

**Virginia State Corporation Commission
eFiling CASE Document Cover Sheet**

21084003

Case Number (if already assigned)	PUR-2021-00171
Case Name (if known)	Kentucky Utilities Company d/b/a/ Old Dominion Power Company For an Adjustment of Electric Base Rates
Document Type	APLA
Document Description Summary	Filing Letter, Application, Table of Contents, Motion for Protective Ruling
Total Number of Pages	37
Submission ID	22684
eFiling Date Stamp	8/31/2021 4:24:40PM



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August 31, 2021

VIA ELECTRONIC FILING

The Honorable Bernard J. Logan
Clerk, Virginia State Corporation Commission
Document Control Center
1300 East Main Street
Tyler Building - 1st Floor
Richmond, VA 23219

**RE: Kentucky Utilities Company d/b/a Old Dominion Power Company's
Application for Authority to Adjust Rates
Case No. PUR-2021-00171**

Dear Mr. Logan:

On behalf of Kentucky Utilities Company d/b/a Old Dominion Power Company ("KU-ODP" or "Company"), by counsel, please find enclosed and accept for filing its Application for an adjustment of electric base rates. Pursuant to the applicable sections of Chapter 10 of Title 56 of the Code of Virginia, and the Virginia State Corporation Commission's *Rules Governing Utility Rate Applications and Annual Information Filings* ("Rate Case Rules"), 20 VAC 5-204-10 *et seq.*, the Application seeks authority to increase the Company's electric base rates. Written direct testimony of ten witnesses on behalf of the Company and the schedules required by the Rate Case Rules are included with the Application.

Pursuant to the State Corporation Commission's current COVID-19 procedures, the application, supporting testimony and schedules required by the Rate Case Rules are being electronically filed with State Corporation Commission's Document Control Center.

KU-ODP is producing a searchable PDF version of the application and direct testimony electronically to the Divisions of Utility Accounting and Finance and Public Utility Regulation and the Division of Consumer Counsel of the Office of the Attorney General of Virginia on the application filing date under separate cover of this letter through counsel's HighQ document production platform.

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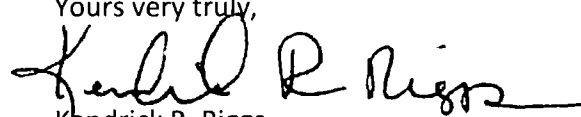
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KU-ODP is producing all schedules containing calculations derived from formulas to the Divisions of Utility Accounting and Finance and Public Utility Regulation in electronic spreadsheet format including all underlying formulas and assumptions on the application filing date. All schedules that do not contain calculations derived from formulas will be provided electronically to the Divisions of Utility Accounting and Finance and Public Utility Regulation in a searchable PDF version by September 14, 2021.

Under separate cover of this letter, Schedules 29 and 40 in electronic medium are being submitted to the Division of Utility Accounting and Finance by electronic mail. Also, under separate cover of this letter, Schedule 40 in electronic medium is being submitted to the Division of Public Utility Regulation by electronic mail.

A complete copy the Application in electronic medium is being submitted to the General Counsel for the Commission under separate cover of this letter by electronic mail.

Should you have any questions, please contact me at your convenience.

Yours very truly,

Kendrick R. Riggs

KRR:mew

cc: William H. Chambliss, General Counsel, Office of General Counsel
William F. Stephens, Director, Division of Public Utility Regulation
Kimberly B. Pate, Director, Division of Utility Accounting & Finance
C. Meade Browder, Jr., Sr. Asst. Attorney General, Office of the Attorney General, Division of Consumer Counsel

Robert M. Conroy, Vice President, State Regulation & Rates, LG&E and KU Services Company
Allyson K. Sturgeon, Managing Senior Counsel, Regulatory and Transactions, LG&E and KU Services Company

Application

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

KENTUCKY UTILITIES COMPANY)
D/B/A OLD DOMINION POWER COMPANY) CASE NO. PUR-2021-00171
For an Adjustment of Electric Base Rates)

KENTUCKY UTILITIES COMPANY
D/B/A OLD DOMINION POWER COMPANY'S
APPLICATION FOR AUTHORITY TO ADJUST RATES

Applicant, Kentucky Utilities Company ("KU") d/b/a Old Dominion Power Company ("KU-ODP" or "Company"), pursuant to the applicable sections of Chapter 10 of Title 56 of the Code of Virginia, and the Virginia State Corporation Commission's ("Commission") *Rate Case Rules*, Rule 20 VAC 5-204-10 *et seq.* ("*Rate Case Rules*"), hereby applies to the Commission for authority to adjust its electric base rates. In support of its Application, KU-ODP states as follows:

KU-ODP is a Virginia public service company under the laws of the Commonwealth of Virginia providing electric service in Dickenson, Lee, Russell, Scott, and Wise Counties, Virginia. KU-ODP's principal place of business is at 220 West Main Street, Louisville, Kentucky 40202, though it maintains business offices in Virginia at 1000 Park Avenue, NW, Norton, Virginia, and at 42311 E. Morgan Avenue, Pennington Gap, Virginia, as well.

On June 30, 2021, KU-ODP notified the Commission by letter of its intent to file this base rate application, pursuant to 20 VAC 5-204-10(A).

