COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

An Electronic Examination Of The Application Of The Fuel Adjustment Clause Of Kentucky Power Company From November 1, 2020 Through October 31, 2022	))))	Case No. 2023-00008

POST-HEARING BRIEF OF KENTUCKY POWER COMPANY

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I. INTRODUCTION

The Commission opened this proceeding to examine the operation of Kentucky Power Company's ("Kentucky Power" or "Company") fuel adjustment clause ("FAC") for the period November 1, 2020 through October 31, 2022 ("Review Period"). During this Review Period, the Company saw unprecedented and historic macroeconomic conditions, outside the Company's control, that significantly affected fuel costs for each of the Company's owned generating units and the Company's ability to readily procure coal to run the two units at the Company's Mitchell Generating Station. In spite of this adversity, the Company made extraordinary efforts to prudently manage its coal supply, procure additional coal when possible, and effectively manage the operation of its owned generating units in order to maximize customer benefits, including minimizing costs. The Company was able to do so, in large part, thanks to its membership in a regional transmission organization ("RTO"), which the Commission approved 20 years ago, and which allowed the Company to engage in a coal conservation strategy to ensure the Company's Mitchell units would run at time that would provide the greatest economic benefit to customers. Membership in the PJM RTO also provided access an energy market where the Company could make economic energy purchases during those times when the Company was conserving coal. Taken together, the Company's actions had the effect of maximizing the economic benefit to customers during a time of nationwide natural gas price volatility and coal shortage, and ensuring that Kentucky Power customers were continuously provided with safe, effective, and reliable service during the Review Period.

At the same time, the charges and credits billed through the FAC during the Review Period were reasonable and were not the result of misapplication of the FAC regulation or miscalculation, with the exception of one relatively minor inadvertent exclusion from recovery under the FAC, which the Company proposes to recover as part of this proceeding.

The Commission also should wholly disregard the Attorney General's ("AG") and Kentucky Industrial Utility Customers' ("KIUC") (collectively, "AG-KIUC") proposal to retroactively alter the current Commission-approved peaking unit equivalent ("PUE") formula in order to disallow from recovery through the FAC and refund to customers up to approximately $55 million more than the current PUE formula dictates. AG-KIUC's proposal willfully ignores the intended purpose of the PUE and would violate the filed rate doctrine and constitute impermissible retroactive ratemaking.

In sum, there is no evidence of record that demonstrates that any of the fuel charges during the Review Period were unreasonable, that the Company miscalculated them or misapplied the FAC regulation, or that any charges resulted from improper fuel procurement practices. In fact, substantial evidence provided by the Company demonstrates the exact opposite. The Commission should approve as reasonable and prudent all of the Company's FAC charges and credits during the Review Period.

II. PROCEDURAL BACKGROUND

A. Operation of the Fuel Adjustment Clause During the Review Period.

The FAC factor varied from a credit of $(0.00374)/kWh for November 2020 to a charge of $0.03959/kWh for September 2022 during the Review Period. The average fuel adjustment clause factor during the Review Period was $0.01409/kWh.[1] For November 2020 through July 2021, the base fuel rate was $0.02851 per kWh; from August 2021 through October 2022, the base fuel rate was $0.02612 per kWh.[2] The actual monthly fuel rate varied from a low of $0.02477 per kWh in November 2020 to a high of $0.06571 per kWh in September 2022.[3] The volatility in the actual

[1] The average is computed using a $0.02851/kWh base fuel rate from November 2020 through July 2021 and a $0.02612/kWh base fuel rate from August 2021 through October 2022.
[2] Bishop Errata Direct Test. at 6, Table SEB-1 (filed February 5, 2024).
[3] *Id.*

monthly fuel rate and the FAC factor during the Review Period resulted from the volatility in the natural gas and coal markets, as explained below.

B. Fuel Procurement During the Review Period.

1. Natural Gas

Kentucky Power purchases natural gas for the Big Sandy Unit 1 gas-fired unit on the spot market[4] given the unit's variable operation as a load following unit.[5] This is consistent with the Company's fuel procurement for Big Sandy Unit 1 since its conversion to natural gas.[6]

Natural gas prices were extraordinarily volatile and reached historic highs during the Review Period due to macroeconomic factors out of the Company's control, including recovery from the COVID-19 pandemic and the war in Ukraine.[7] Natural gas prices spiked and dropped several times throughout the Review Period.[8] Beginning in the second half of 2021, strong demand and the lack of natural gas production growth as the country emerged from the COVID-19 pandemic began to spur higher market prices.[9] The July 2021 NYMEX contract settled at $3.617 per MMBtu, which was the highest prompt month settlement price since December 2018.[10] In February 2022, Russia invaded Ukraine, which added further instability to an already volatile energy market and put more pressure on U.S. exports, particularly to Europe.[11] Entering the peak summer months of July 2022 and August 2022, natural gas production began to trend higher, and

[4] *See* Stutler Direct Test. at 3–4, 11–12.
[5] Order, *In the Matter of: The Application Of Kentucky Power Company For: (1) A Certificate Of Public Convenience And Necessity Authorizing The Company To Convert Big Sandy Unit 1 To A Natural Gas-Fired Unit; And (2) For All Other Required Approvals And Relief*, Case No. 2013-00430 at 17 (Ky. P.S.C. August 1, 2014) ("The plant will operate as a load-following unit, will be dispatched by PJM, and will remain on line in much the same fashion as a base load unit.")
[6] *Id*. ("Given that a converted BS1 will operate as a load-following unit, the Commission finds that Kentucky Power makes a compelling argument that having the opportunity to purchase gas when needed is more flexible than being tied to a long-term gas purchase contract.")
[7] *See* Stutler Direct Test. at 5–10.
[8] *Id.* at 10.
[9] *Id.* at 6.
[10] *Id.* at 6–7.
[11] *Id.* at 8.

despite the elevated prices, natural gas demand from domestic power generators remained at record levels throughout the summer.[12] The August 2022 NYMEX contract settled at $8.687 per 12 MMBtu, and the September 2022 NYMEX contract settled at $9.353 per MMBtu.[13] In the international market, global demand for liquefied natural gas ("LNG") was still very high, driven in part by the Russian invasion of Ukraine, with record prices assessed above $70 per MMBtu.[14] The volatility and extremely high cost of natural gas contributed to the likewise high demand for coal-fired generation, and therefore for coal, as described in the next section.[15]

In spite of these market disruptions, Kentucky Power received all purchased natural gas supply during the Review Period.[16] All suppliers adhered to contract delivery schedules.[17] There were no occasions during the Review Period when Kentucky Power was unable to operate Big Sandy Unit 1, when it otherwise would have run, because of pipeline constraints or the unavailability of natural gas.[18]

2. Coal

The Company, through the coal procurement team of its affiliate, AEPSC, contracts for and takes delivery of coal in the amounts needed to satisfy its forecasted level of generation.[19] AEPSC, on behalf of the Company, solicits offers for coal contracts through written requests for proposals;[20] there were no oral requests for proposals for coal during the Review Period.[21] AEPSC

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[12] *Id.* at 9.
[13] *Id.*
[14] *Id.*. at 8–9.
[15] *See Id.* at 8.
[16] *Id.* at 11.
[17] *Id.*
[18] Response to KPSC 17 for Case Nos. 2021-00292, 2022-00036, 2022-00263, and 2023-00008.
[19] *See* Response to KPSC PHDR 2-1.
[20] *See* Response to KPSC 1-4.
[21] Response to KPSC 1-5 for Case Nos. 2021-00292, 2022-00036, 2022-00263, and 2023-00008; *see also* Response to KPSC PHDR 2-10.

issued a request for proposal ("RFP") in May 2021 to ensure that Kentucky Power had the amount of coal necessary to meet its forecasted demand available for use.[22]

As explained previously, beginning in summer of 2021, macroeconomic forces outside of the Company's control began to dramatically alter the electricity market. In particular, a sharp increase in electric demand as the country exited the COVID-19 pandemic, an increase in international demand for coal and natural gas, and an inability of coal producers to meaningfully increase production resulted in a lack of available coal in the market to meet demand.[23]

The Company took extraordinary efforts to obtain coal during this period.[24] When it became evident that actual demand for coal-fired generation would exceed the forecasted demand, the Company, in September 2021, issued an RFP seeking coal to meet this increased demand.[25] The Company received no offers for coal to be delivered in 2021 in response to the September 2021 RFP.[26] The Company sought coal through other means, including contacting the West Virginia Coal Association to determine if there were other sources of coal available in the market who may not have responded to the September 2021 RFP.[27] In sum, Kentucky Power purchased coal that was available in the market through the RFP process to meet these demands but could only purchase a limited amount of coal at the time and had to undertake other actions to maintain supply, including implementing a coal conservation strategy to ensure it had coal and that the Mitchell Plant could operate when needed most, to customers' benefit.[28]

[22] Response to KPSC PHDR 2-1.
[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] *Id.*
[28] Chilcote Direct Test. at 9.

