

David S. Samford
Counsel
859.244.3230 (t)
859.231.0011 (f)
dsamford@fbtlaw.com

February 2, 2012

RECEIVED

FEB 02 2012

PUBLIC SERVICE
COMMISSION

VIA HAND-DELIVERY

Mr. Jeff Derouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, KY 40601

RE: *Bulldog's Enterprises, Inc. v. Duke Energy Kentucky, Inc.*
PSC Case No. 2010-00404

Dear Mr. Derouen:

Enclosed please find an original and ten (10) copies of the Respondent's Notice to Preserve Right to Hearing. Please file this document in the record and return a file-stamped copy to me.

Please do not hesitate to contact me if you have any questions.

Sincerely,



David S. Samford

Enclosures

LEXLibrary TMP.TMP 497947vv1

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BULLDOG'S ENTERPRISES, INC. D/B/A)	
BULLDOG'S ROAD HOUSE)	
)	
COMPLAINANT)	
)	CASE NO. 2010-00404
V.)	
)	
DUKE ENERGY KENTUCKY, INC.)	
)	
DEFENDANT)	

DUKE ENERGY KENTUCKY, INC.'S
NOTICE TO PRESERVE RIGHT TO HEARING

Comes now Duke Energy Kentucky, Inc. ("Duke Energy Kentucky"), by counsel, pursuant to the Commission's January 17, 2012 Order giving the Complainant, Bulldog's Enterprises, Inc. d/b/a Bulldog's Roadhouse ("Bulldog") ten days in which to tender responses to data requests and giving the parties until February 3, 2012 to request a hearing, respectfully stating as follows:

Bulldog has not provided responses to Duke Energy Kentucky's supplemental data requests, as required by the Commission's January 17, 2012 Order, and, as a result, Duke Energy Kentucky is still not in a position to request or waive a hearing in this matter on an informed basis. Out of an abundance of caution, and to prevent any future misunderstanding, Duke Energy Kentucky respectfully gives notice that it is expressly reserving its right to request a hearing if Bulldog ever complies with its discovery obligations and the Commission's Orders.

Duke Energy also gives notice that it supports the Commission's warning in its January 17, 2012 Order that dismissal with prejudice is warranted in light of the circumstances of this case.¹ Evidence in the record already demonstrates that Bulldog's burden of proof has not been satisfied. Despite having nearly a year and a half to do so, Bulldog has yet to offer anything beyond vague, inconsistent and self-serving recollections to support its claim that it was billed incorrectly. On the other hand, Duke Energy Kentucky has produced contemporaneous records that directly and reliably demonstrate that Bulldog's utility usage was consistent with the meter readings and significantly higher than that conceded by Bulldog herein.²

This 2nd day of February 2012.

Respectfully submitted,



Mark David Goss
David S. Samford
FROST BROWN TODD, LLC
250 W. Main Street, Suite 2800
Lexington, KY 40507-1749
(859) 231-0000
(859) 231-0011 (facsimile)

Counsel for Duke Energy Kentucky, Inc.

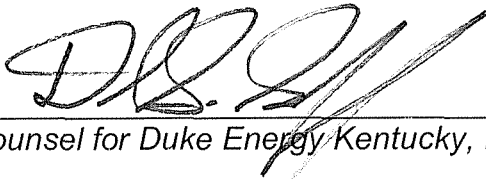
¹ Order, p. 3 (Jan. 17, 2012) ("For the ultimate time, the Commission places Bulldog on notice that its failure to abide by this Order, or any Commission Order, will constitute grounds for dismissal of the instant complaint with prejudice.").

² Duke Energy Kentucky Response to Complainant's First Request for Information, BDE-DR-01-013, p. 1 (July 15, 2011) ("On both visits, the energy audits found the meter at Complainant's service address consuming significant power consistent with the usage reported by the meter."); Duke Energy Kentucky Response to Complainant's First Request for Information, BDE-DR-01-014(d) attachment (July 15, 2011) (Email from Jack Ball, Duke Energy Electric Meter Ops - KY: "Customer load was even higher today than when I tested meter. For a place that's supposed to be closed, they had the ac cranking and over 200 amps of load on each phase.").

CERTIFICATE OF SERVICE

This will certify that a true and correct copy of the foregoing was served by depositing same in the custody and care of the U.S. Mail, postage prepaid, on this 2nd day of February 2012, addressed to the following:

Eric C. Deters
James Y. Moore
Charles T. Lester, Jr.
Eric Deters & Associates, P.S.C.
5247 Madison Pike
Independence, KY 41051



Counsel for Duke Energy Kentucky, Inc.