The Application and accompanying testimony and exhibits demonstrate the need for an increase in the Company's revenues, in the amount of \$12.2 million, which is a 18.1% increase in total operating revenues, including fuel. The revenue increase is derived from a twelve-month test period ended December 31, 2020, with pro forma adjustments that can reasonably be predicted to occur during the twelve-month period beginning June 1, 2022 through May 31, 2023.

The Company's proposed revenue requirement reflects an earned rate of return on rate base of 7.44%, based on a return on equity of 10.40% and an actual capital structure as of December 31, 2020. As shown in the Table 1 below, by the measures shown in Schedules 9, 11, 19, and 21 to this Application, KU-ODP's adjusted return on equity ("ROE") is now well below the lower end of the ROE range the Commission approved in the KU-ODP's last rate case (9.00% - 10.00%)¹ and KU-ODP's requested return on equity in this application, 10.40%.

Schedule	Return on Rate Base	Return on Common Equity
Schedule 9: Rate of Return Statement – Earnings Test – Per Books	5.48%	6.82%
Schedule 11: Rate of Return Statement – Earnings Test – Adjusted to a Regulatory Accounting Basis	5.65%	6.62%
Schedule 19: Rate of Return Statement – Per Books	5.42%	6.56%
Schedule 21: Rate of Return Statement – Reflecting Ratemaking Adjustments	4.28%	4.52%

Therefore, to have the opportunity to earn a just and reasonable rate of return on KU-ODP's rate base used to serve its Virginia customers, KU-ODP must now seek a revenue increase of \$12.2 million in the base rates as set out in this Application.

KU-ODP's need for a base rate increase at this time is caused by KU's continuous significant investments in facilities to provide safe, reliable access to low-cost energy in accordance with applicable environmental regulations. Since the conclusion of its last rate case,

¹ *Application of Kentucky Utilities Company d/b/a Old Dominion Power Company for an Adjustment of Electric Base Rates*, Case No. PUE-2019-00060, Final Order (Va. SCC April 4, 2020).

the Company has invested or projects to invest approximately \$1.18 billion of capital from October 1, 2020 through November 30, 2022. The Company also projects increases in depreciation and property tax expenses resulting from additional Plant in Service and the depreciation rates discussed in Mr. Garrett's testimony.

Pursuant to 20 VAC 5-204-10(B)(4), KU-ODP supports its request for a change in its existing rates and tariffs for electric service with the verified testimony and exhibits of the following persons:

Mr. Robert M. Conroy, Vice President of State Regulation and Rates. Mr. Conroy presents the reasons why KU-ODP is seeking a base rate increase. Also, Mr. Conroy summarizes the testimonies of KU-ODP's other witnesses, describes KU-ODP's continuing commitment to investing in Virginia, discusses a cost-support schedule he is sponsoring, provides an explanation for why certain schedules are not being produced in supporting KU-ODP's application, offers a summary of rate increases, and provides a recommendation to the Commission.

Mr. Lonnie E. Bellar, Chief Operating Officer. Mr. Bellar discusses the Company's safety culture and the recognitions the Company has received for outstanding safety performance over the past year. He also describes the status and performance of the Company's generation, transmission, distribution, and customer service operations. Mr. Bellar also outlines the major capital projects associated with these operations and reflected in the rate year, including the investments the Company is making to comply with environmental regulations. In addition, Mr. Bellar discusses existing programs to achieve improvements in efficiency and productivity for the Company's operations. Also, Mr.

Bellar describes the Company's planned Advanced Metering Infrastructure ("AMI") deployment and the benefits it will bring.

Ms. Eileen L. Saunders, Vice President, Customer Services. Ms. Saunders presents testimony concerning customer services operations, including customer service metrics and recognitions the Company has received. Ms. Saunders also addresses COVID-related matters and certain AMI-related matters, including how AMI will enhance customer service, the ownership and maintenance of AMI components, and an AMI transition plan that includes adequate customer education. Ms. Saunders also summarizes the capital investments customer services operations are making to enhance and facilitate the overall customer experience. Ms. Saunders also addresses the various ways KU-ODP assists its low- and fixed-income customers with their energy bills.

Mr. John Bevington, Director, Business and Economic Development. Mr. Bevington presents testimony that describes the Company's proposed demand-side management and energy efficiency ("DSM-EE") pilot program. In addition, Mr. Bevington provides perspective on significant changes in the energy industry, details KU-ODP's commitment to energy efficiency and reducing carbon emissions, and discusses economic development in KU-ODP's service territory.

Mr. Daniel K. Arbough, Treasurer. Mr. Arbough presents testimony supporting certain of KU-ODP's filing requirements, presenting KU's capital structure, describing KU's cost of debt, debt issuances since the last rate case and credit ratings. Mr. Arbough also supports and explains several of KU-ODP's adjustments for the rate year.

Mr. Adrien M. McKenzie, President, FINCAP, Inc. Mr. McKenzie's testimony presents the results of his analysis, which shows that the reasonable range of ROE for KU-

ODP's electric operations is 9.40% to 10.80%. Mr. McKenzie's testimony also presents his recommendation that the Commission adopt a 10.40% allowed ROE for KU-ODP's electric operations.

