead to Duke Kentucky's proposed property tax expense to be overstated.¹⁷⁵

The Company also applied a 2.0% increase in the effective tax rates to be billed by each jurisdiction each year, which is reasonable.¹⁷⁶ But, then Duke Kentucky applied this increase in the billed effective tax rates by a projected increase in gross plant for the gas and electric divisions,

¹⁶⁹ Duke Kentucky's response to the Commission Staff's First Request for Information ("Staff's First Request"), Item 56, Excel Attachment named Staff-DR-01-056 Attachment – KPSC Elec SFRs – 2022, at the tab named Forecasted period; Futral Testimony at 14.

¹⁷⁰ Futral Testimony at 15.

¹⁷¹ *Id.*

¹⁷² *Id.* at 16.

¹⁷³ *Id.*; Duke Kentucky's response to the Attorney General's Second Request, Item 47.

¹⁷⁴ Duke Kentucky's response to the Attorney General's Second Request, Item 47; Futral Testimony at 17.

¹⁷⁵ Futral Testimony at 17.

¹⁷⁶ *Id.*

and allocated that increase to the electric division based on the level of electric gross plant in 2021.¹⁷⁷ This was the Company's second error that caused the property tax expense to be overstated. The escalation amounts should have been based on the increase in net plant for just the electric division, and not based on the overall company gross plant additions allocated to the electric division.¹⁷⁸ Property taxes are based on the valuation of property, and the use of net plant (or net book value) considers the diminished value of plant due to depreciation, and represents the best way to estimate taxing authority valuations.¹⁷⁹

Duke Kentucky filed revised rebuttal testimony on this issue and recommends the Commission to reject the Attorney General's recommendations and utilize \$14.844 million dollars as the 2021 property tax expense starting point, and escalate using factors that rely on net operating income growth as well as local tax rate growth to ultimately estimate a property tax expense of \$18.139 million dollars for the test period.¹⁸⁰ This revision represents a reduction of \$1.602 million in the amount of property tax expense projected for the test year and a reduction in the revenue requirement of \$1.605 million after gross-up for Commission assessment fees and bad debt expense. However, during the public hearing, the Company's witness admitted that the updated \$18.139 million dollars in the revised rebuttal testimony was erroneous, and that the updated property tax expense for the test period should be \$18,004,307, as reflected in Duke Kentucky's revised discovery response to the Attorney General.¹⁸¹ Due to the fact that Duke Kentucky made no further corrections to the revised rebuttal testimony, it appears that the proposed reduction of \$1,605,133¹⁸² in the revenue requirement related to the Company's change

¹⁷⁷ *Id.* at 17 – 18.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.* at 18.

¹⁸⁰ John R. Panizza Revised Rebuttal Testimony (“Panizza Revised Rebuttal”), at 6.

¹⁸¹ VTE at 16:10:00 – 16:10:40; Duke Kentucky's revised response to the Attorney General's First Request, Item 141, Revised Attachment 1.

¹⁸² Steinkuhl Revised Rebuttal at 7.

in property tax expense is not correct, and would require a further downward adjustment of \$0.135 million. In addition, Duke Kentucky provided no evidence to show how it derived its 2021 and 2022 estimated property tax amounts, or how it derived its escalation amounts based on asserted increases in net operating income. Thus, the Company's arguments are unfounded and should be rejected.

The Attorney General recommends the Commission to reduce the property tax expense amount to reflect the 2022 actual expense escalated through the end of the test year for the increases in electric net plant and the Company's 2.0% per year property tax effective rate increases.¹⁸³ The Attorney General further requests that the expense amounts used to compute the reduction reflect the removal of property tax expense associated with the ESM to avoid duplication of expense reductions.¹⁸⁴ The effect of this recommendation is a \$2.518 million dollar reduction in the Company's as-filed base revenue requirement and requested base rate increase after the gross-up for Commission assessment fees and bad debt expense.¹⁸⁵

IV. COST OF CAPITAL ISSUES

a. Return on Equity

Based upon the direct testimony of Duke Kentucky's witness Mr. Joshua C. Nowak ("Mr. Nowak"), the Company proposes an inflated and unreasonable 10.35% return on equity ("ROE"),¹⁸⁶ while the Attorney General's witness Mr. Baudino recommends a reasonable 9.55% allowed ROE.¹⁸⁷

Mr. Baudino's recommended ROE of 9.55% is primarily based on the results of a

¹⁸³ Futral Testimony at 19.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ Nowak Testimony at 4; Baudino Testimony at 4.

¹⁸⁷ Baudino Testimony at 3.

discounted cash flow (“DCF”) analysis as applied to a proxy group of fourteen vertically integrated electric companies.¹⁸⁸ The DCF analysis is Mr. Baudino’s standard constant growth form of the model that employs growth rate forecasts from the following three sources: dividend and earnings growth from Value Line, and consensus earnings growth forecasts from Yahoo! Finance, and Zacks.¹⁸⁹ 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.¹⁹⁰ However, Mr. Baudino’s CAPM results confirm the reasonableness of his 9.55% ROE recommendation in the pending case.¹⁹¹

Mr. Baudino utilized the following proxy group for purposes of his ROE analyses: ALLETE, Inc., Alliant Energy Corporation, Ameren Corporation, American Electric Power Company, Inc., Edison International, Entergy Corporation, Evergy, Inc., Hawaiian Electric Industries, Inc., IDACORP, Inc., NextEra Energy, OGE Energy Corporation, Portland General Electric Company, Southern Company, and Xcel Energy, Inc.¹⁹² This is the same proxy group of vertically integrated electric utilities that Duke Kentucky’s witness Mr. Nowak used for his analysis.¹⁹³

Mr. Baudino’s DCF analysis as applied to the proxy group resulted in the average growth rate range of 8.89% - 10.51%, with an average of 9.48%.¹⁹⁴ The DCF analysis based upon the median growth rates resulted in a range of 9.21% - 9.92%, with the average of 9.58%.¹⁹⁵ Hence, pursuant to the DCF analysis, Mr. Baudino recommends that the Commission adopt an ROE range

¹⁸⁸ *Id.* at 3 and 13.

¹⁸⁹ *Id.* at 13.

¹⁹⁰ *Id.*

¹⁹¹ *Id.*; *See* Baudino Testimony at 29, Table 1 – Summary of ROE Estimates.

¹⁹² Baudino Testimony at 15 – 16.

¹⁹³ *Id.* at 15.

¹⁹⁴ *Id.* at 19.

¹⁹⁵ *Id.*

of 9.48% - 9.58% for the regulated electric operations of Duke Kentucky.¹⁹⁶ Based upon these results, Mr. Baudino more specifically recommends an ROE for Duke Kentucky of 9.55%, which is near the midpoint of the recommended range.¹⁹⁷ Additionally, Mr. Baudino agrees with Mr. Nowak's recommendation that a downward or upward adjustment for risk factors specific to Duke Kentucky is not necessary in this case.¹⁹⁸ Thus, the 9.55% recommended ROE is reasonable for a relatively low-risk regulated electric utility investment such as Duke Kentucky,¹⁹⁹ even when considering uncertainty inherent in the market at this time.²⁰⁰

As Mr. Baudino's testimony demonstrates, Mr. Nowak's recommended ROE of 10.35% significantly overstates the investor-required return for regulated electric utilities,²⁰¹ and is inconsistent with current financial market evidence, even when considering the increase in interest rates in 2022 and thus far in 2023.²⁰² Mr. Nowak presented his range of ROE results for his proxy group of 9.27% - 11.53%,²⁰³ and then concluded that a reasonable ROE range was 9.85% - 10.85%.²⁰⁴ Based upon Mr. Nowak's evaluation of Duke Kentucky's risk profile, he then recommended an ROE of 10.35% from the aforementioned range.²⁰⁵

Mr. Nowak utilized DCF, CAPM, Risk Premium, and Expected Earnings models to evaluate a rate of return for Duke Kentucky in the pending case.²⁰⁶ In the first model, Mr. Nowak's DCF analyses yielded a mean, or average, of 9.15% and median of 9.48% for the proxy group.²⁰⁷

¹⁹⁶ *Id.* at 3; *See* Baudino Testimony at 29, Table 1 – Summary of ROE Estimates.

¹⁹⁷ Baudino Testimony at 3.