The Company also managed its coal deliveries by working with coal suppliers, when appropriate, to take delivery of its coal through non-ratable shipments.[29] This benefits both the Company and its suppliers by allowing each to adjust schedules to allow for reduced shipments when either party may have an outage and then increasing shipments when more coal is available and needed.[30] Working with suppliers under existing contracts allowed the Company to take delivery of that cheaper contract coal rather than go to the market to replace those contracts at a higher cost.[31] With the above noted contract modifications to coal contracts, the Company received the coal it contracted for.[32]

The Company's coal solicitation and management efforts during the Review Period were successful despite the fact that there was an "industry-wide fuel supply shortage."[33] Kentucky Power ended the review period that included the most constraints in the coal market (i.e., the six-month period ending October 31, 2021) with its Mitchell high sulfur coal pile at only one day below the target level (14 days vs. a target level of 15 days).[34] Its Mitchell low sulfur coal pile similarly was only modestly below the target level (25 days vs. a target level of 30 days) at the conclusion of that six-month review period.[35] Importantly, the Company's Mitchell coal inventories remained above ten days for the entire Review Period, and Kentucky Power was not required to place the two Mitchell units in a forced outage under the PJM initiative to protect inventory going into winter during the Review Period.[36]

C. Operation of Kentucky Power's Owned Generating Units During the Review Period.

[29] *See* Chilcote Direct Test. at 7–8.
[30] *See* Response to KPSC 2-14.
[31] Response to KPSC 2-8.
[32] *Id.*
[33] *Id.*
[34] Response to KPSC 1-3.
[35] *Id*.
[36] Response to KPSC 2-8.

Kentucky Power owns a fifty percent undivided interest in Mitchell Unit 1 and Mitchell Unit 2. It owns the Big Sandy Unit 1 in its entirety. Notably, the Company did not control, dispatch, or schedule planned outages for the Rockport Plant, but instead took capacity and energy from that plant under a unit power agreement.[37] The Company's owned generating units[38] are subject to planned outages, maintenance outages, and forced outages.

Planned outages typically last multiple weeks and are taken to permit the Company to perform work on major equipment groups that are not immediately required for the safe operation of the unit.[39] They are scheduled approximately a year in advance.[40] Maintenance outages also are taken to perform repair and maintenance work but may be requested with a shorter lead time than planned outages.[41] A forced outage does not require PJM approval and is necessary "to address an immediate operational or safety concern" regarding the generating unit.[42] Both planned and maintenance outages must be approved by PJM before they may be taken.[43] PJM bars utilities from taking planned outages during the months of June through September, when energy demand typically is high.[44] Kentucky Power further limits its requests for planned outages to the "shoulder months" of March, April, May, September, October, and November, when energy demand is reduced.[45] October is among the lowest demand months historically and is often a month in which Kentucky Power schedules Planned Outages.[46]

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[37] *Id.*

[38] Kentucky Power also received energy during the Review Period under the Company's Rockport Unit Power Agreement. All of the Company's generating resources are offered into the PJM energy market every hour of every day. Response to KIUC 1-2. It similarly purchases the entirety of its load every hour of every day from the PJM energy market. *Id*.

[39] Rosenberger Errata Direct Testimony at 3 (filed Feb, 5, 2024).

[40] *Id.*

[41] Rosenberger Direct Testimony at 3.

[42] *Id.*.

[43] *Id.*

[44] Vaughan Rebuttal Testimony at R3.

[45] *Id.*

[46] Kerns Rebuttal Test. at R6.

The Company continued prudent maintenance and operation of its generating units, including Mitchell Units 1 and 2, during the Review Period.[47] AG-KIUC Witness Kollen's characterization that Mitchell exhibited "poor performance" during the review period, especially in October 2022, is not accurate.[48] Planned Outages, which are scheduled by the Company well in advance, during traditional periods of lower power demand, and approved by PJM, are necessary for the long-term availability and reliability of generating units and do not equate to "poor performance."[49]

Company Witness Rosenberger describes in detail the reasons that outages during the Review Period at the Mitchell Plant were necessary in his Errata Direct Testimony, and Company Witness Mell described the same for the Big Sandy Plant in his Direct Testimony. Kentucky Power adhered to PJM's requirements for planned and maintenance outages and PJM approved the Company's Planned Outage schedule, which underscores the fact that the Company's planning was reasonable and prudent.[50]

III. APPLICABLE LAW

807 KAR 5:056 establishes a uniform fuel adjustment clause.[51] Section 3 of the regulation provides for periodic review of each utility's fuel adjustment clause. In addition, the Commission is authorized to disallow any unreasonable fuel charges,[52] and to disallow any adjustments under the Kentucky Power's fuel adjustment clause that "the commission finds unjustified due to improper calculation or application of the charge or improper fuel procurement practices."[53]

IV. ARGUMENT

[47] *Id.* at R5.
[48] *Id.*
[49] *Id.*
[50] *Id.* at R9.
[51] 807 KAR 5:056, Section 1.
[52] 807 KAR 5:056, Section 3(1).
[53] 807 KAR 5:056, Section 3(3)(b).

A. Kentucky Power's Proposed Base Fuel Rate Is Reasonable and Should Be Approved.

Kentucky Power's currently-approved base fuel rate is $0.02612 per kilowatt-hour ("kWh"), which was placed into effect for service rendered on and after August 1, 2021.[54] Kentucky Power proposes a new base fuel rate of $0.03380 per kWh.[55] The Company's proposal is reasonable and should be approved because it is based on historical fuel costs for the entire 24-month Review Period in this case and the Company's forecasted cost of fuel for calendar years 2023, 2024, and 2025.[56]

Table SEB-1[57] provides the Company's monthly fuel costs compared to the base fuel rate in effect during the subject month. It also provides the average and median rates for the Review Period.

[54] Bishop Errata Direct Test. at 4–5 (filed Feb. 5, 2024).
[55] *Id.* at 5.
[56] *Id.* at 8–9.
[57] *Id.* at 6.

Table SEB-1					
Month & Year	Final Cost	Total Sales kWh	Monthly Fuel Rate in Cents per kWh (C2) / (C3)	Base Fuel Rate Cents per kWh	Cents per kWh (Below) or Above Base Fuel Rate (C4) - (C5)
1	2	3	4	5	6
November 2020	9,966,635	402,448,122	2.477	2.851	(0.374)
December 2020	14,777,906	524,192,278	2.819	2.851	(0.032)
January 2021	15,124,428	539,353,036	2.804	2.851	(0.047)
February 2021	16,531,741	486,722,816	3.397	2.851	0.546
March 2021	12,875,086	435,529,780	2.956	2.851	0.105
April 2021	11,062,619	378,251,895	2.925	2.851	0.074
May 2021	10,323,161	377,519,768	2.734	2.851	(0.117)
June 2021	12,922,780	416,164,022	3.105	2.851	0.254
July 2021	14,690,458	454,066,108	3.235	2.851	0.384
August 2021	15,152,462	463,416,762	3.270	2.612	0.658
September 2021	13,582,685	394,147,678	3.446	2.612	0.834
October 2021	17,191,990	357,113,123	4.814	2.612	2.202
November 2021	25,159,458	424,392,684	5.928	2.612	3.316
December 2021	15,760,531	459,691,976	3.428	2.612	0.816
January 2022	19,529,185	577,776,513	3.380	2.612	0.768
February 2022	19,267,537	468,782,836	4.110	2.612	1.498
March 2022	22,440,362	442,400,243	5.072	2.612	2.460
April 2022	19,061,024	388,747,791	4.903	2.612	2.291
May 2022	22,099,904	415,884,310	5.314	2.612	2.702
June 2022	24,224,405	449,598,270	5.388	2.612	2.776
July 2022	21,149,807	478,525,653	4.420	2.612	1.808
August 2022	26,360,992	469,359,131	5.616	2.612	3.004
September 2022	26,562,836	404,267,144	6.571	2.612	3.959
October 2022	26,525,640	405,052,299	6.549	2.612	3.937
Two Year Average			**4.111**		**1.409**
Two Year Median			**3.437**		**0.825**
Avg. using Base Fuel Rate of 2.851 Cents per kWh			**2.939**		**0.088**
Avg. using Base Fuel Rate of 2.612 Cents per kWh			**4.814**		**2.202**