Mr. Christopher M. Garrett, Controller. Mr. Garrett presents testimony on certain pro forma adjustments to KU-ODP's operating income for the twelve months ended December 31, 2020, demonstrating that those adjustments can reasonably be predicted to occur during the rate year. Mr. Garrett also presents testimony on a number of Schedules required by the Rules Governing Utility Rate Applications and Annual Informational Filings in Chapter 204 in Title 20 of the Virginia Administrative Code, which support KU-ODP's application. Mr. Garrett also addresses the Company's depreciation rates and sponsors the Company's depreciation study.

Mr. Patrick L. Baryenbruch, Baryenbruch & Company, LLC. Mr. Baryenbruch provides testimony demonstrating that the cost of services provided by PPL Corporation's service companies and affiliates, Louisville Gas and Electric ("LG&E"), and LG&E and KU Services Company to KU-ODP during the test period were reasonable.

Ms. Andrea M. Fackler, Manager, Revenue Requirement / Cost of Service. Ms. Fackler presents testimony sponsoring KU-ODP's jurisdictional separation study, sponsoring Schedule 40 (the jurisdictionally assigned class cost of service study based on KU-ODP's embedded cost of providing electric service for the 12 months ended December 31, 2020), describing the proposed allocation of the revenue increases for KU-ODP based on the cost of service study, sponsoring various schedules in support of KU-ODP's application, supporting various adjustments in Schedules 16 and 25, and addressing KU-ODP's update to its cash working capital and lead-lag study.

Mr. Michael E. Hornung, Manager, Pricing/Tariffs. Mr. Hornung sponsors Schedule 41, Proposed Rates and Tariffs, presents testimony concerning KU-ODP's proposed tariff changes, and provides an update on the transition of certain Company customers who are grandfathered under certain rate schedules.

Supporting Schedules

1. KU-ODP has filed a return-on-rate-base rate application in this proceeding because Va. Code § 56-580(G) states, “[T]he utility’s rates shall be . . . (ii) determined thereafter by the Commission on the basis of such utility’s prudently incurred costs pursuant to Chapter 10 (§ 56-232 *et seq.*) of this title.” Chapter 10 includes Virginia Code § 56-235.2(A), which states, “Any rate, toll, charge or schedule of any public utility operating in this Commonwealth shall be considered to be just and reasonable only if: (1) the public utility has demonstrated that such rates, tolls, charges or schedules in the aggregate provide . . . a fair return on the public utility’s rate base used to serve those jurisdictional customers” Therefore, KU-ODP’s rates can be “just and reasonable” only if they provide a “fair return” on its rate base. For that reason, KU-ODP has filed a return-on-rate-base rate application in this proceeding.

2. KU-ODP is not required to file a type of base rate application other than a return-on-rate-base application because, pursuant to Va. Code §56-580(G), KU-ODP is not subject to Va. Code Chapter 56, the *Virginia Electric Utility Restructuring Act* (“VEURA”):

The applicability of all provisions of this chapter except § 56-594 to any investor-owned incumbent electric utility supplying electric service to retail customers on January 1, 2003, whose service territory assigned to it by the Commission is located entirely within *Dickenson, Lee, Russell, Scott, and Wise Counties* shall be suspended effective July 1, 2003, so long as such utility does not provide retail electric services in any other service territory in any jurisdiction to customers who have the right to receive retail electric energy from another supplier. During any such suspension period, the utility's rates shall be (i) its capped rates established pursuant to § 56-582 for the duration of the capped rate period established

thereunder, and (ii) determined thereafter by the Commission on the basis of such utility's prudently incurred costs pursuant to Chapter 10 (§ 56-232 *et seq.*) of this title. (Emphasis added).

KU-ODP has neither expanded its Virginia service territory beyond the counties set forth in the subsection above, nor has it in any other way engaged in electric competition in Virginia, the establishment of which was the overarching purpose of the VEURA. Because other rate-making provisions of the VEURA do not apply to KU-ODP, it has filed a return-on-rate-base rate application in this proceeding pursuant to Va. Code § 56-580(G) and § 56-235.2(A) in Chapter 10 of Title 56 of the Code of Virginia.

As applicable to an exempt public service company under Va. Code § 56-580(G), KU-ODP's 2021 base rate Application is being filed pursuant to Chapter 10 of Title 56 of the Code of Virginia and Rules 10 and 20, 20 VAC 5-204-10 and -20, of the Commission's *Rate Case Rules*, as revised in Case No. PUR-2020-00022 and made effective January 1, 2021. The Application includes the Schedules 1-49 as prescribed in those *Rate Case Rules*, subject to the following exceptions: (1) because KU-ODP is exempt from Va. Code § 56-585.1, KU-ODP is not filing Schedules 10, 13, 20, 23, 33, and 44-47; and (2) because KU-ODP's Application is not being made pursuant to Va. Code § 56-602, it is exempt from filing Schedule 48.

KU-ODP is electronically filing its Schedules (as described above) with the Commission's Document Control Center. Schedules 29 and 40 in electronic medium were submitted to the Commission's Division of Utility Accounting and Finance by electronic mail, and Schedule 40 in electronic medium was submitted to the Division of Public Utility Regulation by electronic mail. *See* 20 VAC 5-204-10(I).

