okayCOMMONWEALTH 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

RESPONSE BRIEF OF KENTUCKY POWER COMPANY

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I. INTRODUCTION

The Public Service Commission of Kentucky ("Commission") should not be persuaded by any of the Attorney General ("AG") and Kentucky Industrial Utility Customers, Inc.'s ("KIUC") (collectively, "AG-KIUC") arguments because each is either precluded by well-established legal doctrines or is refuted by substantial evidence of record.

AG-KIUC's arguments fundamentally rest on their assertions that the Company's generating units performed poorly, which caused Kentucky Power to have to make more (and more expensive) market purchases than it otherwise should have if the units were running more. Kentucky Power has submitted substantial evidence into the record of this case regarding the reasonableness of its generating units' performance during the period from November 1, 2020 through October 31, 2022 ("Review Period"). AG-KIUC's "evidence," in support of its claims regarding the performance of the Company's generating units amounts to nothing more than the unsupported statements of a witness most qualified to opine on accounting issues, and is not sufficient to overcome the Company's substantial evidence from its multiple industry experts. For the same reasons that AG-KIUC's claims regarding the performance of the Company's generating units fail, their remaining arguments regarding the Company's market energy purchases also fail.

The Commission also should outright reject AG-KIUC's arguments that the Commission-approved peaking unit equivalent ("PUE") formula should be retroactively modified in this proceeding. Not only is their proposal barred by past Commission precedent, the filed rate doctrine, and the rule against retroactive ratemaking, the arguments made in their brief also are barred by res judicata, or issue preclusion. The current PUE formula was actually and finally litigated, and approved by the Commission, in the Company's 2017 rate case. If any changes to the PUE may be justified, then they should be made only on a prospective basis and in the context of a base rate case where the issues, and any consequences of such a change to base rates or other

rates, can be fully and thoughtfully examined. Importantly, there is no evidence in the record that the Company failed to properly implement the Commission-approved PUE formula during the Review Period.

The record in this case leads to only one conclusion, Kentucky Power's fuel adjustment clause charges and credits for the Review Period should be approved.

II. SUBSTANTIAL RECORD EVIDENCE CLEARLY REBUTS AND DISPROVES AG-KIUC'S ARGUMENTS WITH RESPECT TO THE PERFORMANCE OF THE COMPANY'S GENERATING UNITS

A. Kentucky Power's generating units performed appropriately during the review period.

AG-KIUC continue to assert that Kentucky Power's coal-fired generating units operated poorly during the Review Period.[1] First, as discussed in detail in the Company's Initial Post-Hearing Brief, the insinuation that the Company's coal-fired units should operate more regardless of economics ignores the reality, and benefit to customers, of participating in PJM's economic dispatch.[2] Second, AG-KIUC's attacks on the Company's coal-fired units ignore the need to maintain the Company's aging coal-fired plants during periods of lower expected demand to ensure they are available for future use. As described in the Company's Initial Post-Hearing Brief, the Company operated the Mitchell Plant during the Review Period in a manner consistent with the plant's economics, including consideration of the fuel constraints experienced during the Shortage Period and approved plant outages.[3] There is no rational basis, or evidence, for concluding that the Mitchell Plant has performed, as AG-KIUC claims, "especially poor."[4]

[1] AG-KIUC Brief at 17.

[2] Kentucky Power Initial Post-Hearing Brief at 24-25.

[3] *Id.* at 22-23.

[4] AG-KIUC Brief at 17.

B. AG-KIUC's assertion that the FAC may be suspended "based on the severity of the utility's unreasonable fuel charges and any history of any unreasonable fuel charges" is completely inappropriate here and should be wholly disregarded.

AG-KIUC assert in the "Legal Standard" section of their brief that "[u]nder 807 KAR 5:056, 'fuel charges that are unreasonable shall be disallowed and may result in the suspension of the fuel adjustment clause based on the severity of the utility's unreasonable fuel charges and any history of unreasonable fuel charges.'"[5] While it does not appear from their brief that AG-KIUC actually argue that the Company's fuel adjustment clause should be suspended, any such imposition by the Commission as part of this proceeding would be completely inappropriate and unsupported by the record of the case.