¹⁹⁸ *Id.* at 42.

¹⁹⁹ *Id.*

²⁰⁰ *See* Baudino Testimony at 5 – 13, wherein he thoroughly reviews the current economic conditions.

²⁰¹ *See* Baudino Testimony at 33 – 43.

²⁰² *Id.* at 33.

²⁰³ *Id.* at 34.

²⁰⁴ *Id.* at 31.

²⁰⁵ *Id.* at 34.

²⁰⁶ *Id.*

²⁰⁷ *Id.*; *See* Joshua C. Nowak Rebuttal Testimony (“Nowak Rebuttal”) at 9. In Mr. Nowak's rebuttal testimony he continues to recommend a 10.35% ROE for Duke Kentucky. Additionally, Mr. Nowak provided his updated DCF results in his rebuttal testimony, with the DCF average result of 9.92%, and the median result of 9.59%.

Even though Mr. Baudino did not have any major criticism for Mr. Nowak's DCF analyses, he did note that even though Mr. Nowak utilized earnings growth rates from Value Line, Yahoo! Finance, and Zacks to develop his DCF ROE estimates, he should have considered Value Line's dividend growth forecast due to dividend payments being such a significant portion of the total return to utility shareholders.²⁰⁸ Value Line's forecast of dividend growth is consistent with Mr. Baudino's earnings growth projections.²⁰⁹

In stark contrast to Mr. Nowak's DCF analyses, his second model utilizing his CAPM analyses produced an excessive ROE range of 11.09% - 11.70%.²¹⁰ Mr. Nowak's CAPM results are so grossly overstated for a regulated electric utility such as Duke Kentucky that the Commission should reject them out of hand.²¹¹ The primary problem with Mr. Nowak's CAPM analysis is his sole reliance on forward-looking market returns for the S&P 500.²¹² Mr. Nowak's projected market returns are overstated due to reliance on Value Line 3 – 5 year projected earnings growth rates that are unsustainable in the long run, and vastly exceed both the historical capital appreciation for the S&P 500, as well as historical and projected GDP growth rates.²¹³ These unsustainably high returns ranging from 12.77% - 15.61%, with expected long-run growth rates ranging from 10.83% - 13.78%, directly translate to overstated expected market risk premiums ("MRPs") that Mr. Nowak used in his CAPM analyses.²¹⁴ As Mr. Baudino asserts in his testimony, Kroll's historical analysis shows that the arithmetic capital appreciation for the S&P 500 was 7.9% for the historical period 1926 to 2022, and the geometric, or compound growth was 6.1%.²¹⁵ This

²⁰⁸ Baudino Testimony at 34 – 35.

²⁰⁹ *Id.* at 34; *See* Baudino Testimony, Exhibit RAB-3.

²¹⁰ Baudino Testimony at 34; *See* Nowak Rebuttal at 9. Mr. Nowak provided his updated CAPM results in his rebuttal testimony, with the CAPM average result of 10.86%, and the median result of 10.79%.

²¹¹ Baudino Testimony at 36.

²¹² *Id.*

²¹³ *Id.* at 36 – 37.

²¹⁴ *Id.*

²¹⁵ *Id.* at 37.

historical experience stands in stark contrast to forecasted growth rates of 10.83% and 13.78% for the S&P 500 using Value Line data that Witness Nowak employed in his CAPM.²¹⁶

Mr. Nowak's earnings growth forecasts are even more unsustainable when considering both the historical and forecasted GDP growth for the United States, which was 6.1% from 1929 – 2022.²¹⁷ Importantly, the 6.1% GDP growth rate matched the historical compound growth rate for capital appreciation for the S&P 500.²¹⁸ As Mr. Baudino pointed out in his testimony, Mr. Nowak's S&P 500 constant growth rates of 10.83% and 13.78% are simply unsustainable over the long run.²¹⁹ Mr. Nowak's usage of these inflated growth rates inevitably lead to an overstatement of the long-run expected market return, the associated MRP, and the CAPM ROE results.²²⁰

Yet another issue with Mr. Nowak's CAPM analyses are his inflated MRPs range of 8.77% - 11.70%.²²¹ As Mr. Baudino notes in his testimony, based upon sources such as Kroll, the current recommended MRP is 6%, the average of the Damodaran MRPs is 5.14%, and the historical MRPs range from 6.22% - 7.10%.²²² Mr. Nowak's lowest MRP of 8.77% is significantly in excess of the MRPs cited by Mr. Baudino.²²³

Mr. Nowak's third model using his Risk Premium analyses also produced an inflated ROE range, although not quite as high as the previously discussed CAPM model.²²⁴ Mr. Nowak's resulting ROE range from his Risk Premium analyses was 10.27% - 10.36%.²²⁵ As Mr. Baudino notes, in general, the bond yield plus risk premium approach is imprecise and can only provide

²¹⁶ *Id.*.

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ *Id.* at 38.

²²⁰ *Id.*

²²¹ *Id.*

²²² *Id.* at 39.

²²³ *Id.*

²²⁴ *Id.* at 40.

²²⁵ *Id.*; See Nowak Rebuttal at 9. Mr. Nowak provided his updated Risk Premium results in his rebuttal testimony, with the Risk Premium average result of 10.29%, and the median result of 10.29%.

very general guidance on the current authorized ROE for regulated utilities.²²⁶ Historical risk premiums can change substantially over time based on investor preferences and market conditions.²²⁷ Mr. Baudino calls this approach a “blunt instrument” for estimating the ROE in regulated proceedings.²²⁸ In Mr. Baudino’s expert view, a properly formulated DCF model using current stock prices and growth forecasts is far more reliable than the bond yield plus risk premium model that relies on an historical analysis of risk premiums.²²⁹ Using historical risk premiums assumes that the past will look like the future, which is an assumption that may not hold in present day financial markets.²³⁰

Mr. Nowak developed a historical risk premium using Commission-allowed returns for vertically integrated utility companies from 1992 through October 31, 2022.²³¹ Mr. Nowak then used regression analysis to estimate the value of the inverse relationship between the yield on the 30-Year Treasury Bond and risk premiums during that period.²³² Mr. Nowak used the following three 30-Year Treasury Bond yields: the current 30-day average, near-term Blue Chip consensus forecast for Q1 2023 – Q1 2024, and a Blue Chip consensus forecast for 2024 – 2028.²³³ Mr. Nowak’s approach suggests that the Commission should base its ROE determination for Duke Kentucky on the ROE determinations of commissions in other states over a long period of time.²³⁴ However, Mr. Baudino recommends that the Commission place little weight on this approach and base its decision on a review of the analyses presented in this case to make its determination for a

²²⁶ Baudino Testimony at 39.

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ *Id.* at 39 – 40.

²³⁰ *Id.* at 40.

²³¹ *Id.*

²³² *Id.*

²³³ *Id.*

²³⁴ *Id.*

just and reasonable ROE for Duke Kentucky.²³⁵

Mr. Nowak's fourth model using his Expected Earnings analyses also produced a clearly excessive ROE range of 11.35% - 11.53%.²³⁶ Mr. Nowak's Expected Earnings analysis relied on Value Line's forecasted returns for the companies in his proxy group for the period 2025 – 2027.²³⁷ Mr. Nowak adjusted these forecasted ROEs to, in his view, "account for the fact that the ROEs reported by Value Line are calculated on the basis of common shares outstanding at the end of the period, as opposed to average shares outstanding over the entire period."²³⁸

As Mr. Baudino states in his testimony, the forecasted returns from Value Line will not be as reliable or accurate as a properly specific DCF analysis using current stock prices.²³⁹ Only through current stock prices do investors reveal their return requirements through what they are willing to pay in the marketplace for the stocks of regulated electric utilities.²⁴⁰ Mr. Nowak's utilization of Value Lines' projected returns for a time period several years into the future is highly speculative, and thus, the Commission should not rely upon them.²⁴¹ Additionally, Mr. Nowak overstates the forecasted returns from Value Line by making an adjustment to the average shares outstanding over the 2025 to 2027 time period.²⁴² The three-year forecasted period already represents an average of shares and ROEs over the period, making Mr. Nowak's share adjustment both unnecessary and more importantly incorrect.²⁴³ Furthermore, it is highly unlikely that an investor using Value Line's data would make the adjustment to each utility's forecasted common

²³⁵ *Id.*

²³⁶ *Id.* at 41; *See* Nowak Rebuttal at 9. Mr. Nowak provided his updated Expected Earnings results in his rebuttal testimony, with the CAPM average result of 11.61%, and the median result of 11.31%.