Information that does not pertain to KU-ODP and is otherwise not responsive has been redacted from certain workpapers in Schedule 29, which workpapers support Adjustments AG-14 and ORB-46.

Accounting and Finance and Public Utility Regulation in a searchable PDF version by September 14, 2021 in conformity with Rule 10(H).

Also included with and following this Application, pursuant to 5 VAC 5-204-10, is a table of contents of KU-ODP's 2021 Rate Case Filing, including exhibits and Schedules segregated by volume. In addition, electronic versions of this filing will be made available on the Company's corporate website.

Copies of all orders, pleadings, and other communications related to this proceeding should be directed to:

Robert M. Conroy
Vice President, State Regulation and Rates
LG&E and KU Services Company
220 West Main Street
Louisville, Kentucky 40202

Allyson K. Sturgeon
Managing Senior Counsel, Regulatory and Transactions
Sara V. Judd
Senior Corporate Attorney
LG&E and KU Services Company
220 West Main Street
Louisville, Kentucky 40202

Kendrick R. Riggs (VSB No. 32247)
Stoll Keenon Ogden PLLC
500 West Jefferson Street, Suite 2000
Louisville, Kentucky 40202-2828

Advanced Metering Infrastructure

KU-ODP is planning to deploy Advanced Metering Infrastructure ("AMI") in its Virginia service territory. As further described in Mr. Conroy's testimony, the Company's planned AMI deployment is an "ordinary extension[] or improvement[] in the usual course of business" under Va. Code § 56-265.2(A)(1) and therefore does not require a certificate of public convenience and necessity. KU-ODP respectfully requests the Commission issue a declaratory order that a

certificate of public convenience and necessity is not required under Virginia law for the Company's planned AMI project. If the Commission disagrees and believes a certificate is required, the Company respectfully requests the Commission grant a certificate of public convenience and necessity for the AMI deployment.

Pilot DSM Program

KU-ODP is proposing a pilot DSM program in this case to comply with the requirements of Va. Code § 56-596.2, *Energy efficiency programs; financial assistance for low-income customers*. The application of Va. Code § 56-596.2 to KU-ODP is not clear and is in some instances ambiguous. To resolve this ambiguity and comply with the statute, KU-ODP is proposing a pilot DSM program. If approved by the Commission in this case, KU-ODP will proceed with the evaluation and design of DSM programs and then request implementation of the programs and a cost-recovery rider in a separate filing. The implementation filing will include the proposed programs, the evaluation of their cost-effectiveness, the cost of the proposed programs to be recovered in the rider, and the implementation and billing of the rider. The pilot DSM program is described in further detail in the direct testimony of Mr. Bevington and the direct testimony of Mr. Hornung includes an illustrative tariff.

Va. Code § 56-596.2 requires certain utilities to develop and implement energy efficiency programs. The statute is located in Title 56, Chapter 23, the Virginia Electric Utility Regulation Act ("VEURA"). With limited exceptions, KU-ODP is expressly exempt from the requirements of VEURA pursuant to Va. Code § 56.580(G). As further described in Mr. Conroy's direct testimony, the Commission has recognized this exemption in every KU-ODP rate case filed since

2009² and has consistently used the authority in Chapter 10 to regulate KU-ODP's rates for decades.

Because KU-ODP is expressly exempt from the requirements of VEURA pursuant to Va. Code § 56.580(G), KU-ODP is not a "Phase I Utility" or "Phase II Utility" under VEURA.

When Va. Code § 56-596.2 was originally enacted in 2018, it did not apply to KU-ODP because KU-ODP was exempted from the requirements of VEURA. As part of the Virginia Clean Economy Act, the Virginia General Assembly added the statement "Notwithstanding subsection G of 56-580, or any other provision of law, each incumbent investor-owned electric utility shall" to the beginning of the statute. However, because the majority of the statute still provides directives only to Phase I and Phase II Utilities, only two specific portions of the statute clearly apply to KU-ODP.

Further, Section B of Va. Code § 56-596.2 provides that energy efficiency programs shall be implemented to achieve certain total annual energy savings. For calendar years 2022 through 2024, the statute provides energy saving targets only for Phase I and Phase II Utilities, but not for KU-ODP. As a result, the Company is proposing, as part of the proposed pilot program, to reduce

² *Application of Kentucky Utilities Company d/b/a Old Dominion Power Company For an adjustment of electric base rates*, Case No. PUR-2019-00060 (Va. SCC filed July 12, 2019); *Application of Kentucky Utilities Company d/b/a Old Dominion Power Company For an adjustment of electric base rates*, Case No. PUR-2017-00106 (Va. SCC filed Sept. 29, 2017); *Application of Kentucky Utilities Company d/b/a Old Dominion Power Company For an adjustment of electric base rates*, Case No. PUR-2015-00063 (Va. SCC filed June 30, 2015); *Application of Kentucky Utilities Company d/b/a Old Dominion Power Company For an adjustment of electric base rates*, Case No. PUE-2013-00013 (Va. SCC filed Apr. 1, 2013); *Application of Kentucky Utilities Company d/b/a Old Dominion Power Company For an adjustment of electric base rates*, Case No. PUE-2011-00013 (Va. SCC filed Apr. 1, 2011); *Application of Kentucky Utilities Company d/b/a Old Dominion Power Company For an adjustment of electric base rates*, Case No. PUE-2009-00029 (Va. SCC filed June 3, 2009).

its average annual energy jurisdictional retail sales by 0.02 percent beginning in 2024. The target for energy savings is described further in Mr. Bevington's direct testimony.