The Company's projected fuel costs for calendar years 2023, 2024, and 2025 are 3.50294 cents per kWh, 3.43120 cents per kWh, and 3.53881 cents per kWh, respectively.[58] Those fuel cost projections are approximately 31.4% to 35.5% *higher* than the current base fuel rate of 2.612 cents per kWh.[59] Projected fuel costs also are relatively in line with the median fuel cost during

[58] *Id.* at 7.
[59] *Id.*

the Review Period (3.437 cents per kWh).[60] After reviewing the current market and projected fuel costs, leaving the current base fuel rate unchanged would likely result in increased month-over-month FAC rate volatility.[61] Thus, the current fuel rate is not reasonable and requires revision.[62]

In choosing the proposed base fuel rate, the Company aimed to choose a representative month that would best reflect expected going-forward rates in order to limit the volatility of (*i.e.* smooth out) the charge or credit that appears on customers' bills for the FAC.[63] Consequently, the January 2022 base fuel rate of 3.380 cents per kWh was chosen to be the Company's proposed rate going forward because it is both: a) closest to the historical median during the Review Period (which better ensures outlier months do not disproportionately affect the data than the average would), and b) most closely approximates the average for projected fuel costs for 2023 through 2025, which the Company expects to remain relatively flat.[64] Thus, under all approaches, it is a prudent and reasonable choice for a new base fuel rate and is representative of historical and projected fuel costs.[65]

The Commission should approve the Company's proposed base fuel rate of $0.03380 per kWh as reasonable and issue an order placing that rate into effect for services rendered on or after the Company's first billing cycle following the date of the Commission's order in this case.

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[60] *Id.* at 8.
[61] *Id.*
[62] *Id.*
[63] *Id.* at 9.
[64] *Id.*
[65] *Id.* at 10.

B. The Charges and Credits Billed Through Kentucky Power's Fuel Adjustment Clause During the Review Period Are Reasonable and Should Be Approved.

1. The Review Period Fuel Adjustment Clause Charges and Credits Were Calculated in Accordance with the Commission's Regulation, and Did Not Involve Any Mathematical or Computational Errors, with the Exception of One Inadvertent Exclusion from Recovery.

The charges billed and amount credited to customers through the Company's FAC are calculated in accordance with the Commission's FAC regulation (807 KAR 5:056). In accordance with long-standing Commission practice applicable to all utilities employing a FAC in the Commonwealth, actual coal and oil costs for the reference month (two months prior to the billing period) are used in the calculation of the billing period's FAC charges and credits.[66] Thus, for example, actual October 2021 coal and oil costs were used to calculate the fuel adjustment clause charge applied to customers' December 2021 bills.[67] Preliminary natural gas costs for the reference month (two months prior to the billing period), as further adjusted for any true-up of the prior month's preliminary natural gas costs and the actual prior month's natural gas costs, were used in calculating the FAC charges and credit during the Review Period.[68]

With the exception of one inadvertent exclusion from recovery through the FAC, discussed further below, there is no evidence of record of a mathematical or other computational error in the calculation of the monthly fuel adjustment clause charges or credits. All FAC charges collected or credited during the review period were calculated in conformity with 807 KAR 5:056 and should be approved.

[66] Case No. 2022-00036, Response to KPSC PH-4; Case No. 2022-00036, Response to KPSC PH-5.
[67] *Id*.
[68] *Id*.

a. Because PJM Employs Economic Dispatch Principles, All Energy Purchases Made by Kentucky Power Are Economic and Recoverable Through the FAC under 807 KAR 5:056.

Moreover, the FAC regulation explicitly allows recovery of fuel costs through the FAC, including "[t]he net energy cost of energy purchases, exclusive of capacity or demand charges irrespective of the designation assigned to the transaction, <u>if the energy is purchased on an economic dispatch basis</u>."[69] Importantly, because Kentucky Power is a member of an RTO, "every hour the RTO is solving for the least-cost economic dispatch of the entire…footprint, including the Company's load."[70] Therefore, "[e]very [energy] purchase the Company makes from PJM is based on its hourly security-constrained economic dispatch solution."[71] As such, under the FAC regulation, all of the Company's energy purchases, notwithstanding the Commission's imposition of the currently-approved PUE limit, are recoverable through the FAC.

b. Kentucky Power's Proposed One-Time Adjustment To Recover $172,892.70 in Inadvertently Excluded Purchase Power Costs Is Reasonable and Should Be Approved.

The Company proposes one adjustment to the FAC rates collected by the Company during the Review Period in order to collect $172,892.70 in fuel costs that was inadvertently and improperly excluded from recovery through the FAC during the month of August 2021.[72]

The Company's peaking unit equivalent ("PUE") calculations that demonstrate the purchase power amounts to be recovered through the FAC contained an inadvertent misalignment of the cell rows pertaining to purchase power costs during certain hours of July 2021 and August 2021.[73] The Company filed revised PUE calculations in Case No. 2022-00036 to correct the cell

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[69] 807 KAR 5:056, Section 1(3)(c) (emphasis added).
[70] Hearing Transcript at 33–34.
[71] *Id.*at 34.
[72] Bishop Rebuttal Test. at R3.
[73] *Id.* at R3.

misalignments on September 19, 2022.[74] The Company determined upon correction that there were no changes to the total amount of purchase power costs for July 2021 to be recovered through the FAC as a result of the misalignment.[75] However, there was a discrepancy in the total amount of purchase power costs that should have been recovered through the FAC for the month of August 2021, but were instead inadvertently excluded, in the total amount of $172,892.70.[76] Absent the inadvertent cell misalignment, these purchase power costs were eligible for recovery through the FAC and should have been collected from customers.

The Company proposes to collect the $172,892.70 in purchase power costs from customers through the FAC over the course of one month, beginning the first billing month after the Commission issues its final order in this case.[77] The Company's proposal would have a minimal impact on customer bills. An average residential customer using 1,300 kWh would see a one-time (only for one month) increase in FAC charges of approximately $0.50 as a result of the Company's proposal.[78]

The Company's proposal as detailed above is fair, just, and reasonable. The purchase power costs discussed above were otherwise eligible to be recovered from through the FAC and instead were inadvertently excluded due to a simple miscalculation. The miscalculation was not willful and there is no reason that the amounts should otherwise not be recovered through the FAC. The Company's proposal to collect these improperly excluded amounts is appropriate in this proceeding because it falls within the Review Period of this case and should be granted by the Commission.

[74] *Id.* at R3–R4.
[75] *Id.* at R4.
[76] *Id.*
[77] *Id.* at R5.
[78] *Id.*

2. The Review Period Fuel Adjustment Clause Charges and Credits Did Not Result From Any Improper Fuel Procurement Practices.

Nor were there any improper fuel procurement practices during the review. Coal was purchased through a combination of long-term contracts and spot purchases, consistent with long-standing practices approved by the Commission in previous Kentucky Power FAC review cases.[79] The contracts themselves were acquired through written requests for proposals and represented the least cost conforming fuel offered in response to the requests for proposals.[80] All fuel contracts related to commodity and transportation were filed with the Commission in accordance with 807 KAR 5:056, Section 2(1)–(3).[81] Coal and natural gas were acquired from unrelated third-parties and not utility-owned or utility-controlled suppliers.[82] Further, Kentucky Power followed its fuel procurement policies and procedures during the Review Period.[83]

a. Kentucky Power's Coal Procurement Efforts During the Review Period Were Prudent.