²³⁷ Baudino Testimony at 41.

²³⁸ *Id.*; Nowak Testimony at 42.

²³⁹ Baudino Testimony at 41.

²⁴⁰ *Id.*

²⁴¹ *Id.*

²⁴² *Id.* at 41 – 42.

²⁴³ *Id.* at 42.

shares outstanding as Mr. Nowak proposes in order to calculate a projected ROE for the 2025 – 2027 time period.²⁴⁴ If Mr. Nowak’s adjustments were removed then the average forecasted ROE based upon his Expected Earnings analysis in the 2025 – 2027 period would be 11.21%, with a median ROE of 11.10%, which are lower than his ROE range of 11.35% to 11.53%, but still clearly in excess of Mr. Baudino’s DCF and CAPM recommended results.²⁴⁵ The Edison Electric Institute reported that average allowed ROEs in the third and fourth quarters of 2022 were 9.34% and 9.73%, respectively.²⁴⁶ Thus, Mr. Nowak’s Expected Earnings ROE results are also far greater than recent commission-allowed ROEs in the last two quarters of 2022.²⁴⁷

Based upon the foregoing, Commission approval of Duke Kentucky’s overly inflated ROE proposal of 10.35% would cause rates to increase to an unreasonable level and harm ratepayers.²⁴⁸ Thus, the Attorney General requests the Commission to adopt Mr. Baudino’s reasonable recommendation of a 9.55% ROE for Duke Kentucky.²⁴⁹ If the Commission accepts Mr. Baudino’s proposed ROE of 9.55% then it will reduce Duke Kentucky’s requested rate increase by approximately \$5.854 million dollars.²⁵⁰

b. Capital Structure

Duke Kentucky’s witnesses, Mr. Christopher R. Bauer (“Mr. Bauer”) and Mr. Nowak, initially recommended a capital structure for Duke Kentucky consisting of 52.505% common equity, 43.713% long-term debt, and 3.782% short-term debt.²⁵¹ Duke Kentucky’s proposed cost of long-term debt is 4.377% and the short-term debt is 4.739%.²⁵² Mr. Baudino accepts the

²⁴⁴ *Id.*

²⁴⁵ *Id.*

²⁴⁶ *Id.*

²⁴⁷ *Id.*

²⁴⁸ *Id.* at 4.

²⁴⁹ *Id.* at 3.

²⁵⁰ Futral Testimony at 5.

²⁵¹ Baudino Testimony at 30 – 31.

²⁵² *Id.* at 31.

proposed costs of both the long-term and short-term debt rates, but recommends the Commission to deny Duke Kentucky's proposed capital structure.²⁵³ In Mr. Baudino's expert opinion, the common equity ratio of 52.505% is clearly excessive when compared to Duke Kentucky's recent historical common equity percentages, which ranged from 46.44% in 2020 to 50.19% in 2022.²⁵⁴ Thus, Mr. Baudino recommends the Commission adopt Duke Kentucky's requested long-term debt ratio of 43.713%, a 50% common equity ratio, and a 6.287% short-term debt ratio.²⁵⁵

Mr. Baudino's proposed capital structure is consistent with the Company's 2022 common equity ratio and significantly higher than its common equity ratios in 2020 and 2021, while his recommended short-term debt ratio is consistent with 2022 and is lower than 2020 and 2021.²⁵⁶ Duke Kentucky currently has strong investment grade credit ratings of Baa1 from Moody's and BBB+ from S&P. The Company's requested common equity ratio of 52.505% is not required to support its credit ratings and would inflate the revenue requirement for Kentucky ratepayers. In fact, Duke Kentucky recommended reducing its proposed capital structure through its rebuttal testimony to reflect a 52.145% equity ratio,²⁵⁷ which lends support to Mr. Baudino's recommendation of a lower proposed capital structure for the Company.

At the evidentiary hearing, Mr. Bauer testified that Moody's had recently changed the outlook of Duke Kentucky from stable to negative,²⁵⁸ however, at this time there has not been a decrease to the Company's actual credit rating.²⁵⁹ According to Duke Kentucky's Hearing Exhibit 1, Moody's states, "Duke Energy Kentucky's negative outlook reflects the potential that

²⁵³ *Id.*

²⁵⁴ *Id.* at 32. Duke Kentucky provided eleven months of information for the common equity ratios in 2022.

²⁵⁵ Baudino Testimony at 31.

²⁵⁶ *Id.* at 32.

²⁵⁷ Rebuttal Testimony of Christopher R. Bauer ("Bauer Rebuttal Testimony"), at 2.

²⁵⁸ VTE at 14:42:00 – 15:16:35, Mr. Bauer testified that the Moody's outlook can last from weeks to months; *See* DEK Hearing Exhibit 1.

²⁵⁹ VTE at 14:42:00 – 15:05:50; *See* DEK Hearing Exhibit 1.

historically weak credit metrics will be sustained going forward should the outcome of the company's pending rate case be unfavorable."²⁶⁰ First, Moody's does not explain what it would deem as an "unfavorable" decision. Second, Mr. Baudino's proposed 50% common equity ratio, as well as the proposed 9.55% ROE, are both substantial increases to Duke Kentucky's currently approved 48.23% common equity ratio, and 9.25% ROE.²⁶¹ Hence, the Attorney General's recommendations for both common equity ratio and ROE are credit supportive in the pending case. Finally, it is important to note that the S&P's credit rating and outlook are unchanged for Duke Kentucky.²⁶²

Thus, the Attorney General respectfully requests the Commission to adopt Mr. Baudino's capital structure recommendation of 43.713% long-term debt ratio, 50% common equity ratio, and 6.28% short-term debt ratio.²⁶³ If the Commission accepts Mr. Baudino's proposed capital structure then it will reduce the requested rate increase by approximately \$2.483 million dollars.²⁶⁴

V. PROPOSED MODIFICATIONS TO EXISTING TARIFFS

a. Duke Kentucky's Proposed Modification to the Calculation of Rider FAC Rates should be approved.

Duke Kentucky proposes to use a rolling twelve-month average to calculate the Rider Fuel Adjustment Clause ("Rider FAC") rates, rather than the prior month expenses and sales to calculate the rates.²⁶⁵ The Company proposes to continue its practice of deferring the difference in the actual recoverable Rider FAC expense and revenues accrued each month to a regulatory asset or

²⁶⁰ DEK Hearing Exhibit 1.

²⁶¹ Case No. 2019-00271, 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 (Ky. PSC Apr. 27, 2020), Order at 15; Futral Testimony at 12 – 13.

²⁶² VTE at 18:46:15 – 18:46:44.

²⁶³ Baudino Testimony at 32.

²⁶⁴ Futral Testimony at 20.

²⁶⁵ Kollen Testimony at 39.

liability.²⁶⁶ The Attorney General agrees with this proposal because it should significantly reduce the monthly and seasonal volatility in the Rider FAC rates, which will be beneficial to customers through more consistent and uniform rates throughout the year.²⁶⁷ The Attorney General therefore respectfully requests the Commission to adopt Duke Kentucky's proposed modification to the calculation of Rider FAC rates.

b. ESM rates should be reduced by extending East Bend 2's Ash Pond Asset Retirement Obligations Regulatory Asset Amortization Period to align with the probable life of the generating facility.

Duke Kentucky presently recovers the East Bend 2 Coal Ash Asset Retirement Obligations ("ARO") through the ESM on a levelized basis over ten years using the weighted average cost of capital rate of return.²⁶⁸ The present annual recovery is \$2.430 million dollars based on the monthly recovery of \$0.205 million dollars, which began in June 2018 and will be completed in May 2028.²⁶⁹ The Company admits through discovery responses that the May 2028 date does not bear any significance besides being the end of the ten-year amortization period.²⁷⁰

The Attorney General recommends extending the amortization period for the East Bend 2 Coal Ash ARO and recalculate the levelized recovery to reflect a probable retirement date for East Bend of mid-year 2041, which is the probable retirement date reflected in the presently approved depreciation rates for East Bend 2.²⁷¹ In the alternative, if the Commission approves the Company's request to accelerate the probable retirement date for depreciation and decommissioning expense purposes, then the Attorney General recommends that it extend the amortization period and recalculate the levelized recovery to reflect a probable retirement date of

²⁶⁶ *Id.* at 39 – 40.