Section C of Va. Code § 56-596.2 also does not apply to KU-ODP. It sets minimum projected costs for energy efficiency programs for Phase I and Phase II Utilities and details a stakeholder process to be funded pursuant to Va. Code § 56-592.1, a VEURA section to which KU-ODP is not subject.

KU-ODP respectfully requests the Commission approve the proposed pilot DSM program. And because of the ambiguity in Va. Code § 56-596.2, KU-ODP respectfully requests the Commission issue a declaratory order finding that KU-ODP's proposed DSM pilot program satisfies KU-ODP's requirement under Va. Code § 56-596.2.

WHEREFORE, Kentucky Utilities Company d/b/a Old Dominion Power Company respectfully requests that the Virginia State Corporation Commission:

1. As provided by Virginia Code Section 12.1-31 and 5 VAC 5-20-120, *Procedure before Hearing Examiners*, of the Commission's Rules of Practice and Procedure,³ appoint a Hearing Examiner to conduct all further proceedings in this matter on behalf of the Commission, including filing a final report;
2. Schedule public hearings that permit remote attendance by the public;
3. Issue a declaratory order that a certificate of public convenience and necessity is not required under Virginia law for the Company's planned AMI project because it is an ordinary extension or improvement in the usual course of business;
4. To the extent any Commission regulations exist requiring items obviated by the deployment of smart meters, the Company requests an exemption or deviation from the same;

³ 5 VAC 5-20-10 *et seq.*

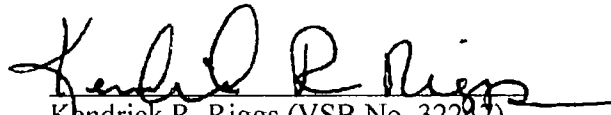
5. Approve KU-ODP's proposed DSM pilot program and issue a declaratory order finding that it satisfies KU-ODP's requirements under Va. Code § 56-596.2;

6. After an investigation and hearing, by a final order approve the base rate, terms and conditions, and miscellaneous changes requested in this Application for service on and after June 1, 2022; and

7. Grant all other relief to which KU-ODP may be entitled.

Dated: August 31, 2021

Respectfully submitted,



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*Counsel for Kentucky Utilities Company
d/b/a Old Dominion Power Company*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Application and the testimony and schedules referenced therein was produced in electronic medium on August 31, 2021 to the following persons:

Kimberly B. Pate
Director, Division of Utility Accounting & Finance
Virginia State Corporation Commission
P.O. Box 1197
Richmond, VA 23218

William H. Chambliss
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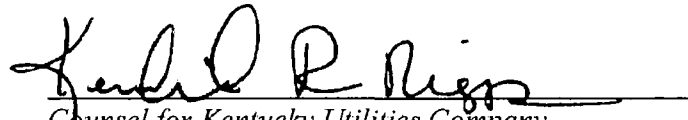

*Counsel for Kentucky Utilities Company
d/b/a Old Dominion Power Company*

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Case No. PUR-2021-00171**

210840017

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**Kentucky Utilities Company d/b/a Old Dominion Power Company
Case No. PUR-2021-00171**

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Motion for Protective Ruling

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

KENTUCKY UTILITIES COMPANY)
D/B/A OLD DOMINION POWER COMPANY) CASE NO. PUR-2021-00171
For an Adjustment of Electric Base Rates)

MOTION OF KENTUCKY UTILITIES COMPANY
D/B/A OLD DOMINION POWER COMPANY
FOR ENTRY OF A PROTECTIVE RULING

Kentucky Utilities Company (“KU”) d/b/a Old Dominion Power Company (“KU-ODP” or “Company”), by counsel, hereby moves the Virginia State Corporation Commission (“Commission”) for Entry of a Protective Ruling (“Motion”) pursuant to Rules 110 and 170 of the Commission’s Rules of Practice and Procedure (“Procedural Rules”), 5 VAC 5-20-110 and 5 VAC 5-20-170. In support of the Motion, KU-ODP states as follows:

1. On August 31, 2021, KU-ODP filed its application for an adjustment of its electric base rates (“Application”).
2. Rule 170 of the Procedural Rules authorizes the Commission or Hearing Examiner to issue an appropriate protective order or ruling establishing procedures applicable to the use of confidential information, in a proceeding.
3. Exhibit LEB-2 and Exhibit LEB-5 to Mr. Lonnie E. Bellar’s Direct Testimony include confidential commercial information. Exhibit LEB-2 includes future sales prices and future fuel prices as part of the Company’s Analysis of Generating Unit Retirement Years. Information regarding projected sales prices and fuel prices is confidential information, the public disclosure of which would provide the Company’s competitors a commercial advantage in the wholesale market. Further, public disclosure of the information would provide a commercial

advantage to the Company's retail and wholesale customers when negotiating power requirement contracts.