In May of 2021, Kentucky Power issued an RFP for coal purchases to ensure that it had sufficient coal available at the Mitchell Generating Station to meet the forecasted demand for coal-fired generation. As discussed above in Section II.B.2, macroeconomic events outside of Kentucky Power's control resulted in an increase in demand for coal-fired generation. Kentucky Power sought additional coal in the market to meet its needs, however limited supply was available

[79] *See* Case No. 2021-00292, Response to KPSC 1-1, Attachment 1; Response to KPSC 1-2, Attachment 1; Response to KPSC 1-4; *see also* Case No. 2022-00036, Response to KPSC 1-1, Attachment 1; Response to KPSC 1-2, Attachment 1; Response to KPSC 1-4, Attachment 2; Response to KPSC 1-4, Attachment 3; Response to KPSC 2-4; *see also* Case No. 2022-00263, Response to KPSC 1-1, Attachment 1; Response to KPSC 1-2, Attachment 1; Response to KPSC 1-4, Attachment 1; Response to KPSC 1-4, Attachment 2; *see also* Case No. 2023-00008, Response to KPSC 1-1, Attachment 1; Response to KPSC 1-2, Attachment 1; Response to KPSC 1-4, Attachment 1; Response to KPSC 1-4, Attachment 2.
[80] *See id*.
[81] Response to KPSC 1-21.
[82] *See* Response to KPSC 1-1, Attachment 1; Response to KPSC 1-2, Attachment 1; Response to KPSC 1-6, Attachment 1.
[83] Response to KPSC 1-18.

in late 2021 and into 2022 (the "Shortage Period").[84] Company Witness Chilcote described the Company's efforts to find coal during the Shortage Period:

> So in September of '21 we didn't get hard -- we didn't get any bids for -- for 2021 at that point. Most of the coal companies were fully -- what I would call fully subscribed, right? They had sold all their coal for 2021 and a large portion of their coal for 2022, and prices were rapidly increasing for coal at that point too.
>
> What we did as a company, we didn't sit around and say, "Oh, there's no coal, we're just gonna wait." We picked up the phone, right? Because we've been in this business for years. So we picked up the phone and we said to these suppliers, "We need you to help us. We -- we need more coal. And what can you do to help?" So we issued that plea, not just for Kentucky Power, but for all of our utilities, right? Because it wasn't strictly a Kentucky Power issue, it was –it's -- it was a national issue, right? Everybody needed coal at that point. And -- and we were not -- you know, we -- we found coal in the market. We actually ended up contracting -- we talked about the belt that goes to Mitchell from one of our high-sulfur suppliers. We actually ended up doing contracts with two other high-sulfur suppliers at that time. So we added diversity of supply into -- into the Kentucky Power portfolio because of reaching out to people and trying to find additional coal at that time. But we didn't have enough, and nor could we purchase enough to meet the new forecast that we had. We purchased what we could, but there was -- there just wasn't enough to meet that new forecast.[85]

Company Witness Chilcote's hearing testimony, in response to questioning from Staff Counsel, underscored the extraordinary efforts the Company undertook to find coal:

> MR. PINNEY: Okay. I only have one more coal question. So when you're talking about -- you know, you're calling, you're looking for coal wherever it is, and I think you testified earlier that, you know, you're picking up the phone, you're calling people. Do you have a Rolodex, do you have a list of people that you can come up with? I mean, are you looking on Craigslist, I mean, what -- how do you find these people?
>
> MS. CHILCOTE: So, I mean, I've been in the business for almost 35 years, so I have pretty many contacts in the business. But then some people from our company also approach the West Virginia Coal Association and ask them to approach their members to help with finding supply at that same time. So we did reach out to known organizations that were there that coal suppliers were members of, and that's how we ended up with some of these what I'd call mines in development; right? These were people that had not been sending us coal that either we had reached out to or maybe the West Virginia Coal Association or even the Kentucky Coal

[84] Chilcote Direct Test. at 9.
[85] Hearing Transcript at 106–07.

> Association had reached out to and said, there are utilities looking for coal, you know, could you guys begin to operate and offer them coal, so . . . .[86]

Importantly, it is not possible for coal operators to quickly ramp up production. Company Witness Chilcote describe the effort it takes for coal mine operators to increase production:

> So to add tons is not -- you can't just walk out on the street and get people; right? Coal mining and all of that requires skilled labor, and so it takes a significant amount of time for these mines to go out and to hire employees and to train them, and one of the biggest things they have to be trained in is safety; right? It's not a super-safe job to work in an underground coal mine, so being safe and having all those required skills takes a significant amount of time to train that workforce.[87]

The unrefuted record evidence is clear – there was insufficient coal available in the market during the Shortage Period to meet the demand for coal-fired generation, and the Company took all reasonable, and even extraordinary, efforts to try and obtain additional coal.

Kentucky Power's eastern affiliates experienced the same deficiencies in the coal market during the Shortage Period. The Indiana Utility Regulatory Commission ("IURC") reviewed Indiana Michigan Power Company's coal procurement efforts twice during the Shortage Period and determined that "Applicant's evidence demonstrates that it has made every reasonable effort to obtain available fuel or power as economically as possible."[88] The IURC concluded the following regarding the coal procurement strategy, "Based on the evidence presented, as indicated here and further below, the Commission finds that Applicant is endeavoring to acquire fuel for its internal generation, or purchase power, so as to provide electricity at the lowest fuel cost reasonably possible."[89]

Similar coal procurement efforts were also evaluated in Virginia. In that proceeding, the State Corporation Commission's witness testified that "Staff believes that APCo's repeated efforts

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[86] *Id.* at 185–86
[87] *Id.* at 295.
[88] Response to PHDR 1-11, Attachment 1 at 55, 60.
[89] *Id.*

to secure additional supplies of coal through RFPs and other actions during 2021 and 2022 demonstrate a reasonable response to the market and inventory conditions as they unfolded during that period."[90] In fact, the only entity to find fault with any of Kentucky Power's affiliates' coal procurement efforts is the Public Service Commission of West Virginia who, in a decision currently under appeal, ignored the record evidence regarding coal supplies during the Conservation Strategy Period and based its decision not on facts, but a fiction that assumed coal was readily available to owners of coal-fired generations when it was not.[91] The Commission should not ignore the substantial evidence in this case and follow in such fiction.

b. Kentucky Power's Coal Conservation Strategy.

Considering the reality that there was insufficient coal available in the market during the Shortage Period to meet the increased demand for coal-fired generation, the Company was faced with a choice: Kentucky Power could operate as normal, offering only cost-based bids to the PJM market, generating from Mitchell when called upon regardless of the ability to timely replenish its fuel supply, and rolling the dice that the plant would have sufficient fuel available to generate during periods of peak prices; or implement a coal conservation strategy that sought to maximize the economic benefit to customers of the limited coal supply available in the market and enable its generation to operate when customers most needed it. Kentucky Power chose the path that would most benefit customers.

The Company's coal conservation strategy included using price adders in its market-based offers to PJM to maximize the economic value of the Mitchell Plant for its customers. By doing

[90] See, *Appalachian Power Company – To Decrease its Fuel Factor Pursuant to VA Code 56-249.6*, Virginia State Corporation Commission Case No. PUR-2023-00156, Prefiled Staff Testimony of Patrick W. Carr, filed December 20, 2023 at 16. Mr. Carr's testimony is available at 7wg%01!.PDF (virginia.gov).

[91] The same Virginia Commission's witness who testified that AEPSC's coal procurement efforts were reasonable in response to market and inventory conditions confirmed that the decision of the Public Service Commission of West Virginia's did not change his opinion. Response to PHDR 1-11, Attachment 1 at 46.

so, the Company prevented the Mitchell Plant from running out of coal and ensured that the units were available to operate when market prices were expected to be the highest, providing the greatest benefit to customers (*e.g.* in the winter months).