²⁶⁷ *Id.* at 40.

²⁶⁸ *Id.* at 44.

²⁶⁹ *Id.*

²⁷⁰ *Id.*; Duke Kentucky's response to the Attorney General's Second Request, Item 48(e).

²⁷¹ Kollen Testimony at 46.

mid-year 2035.²⁷² Duke Kentucky objects to these recommendations in revised rebuttal testimony and asserts that the Commission approved the ten-year amortization period of this regulatory asset in Case No. 2017-00321, and therefore the amortization period should not be modified.²⁷³ However, the Attorney General’s recommendations would provide an appropriate and reasonable amortization period, regardless of whether that probable retirement date is 2041 as the Attorney General recommends, or 2035 as the Company proposes.²⁷⁴ This proposal is consistent with the Attorney General’s recommendation to use the probable retirement date for the amortization period for the East Bend 2 deferred O&M expense regulatory asset as well.²⁷⁵

If the Commission accepts the Attorney General’s primary recommendation then it will reduce the recovery of this regulatory asset by \$1.463 million dollars through the ESM revenues.²⁷⁶ If the Commission were to accept the alternative proposal it would reduce the recovery of the regulatory asset by \$1.211 million dollars through the ESM revenues.²⁷⁷

VI. PROPOSED NEW PROGRAMS, RELATED TARIFFS, AND REGULATORY ASSETS

a. Proposed New Generation Asset True-Up Mechanism.

Duke Kentucky initially proposed a new placeholder Generation Asset True-Up Mechanism (“Rider GTM”), which would recover a return of and on the undepreciated plant costs and other operating expenses (depreciation expense and property tax expense) of Company-owned generating units after they are retired in the future.²⁷⁸ In the Attorney General’s witness Mr. Kollen’s testimony, he recommended for the Commission to grant the Rider GTM with multiple

²⁷² *Id.*

²⁷³ Steinkuhl Revised Rebuttal Testimony at 18.

²⁷⁴ Kollen Testimony 45.

²⁷⁵ *Id.*

²⁷⁶ *Id.* at 46.

²⁷⁷ *Id.*

²⁷⁸ Lawler Testimony at 17; Kollen Testimony at 46.

modifications.²⁷⁹ However, as aforementioned, after the witnesses for both Duke Kentucky and the Attorney General had filed their respective testimonies in the pending case, the General Assembly of the Commonwealth of Kentucky enacted Senate Bill 4,²⁸⁰ which requires a utility to obtain Commission approval before retiring a fossil fuel-fired generating unit.²⁸¹ Duke Kentucky states in rebuttal testimony that, “[w]ith the passage of SB 4, the Company no longer believes that the Commission can consider Rider GTM in this case... However, if the Commission disagrees with the Company’s interpretation of SB 4 and approves Rider GTM, there are certain of Mr. Kollen’s recommendations the Company does not agree with.”²⁸²

Senate Bill 4, Section 2(2), states that the Commission shall not approve the retirement of an electric generating unit, authorize a surcharge for the decommissioning of the unit, or take any other action which authorizes or allows the recovery of costs for the retirement of an electric generating unit, unless the utility can rebut the presumption against retirement of the fossil fuel-fired electric generating unit.²⁸³ Based upon this portion of Senate Bill 4, it does not appear that the Commission can grant Duke Kentucky’s Rider GTM in the pending case because the Company has not filed an application to retire its fossil fuel-fired generating assets pursuant to Senate Bill 4, nor obtained an Order from the Commission granting the same.²⁸⁴ In the alternative, if the Commission determines that it has the authority to rule upon Duke Kentucky’s proposed Rider GTM then the Attorney General proposes the following modifications.

First, the Company’s proposed Rider GTM does not address the ongoing recovery of the

²⁷⁹ Kollen Testimony at 46 – 56.

²⁸⁰2023 Kentucky Senate Bill No. 4, Section 2(2), Kentucky 2023 Regular Session, <https://apps.legislature.ky.gov/law/acts/23RS/documents/0118.pdf>.

²⁸¹ *Id.*

²⁸² Lawler Rebuttal Testimony at 17.

²⁸³2023 Kentucky Senate Bill No. 4, Section 2(2), Kentucky 2023 Regular Session, <https://apps.legislature.ky.gov/law/acts/23RS/documents/0118.pdf>.

²⁸⁴ VTE at 12:00:25 – 12:01:55.

costs of the retired generating units through base rates.²⁸⁵ If this significant flaw is not corrected then it can result in Duke Kentucky recovering the same costs once through base revenues, and a second time through the Rider GTM until base rates are reset at a future date.²⁸⁶ This flaw also fails to reflect savings from costs no longer incurred, but still recovered through base revenues, including but not limited to: reductions in non-fuel operations and maintenance expense, administrative and general expense, and other tax expense.²⁸⁷ The Attorney General recommends that the GTM revenue requirement for the generating unit that is retired be reduced by the base revenues that recover the non-fuel costs of that generating unit.²⁸⁸ This credit would remain in effect until base rates are reset, which exclude all costs of the retired generating unit.²⁸⁹ Duke Kentucky does not appear to object to this recommendation in its rebuttal testimony.²⁹⁰ Additionally, the calculation of the credit in Rider GTM should follow the base/current method used for the Company's environmental surcharge mechanism, which calculates the revenue requirement for the allowed costs and then subtracts the base revenues that recover some or all of the allowed costs.²⁹¹

Second, the proposed Rider GTM only subtracts the accumulated deferred income taxes ("ADIT") associated with the plant in-service, but this does not reflect the entirety of the ADIT related to the generating unit after it is retired.²⁹² As proposed, the Rider GTM does not include the effects of the Company's deduction from taxable income for the remaining tax basis of that

²⁸⁵ Kollen Testimony at 47 – 48.

²⁸⁶ *Id.* at 48.

²⁸⁷ *Id.*

²⁸⁸ *Id.*; See Kollen Testimony at 49 and Exhibits LK-10 and LK-11 for copies of the LG&E and KU Retired Asset Recovery Rider tariffs, respectively. The LG&E and KU Retired Asset Recovery Rider tariffs reflect a credit for the base revenue recovery of the non-fuel costs of the retired generating units to ensure there is no double recovery.

²⁸⁹ Kollen Testimony at 48.

²⁹⁰ Lawler Rebuttal Testimony at 18.

²⁹¹ Kollen Testimony at 48.

²⁹² *Id.* at 51.

asset.²⁹³ The Rider GTM should subtract the total ADIT associated with the retired generating unit, consisting of the sum of the ADIT associated with the plant in-service and the ADIT associated with the deduction for the remaining tax basis of the unit when retired and the cost is no longer included in plant in-service.²⁹⁴ The ADIT that the Rider GTM should subtract is the same as the ADIT resulting from multiplying the regulatory asset times the combined federal and state income tax rate.²⁹⁵ The Attorney General recommends the Commission to modify the proposed Rider GTM to subtract the ADIT related to the regulatory asset calculated using the combined federal and state income tax rate.²⁹⁶ This methodology is consistent with the calculations reflected in the Kentucky Power Company Decommissioning Rider (D.R.) authorized in Kentucky Public Service Case No. 2012-00578,²⁹⁷ and the KU and LG&E Retired Asset Recovery Riders (Rider RAR) authorized in Kentucky Public Service Cases No. 2020-00349²⁹⁸ and 2020-00350,²⁹⁹ respectively.³⁰⁰ Duke Kentucky does not object to this recommendation in its rebuttal testimony.³⁰¹

Third, Duke Kentucky proposes recovery of the remaining undepreciated net book value of each retired generating unit over a ten year period, which is an inordinately short period of time

²⁹³ *Id.*

²⁹⁴ *Id.*

²⁹⁵ *Id.*

²⁹⁶ *Id.*

²⁹⁷ Case No. 2012-00578, Application of Kentucky Power Company for (1) A Certificate of Public Convenience and necessity Authorizing the Transfer to the Company of an Undivided Fifty Percent Interest in the Mitchell Generating Station and Associated Assets; (2) Approval of the Assumption by Kentucky Power Company of Certain Liabilities in Connection with the Transfer of the Mitchell Generating Station; (3) Declaratory Rulings; (4) Deferral of Costs Incurred in Connection with the Company's Efforts to Meet Federal Clean Air Act and Related Requirements; And (5) All Other Required Approvals and Relief (Ky. PSC Oct. 7, 2013).