4. Exhibit LEB-5 contains proprietary meter data that the Company obtained through a request for information ("RFI") to meter vendors regarding the future availability and pricing for various meter types. Public disclosure of the confidential portions of Exhibit LEB-5 will adversely affect KU in several respects. It will violate the Company's contractual obligation to refrain from disclosing to the public the proprietary information received from certain meter vendors. Public disclosure is likely to reduce the willingness of other meter vendors and similar entities to contract or otherwise transact business with the Company in the future. Public disclosure of meter pricing information and assumptions used in the meter life studies will also place the Company at a considerable disadvantage when negotiating future contracts. Public disclosure of information contained in the responses to the RFI will prejudice bidding meter vendors by allowing their competitors access to sensitive operational information concerning their products.

5. Additionally, Commission Staff and other parties may request KU-ODP through interrogatories or requests for production of documents to produce confidential information during the course of this proceeding. KU-ODP or other parties may file additional confidential information with the Commission under seal as part of this proceeding. To facilitate the handling of confidential or proprietary information and documents, and to ensure that discovery proceeds smoothly, KU-ODP requests that the Commission enter a Protective Ruling setting forth the

procedures by which such information shall be handled in this proceeding. A proposed form of Protective Ruling is set forth in Attachment 1 to this Motion.

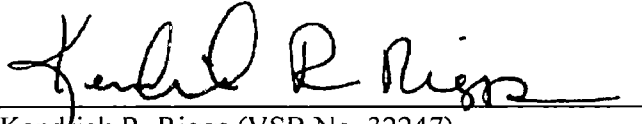
6. The proposed Protective Ruling set forth in Attachment 1 is substantially similar to the recent Protective Ruling issued by the Hearing Examiner in Case No. PUR-2019-00060.¹

WHEREFORE, Kentucky Utilities Company d/b/a Old Dominion Power Company respectfully requests that the Commission grant its *Motion for Entry of a Protective Ruling* by issuing a Protective Ruling as set forth in Attachment 1 to this Motion, including Attachment A thereto, for use in this proceeding.

¹ *Application of Kentucky Utilities Company d/b/a Old Dominion Power Company For an adjustment of electric base rates*, Case No. PUR-2019-00060, Hearing Examiner's Protective Ruling (Va. SCC Oct. 10, 2019).

Dated: August 31, 2021

Respectfully submitted,



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COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

KENTUCKY UTILITIES COMPANY)
D/B/A OLD DOMINION POWER COMPANY) CASE NO. PUR-2021-00171
For an Adjustment of Electric Base Rates)

PROTECTIVE RULING

On August 31, 2021, Kentucky Utilities Company (“KU”) d/b/a Old Dominion Power Company (“KU-ODP” or “Company”) filed its application for an adjustment of its electric base rates (“Application”). On the same day, the Company filed a Motion for Entry of Protective Ruling (“Motion”) along with a proposed protective ruling (“Proposed Protective Ruling”) setting forth the procedures by which confidential or proprietary information and documents shall be handled generally in this proceeding. In its Motion, the Company indicated that the Proposed Protective Ruling is substantially similar to the Protective Ruling issued by the Hearing Examiner in Case No. PUR-2019-00060 on October 10, 2019.²

UPON CONSIDERATION of KU-ODP’s Motion and the Commission’s Rules of Practice and Procedure,³ the Commission finds that, to facilitate the filing and exchange of confidential information, and to permit the development of all issues in this proceeding, the Company’s Motion should be granted and a Protective Ruling should be entered. The Protective Ruling herein adopts the substantive provisions of the Proposed Protective Ruling submitted by the Company. Accordingly,

IT IS DIRECTED THAT the following procedures shall be established for the filing, exchange, and handling of confidential information and documents in this case:

² Motion at Paragraph 4.

³ 5 VAC 5-20-10 *et seq.*

(1) Any documents, materials and information to be filed with or delivered to the Commission or produced by any party to Staff or another party, including transcripts, which the producing party designates and clearly marks as confidential or as containing trade secrets, privileged, or confidential commercial or financial information (“Confidential Information”), shall be filed, produced, examined, and used only in accordance with the conditions set forth below. Information that is available to the public anywhere else will not be granted confidential treatment and shall not be designated as “Confidential Information” by any party.

(2) Parties shall clearly mark and file under seal with, or deliver to, the Commission all information otherwise required to be filed or delivered but considered by the party to be Confidential Information. Items filed or delivered under seal shall be securely sealed in an opaque container that is clearly labeled “UNDER SEAL” or produced in electronic medium through a secured file transfer platform with files clearly labeled “UNDER SEAL” and, if filed, shall meet the other requirements for filing contained in the Commission’s Rules.

(3) Parties shall also file with, or deliver to, the Commission an original and one (1) copy of an expurgated or redacted version of all such documents containing Confidential Information for use and review by the public in paper medium or through a secured file transfer platform in electronic medium. On every document filed or delivered under seal as containing some Confidential Information, the producing party shall mark each individual page of the document that contains such Confidential Information, and shall clearly indicate the specific information requested to be treated as confidential by the use of highlighting, underscoring, bracketing, or other appropriate marking. All remaining materials on each page of the document shall be treated as non-confidential and available for public use and review, as well as introduction at any hearing without regard to the remaining procedures established by this Protective Ruling. If

an entire document is confidential, a marking prominently displayed on the first page of such document, or at the beginning of any information provided in electronic format, indicating that the entire document is confidential, shall suffice.