Company Witness Vaughan described the purpose of the adder as follows:

> The Company included an adder, or increment, associated with fuel supply risk that recognizes potential opportunity costs to its customers to the market offer curves it submitted to PJM for the Mitchell Plant to address its concerns with coal supply. As a hypothetical example, assume the Company had a generating unit that was currently online and capable of producing energy at a price of $40 per Megawatt-hour (MWh). If the Company's market forward price was expected to average $40/MWh in the off-peak hours while reaching $80/MWh in the peak hours, adding an increment to price the unit above $40/MWh would ensure the unit was not dispatched off of its eco min level of generation in the off-peak hours but still available to ramp up and generate in the higher priced peak hours. In this example, the increment is ensuring that the limited coal supply is consumed when it can produce the most economic benefit for Kentucky Power customers. The adder strategy was not needed for Big Sandy Unit 1 because it did not experience similar fuel constraints during the Review Period.[92]

Kentucky Power is not unique among Kentucky utilities in implementing price adders to ensure limited coal supplies are maximized to the benefit of customers. During the Review Period, East Kentucky Power Cooperative ("EKPC") implemented a price adder in its market-based bids for its Spurlock Generating Station during a period when coal supply to the station was interrupted.[93] Like Kentucky Power, EKPC implemented a price adder to "optimize the use of coal that we had available."[94]

[92] Vaughan Direct Testimony at 11.
[93] *In the Matter of: An Electronic Examination of the Application of the Fuel Adjustment Clause of East Kentucky Power Cooperative, Inc. From November 1, 2020 Through October 31, 2022*, Case No. 2023-00009, Hearing Video at 19:45–20:37. The Commission on May 6, 2024 issued an order approving the charges and credits applied by EKPC through its FAC for the Review Period that included their use of price adders.
[94] *Id.*

c. The Coal Conservation Strategy Was Prudent, Provided Economic Benefit to Customers, and Ensured the Company's Generation Would Be Available When Most Needed.

Through the coal conservation strategy, the Company was able to provide economic benefit to customers in the face of unprecedented fuel supply limitations caused by the inability of coal operators to provide sufficient coal to meet the demand for coal-fired generation. Company Witness Vaughan explained the benefit of the coal conservation strategy to customers this way:

> The Company's approach benefits customers by ensuring, to the extent reasonably possible, the Company is providing lower-cost generation when market prices are expected to be high. Given the limitations with coal supply, the Company had to make choices, based on the information available to it at the time, regarding when to provide generation and chose to do so in a manner that ensured generation was available when its customers were most exposed to market prices, during the winter and summer seasons. It did this by implementing practices (like the pricing increments described above) in order to conserve the finite amount of coal for those months when it was reasonably expected to be the most economically beneficial. Hypothetically speaking, the Company could provide generation when prices are $100 per megawatt (MW) or provide it when prices are $200/MW. By covering internal load with generation when prices are higher in the summer and winter, the customer is benefitted by the margin of the differences in the cost of the energy. If Kentucky Power had simply let the Mitchell Plant dispatch on its cost based offer, it would have drawn from its available coal supply and generated energy during periods of lower market prices instead and subsequently fallen below PJM's 10-day inventory limit. This would have resulted in an increase in the overall cost of service because the Company would have been forced to meet its native load energy requirements through increased energy purchases from the PJM energy market during higher priced times.[95]

To state this concept more simply, the coal conservation strategy implemented by Kentucky Power did not change the amount of energy produced by Kentucky Power with the limited coal available to it. Instead, it shifted the timing of the production available with the limited coal supply to periods when that production was most economically beneficial to the Company's customers.[96]

[95] Vaughan Direct Testimony at 13–14.
[96] Response to Staff PHDR 2-13(b).

Additionally, the coal conservation strategy avoided forced outages (and subsequent derates) for the units during the Review Period. In October 2021 PJM amended its Manual 13, Emergency Operations, in response to the market-wide shortage of coal.[97] Through this amendment, PJM required its member generators to maintain at least a ten-day supply of coal.[98] If generators failed to maintain a 10-day supply, the units were required to be placed in Maximum Emergency status (limiting their operation to periods of emergency).[99] Once in Maximum Emergency status, generators must remain in that status until the coal supply at the generator exceeded 21 days.[100] Company Witness Vaughan described the impact of this change at the hearing:

> Okay. So basically what happened when they implemented it is if your fuel or reagent inventory went below ten days . . . you had to move to a maximum emergency status, which essentially meant that your unit was forced offline until you built back up 21 days of burn, of inventory, and so if you -- if you -- if you're above ten days, you're fine, as long as you keep your inventory there; you dip below, you -- the rule says you're going into this in new commitment status, you're going to come offline, and you're going to stay there until you build -- build your inventory back. The issue with that is, if you are out -- if your unit's offline for fuel supply reasons and it's economic, PJM would have dispatched you otherwise, you're – you're considered forced out, and you're now at risk of derating -- derating the amount of capacity, accredited capacity that that unit gets attributed to it for -- for purposes of meeting your capacity requirements, and you're also at risk of -- potentially at risk of other penalties, right? I mean, if there was a performance assessment interval, they would have called an emergency and you'd be dispatched, but, you know, there's still risk there, because, you know, as Mr. Mell discussed, it takes a while to bring some of these units online, so yes.[101]

More specifically, the Company's coal conservation strategy directly avoided 234 unit forced outage days at the Mitchell Plant (117 forced outage days per unit).[102]

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[97] *See* Vaughan Direct Test. at 5–6.
[98] *Id.*
[99] *Id.*
[100] *Id.*
[101] Hearing Transcript at 124–25.
[102] Vaughan Direct Testimony at 14.

Faced with an unprecedented increase in the demand for coal-fired generation, driven by macroeconomic factors entirely outside of Kentucky Power's control, and the inability of coal producers to provide sufficient coal to meet the increased demand, and despite the Company's extraordinary efforts to find such coal, the Company prudently implemented its coal conservation strategy. Through the coal conservation strategy, the Company was able to maximize the economic benefit to customers of the limited fuel supply available for the Mitchell Plant.

C. Kentucky Power Operated its Generating Units Prudently During the Review Period.

AG-KIUC Witness Lane Kollen argues that the Company's generating units operated "poorly" during the Review Period[103] and that the units performance in October 2022 was "especially poor."[104] Mr. Kollen ignores both the nature of how the PJM market works and the need for generating units to undergo preventative maintenance. Kentucky Power operated its generating units in a reasonable and prudent manner during the Review Period.

1. Kentucky Power's Planned Outage Schedule During the Review Period was Prudent and Reasonable.

As an initial matter, during the period when the Rockport Unit Power Agreement was in effect, Kentucky Power did not control the operation, maintenance, or dispatch of the Rockport Units.[105] Moreover, AG-KIUC ignores the needs for and strategic timing of planned maintenance on the Company's generating units. A planned outage is an "outage lasting several weeks to perform work on major equipment groups that is not promptly required for the safe operation of the unit. Planned Outages are scheduled approximately a year in advance and the dates of the Planned Outages are approved by PJM."[106] Kentucky Power is prohibited by PJM from scheduling

[103] Kollen Direct Test. at 8.
[104] *Id.* at 10.
[105] West Rebuttal Test. at R5.
[106] Rosenberger Direct Testimony at 3.

planned outages during the summer months of June through September and seeks to avoid planned outages during the winter peak season from December through early March.[107] Accordingly, Kentucky Power targets the "shoulder months" in the spring and fall to schedule planned outages.[108] This was the case during the Review Period.

Kentucky Power's planned outages during the Review Period occurred during the shoulder months[109]:

Unit	Start Date	End Date	Description of Outage Reason / Work Performed
Mitchell 1	10/3/2020 4:37	11/25/2020 20:38	For #11 ID Fan Regulating Hub Replacement. Boiler inspect and repair, and Precipitator inspect and repair.
Mitchell 1	10/16/2021 0:00	12/12/2021 13:31	Boiler inspect and repair, BOP repairs, SCR Catalyst #4 layer replacement, Boiler Feed Pump Element replacement.
Mitchell 1	10/8/2022 0:00	11/19/2022 17:32	Boiler inspect and repair, Precip inspect and repair, Pulverizer/Feeder MATS inspect and repair, Economizer wash, Replace Precip Transformer power cables, Replace SCR XJ s 14,15 and 115, Replace Exit Duct XJ FGX-71009, Water Cannon upgrades, Ovation Evergreen upgrade, Inter-lock testing, HE Piping inspect and repair, CCR-ELG Pre-work.
Mitchell 2	3/6/2021 4:43	4/26/2021 2:19	ID Fan rebuilds, MATS inspections, and interlock checks.
Mitchell 2	9/10/2022 0:00	12/16/2022 14:25	Boiler inspect and repair, Cooling Tower inspect and repair, Low Pressure Turbine A"&"B" Valve replacement, CCR-ELG Pre-work.