As an initial matter, none of the Company's fuel charges during the Review Period were unreasonable, as demonstrated in the Company's Initial Post-Hearing Brief and herein. All fuel charges were calculated in accordance with the FAC regulation and the current Commission-approved PUE formula, and were not the result of improper fuel procurement practices. Thus, the threshold requirement for the suspension of the FAC simply cannot be met because all fuel charges during the Review Period were reasonable. In addition, suspending the operation of the Company's FAC would be a drastic and inappropriate punitive measure disproportionate to any wrong alleged by AG or KIUC.[6] It also would have a dire effect on Kentucky Power's financial condition even if suspension arguably were appropriate, which it is not.[7]

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[5] *Id.* at 4.

[6] Moreover, the Company has been unable to locate, after a diligent review of Commission records, any instance where the Commission has suspended a utility's fuel adjustment clause as a result of findings of a utility's unreasonable fuel charges and any history of unreasonable fuel charges.

[7] *See* Order at 7-8, *In The Matter Of The Purchased Gas Cost Adjustment Filing Of Duke Energy Kentucky*, Case No. 2007-00362 (Ky. P.S.C. Aug. 28, 2007) ("At EKPC's current FAC basing point, one month of FAC revenue recovery amounts to approximately $27 million, which exceeds EKPC's total margins in most years. Even a one month suspension of the current recovery of that level of costs would threaten EKPC's financial survival. EKPC estimates that it would need immediate, emergency rate relief from the Commission for a minimum annual increase of $320 million, if the FAC recovery were suspended.") (*dicta*).

Thus, the Commission should outright dismiss any implication that the Company's FAC should be suspended.

C. The Commission should disregard reference to the Public Service Commission of West Virginia's decision to ignore evidence regarding coal procurement efforts.

AG-KIUC references the decision of the Public Service Commission of West Virginia in Case No. 23-0377-E-ENEC as an example of what could happen if the Company is given the "carte blanche" it allegedly requests.[8] First, the Company has not made any request to change any portion of its FAC recovery mechanism.[9] Second, and as described in more detail in the Company's Initial Post-Hearing Brief, the West Virginia Commission ignored the record evidence in that case regarding the coal market and based its decision on a fiction that coal was readily available.[10] The Commission should disregard the fiction espoused by the West Virginia Commission and instead rely on the substantial evidence presented in this case.

D. AG-KIUC's criticisms of the Company's owned generation mix are not appropriate for a FAC review proceeding.

Beginning on page 20 of their brief, AG-KIUC delve into arguments concerning the Commission's purported "expectation that 'utilities will invest in their service territories' and have 'steel in the ground,'" and other arguments concerning AG-KIUC's criticisms of Kentucky Power's generation mix.[11] The Commission should dispose of these arguments outright, as they are inappropriate for discussion in a FAC review proceeding. Rather, these issues are properly discussed in an Integrated Resource Planning ("IRP") case. In fact, these issues actually are being

[8] AG-KIUC Brief at 22.

[9] *See,* Section III.F, Supra.

[10] Initial Post-Hearing Brief at 18.

[11] *See* AG-KIUC Brief at 20-22.

discussed in the Company's current IRP case, to which both the AG and KIUC are actively-participating parties.

III. AG-KIUC'S RECOMMENDATIONS TO RETROACTIVELY MODIFY THE PUE FORMULA MUST BE DENIED.

A. AG-KIUC's arguments to modify the PUE formula are barred by res judicata (issue preclusion).

Section I of AG-KIUC's brief argues that the PUE formula applied by Kentucky Power during the review period was applied in a manner that did not result in fair, just, or reasonable rates.[12] It argues specifically that the startup cost assumptions in the PUE methodology were unreasonable[13] and that Kentucky Power's "assumptions" with respect to the size of a hypothetical peaking unit were also unreasonable.[14] AG-KIUC's arguments, if implemented, would result in the retroactive modification of the current Commission-approved PUE formula. AG-KIUC's arguments to modify the current PUE formula, in addition to violating the filed rate doctrine and the rule against retroactive ratemaking, also are res judicata and cannot be asserted again now.