(4) If information that is requested pursuant to a discovery request in this proceeding is considered by the producing party to be Confidential Information, the producing party shall clearly mark all Confidential Information produced to Staff or other individuals authorized under this Protective Ruling to receive Confidential Information.

(5) Confidential Information from this proceeding that is retained by an attorney pursuant to Paragraph (17)(a), below, is not precluded from use in a subsequent Commission proceeding (if otherwise relevant and admissible), but shall remain subject to this Protective Ruling and any future order or ruling related thereto. Otherwise, all Confidential Information filed or produced by a party shall be used solely for the purpose of this proceeding (including any appeals).

(6) Access to Confidential Information shall be provided and specifically limited to Staff and any party, its counsel and expert witnesses, and to support personnel working on this case or a future case, subject to the conditions in Paragraphs (5), (17)(a), and (17)(b), under the supervision of said counsel or expert witnesses and to whom it is necessary that the Confidential Information be shown for the purpose of this or a future proceeding, provided each such person granted access has previously executed an Agreement to Adhere to Protective Ruling ("Agreement"), which is set forth as Attachment A to this Protective Ruling. Staff and Staff counsel are not required to sign the Agreement, but are hereby ordered to preserve the confidentiality of the Confidential Information. All Agreements shall be promptly forwarded to the producing party and Staff counsel, and filed with the Clerk of the Commission upon execution.

(7) Staff or any party to the proceeding may challenge the confidential designation of particular information by filing a motion promptly with the Commission. The Commission or Hearing Examiner will conduct an *in camera* review of the challenged documents, materials or information. Upon challenge, the information shall be treated as confidential pursuant to the Rules only where the party requesting confidential treatment can demonstrate to the satisfaction of the Commission that the risk of harm of publicly disclosing the information outweighs the presumption in favor of public disclosure. In no event shall any party disclose the Confidential Information it has received subject to this Protective Ruling absent a finding by the Commission or Hearing Examiner that such information does not require confidential treatment.

(a) Within five (5) business days of the filing of the motion, the party requesting confidential treatment shall file a response. The response shall respond to each and every document and all information that is subject to the party's motion. The response shall: (1) describe each document and all information, such description to include the character and contents of each document and all information to the extent reasonably possible without disclosing the Confidential Information; (2) explain in detail why the information requires confidential treatment; and (3) describe and explain in detail the anticipated harms that might be suffered as a result of the failure of the document to be treated as confidential.

(b) Within five (5) business days of the filing of the motion, Staff or any other party to the proceeding may file a response.

(c) Within three (3) business days of the filing of any response, the party objecting to confidential treatment, or Staff, if Staff is challenging confidentiality, may file a reply.

disclosure permission may file a motion with the Commission for such permission and shall bear the burden of proving the necessity for such disclosure.

(10) The producing party shall be under no obligation to furnish Confidential Information to persons other than those authorized to receive such information under Paragraph (6) above unless specifically ordered otherwise by the Commission or Hearing Examiner. Parties are encouraged to seek consent to disclose information or documents designated as confidential from the producing party to the maximum extent practicable before filing a motion pursuant to Paragraph (9) above.

(11) The Clerk of the Commission is directed to maintain under seal all documents, materials and information filed with the Commission in this proceeding that the producing party has designated as Confidential Information until further Order of the Commission or Hearing Examiner Ruling.

(12) A producing party is obligated to separate to the fullest extent practicable non-confidential documents, materials and information from Confidential Information and to provide the non-confidential documents, materials and information without restriction.

(13) To the extent that a party contends that the terms of this Protective Ruling do not provide sufficient protection to prevent harm to the producing party or to others, the party may request additional protection for extraordinarily sensitive information by filing a motion with the Commission, pursuant to 5 VAC 5-20-110 and 5 VAC 5-20-170. The moving party shall also file such extraordinarily sensitive information with the Clerk of the Commission under seal and deliver a copy of the information to Staff counsel under seal, pursuant to Paragraph (2) above. The producing party has the burden to demonstrate to the satisfaction of the Commission that this Protective Ruling does not provide the extraordinarily sensitive information sufficient protection and that the proposed restrictions are necessary.

(a) The motion shall: (1) describe each document and all information for which additional protection is sought, such description to include the character and contents of each document and all information to the extent reasonable possible without disclosing the Confidential Information; (2) explain in detail for each document and all information why the confidential treatment afforded under this Protective Ruling is not sufficient to protect the producing party's interests; (3) describe and explain in detail the anticipated harms that might be suffered if the information is not afforded the higher protection; and (4) explain its proposed additional restrictions and why such restrictions are the minimum necessary to protect that party.

(b) Within three (3) business days of the filing of the motion, Staff and any party may file a response to the motion.

(c) Within two (2) business days of the filing of any response, the producing party may file a reply.