The work performed during these planned outages are necessary to ensure the safe and reliable operation of the units.[110] Notably, both Mitchell Units were in a planned outage during October 2022 to, among others, allow the units to meet the compliance deadlines under EPA's CCR-ELG Rule.[111] AG-KIUC Witness Kollen ignores these necessary planned outages in criticizing the units' performance during the Review Period and in claiming the performance in October 2022 was "especially poor." The Commission should ignore Mr. Kollen's complaints.

2. Kentucky Power's Generating Units Performed Adequately During the Review Period.

[107] Vaughan Rebuttal Testimony at R3.
[108] *Id.*
[109] Kerns Rebuttal Testimony at R7.
[110] Kerns Rebuttal Testimony at R7.
[111] *Id.* at R8.

AG-KIUC Witness Kollen's claims about the performance of the Mitchell Plant inappropriately conflates low capacity factors with poor performance. First, Mr. Kollen's reliance on capacity factors ignores the impact of necessary planned outages on the calculation of capacity factor.[112] Second, Mr. Kollen's argument discounts how Kentucky Power offers the Mitchell Plant into the PJM Market. During the Review Period, the Mitchell Plant's economics, including consideration of the fuel constraints experienced during the Shortage Period and approved plant outages, informed the manner in which Kentucky Power offered the Mitchell Plant into the PJM Market.[113] PJM only selects the Mitchell Plant to operate if it is part of the RTO's least cost, pool-scheduled solution to meet the systems load requirements.[114] If, as was the case during the Review Period, the Mitchell Plant was not selected due to its relative economics, the capacity factors would not be indicative of poor performance.[115]

Moreover, even if a generating unit's capacity factor was the appropriate measure of a unit's performance, which it is not, the Mitchell Plant has operated consistent with the entire PJM coal fleet. Over the past decade, the entire PJM coal fleet has operated at an average annual capacity factor of roughly 43%, similar to the Mitchell Plant:[116]

[112] Vaughan Rebuttal Testimony at R2–R3.
[113] *Id.* at R4.
[114] *Id.*
[115] *See Id.*
[116] *Id.*at R6.

Net Capacity Factor % PJM Coal Fleet Avg. vs Mitchell Plant		
Year	PJM Coal Fleet	Mitchell Plant
2013	49.5	43.6
2014	49.9	62.2
2015	43.8	39.3
2016	46.2	56.1
2017	46.6	56.3
2018	44.4	40.3
2019	30.1	36.9
2020	34.4	26.4
2021	42.6	34.9
2022	41.8	25.6
Average	42.9	42.2

Kentucky Power's Mitchell Generating Plant has operated consistently with full PJM coal fleet over the course of a decade. There is no rational basis, or evidence, for concluding that the Mitchell Plant has performed "especially poor."[117]

D. AG-KIUC's Proposal To Retroactively Modify the PUE Mechanism Is Barred By Logic, Past Commission Precedent, and Well-Established Legal Principles.

AG-KIUC propose to alter, on a retroactive basis, the way that the PUE is calculated in order to support their recommended disallowance of $59,785,373 in prudently-incurred purchase power costs made during the two-year Review Period in this case.[118] AG-KIUC's recommended disallowance amount is $55,266,938 higher than the PUE disallowances calculated by the Company under the existing, Commission-approved PUE calculation methodology.[119]

[117] *Id.*
[118] *See* Futral Direct Test. at 17.
[119] *Id.*

Importantly, AG-KIUC do not argue that Kentucky Power has misapplied the existing, Commission-approved PUE calculation methodology.

Instead, AG-KIUC argue that the fixed startup costs used in the PUE calculation since the Commission approved it in Case No. 2017-00179[120] is somehow now inappropriate. Additionally, AG-KIUC now ignore the record in Case No. 2017-00179 and argue that Kentucky Power hid the justification for its request. Incredibly, despite the application of the PUE calculation since 2018, AG-KIUC now argue that the Commission-approved start-up costs should not be applied every hour.[121] AG-KIUC further argue that the "hypothetical peaking unit be capped at either 100 [MW] or 200 [MW], and that purchases above that cap be measured against the highest cost coal-fired generating unit to determine if purchases were economy or non-economy."[122] AG-KIUC's arguments are barred by logic, past Commission precedent, and well-established legal principles.

1. The PUE Calculation Was Never Intended To Simulate the Real-World Operation of an Actual Generating Unit—It Is a Proxy Mechanism.

As an initial matter, the fundamental error in KIUC's argument is its apparent belief that the PUE calculation is an algorithm designed to simulate perfectly the real-world operation of a General Electric simple cycle gas turbine. Instead, the PUE calculation is a formula-derived approximation:

> In Case No. 2000-00495-B, the Commission authorized American Electric Power's ("AEP") use of a <u>proxy mechanism</u> to establish the energy portion of non-economy energy purchases. <u>The proxy mechanism approximates the energy costs</u> of a

[120] Order, *In the Matter of: Electric Application of Kentucky Power Company for (1) A General Adjustment of its Rates for Electric Service; (2) An Order Approving its 2017 Environmental Compliance Plan; (3) An Order Approving its Tariffs and Riders; (4) An Order Approving Accounting Practices to Establish Regulatory Assets and Liabilities; and (5) An order Granting All Other Required Approvals and Relief*, Case No. 2017-00179 at 56 ("Kentucky Power's proposal to include startup costs and variable O&M expense is reasonable and should be approved.") (Ky. P.S.C Jan 18, 2018).
[121] Futral Direct Test. at 11.
[122] Kollen Direct Test. at 5.

"Peaking Unit Equivalent" based on the operating characteristics of a General Electric simple cycle gas turbine.[123]

The approximate nature of the proxy is underscored by the 75 percent threshold for consideration of the PUE in connection with the Company's purchased power costs:

> When a power purchase occurs during an expense month, AEP will determine the average daily market price for that month. It will then determine the lowest daily market price for gas for the hypothetical turbine during that month and compare that price to its actual average purchased energy cost for internal uses for the same month. <u>If the actual average purchased energy cost for internal use for the month is 75 percent or less of the lowest daily market price for gas for the hypothetical gas turbine during the same month</u>, AEP will consider this cost as the fuel cost for these purchases. <u>If the actual average purchased energy cost for internal use is greater than 75 percent of the lowest daily market price for gas for the hypothetical gas turbine</u>, then AEP will compare its average purchased energy cost for internal uses with the market price for gas for the hypothetical turbine for each day of the month and exclude for FAC purposes any of the actual purchased energy costs that exceed the daily gas market price.[124]

This 75 percent threshold renders any effort to characterize the application of the peaking unit equivalent as a simulation of the actual operation of the hypothetical turbine both inapposite and inaccurate. If the PUE calculation were intended to simulate the real-world operation of the hypothetical simple cycle unit, then the PUE calculation would need to be made for each hour of each month because the unit might have run at least once during a month for reasons unrelated to the noneconomic purchase.

2. AG-KIUC's Proposal Ignores and Contravenes Past Commission Precedent.

The current PUE mechanism was fully approved by the Commission prior to the Review Period. The Commission initially approved the Company's use of the PUE to determine economy

[123] Order, *In the Matter of: The Request Of Kentucky Power Company D/B/A American Electric Power To Change The Gas Price Index It May Use In Determining The Costs Recoverable Through Its Fuel Adjustment Clause*, Case No. 2004-00375 at 1 (Ky. P.S.C. November 10, 2004) (emphasis supplied).