²⁹⁸ Case No. 2020-00349, Electronic Application of Kentucky Utilities Company for an Adjustment of its Electric Rates, A Certificate of Public Convenience and Necessity to Deploy Advanced Metering Infrastructure, Approval of Certain Regulatory and Accounting Treatments, and Establishment of a One-Year Surcredit (Ky. PSC June 30, 2021).

²⁹⁹ Case No. 2020-00350, Electronic Application of Louisville Gas and Electric Company for Adjustment of its Electric and Gas Rates, A Certificate of Public Convenience and Necessity to Deploy Advanced Metering Infrastructure, Approval of Certain Regulatory and Accounting Treatments, and Establishment of a One-Year Surcredit (Ky. PSC June 30, 2021).

³⁰⁰ See Kollen Testimony, Exhibit LK-15 for a copy of the Kentucky Power company Decommissioning Rider tariff, and Exhibit LK-10 and LK-11 for the LG&E and KU Retired Asset Recovery Rider tariffs, respectively.

³⁰¹ Lawler Rebuttal Testimony at 18.

if the remaining undepreciated net book value is significant.³⁰² As of April 2023, the remaining undepreciated net book value, excluding AROs, of Duke Kentucky's East Bend 2 was \$481,214,570.³⁰³ Due to the Company currently having large undepreciated net book values of its generating units, the recovery of Duke Kentucky's undepreciated net book value of each retired generating unit should occur over a twenty year period.³⁰⁴ However, if for example, East Bend 2 is not retired until 2041 or later, at which time the undepreciated net book value may be much less, then it would be reasonable for the Commission to consider a shorter recovery period for the Company to collect the undepreciated net book value.³⁰⁵ In rebuttal testimony, Duke Kentucky contends that a ten-year recovery period is reasonable, and any longer period would "further exacerbate that intergenerational cross subsidization unnecessarily."³⁰⁶ However, a recommendation of a twenty-year recovery period is in line with Kentucky Power Company's Decommissioning Rider that has a twenty-five year period to recover coal-fired retired plant costs, which the Commission previously approved.³⁰⁷

Duke Kentucky's proposed Rider GTM also poses several other concerns: (1) Rider GTM does not limit the recovery to East Bend 2 and Woodsdale generating units; (2) there are no procedural aspects specified in the tariff; (3) the test year to be used to calculate the Rider GTM revenue requirement is not addressed or defined; and (4) there is no true-up included either to the actual revenue requirement for the prior test year or to the actual revenues compared to the forecast revenues for the prior year.³⁰⁸ In rebuttal testimony, Duke Kentucky agrees that the Rider GTM tariff language is not limited to East Bend 2 and Woodsdale, but does not agree that the tariff

³⁰² Kollen Testimony at 52.

³⁰³ Duke Kentucky's Second Supplemental Response to the Attorney General's Second Request, Item 16.

³⁰⁴ Kollen Testimony at 53.

³⁰⁵ *Id.*

³⁰⁶ Lawler Rebuttal at 21.

³⁰⁷ Kollen Testimony at 53.

³⁰⁸ *Id.* at 54 – 55.

language needs to be modified.³⁰⁹ The Company states that any procedural aspects as well as the test year to be used “would be unique to each rider filing under the Rider GTM and should be spelled out in the Company’s application to populate the rider.”³¹⁰ Duke Kentucky further asserts that if the Rider GTM includes a revenue requirement based on a forecasted test period then the Company would include a provision for a true-up of a forecasted revenue requirement to the actual revenue requirement, but if it was based on a historical test period then it would not be necessary.³¹¹

In order to remedy these issues the Attorney General recommends the additional following modifications to the Rider GTM. The Commission should limit the applicability of the proposed Rider GTM to East Bend 2 and the existing Woodsdale generating units, and allow the Rider GTM to terminate after the recoveries are completed.³¹² If there is a need to extend the tariff to apply to other generating units in the future, then the Commission would have the ability to modify the tariff.³¹³ The Commission should direct the Company to include the procedural aspects as described in Ms. Lawler’s direct testimony in the Rider GTM tariff language.³¹⁴ The Commission should also direct Duke Kentucky to calculate the Rider GTM revenue requirement based on the forecasted costs during the year the Rider GTM tariff rates will be in effect, until they are reset.³¹⁵ The Commission should further instruct the Company to include two true-up provisions in the calculations, one for the true-up of the forecast revenue requirement to the actual revenue requirement and the other for the true-up of actual revenues to the actual revenue requirement.³¹⁶

³⁰⁹ Lawler Rebuttal at 22.

³¹⁰ *Id.*

³¹¹ *Id.* at 23.

³¹² Kollen Testimony at 56.

³¹³ *Id.*

³¹⁴ *Id.*

³¹⁵ *Id.*

³¹⁶ *Id.*

Thus, if the Commission determines it has the authority to approve Duke Kentucky's proposed Rider GTM at this time, the Attorney General respectfully requests the Rider GTM only be granted with the previously described recommended modifications, which will provide a ratemaking structure that ensures timely rate reductions when each generating unit is retired and allow the Company to recover the actual prudent and reasonable costs, no more and no less.³¹⁷

b. Proposed New Electric Vehicle Programs and Related Tariffs.

Duke Kentucky proposes to implement two new electric vehicle ("EV") programs, two new related tariffs, and related regulatory assets to assist the customers desiring to make a transition to electric transportation.³¹⁸ The new proposed programs provide financial incentives to customers in order to expand the number and use of EVs and accelerate the development of the EV infrastructure necessary to charge those EVs.³¹⁹

The first proposed EV program is the Make Ready Credit ("MRC") program.³²⁰ The MRC program is a voluntary program for residential and nonresidential customers.³²¹ The Company will provide bill credits to participating customers to defray the costs of customer or third party owned improvements ("make ready infrastructure") necessary to install Level 2 or higher EV charging equipment.³²² Duke Kentucky proposes to defer the costs of the MRC program as a regulatory asset and will seek recovery of the regulatory asset in a future rate case.³²³ The Company also requests authorization to defer carrying costs on the regulatory asset at the cost of debt approved in the pending case.³²⁴

³¹⁷ *Id.*

³¹⁸ Cormack C. Gordon Direct Testimony ("Gordon Testimony") at 2; Kollen Testimony at 57.

³¹⁹ Gordon Testimony at 4 – 6; Kollen Testimony at 57.

³²⁰ Gordon Testimony at 3.

³²¹ Kollen Testimony at 57.

³²² Gordon Testimony at 3; Kollen Testimony at 57.

³²³ Kollen Testimony at 57.

³²⁴ *Id.* at 58.

The Attorney General does not object to a completely voluntary MRC program fully paid for by program participants. But, Duke Kentucky is proposing for the costs of the MRC program to be borne by all customers.³²⁵ In rebuttal testimony, Duke Kentucky asserts that the MRC program was designed to minimize cost socialization through the offset of future EV charging revenues, and that these EV revenues will set the foundation for future downward rate pressure.³²⁶ However, in response to the Attorney General’s discovery, Duke Kentucky admits that an increased EV electric load could require the Company to make costly upgrades to generation, transmission, distribution, and market purchase power.³²⁷

The Company further states in rebuttal testimony that the MRC Program “aims to simplify EV adoption for Kentucky customers by mitigating barriers to EV ownership, especially for lower income customers...”³²⁸ According to Kelly Blue Book, in August 2022, the average price paid for a new electric vehicle was over \$66,000,³²⁹ which was significantly higher than the non-luxury gas-powered vehicles, and even some luxury gas-powered vehicles.³³⁰ Based upon the average cost of a new electric vehicle, it is highly unlikely that the average customer, let alone the lower income customer, will be able to afford to purchase an EV and take advantage of the MRC program. It is not fair, just, or reasonable to require nonparticipating customers, who may not be able to afford an electric vehicle, or who does not want an electric vehicle, to subsidize and defray costs for the MRC participating customers who can afford an electric vehicle. The Attorney General recommends the Commission to deny Duke Kentucky’s proposed MRC program, unless

³²⁵ Duke Kentucky’s response to the Attorney General’s First Request, Item 31(a)(2).