(14) In the event the Staff or any other party seeks to use Confidential Information in filed pleadings, testimony, or other documents, Staff or the party seeking such introduction shall:

(a) file both confidential and non-confidential versions of the pleading, testimony, or other document. Confidential versions of the filed pleadings, testimony, or other documents shall clearly indicate the confidential material, including extraordinarily sensitive information, if any, contained within by highlighting, underscoring, bracketing, or other appropriate marking;

(b) submit the confidential version to the Clerk of the Commission securely sealed in an opaque container that is clearly labeled "UNDER SEAL." Non-confidential versions of filed pleadings, testimony, or other documents shall redact all references to the

Confidential Information. The filed pleadings, testimony, or other documents containing the Confidential Information shall be kept under seal unless and until the Commission rules to the contrary. Each party having signed Attachment A hereof, Staff, and each party to whom the Confidential Information belongs shall receive a copy of those parts of the filed pleadings, testimony, or other documents that contain references to or portions of the designated Confidential Information; provided, however, that a party shall not be entitled to receive an unredacted copy of filed pleadings, testimony, or other documents that include extraordinarily sensitive information for which additional protective treatment has been provided for by Order of the Commission or Hearing Examiner Ruling, unless such party otherwise has been provided access to such information contained in such filed pleadings, testimony, or other documents by such Order or Ruling. Each party having signed Attachment A hereof and Staff shall be bound by the Protective Ruling insofar as it restricts the use of and granting of access to the Confidential Information and by any such Order or Ruling providing additional protections for the extraordinarily sensitive information.

(15) Oral testimony regarding Confidential Information, if ruled admissible by the Commission, will be taken *in camera* and in the presence of only Staff and those other persons who have been granted access to such specific Confidential Information pursuant to this Protective Ruling. That portion of the transcript recording such testimony shall be placed in the record under seal.

(16) No person authorized under this Protective Ruling to have access to Confidential Information shall disseminate, communicate, or reveal any such Confidential Information to any person not specifically authorized under this Protective Ruling to have access to the same.

(17) (a) Attorneys may retain Confidential Information in their notes, other work product, and documents that are part of the record in this proceeding (including, but not limited to, transcripts, testimony exhibits, pleadings, rulings, and orders), provided that Confidential Information contained therein must continue to be treated as directed by this Protective Ruling.

(b) If not covered by (a), above, at the conclusion of this proceeding (including any appeals), any originals or reproductions of any Confidential Information produced pursuant to this Protective Ruling shall be returned to the producing party or destroyed. In addition, at such time, any notes, analysis, or other documents prepared containing Confidential Information shall be destroyed. At such time, any originals or reproductions of any Confidential Information, or any notes, analysis, or other documents prepared containing Confidential Information in Staff's possession, will be returned to the producing party, destroyed or kept with Staff's permanent work papers in a manner that will preserve the confidentiality of the Confidential Information. The producing party shall also retain all Confidential Information for a period of at least five (5) years after the conclusion of this proceeding (including any appeals). Insofar as the provisions of this Protective Ruling restrict the communications and use of the Confidential Information produced thereunder, such restrictions shall continue to be binding after the conclusion of this proceeding (including any appeals) as to the Confidential Information.

(18) Any party or person who obtains Confidential Information and thereafter fails to reasonably protect or misuses it in any way shall be subject to sanctions as the Commission may deem appropriate, including the penalties provided for in § 12.1-33 of the Code of Virginia. This provision is not intended to limit the producing party's rights to pursue any other legal or equitable remedies that may otherwise exist.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the State Corporation Commission c/o Document Control Center, 1300 East Main Street, First Floor, Tyler Building, Richmond, Virginia 23219.

21084906

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

KENTUCKY UTILITIES COMPANY)
D/B/A OLD DOMINION POWER COMPANY) CASE NO. PUR-2021-00171
For an Adjustment of Electric Base Rates)

**AGREEMENT TO ADHERE TO PROTECTIVE RULING
PROVIDING FOR CONFIDENTIAL TREATMENT**

I, _____, on behalf of and representing _____, hereby acknowledge having read and understood the terms of the Protective Ruling entered in this proceeding on _____, 2021, and agree to treat all Confidential Information that I receive in connection with Case No. PUR-2021-00171 as set forth in that Protective Ruling. Such treatment shall include, but not be limited to: (1) not disseminating, communicating, or revealing any Confidential Information to any person, other than Staff, not specifically authorized to receive Confidential Information under that Protective Ruling; (2) an attorney licensed to practice law in Virginia, admitted *pro hac vice* in this case, or employed as corporate counsel, returning or destroying all Confidential Information produced pursuant to that Protective Ruling except for the attorney's notes and work product, and documents that are part of the record in this proceeding (including, but not limited to, transcripts, testimony, exhibits, pleadings, rulings, and orders); and (3) if not covered by (2), above, returning or destroying all Confidential Information produced pursuant to that Protective Ruling.

Signature

Printed Name

On behalf of

Date

CERTIFICATE OF SERVICE

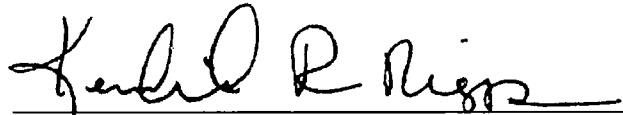
The undersigned hereby certifies that a true and correct copy of the foregoing Motion was produced in electronic medium on August 31, 2021 to the following persons:

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d/b/a Old Dominion Power Company*