[124] Order, *In the Matter Of: An Examination By The Public Service Commission Of The Application Of The Fuel Adjustment Clause Of American Electric Power Company From May 1, 2001 to October 1, 2001* at 2–3 (Ky. P.S.C. October 3, 2002) (emphasis supplied).

and non-economy purchased power in its October 3, 2002 order in Case No. 2000-00495-B. Changes to the PUE calculation, including the addition of fixed startup costs, were proposed to and authorized by the Commission in Case No. 2017-00179. More specifically, in that case, the Company provided the Commission with the exact calculation that it would use to calculate the PUE, and the Commission approved it.[125] The Company has not deviated from the methodology approved by the Commission in Case No. 2017-00179 when calculating the PUE and the resulting FAC rate. In addition, the Commission has approved the Company's FAC charges, and the Company's calculation of the same under the currently-existing, Commission-approved PUE formula, in four six-month FAC review cases[126] and two two-year FAC review cases,[127] which include the period from January 18, 2018 through April 30, 2021.

The function of FAC reviews like the present case is to review the FAC charges to customers during the respective Review Period. During these reviews, the Commission is empowered to disallow charges that "the commission finds unjustified due to improper calculation or application of the charge or improper fuel procurement practices."[128] However, what AG-KIUC ask the Commission to do here is not to disallow certain charges or credits because they were

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[125] *See* Hearing Tr. at 285-289 (filed Feb. 21, 2024); Kentucky Power Hearing Exhibit 1; Vaughan Rebuttal Test. at 10–11.

[126] Order, *In The Matter Of: An Electronic Examination Of The Application Of The Fuel Adjustment Clause Of Kentucky Power Company From November 1, 2018 Through April 30, 2019*, Case No. 2019-00226 (Ky. P.S.C. Feb. 4, 2020); Order, *In The Matter Of: An Electronic Examination Of The Application Of The Fuel Adjustment Clause Of Kentucky Power Company From May 1, 2019 Through October 31, 2019*, Case No. 2020-00004 (Ky. P.S.C. May 12, 2020); Order, *In The Matter Of: An Electronic Examination Of The Application Of The Fuel Adjustment Clause Of Kentucky Power Company From November 1, 2019 Through April 30, 2020*, Case No. 2020-00245 (Ky. P.S.C. Dec. 3, 2020); Order, *In The Matter Of: An Electronic Examination Of The Application Of The Fuel Adjustment Clause Of Kentucky Power Company From November 1, 2020 Through April 30, 2021*, Case No. 2021-00292 (Ky. P.S.C. March 24, 2022).

[127] *See* Order, *In The Matter Of: An Electronic Examination Of The Application Of The Fuel Adjustment Clause Of Kentucky Power Company From November 1, 2018 Through October 31, 2020*, Case No. 2021-00053 (Ky. P.S.C. Aug. 2, 2021); Order, *In The Matter Of: An Electronic Examination Of The Application Of The Fuel Adjustment Clause Of Kentucky Power Company From November 1, 2016 Through October 21, 2018*, Case No. 2019-00002 (Ky. P.S.C. Dec. 26, 2019).

[128] 807 KAR 5:056, Section 3(3)(b).

improperly calculated or misapplied, but rather, AG-KIUC ask the Commission to *change the method by which the FAC is calculated* on a retroactive basis, despite the fact that Kentucky Power used the calculation approved most recently by the Commission in 2018. The Commission cannot allow such a circumvention of past Commission precedent.

3. If Implemented, AG-KIUC's Proposal Would Violate the Filed Rate Doctrine and Constitute Impermissible Retroactive Ratemaking.

AG-KIUC's proposals, if adopted by the Commission, would retroactively alter the current Commission-approved PUE calculation in violation of the filed rate doctrine and also would constitute impermissible retroactive ratemaking.

"The filed rate doctrine forbids utilities from charging rates other than those properly filed with the Commission."[129] "A corollary to the filed rate doctrine is the rule against retroactive ratemaking, which prohibits the Commission from adjusting current rates to make up for a utility's over- or undercollection in prior periods."[130]

The Commission has interpreted KRS 278.160 as codifying the filed rate doctrine and emphasized that it is "strictly enforced."[131] It has also recognized the rule against retroactive ratemaking as a "a fundamental rule of utility rate-making" that mandates "rates are exclusively prospective in application because rate-making is a legislative act."[132]

These principles are grounded in the purpose of the Commission's ratemaking authority, which is to provide "stability and notice to all entities involved in the rate process."[133] It is "[a] pervasive and fundamental rule underlying the utility rate-making process is that 'rates are exclusively prospective in nature.' The rationale for this rule is that the Commission acts in a

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[129] *Cogentrix Energy Power Mgt., LLC v. FERC*, 24 F.4th 677, 681 (D.C. Cir. 2022).
[130] *Id.* (internal quotes omitted).
[131] *In the Matter of: Americonnect, Inc. Investigation into the Alleged Violations of KRS 278.020 and KRS 278.160*, 95-220, 1996 WL 34588289 (Ky. P.S.C. June 26, 1996).
[132] *Id.*
[133] *Cincinnati Bell Tel. Co. v. Kentucky Pub. Serv. Comm'n*, 223 S.W.3d 829, 838 (Ky. App. 2007).

legislative capacity when exercising its rate-making authority."[134] Similarly, under the filed rate doctrine, a utility's "filed rate"—i.e., "the rate approved by the PSC"—cannot "be altered retroactively by the [Commission]."[135] Rather, "the filed rate can only be lawfully altered prospectively."[136]

a. The Filed Rate Doctrine Precludes a Collateral Attack on the Commission-Approved PUE Formula.

Modifying the FAC as AG-KIUC argue by reducing the amount of startup costs included in the PUE formula constitutes ratemaking. Kentucky law defines a "rate" broadly:

> "Rate" means any individual or joint fare, toll, charge, rental, or other compensation for service rendered or to be rendered by any utility, and any rule, regulation, practice, act, requirement, or privilege in any way relating to such fare, toll, charge, rental, or other compensation, and any schedule or tariff or part of a schedule or tariff thereof[.][137]

Under this definition, the FAC qualifies as a "rate"—it is indisputably a "charge" or "other compensation." The PUE formula also falls within this statutory definition. The PUE is the way FAC-recoverable costs are calculated, *i.e.* it is the Company's "practice" or "act" of calculating the FAC, and therefore relates to a "charge" "or other compensation." Moreover, the PUE formula is "part of a schedule or tariff" because it is an integral component of the FAC, which is itself a tariff. Indeed, in its order approving the use of startup costs in the PUE formula in Case No. 2017-00179, the Commission itself described the "issue" of "the peaking unit equivalent calculation" as "ratemaking."[138]

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[134] *In the Matter of: City of Franklin Complainant*, No. 92-084, 1996 WL 34589769 (Ky. P.S.C. Jan. 18, 1996) (quoting *New England Telephone And Telegraph Co. v. Pub. Util. Comm'n*, 358 A.2d 1 (R.I. 1976)).
[135] *Cincinnati Bell*, 223 S.W.3d at 839.
[136] *Id.* (citing KRS 278.270).
[137] KRS 278.010(12).
[138] *In the Matter of: Elec. Application of Kentucky Power Co. for (1) A Gen. Adjustment of Its Rates for Elec. Service: (2) an Ord. Approving Its 2017 Env't Compliance Plan; (3) an Ord. Approving Its Tariffs & Riders; (4) an Ord. Approving Acct. Pracs. to Establish Regul. Assets & Liabilities; & (5) an Ord. Granting All Other Required Approvals & Relief*, No. 2017-00179, Order at 54–55, 2018 WL 509670, at *32 (Ky. P.S.C. Jan. 18, 2018); *see also*

Accordingly, the current PUE formula became part of the "filed rate" when the Commission entered its January 18, 2018 order in Case No. 2017-00179 approving the Company's proposed tariff and rate, which included the use of startup costs in the PUE formula.[139]

The Commission has recognized that "after-the-fact adjustments" like the FAC are exceptions to the general rule that ratemaking must be prospective in nature. Courts, including in Kentucky, have recognized the "after-the-fact" nature of the FAC as a sort of exception to usual prospective ratemaking principles.[140] But the standard, normal operation of a FAC as a retroactive cost-recovery mechanism is fundamentally different than altering the calculation of what costs are recoverable through the FAC. The "after-the-fact" recovery of costs prescribed by an approved formula, a mathematic calculation, which makes it consistent with the principles of stability and notice. In other words, retroactive adjustments made *by* operation of the FAC are permissible because they are contemplated and approved in the filed tariff, whereas adjustments made *to* the FAC itself may only be prospective, because such adjustments necessarily alter the FAC rate by adjusting the FAC formula incorporated into the tariff.