³²⁶ Cormack C. Gordon Rebuttal Testimony (“Gordon Rebuttal”), at 8 – 9.

³²⁷ Duke Kentucky’s response to the Attorney General’s First Request, Item 32.

³²⁸ Gordon Rebuttal Testimony at 9.

³²⁹ Kelly Blue Book, <https://mediaroom.kbb.com/2022-09-12-New-Vehicle-Prices-Increase-for-Fifth-Straight-Month,-Set-Record-Again-in-August,-According-to-Kelley-Blue-Book>; Duke Kentucky’s response to the Attorney General’s First Request, Item 33.

³³⁰ Kelly Blue Book, <https://mediaroom.kbb.com/2022-09-12-New-Vehicle-Prices-Increase-for-Fifth-Straight-Month,-Set-Record-Again-in-August,-According-to-Kelley-Blue-Book>.

it is completely voluntary and the costs are fully paid for *solely* by the program participants.

The second proposed EV program is the Electric Vehicle Supply Equipment (“EVSE”) program.³³¹ The EVSE program is also a voluntary program for residential and nonresidential customers.³³² Pursuant to this program, the Company will own the EV charging equipment, but will charge participating customers a fee for the use of the EV charging equipment over the term of the contract.³³³ Duke Kentucky asserts that the fee will include the cost of the equipment, installation, and warranty work.³³⁴ Thus, because the costs of the proposed EVSE program are not subsidized by the nonparticipating customers, and will be completely participant funded, the Attorney General has no objection to this program.³³⁵

Based upon the foregoing, the Attorney General requests the Commission deny the Company’s proposed MRC program, or in the alternative require the program to be completely voluntary and fully paid for by the program participants. The Attorney General does not object to Duke Kentucky’s proposed EVSE program as it is entirely voluntary and participant funded.

c. Proposed New Incremental Local Investment Charge Tariff.

Duke Kentucky proposes updates to the Company’s Local Government Fee Tariff³³⁶ along with a new Rider Incremental Local Investment Charge tariff (“Rider ILIC”)³³⁷ in the pending case.³³⁸ The Company asserts that in recent years, “cities wishing to exert more control over the utility, encourage economic development, and provide enhanced benefits to their constituents are making more demands upon the Company through both franchise and other ordinances and

³³¹ Gordon Testimony at 3; Kollen Testimony at 58.

³³² Gordon Testimony at 3; Kollen Testimony at 58.

³³³ Gordon Testimony at 3; Kollen Testimony at 58.

³³⁴ Gordon Testimony at 3; Kollen Testimony at 58.

³³⁵ Duke Kentucky’s response to the Attorney General’s First Request, Item 31(b)(iii) and (iv).

³³⁶ Application, Volume 11, Schedule L-1, page 164 of 189.

³³⁷ Application, Volume 11, Schedule L-1, page 185 – 186 of 189.

³³⁸ Spiller Testimony at 30 – 34; Lawler Testimony at 21 – 22; Kollen Testimony at 60.

permitting requirements.”³³⁹ Duke Kentucky cites to a proposed franchise ordinance in one of the larger cities in its service territory that, if passed, would require the Company to completely underground the entire electric delivery system in that city within three years, at the request of the city or the residents the Company would have to relocate its facilities at its own cost, require the Company to use union contractors or obtain city consent to use non-union contractors, and agree that all costs of complying with the city’s ordinance should be borne by Duke Kentucky.³⁴⁰

If approved, the proposed Rider ILIC will “recover the costs of incremental processes and system investments required pursuant to a local ordinance or franchise, such as undergrounding of electric facilities or other relocations or system improvements and upgrades that are either requested or required by local regulation that are outside the Company’s regular system-wide construction plans.”³⁴¹ Duke Kentucky asserts that “[t]his rider is necessary to ensure appropriate cost recovery from customers if a city passes an ordinance that imposes such incremental processes and associated costs upon the utility specific to that city, which are outside the normal system needs of the Company.”³⁴² Duke Kentucky further explains that it will file a separate application to implement Rider ILIC as necessary in response to a local government mandate such as an ordinance or franchise.³⁴³ The Company plans to 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 necessary data input changes supporting the rider calculation.³⁴⁴

Although Duke Kentucky has raised an important issue concerning potentially

³³⁹ Spiller Testimony at 30.

³⁴⁰ *Id.* at 32 – 33.

³⁴¹ Lawler Testimony at 21.

³⁴² *Id.*

³⁴³ *Id.* at 22.

³⁴⁴ *Id.*

unreasonable and economically unfeasible proposed franchises, ordinances, and/or permitting requirements, the Attorney General cannot support the updates to the Company's Local Government Fee Tariff nor the new Rider ILIC because, as proposed, it is not in the best interest of the Company's customers. First and foremost, Duke Kentucky admits that it has the ability to not bid on a franchise agreement or to seek legal redress against any franchise, ordinance, or permitting requirement in Kentucky.³⁴⁵ So, if the Rider ILIC were approved, Duke Kentucky would have the option to either pursue legal remedies against the city, or to simply flow the potentially expensive, unnecessary, or unreasonable projects through the Rider ILIC, and thereby force the captive customers to pay for the same. For example, Duke Kentucky states that, "the Company believes undergrounding of the entire electric delivery system within a city may be unreasonable, cost prohibitive, and at a minimum, impossible to accomplish within the time desired by the city..."³⁴⁶ 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.

Second, the proposed updates to the Company's Local Government Fee Tariff nor Rider

³⁴⁵ Spiller Testimony at 33.

³⁴⁶ *Id.*

ILIC specifies how Duke Kentucky will determine whether the proposed costs of a project are outside of the Company's regular system-wide construction plans.³⁴⁷ Duke Kentucky has not proposed an objective process as to how the Company will determine whether a proposed project would or should be included in the Company's regulatory system-wide construction plans.³⁴⁸

Third, the Company's proposed tariff language requires an agreement between the local government authority and Duke Kentucky, prior to the start of construction, setting forth the nature, type, estimated costs, and other terms and conditions for the incremental local investment.³⁴⁹ But, as drafted, the proposed Rider ILIC does not require this agreement to be filed with the Commission or to obtain approval of the agreement from the Commission.³⁵⁰ In rebuttal testimony, Duke Kentucky states that the Company would file the contract or agreement with the Commission for its review and approval along with the application to implement the Rider ILIC.³⁵¹ However, this requirement is not contained in the proposed Rider ILIC tariff language.

Fourth, the ratemaking recovery as described in the proposed Rider ILIC tariff appears to be based on the estimated installed costs and of the assets before the costs are incurred and construction has been completed.³⁵² Further, the use of a fixed charge rate methodology essentially provides a leveled form of ratemaking recovery, yet the Company will incur the costs for financial statement purposes on a declining cost basis, thus potentially creating an additional revenue requirement for all customers to pay in future base rate case proceedings.³⁵³ In rebuttal

³⁴⁷ Kollen Testimony at 61.

³⁴⁸ Lawler Rebuttal at 25. Ms. Lawler asserts that the filing of an application to implement Rider ILIC will provide an objective process for the commission to ensure that the scope and/or cost of a project would or should be included in the Company's system-wide construction plans, but fails to explain the objective process that the Company itself would use to determine the same.

³⁴⁹ Kollen Testimony at 62.

³⁵⁰ *Id.*

³⁵¹ Lawler Rebuttal 26.

³⁵² Kollen Testimony at 63.

³⁵³ *Id.*

testimony, the Company states that it is not opposed to the Commission determining a different rate design, but the Company, “continues to believe that a levelized fixed charge is the most straightforward way of recovering these costs.”³⁵⁴ Duke Kentucky also asserts that annual adjustments are subject to Commission review and approval.³⁵⁵ Nothing in the rebuttal testimony alleviates the Attorney General’s aforementioned concerns regarding the proposed Rider ILIC or the associated ratemaking recovery.

The Attorney General respectfully requests the Commission to deny Duke Kentucky’s proposed updates to the Company’s Local Government Fee Tariff and the new Rider ILIC due to the lack of specificity in the proposal, but more importantly because it is not in the best economic interest of the customers.

d. The Commission should deny Duke Kentucky’s proposed new Clean Energy Connection Program structure and tariff.