> The rule of res judicata is an affirmative defense which operates to bar repetitious suits involving the same cause of action. The doctrine of res judicata is formed by two subparts: 1) claim preclusion and 2) issue preclusion. Claim preclusion bars a party from re-litigating a previously adjudicated cause of action and entirely bars a new lawsuit on the same cause of action. Issue preclusion bars the parties from relitigating any issue actually litigated and finally decided in an earlier action. The issues in the former and latter actions must be identical.[15]

For issue preclusion to operate as a bar to further litigation, certain elements must be present. First, the issue in the second case must be the same as the issue in the first case.[16] Second,

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[12] AG-KIUC Brief at 7-14.

[13] *Id.* at 8.

[14] *Id.* at 11.

[15] *Yeoman v. Commonwealth, Health Policy Bd*., 983 S.W.2d 459, 464–65 (Ky. 1998) (internal citations omitted).

[16] *Id.* at 465.

the issue must have been actually litigated.[17] Third, even if an issue was actually litigated in a prior action, issue preclusion will not bar subsequent litigation unless the issue was actually decided in that action.[18] Fourth, for issue preclusion to operate as a bar, the decision on the issue in the prior action must have been necessary to the court's judgment.[19]

Issue preclusion applies to AG-KIUC's arguments to modify the current PUE formula here because the issue was fully and fairly litigated in Kentucky Power's 2017 rate case, was actually decided therein, and both the AG and KIUC were parties that actually participated in the 2017 rate case. Each of the required elements for issue preclusion are met.

First, the issues in this case concerning the current PUE formula are the same as those at issue in the 2017 rate case when it was proposed and approved by the Commission. In the 2017 rate case, Kentucky Power's application included a proposal to modify the PUE formula to include a fixed amount of unit startup costs, variable operations and maintenance ("O&M") expense, and the cost of firm natural gas service.[20] Kentucky Power included as Exhibit AEV-8 to the Direct Testimony of Alex E. Vaughan the exact calculation that Kentucky Power would perform, including the values it would use, under the proposed modified PUE formula.[21] Kentucky Power also made these facts clear throughout this proceeding and at the hearing in this case.[22] AG-KIUC

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] *See* Order at 55-56, *In The Matter Of: Electronic 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 (Ky. P.S.C. Jan. 18, 2018) ("2017 Rate Case Order").

[21] *See* 2017 Rate Case, Direct Testimony of Alex E. Vaughan at 33-35, Exhibit AEV-8, 2017.

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

now argue that the same formula and calculations approved by the Commission in the 2017 rate case should be modified because they are neither fair, just, nor reasonable.

Second, the issue of the PUE formula proposed by the Company in the 2017 rate case was actually litigated. The AG and KIUC each had ample opportunity to issue any discovery on or test the Company's proposals to modify the PUE formula during the pendency of the 2017 rate case. The AG propounded 499 data requests, not counting subparts, on the Company, and no questions were asked of the Company on this issue. Neither AG's nor KIUC's witnesses addressed the issue in testimony and no questions were asked of Company witnesses about this during the evidentiary hearing. The simple fact is that the current PUE formula was actually litigated in the 2017 rate case, and the AG-KIUC failed to raise any of the issues they raise now, despite having ample opportunity, in Case No. 2017-00179.

Third, the issue of the PUE formula was actually decided in the 2017 rate case. The Commission's final order in that case discussed Kentucky Power's proposal to modify the PUE formula. The Commission obviously fully considered the Company's modification proposals because it denied the Company's proposal to include the cost of firm natural gas service in the PUE formula.[23] The Commission then went on to approve the remaining modifications, stating specifically: "Kentucky Power's proposal to include startup costs and variable O&M expense is reasonable and should be approved."[24] The Commission's rulings on the proposed PUE formula resulted in the exact Commission-approved PUE formula used during the Review Period in this case.

[23] 2017 Rate Case Order at 55.

[24] *Id.* at 56.

Fourth, the Commission's decision on the issue of the PUE formula in the 2017 rate case was necessary to the court's judgment because the decision was part of the Commission's overall decision to approve Kentucky Power's proposed rates and terms of service as fair, just, and reasonable in the 2017 rate case order.[25]

The Commission found the current PUE formula to be fair, just, and reasonable in the 2017 rate case, and AG-KIUC now attempt to argue here that the current PUE formula is not, in fact, fair, just, or reasonable. AG-KIUC do not argue anything new in Section I of their brief that should not and could not have been argued when Kentucky Power proposed the current PUE formula in the 2017 rate case and the Commission approved it. AG-KIUC's failure to make these arguments in the 2017 rate case cannot be cured at this late juncture. The doctrine of res judicata, specifically of issue preclusion, clearly bars AG-KIUC from making these arguments now and they should be rejected.