The AG-KIUC proposal is an overt attack on Kentucky Power's Commission-approved rates, and the filed rate doctrine "precludes [such] a collateral attack on rates filed with a regulatory agency."[141] Thus, when Kentucky Power's proposal—including the startup costs amount to be

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In the Matter of: Alt. Rate Filing Adjustment Application of Johnson Cnty. Gas Co., No. 2012-00140, 2013 WL 3091487, at *4 (Ky. P.S.C. June 18, 2013) (describing "the Fuel Adjustment Clause" as part of "[t]he ratemaking process"); *see also Kentucky Ind. Util. Customers, Inc.*, 176 P.U.R.4th 371 (Apr. 1, 1997). Other jurisdictions agree. *E.g., Gordon v. Council of City of New Orleans*, 9 So. 3d 63, 66 (La. 2009) (recognizing that FACs are "widely-accepted rate making tools utilized to allow a utility to recoup fluctuating fuel costs on an ongoing basis"); *see also Daily Advertiser v. Trans-La, a Div. of Atmos Energy Corp.*, 612 So. 2d 7, 26 (La. 1993) (emphasizing "fuel adjustment clauses are an integral component of rates").

[139] *In the Matter of: Elec. Tariff Filing of Harrodsburg Water Dept. Revising Its Wholesale Water Serv. Rates*, 2023-00206, 2023 WL 4999445, at *10 (Ky. P.S.C. June 29, 2023).

[140] *See Kentucky Ind. Util. Customers, Inc.*, 176 P.U.R.4th 371 (Apr. 1, 1997).

[141] *In the Matter of: Elec. Tariff Filing of Harrodsburg Water Dept. Revising Its Wholesale Water Serv. Rates*, No. 2023-00206, 2023 WL 4999445, at *7 (Ky. P.S.C. June 29, 2023). This is true "even if procured by unfair, false, misleading or deceptive practices," as the AG-KIUC seems to suggest. *See City Of Russellville v. Pub. Serv.*

used in the PUE formula—was approved by the Commission and became part of the filed rate, it became binding and cannot now be changed retroactively.[142]

b. The AG-KIUC Proposal Constitutes Impermissible Retroactive Ratemaking.

AG-KIUC's argument is inconsistent with both the "underlying purpose of both the filed rate doctrine and the rule against retroactive ratemaking," which in this context "are designed to allow 'purchasers of [fuel] to know the consequences of purchasing decisions they make."[143] The prohibition against retroactive ratemaking "prohibits regulatory commissions, when setting utility rates, from adjusting for past losses or gains to either the utility, consumers, or particular classes of consumers. The rule 'rewards the utility's efficiency and protects the consumer from surprise surcharges allocable to the utility's losses in prior years . . . [and] ensures fairness, stability and certainty by preventing a regulatory agency from reversing prior approved rates.'"[144] As the Commission itself has explained:

> The prohibition against retroactive rate-making is a double-edged sword. On the one hand, this legal doctrine limits a utility's ability to recover extraordinary expenses (and losses) and forces the utility to bear the risks associated with management's decisions. On the other hand, it prevents regulators from retroactively correcting or altering past rate-making decisions that in hindsight were poorly or incorrectly decided. Ratepayers cannot enjoy the doctrine's protections without also accepting the limitations which it imposes.[145]

Comm'n of Kentucky, No. 2003-CA-002132-MR, 2005 WL 385077, at *3–4 (Ky. App. Feb. 18, 2005) (citing *Chandler v. Anthem Ins. Companies*, 8 S.W.3d 48, 51–53 (Ky. App. 1999); (Direct Testimony of Randy A. Futral, at 9 (accusing Kentucky Power of "fail[ing] to disclose [an] important fact in Case 2017-00179")).

[142] *See City Of Russellville*, 2005 WL 385077, at *4.

[143] *In the Matter of: Application of Kentucky Power Co. to Withdraw Its Tariff Rtp Pending Submission by the Co. & Approval by the Comm'n of A New Real-Time Pricing Tariff*, No. 2012-00226, 2012 WL 6643991 (Ky. P.S.C. Dec. 20, 2012) (quoting *Public Utilities Commission of the State of California v. FERC*, 988 F.2d 154, 164 (D.C. Cir. 1993)).

[144] *Kentucky Ind. Utility Customers, Inc. v. Big River Elec. Corp*., 176 P.U.R.4th 371 (Apr. 1, 1997).

[145] Order at 14, *In The Matter Of: Kentucky Industrial Utility Customers, Inc.; NSA, Inc.; Alcan Ingot; and Commonwealth Aluminum Corporation v. Big Rivers Electric Corporation*, Case No. 95-011 (Ky. P.S.C. April 1, 1997).

No intervenor or the Company argues that the Commission's decision to approve the current PUE calculation in Case No. 2017-00179 was "poorly or incorrectly decided," however, the principles stated above also apply equally to past Commission decisions that were aptly and correctly decided. The Commission approved the currently-used PUE methodology, and retroactively altering how the PUE is calculated would undercut the FAC's function and purpose.[146] As Company Witness Vaughan's Rebuttal Testimony aptly explains:

> How could the Company possibly manage its exposure to an unknown construct that may be imposed retroactively upon it in the future? Judging whether or not something is prudent, or in this case if costs are prudently incurred, has to be done through the lens of what was known to the Company at the time it was making decisions, providing service and based upon Commission-approved constructs. It is wholly unreasonable to hold the Company to a standard different from what was approved at the time of actual operations after the fact.[147]

The AG-KIUC proposal would significantly and retroactively alter the mathematical formula by which the FAC rate is calculated, which would subject the Company—and any other utility that relies on the same or similar FAC mechanisms—to enormous uncertainty and unpredictability. Such instability is wholly inconsistent with the prospective nature of ratemaking and the prohibition against retroactive ratemaking.

The Company's FAC is part of the filed rate approved by the Commission. Under well-established ratemaking principles, which should be "strictly enforced," any modification to how the FAC is calculated—including changes to the PUE formula—if appropriate, may only be prospective. Nonetheless, whether to fundamentally alter the PUE formula is a subject best evaluated in a base rate case where witness(es) with the necessary expertise can inform the Commission on the advisability of such a change on a going forward basis and the possible effects

[146] *See Maine Pub. Serv. Co. v. Fed. Power Comm'n*, 579 F.2d 659, 664 (1st Cir. 1978) (describing the purpose of a FAC is so "the utility could file and adhere to a formula tied into the changing cost of fuel rather than being forced to calculate a flat rate in advance estimated to allow for future fuel costs").
[147] Vaughan Rebuttal Test. at R12–13.

on the Company's financial metrics, risk profile, and where all possible means of recovery of purchased power expenses can be comprehensively reviewed.[148]

V. CONCLUSION

Kentucky Power respectfully requests that the Commission enter an Order:

1. Approving Kentucky Power's fuel adjustment clause charges and credits for the Review Period;

2. Approving the Company's proposed base fuel rate of $0.03380 per kWh as reasonable and placing that rate into effect for services rendered on or after the Company's first billing cycle following the date of the Commission's order in this case;

3. Approving the Company's proposed adjustment to collect $172,892.70 in purchase power costs that were inadvertently excluded from FAC recovery in the month of August 2021 from customers through the FAC over the course of one month, beginning the first billing month after the Commission issues its final order in this case;

4. Denying AG-KIUC's recommendation to disallow and refund any amount of purchase power costs and to alter, retroactively or prospectively, the Peaking Unit Equivalent calculation; and

5. Granting Kentucky Power all further relief to which it may be entitled.

[148] *See Id.* at R13.

Respectfully submitted,

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