Duke Kentucky proposes a new Clean Energy Connection Program structure and tariff (“CEC Program”), which is a community solar program that allows participating customers to voluntarily subscribe to a share of new solar energy facility(s).³⁵⁶ The Company asserts that in the future it will file an application for a Certificate of Public Convenience and Necessity (“CPCN”) with the Commission to obtain approval to construct solar projects for the CEC Program.³⁵⁷ Although no applications for a CPCN have been filed thus far, the Company asserts that the first project under the CEC program is expected to be a 49 MW facility that could be placed in service as early as 2025, which would allocate 37 MW to commercial customers, 10 MW to residential customers, and 2 MW to income qualified residential customers.³⁵⁸

³⁵⁴ Lawler Rebuttal at 28.

³⁵⁵ *Id.*

³⁵⁶ Direct Testimony of Paul L. Halstead (“Halstead Testimony”); Kollen Testimony at 64.

³⁵⁷ Halstead Testimony at 3; Kollen Testimony at 64.

³⁵⁸ Halstead Testimony at 3 – 7; Kollen Testimony at 64.

Duke Kentucky proposes two forms of interrelated ratemaking recovery for the CEC Programs costs.³⁵⁹ First, the Company proposes to include the costs of the CEC Program in the calculation of the base revenue requirement in future rate proceeds.³⁶⁰ Second, the Company proposes to use the subscription fees from the program, net of bill credits, as an offset to the costs of the CEC Program in future base rate case proceedings.³⁶¹ However, a significant issue of concern to the Attorney General is if the program is not fully subscribed to, then nonparticipating customers will be required to pay for the CEC program through their electric rates.³⁶²

Additionally, the proposed CEC Program does not provide any specificity as to how the subscription fees will be calculated, other than that the subscription fees will be charged on a dollar/kW-month basis, but provides no description whatsoever of how the bill credits on a cents/kWh basis will be calculated, other than to describe certain limits on the amount of the bill credits.³⁶³ The proposed CEC Program also does not include specific procedural provisions.³⁶⁴ Duke Kentucky asserts that it will seek a CPCN for new solar projects and states that the Company will update these values and submit them in conjunction with its solar facility CPCN filing.³⁶⁵ In rebuttal testimony, Duke Kentucky provides no further specifics as to the proposed program, but instead continues to assert that when an application for a CPCN is filed then more specificity as to the proposed CEC Program's subscription charges/credits will be provided.³⁶⁶

Duke Kentucky should be required to provide a revised and more developed proposed CEC

³⁵⁹ Lawler Testimony at 10 – 11; Kollen Testimony at 64.

³⁶⁰ Lawler Testimony at 10 – 11; Kollen Testimony at 64.

³⁶¹ Lawler Testimony at 10 – 11. Kollen Testimony at 64 – 65.

³⁶² Lawler Testimony at 10 – 11. Ms. Lawler states that if the CEC program is fully subscribed to then only participating customers in the program will pay for the assets. However, if the program is not fully subscribed to then the assets are intended to add solar generation to the Company's overall system and will displace fossil-fueled generation.

³⁶³ Kollen Testimony at 65.

³⁶⁴ *Id.* at 66.

³⁶⁵ *Id.*

³⁶⁶ Rebuttal Testimony of Paul L. Halstead ("Halstead Rebuttal"), at 3.

Program if it files an application for a CPCN for a new solar facility pursuant to KRS 278.020(1). In any future application, in addition to demonstrating a need and absence of wasteful duplication for the proposed solar facility as required by KRS 278.020(1), Duke Kentucky should also: (1) include more specificity regarding the subscription fees/credits as well as procedural provisions for the proposed program; and (2) propose the CEC program under a construct that is completely voluntary, and does not force nonparticipating customers to subsidize the program under any circumstances. Therefore, the Attorney General recommends the Commission to deny Duke Kentucky's proposed CEC Program at this time.

e. The Commission should deny Duke Kentucky's proposed new comprehensive hedging program.

Duke Kentucky proposes a new comprehensive hedging program in the pending case, but only generally describes the proposed program as an expansion of its back-up supply plan that was approved by the Commission through May 31, 2022.³⁶⁷ Although Duke Kentucky asserts that it plans to utilize the PJM AD financial forward power markets that have available financial products, no Company witness listed those products or otherwise specifically described how it would use those products to mitigate price volatility or reduce costs.³⁶⁸

In the Commission's final Order in Case No. 2021-00086, the Commission stated, "[t]herefore, in its next filing, Duke Kentucky should evaluate whether there is real risk and a need for a back-up power supply plan and provide support whether a back-up power supply plan is necessary. Duke Kentucky should also provide a long-term cost effectiveness analysis of its back-

³⁶⁷ Direct Testimony of James McClay ("McClay Testimony"), at 15 – 21; Kollen Testimony at 66 – 67. See Case No. 2021-00086, *Electronic Back-Up Power Supply Plan of Duke Energy Kentucky, Inc.* (Ky. PSC Nov. 30, 2021). The Commission last approved the Company's backup supply plan in Case No. 2021-00086.

³⁶⁸ Kollen Testimony at 67.

up power supply plans.”³⁶⁹ Duke Kentucky has not provided any evidence in the pending case that it performed the required evaluation, or provided a long-term effectiveness analysis of its back-up power supply plan or its proposed comprehensive hedging program. The Company has therefore violated the Commission’s directive from Case No. 2021-00086.³⁷⁰ Based on the foregoing, Duke Kentucky has not provided the Commission the necessary information to properly assess the Company’s proposed new comprehensive hedging program in the pending case.

The Attorney General respectfully requests the Commission to direct the Company to file a separate case concerning its proposed backup power supply plan and/or comprehensive heading program, and provide the required evaluation and long-term effectiveness analysis as required by the Commission’s final Order in Case No. 2021-00086, in order for a complete assessment to be conducted.

VII. ADDITIONAL RECOMMENDATIONS OF THE ATTORNEY GENERAL

- a. **Duke Kentucky’s proposal to increase the average residential customer’s monthly electric bill by \$25 constitutes rate shock and therefore violates the ratemaking principle of gradualism.**

As previously discussed, with respect to the residential class, Duke Kentucky proposes to increase its average residential customer’s monthly electric bill by \$25, which equates to a staggering 21.4% increase.³⁷¹ To add insult to injury, the proposed rate increase in the pending case represents the *third* requested electric rate increase that Duke Kentucky has proposed to foist upon its customers within the last five years.³⁷² An increase of this magnitude to the average

³⁶⁹ See Case No. 2021-00086, *Electronic Back-Up Power Supply Plan of Duke Energy Kentucky, Inc.* (Ky. PSC Nov. 30, 2021), Order at 7.

³⁷⁰ *Id.*

³⁷¹ Application at 5.

³⁷² Case No. 2017-00321, *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* (Ky. PSC Apr. 13, 2018); Case No. 2019-00271, *Electronic Application of Duke Energy Kentucky, Inc.*

residential customer's monthly electric bill will pose a financial hardship on all customers, particularly those who are already struggling to make ends meet. This is especially true for Duke Kentucky's customers who already live in poverty.³⁷³

Duke Kentucky admits in rebuttal testimony that one of the important ratemaking tenets when designing rates is to attempt to avoid sudden or significant rate increases for the customers, or in other words prevent rate shock to the customers.³⁷⁴ In the pending case, Duke Kentucky has violated this important ratemaking tenet by proposing an on average \$25 increase to the residential electric customer's monthly bill. As previously discussed, throughout the pendency of this case, Duke Kentucky has consistently appeared to be more concerned with speculative, potential rate shock on future customers opposed to the actual and detrimental rate shock on its current customers. For example, in rebuttal testimony the Company states that the, "Commission should not myopically consider *the impact of rate shock in isolation to customers today* but consider how to mitigate the impact to customers in the future."³⁷⁵ This assertion not only prioritizes future customers over the current customers, but also appears to implicitly admit that the impact of the proposed rate increase in the pending case will produce rate shock upon the Company's current customers. In fact, in response to the Attorney General's cross-examination at the public hearing, Duke Kentucky admitted that the proposed rate increase in the pending case "is a significant increase to customers."³⁷⁶

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 (Ky. PSC Apr. 27, 2020).³⁷³Based upon the most recent United States Census information the poverty rates for Duke Kentucky's electric service area are as follows: Pendleton County – 14.8%, Grant County – 12.7%, Kenton County – 12.6%, Campbell County – 11.1%, and Boone County – 6.4%. United States Census Bureau, last accessed on May 29, 2023, <https://www.census.gov/quickfacts/fact/table/pendletoncountykentucky,kentoncountykentucky,grantcountykentucky,campbellcountykentucky,boonecountykentucky,KY/PST045221>; Duke Kentucky's response to the Attorney General's First Request, Item 7.