B. AG-KIUC statements are inconsistent with the record supporting the Commission's approval of Kentucky Power's request to include startup costs in the peaking unit equivalent formula.

AG-KIUC allege that the Company failed to disclose that the startup cost adjustment would be added to the existing, hourly peaking unit equivalent costs calculation.[26] They further contend that Kentucky Power did not provide any supporting detail regarding the derivation of the amount of the startup cost adjustment until producing discovery responses in Case No. 2022-00036.[27] The record in Case No. 2017-00179 tells a different story.

[25] *See* 2017 Rate Case Order at 75, ordering paragraph 2 ("The provisions in the Settlement, as set forth in Appendix A to this Order, are approved, subject to the modifications and deletions set forth in this Order.").

[26] AG-KIUC Brief at 8.

[27] *Id.*

In Case No. 2017-00179, Kentucky Power described the PUE formula as an hourly calculation: "The hourly peaking unit equivalent cost calculation compares the hypothetical peaking unit to the Company's other generating units and uses the highest cost unit for the FAC Purchased Power Limitation calculation."[28] Company Witness Vaughan described how "[i]f the peaking unit equivalent is the highest cost unit in that hour, the FAC Purchased Power Limitation limits recovery to" the cost of PUE.[29] Company Witness Vaughan provided Exhibit AEV-8 to his testimony to show how the proposed adjustment to the PUE formula would vary across the year.[30] Exhibit AEV-8 was necessary because the proposed firm gas cost adjustments (which the Commission eventually rejected) varied throughout the year. It is illogical to conclude, as AG-KIUC appear to do[31], that because the Company included the proposed (and ultimately approved) $30/MWh price adjustment for startup costs in an exhibit demonstrating how the firm gas component of the proposed adjustment to the PUE formula would vary from month to month that it would not be applied in full in the existing hourly PUE formula.

Moreover, AG-KIUC's allegation that supporting detail for the $30/MWh startup cost adjustment to the PUE formula was not provided until a discovery response in Case No. 2022-00036 is incorrect. In response to Commission Staff's data request 1-73 in Case No. 2017-00179, the Company provided, as Attachment 78, the work papers supporting Exhibit AEV-8. These workpapers include tabs that show that the startup component of the proposed adjustment to the PUE formula were based on the real-world experience of an affiliate's Ceredo combustion turbine. Company Witness Vaughan described the use of the Ceredo Unit as follows:

[28] VAUGHAN 2017-00179 Testimony at 33, fn 10 (emphasis added).

[29] *Id.* at 33.

[30] Case No. 2017-00179, Exhibit AEV-8.

[31] AG-KIUC Brief at 6.

MR. GISH: Okay. And also you -- there was a lot of questions this morning about the Ceredo unit and what it means and whether or not this should be the Ceredo unit, the peaking unit equivalent. On the page, the third page of this exhibit[32], there's a summary of start-up costs from the Ceredo unit, do you see that?

MR. VAUGHAN: I do.

MR. GISH: And why did you use the Ceredo unit in this exhibit?

MR. VAUGHAN: Because you had to have some example to quantify the level of costs that you were proposing to add in to the calculation of the peaking unit equivalent.

MR. GISH: Okay. So if you had come in and told the commission, we want to add $30 in start-up costs with no support, would they had approved that?

MR. VAUGHAN: I don't know. I would expect not. Generally you have to have a basis for the amount of costs you're looking to include in something.

MR. GISH: And it says Ceredo right on this document, correct?

MR. VAUGHAN: It sure does.

MR. GISH: Right. And that was filed with the application?

MR. VAUGHAN: Yes.[33]

Contrary to the allegations of AG-KIUC, the record in Case No. 2017-00179 is clear. The Company proposed to add $30/MWh to the existing hourly PUE formula to account for startup costs and provided support for the derivation of the proposed startup costs. Based on the evidence provided, the Commission concluded that the inclusion of startup costs to the hourly PUE formula was reasonable.

As stated in the previous section, if the AG or KIUC took issue with the addition of fixed startup costs to the PUE formula, they should have made those arguments in Case No. 2017-00179. They are estopped from doing so now.