³⁷⁴ Lawler Rebuttal at 14.

³⁷⁵ *Id.* at 14 – 15. (emphasis added).

³⁷⁶ VTE at 13:46:00 – 13:49:34.

The Commission has always employed the principle of gradualism in ratemaking, which mitigates the financial impact, or rate shock, of rate increases on customers.³⁷⁷ Thus, the Attorney General respectfully requests the Commission utilize all available ratemaking tools at its disposal to ensure the rates are fair, just, and reasonable, and mitigate the detrimental financial impact of the Company's pending rate increase request on its customers.

a. The Commission should only approve actual rate case expenses that the Company has proven are just and reasonable with sufficient evidence.

As previously stated, on December 6, 2022, the Commission issued a deficiency letter noting multiple deficiencies in Duke Kentucky's application, including but not limited to, Duke Kentucky's failure to comply with rate case public notice requirements regarding the notice contents and notice methodology.³⁷⁸ Duke Kentucky responded to the deficiency letter on December 8, 2022, and generally stated that the Company had published a corrected customer notice with the Kentucky Press Association, which was included in the third week of the required notice publications. Duke Kentucky further asserted that the identified deficiencies were ministerial in nature and do not impact the proposed revenue requirement or the estimated bill impacts to customer classes.

Due to the corrected customer notice only being published once, Duke Kentucky requested a waiver of 807 KAR 5:001, Section 17(2)(b)(3), which requires a utility to publish customer notice of a general rate adjustment once a week for three consecutive weeks in a prominent manner

³⁷⁷ Case No. 2014-00396, In the Matter of Application of Kentucky Power Company for: (1) A General Adjustment of its Rates for Electric Service; (2) An Order Approving its 2014 Environmental Compliance Plan; (2) An Order Approving its Tariffs and Riders; and (4) An Order Granting All Other Required Approvals and Relief, Order (Ky. PSC June 22, 2014) ("the Commission has long employed the principle of gradualism."); *See also* Case No. 2000-00080, In the Matter of: The Application of Louisville Gas & Electric Company to Adjust its Gas Rates and to Increase its Charges for Disconnecting Service, Reconnecting Service and Returned Checks, (Ky. PSC Sept. 27, 2000) ("the Commission is adhering to the rate-making concepts of continuity and gradualism in order to lessen the impact of these increases on the customers that incur these charges.").

³⁷⁸ The Commission's deficiency letter specifically stated that Duke Kentucky had failed to comply with 807 KAR 5:001, Section 16(1)(b)(3) and KAR 5:001, Section 17(4)(b).

in a newspaper of general circulation in the service area, with the first publication to be made no later than the date the application is submitted to the Commission.³⁷⁹ The Company stated that it did not dispute that publication of a notice for a rate case application in a newspaper of general circulation is a requirement, but that because this 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.

In the December 13, 2022 Order, the Commission denied Duke Kentucky's request for a deviation from rate case public notice requirements and rejected the rate case application for filing. The Commission stated that Duke Kentucky did not establish good cause to grant the motion for a deviation, in part, because customers who read the notice published the first or second week, but not the third week, did not receive notice of all of the proposed general rate increases. The Commission further stated that it reminds Duke Kentucky that recovery of rate case expenses is not guaranteed; there must be sufficient evidence that supports a finding that the expense is just and reasonable. Duke Kentucky filed a response on December 14, 2022, asserting that it would publish the corrected notice for three consecutive weeks as required by 807 KAR 5:001, Section 17(2)(b)(3), and the Commission accepted the application for filing on December 14, 2022.

As the Commission stated in its December 13, 2022 Order, rate case expense is not guaranteed, and Duke Kentucky has not provided any evidence, let alone sufficient evidence, to support a finding that the expense associated with the corrective customer notice is just and reasonable. Duke Kentucky made the errors associated with the customer notice, and should therefore be required to bear the full responsibility for the additional publication costs. If Duke Kentucky's customers were required to pay for the expensive mistakes made by the Company it

³⁷⁹ 807 KAR 5:001, Section 17(2)(b)(3).

would lead to unfair, unjust, and unreasonable rates.

Thus, the Attorney General respectfully requests the Commission deny recovery of all rate case expense associated with the publication of the customer notice that exceeds the three consecutive week publication requirement.³⁸⁰ Additionally, the Attorney General further requests the Commission to only allow the Company to include actual rate case costs that are deemed reasonable and necessary, as opposed to estimated rate case costs, in the revenue requirement.

c. Duke Kentucky should make all efforts to expand free payment locations due to having no physical office in the state of Kentucky for customers to pay their bills.

Duke Kentucky does not have a utility office in Kentucky for customers to pay utility bills or obtain customer service.³⁸¹ The Company asserts that in lieu of having a physical office there are seventy payment agent locations in Kentucky where customers can appear in person and pay their bills.³⁸² The payment agent locations include grocery stores, pharmacies, convenience stores, and large retailers.³⁸³ A Duke Kentucky customer who opts to pay their utility bill at a payment agent location is charged a \$1.50 fee to do so.³⁸⁴ Duke Kentucky asserts that customers can search for payment agents that do not assess a fee on their website.³⁸⁵

However, after multiple searches on Duke Kentucky's website over the span of months, it appears that only one free payment location exists in the entire state of Kentucky.³⁸⁶ Based upon information the Company provided in discovery, there were well over 2,000 customers per month from April 2022 – January 2023, who paid their Duke Kentucky electric bills at payment agent

³⁸⁰ *Id.*

³⁸¹ Duke Kentucky's response to the Attorney General's Second Request, Item 4(a).

³⁸² *Id.* at Item 4(a) and (b).

³⁸³ *Id.*

³⁸⁴ Duke Kentucky's response to the Attorney General's First Request, Item 14(d).

³⁸⁵ Duke Energy Payment Locations, <https://www.duke-energy.com/home/billing/payment-locations>.

³⁸⁶ According to Duke Energy's website, one wireless store in Newport, Kentucky is the only free payment location in the entire state of Kentucky.

locations.³⁸⁷ In January 2023 alone there were 2,456 customers who paid their electric bills at payment agent locations.³⁸⁸ The Attorney General is concerned that Duke Kentucky customers who are not financially able to obtain a bank account with full access to checks and online bill pay,³⁸⁹ are the same customers being charged a \$1.50 fee in order to pay their electric bill in cash at a payment agent location. The Attorney General therefore encourages Duke Kentucky to work with its payment agents to determine if more would agree to be a free payment location. If successful, Duke Kentucky's most financially at risk customers will have additional free options to pay their electric bills each month.

CONCLUSION

WHEREFORE, the Attorney General requests that the Commission deny Duke Kentucky's requested rate increase. If the Commission is inclined to grant a rate increase, then it should be limited to what Duke Kentucky has proven with known and measurable evidence that will result in fair, just, and reasonable rates for the Company's ratepayers.

³⁸⁷ Duke Kentucky's response to the Attorney General's Second Request, Item 9(b).

³⁸⁸ *Id.*

³⁸⁹The Federal Reserve, Report on Economic Well-Being of U.S. Households in 2022 – May 2023, <https://www.federalreserve.gov/publications/2023-economic-well-being-of-us-households-in-2022-banking-credit.htm>, (The publication states that unbanked rates were particularly high among adults with low income. In fact, 17% of adults with income below \$25,000 were unbanked as compared with 1% of adults with income of \$50,000 to \$99,999.)

Respectfully submitted,

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Certificate of Service and Filing

Pursuant to the Commission's Orders and in accord with all other applicable law, Counsel certifies that the foregoing electronic filing was transmitted to the Commission on June 9, 2023, and there are currently no parties that the Commission has excused from participation by electronic means in this proceeding.

This 9th day of June, 2023,



Assistant Attorney General