[32] This exhibit is Kentucky Power Hearing Exhibit 1 which was Attachment 78 to the Company's response to Commission Staff data request 1-73 in Case No. 2017-00179. *See* Hearing Transcript at 286.

[33] Hearing Transcript at 288.

C. AG-KIUC's proposal to retroactively alter the Commission-approved PUE formula methodology would actually incentivize the Company to make generation decisions harmful to customers.

Assuming, *arguendo*, that AG-KIUC's claims to retroactively modify the current, Commission-approved PUE formula were not barred by Commission precedent, the filed rate doctrine, the rule against retroactive ratemaking, or res judicata (or issue preclusion), the specific modifications for which AG-KIUC advocate here are also inappropriate and would actually result in harm to customers.

Specifically, AG-KIUC assert, without evidence, that the Commission-approved PUE formula, which includes the startup costs approved over six years ago, incentivizes Kentucky Power to serve its native load using PJM market purchases and not Company owned generation units.[34] This simply not correct. The performance of Kentucky Power's generating units is determined by their economics and by their maintenance schedules, not by the recoverability of purchased power costs as economy purchases. Kentucky Power describes the proper operation of its generating units during the Review Period in detail in its Initial Post-Hearing Brief and refers the Commission to that discussion.[35]

More importantly, AG-KIUC's proposed changes to the Commission-approved PUE formula could have significant negative impacts on customers. In a situation where it is more economic for the Company to purchase power from the PJM market than to produce it using from its owned generating sources, the AG-KIUC proposal to incorporate a 100 MW cap on purchases would make all of the purchases in excess of 100 MW non-economy purchases, not recoverable through the FAC.[36] AG-KIUC's proposal presents the Company with a dilemma: provide

[34] AG-KIUC Brief at 16.

[35] Kentucky Power Initial Post-Hearing Brief at 22-25.

[36] Vaughan Rebuttal Testimony at R15.

customers with lowest reasonable costs energy or prudently manage its finances.[37] The AG-KIUC proposal would instead incent the Company to produce more internal generation regardless of economics and costs to customers to avoid being denied timely and necessary recovery of purchased power costs.[38] AG-KIUC's proposed changes to the Commission-approved PUE formula could harm customers and should be rejected.

D. All charges calculated in conformity with the current Commission-approved PUE formula during the Review Period were recoverable through the FAC.

AG-KIUC attempt to unfairly, or even incorrectly, characterize whether the economy purchases made during the Review Period are actually recoverable. For example, AG-KIUC state in their brief that, "The Company asserts that 98.1% of its $238.7 million energy purchases were "economy" and therefore fully recoverable in the FAC."[39] The Company did not "assert" this—rather, it is a fact that those purchases were economy purchases and were fully recoverable through the FAC under the current Commission-approved PUE formula.[40]

Further, "non-economy" is not synonymous with unreasonable or imprudent. Throughout their brief, AG-KIUC allude to or explain in such a way as to imply that the term "non-economy purchase" is synonymous with a purchase that is not prudently incurred or otherwise is not recoverable.[41] This is not the case. Non-economy purchases are, "purchases made to serve native load that have an energy cost greater than the avoided variable cost of the utility's highest cost

[37] *Id.*

[38] *Id.*

[39] AG-KIUC Brief at 1 (emphasis added).

[40] Similarly, there are no grounds for a refund as proposed by AG-KIUC in Section II of their brief. There is no evidence in the record that Kentucky Power failed to properly implement the Commission-approved PUE formula in determining whether power purchases were recoverable under the FAC as economy purchases.

[41] *See e.g.* AG-KIUC Brief at Section IV.

generating unit available to serve native load during that FAC expense month."[42] Non-economy power purchases are simply not automatically recoverable through the fuel adjustment clause. Non-economy purchases are still eligible for recovery, however, they must pass a prudency review prior to being recovered from customers.[43] Conversely, economy purchases that are automatically recovered through the fuel adjustment clause each month are reviewed retroactively in six-month and two-year review cases opened by the Commission pursuant to the Commission's regulations.

E. Any modifications to the PUE formula may only be prospective and should be made after a full review in a base rate case.

Because AG-KIUC's proposals to modify the PUE formula in this case are barred by Commission precedent, the filed rate doctrine, the rule against retroactive ratemaking, and res judicata (issue preclusion), any modifications to the currently-approved PUE formula, if appropriate, must be made only on a prospective basis.

Moreover, any prospective changes to the PUE formula should only be made after a full and fair review of any proposed prospective changes in a base rate proceeding. A FAC review case is not the appropriate venue to review or approve changes to the PUE formula because any such changes would also affect the Company's base rates. Indeed, the Company proposed modifications to the PUE formula that resulted in the currently-approved PUE formula in its 2017 rate case. Specifically, changing the PUE formula and modifying how economy and non-economy purchases are determined does not change whether non-economy purchases are recoverable; it

[42] Order at 6, *East Kentucky Power Cooperative's Request for a Declaratory Ruling on the Application Of Administrative Regulation 807 KAR 5:056 to Its Proposed Treatment of Non-Economy Energy Purchases,* Case No. 2004-00430 (Ky. P.S.C. Mar. 21, 2005).

[43] *See* Order at 7, *In the Matter of: Electronic Investigation of the Fuel Adjustment Clause Regulation 807 KAR 5:056, Purchased Power Costs, and Related Cost Recovery Mechanisms*, Case No. 2022-00190 (Ky. P.S.C. Nov. 2, 2022) ("Costs for non-economy energy purchases that are not recoverable through an electric utility's FAC are considered "non-FAC expenses" and, if reasonably incurred, are otherwise eligible for recovery through base rates.") (emphasis original).

merely changes the amount of purchases that may be recovered through the FAC. Thus, for example, if more purchases are excluded from FAC recovery, then the amount of purchases included in base rates must likewise be examined and adjusted. Such analysis can and should only be performed in the context of a base rate proceeding, where the Company's cost of service and rates can be examined holistically. Notwithstanding, the appropriate analysis also has not been performed in this case, and any prospective modifications to the PUE formula, and any resulting effects on the Company's base rates, made in this proceeding would neither be appropriate nor supported by substantial evidence of record. For these reasons, the Commission should decline to make any modifications to the currently-approved PUE formula and should instead reserve the issue, if it finds modification warranted, for the Company's next base rate proceeding.

F. The Company does not advocate in this case to eliminate the PUE.

AG-KIUC assert: "The Company advocates for an approach under which all of its PJM energy purchases would automatically be recoverable through the FAC. This recommendation is contrary to both 807 KAR 5:056 and Commission precedent."[44] The Company has not and does not advocate in this proceeding to eliminate the PUE to determine economy and non-economy purchases. The Company merely pointed out that an arbitrary price limiter like the PUE may be inappropriate for a utility in an RTO that employs economic dispatch principles.[45] In fact, Company Witness Vaughan clarified this during the evidentiary hearing:

> MR. MICHAEL WEST: So the concept that does not make sense, is that the PUE in general?
>
> MR. VAUGHAN: Yes, because if you look at the administrative regulations that discuss this, it says all -- all purchases based on economic dispatch are FAC includable. Every purchase the Company makes from PJM is based on its hourly security-constrained economic dispatch solution. Again, when -- when this was originally instituted, Kentucky

[44] AG-KIUC Brief at 19.

[45] Vaughan Rebuttal Testimony at R12.

> Power is part of its own -- part of the AEP control area. It wasn't in an RTO. It was more similarly situated to what LG&E is now, where you're not part of a regional energy market.
>
> MR. MICHAEL WEST: So are you -- are you or Kentucky Power suggesting that the Commission should scrap the PUE since it's -- it doesn't make sense?
>
> MR. VAUGHAN: Not as we sit here today, but perhaps, like I've said, in a next base case -- rate case where all things can be considered prospectively, perhaps we will.[46]

Kentucky Power also pointed out in its Initial Post-Hearing Brief that the FAC regulation, 807 KAR 5:056, Section 1(3)(c), 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, if the energy is purchased on an economic dispatch basis."[47] Thus, 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.[48] While the Company does not advocate for changes consistent with these observations in this case, this concept also could be fully examined in a future proceeding like a base rate case.

[46] Hearing Testimony at 34.

[47] *See* Kentucky Power's Initial Post-Hearing Brief at 13, Section IV.B.1.a.

[48] *Id.*

IV. CONCLUSION

For the reasons stated herein and in the Company's Initial Post-Hearing Brief, 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 formula; and

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

Respectfully submitted,

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