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March 9, 2012

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PUBLIC SERVICE  
COMMISSION

*VIA HAND-DELIVERY*

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

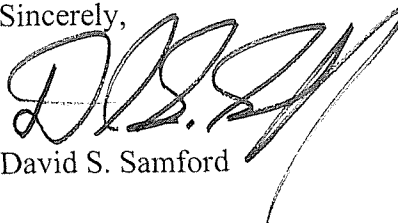
RE: *Bulldog's Enterprises, Inc. v. Duke Energy Kentucky, Inc.*  
PSC Case No. 2010-00404

Dear Mr. Derouen:

Enclosed please find an original and ten (10) copies of the Defendant's Notice of Waiver of 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

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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	)	

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DUKE ENERGY KENTUCKY, INC.'S  
NOTICE OF WAIVER OF HEARING

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Comes now Duke Energy Kentucky, Inc. ("Duke Energy Kentucky"), by counsel, and does hereby give notice of its waiver of a right to a hearing in the above-captioned proceeding as set forth more fully herein, respectfully stating as follows:

Bulldog's Enterprises, Inc. d/b/a Bulldog's Road House ("Bulldog") filed its Complaint on October 15, 2010, but has failed to produce any probative evidence to sustain its allegations in the intervening seventeen months. To the contrary, the record offers substantial and persuasive evidence demonstrating that the Complaint lacks merit and should be dismissed with prejudice. To wit, the record demonstrates:

1) Bulldog has purposefully sought to shield itself from potential creditors, including Duke Energy Kentucky, from the time it first operated a restaurant business.<sup>1</sup>

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<sup>1</sup> See Duke Energy Kentucky's Response to Bulldog's First Request for Information, BDE-DR-01-002(q) (filed July 15, 2011) ("Also, Bulldog Enterprises doesn't own the building. My trust does. Bulldog Enterprises is judgment proof. I'm not dropping the PSC complaint."); Bulldog's Response to Duke Energy

2) The billing records reflect that Bulldog's overall usage of electric and gas in the disputed months of June and July 2010 was in fact substantially lower than the corresponding period in previous years,<sup>2</sup> Bulldog's protests about improper metering notwithstanding.

3) Rate increases that took effect in the latter half of 2009 and early 2010 would have partially offset the savings from lower usage that Bulldog might have anticipated during the two months in question, when compared to previous years.<sup>3</sup>

4) When Bulldog's meter was tested, it was actually found to be slightly slow.<sup>4</sup>

5) Verified measurements taken by Duke Energy Kentucky's field personnel in the course of energy audits confirmed that Bulldog was operating its air conditioning, and drawing significant amps, in a manner wholly consistent with the meter readings.<sup>5</sup>

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Kentucky's Supplemental Data Request, Request No. 13 (filed Feb. 15, 2012) (explaining "we never needed to" transfer the customer account for the business from its prior owner to Bulldog).

<sup>2</sup> See Duke Energy Kentucky's Answer and Motion to Dismiss, Exhibit 2 (filed Nov. 29, 2010).

<sup>3</sup> See *In the Matter of: An Examination of the Application of the Fuel Adjustment Clause of Duke Energy Kentucky, Inc. from January 1, 2006 through October 31, 2008*, Order, Case No. 2008-00522 (Ky. P.S.C., June 2, 2009); *In the Matter of: Application of Duke Energy Kentucky, Inc. for an Adjustment of Rates*, Order, Case No. 2009-00202 (Ky. P.S.C., Dec. 29, 2009).

<sup>4</sup> See Duke Energy Kentucky's Response to Bulldog's First Request for Information, BDE-DR-01-017 (filed July 15, 2011) ("The tests performed on August 9, 2010 showed that the meter was calculating the Complainant's electric usage within the acceptable range of accuracy allowed under the Kentucky Public Service Commission regulations....The Complainant's meter tested three one hundredths of one percent (0.03%) slow.")

<sup>5</sup> See Duke Energy Kentucky's Response to Complainant's First Request for Information, BDE-DR-01-013(ii) (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's 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.").

6) Bulldog operated a large restaurant with 7,800 square feet of space.<sup>6</sup>

7) Bulldog's responses to data requests that the air conditioning in this large restaurant was turned off completely is contradicted by prior correspondence Bulldog sent to Duke Energy Kentucky indicating that the thermostat was in fact not turned off during the period the business was closed.<sup>7</sup>

8) Bulldog's own testimony regarding the nature of the parties it hosted during the months it was closed is inconsistent and unbelievable. Bulldog claimed that the July 4<sup>th</sup> weekend party and private party were exclusively held outdoors, but also claimed that both events were held indoors as well.<sup>8</sup> Bulldog's insistence that no advance preparation went into hosting the July 4<sup>th</sup> weekend party and the other private party is simply not credible.<sup>9</sup> Despite being given many opportunities to do so, Bulldog is unable to produce any of the payroll records or invoices for supplies, food and beverages consumed at either event.<sup>10</sup>

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<sup>6</sup> See Bulldog's Response to Staff Data Request, Staff-DR-01-0002 (filed Aug. 29, 2011).

<sup>7</sup> Cf. Bulldog's Response to Duke Energy Kentucky's Data Requests, Response No. 3(a) (filed July 19, 2011) (air conditioning was off) *and* Duke Energy Kentucky's Response to Bulldog's First Request for Information, BDE-DR-01-002(b) attachment (filed July 15, 2011) (letter from E. Deters stating that the air condition was either off or set at 80 degrees).

<sup>8</sup> Cf. Bulldog's Response to Duke Energy Kentucky's Data Requests, Response No. 2(c) (filed July 19, 2011) (two events held while closed were the only indoor activities while closed) and Bulldog's Response to Staff Supplemental Data Request, Staff-DR-02-001 (filed Jan. 12, 2012) (indicating both events were held outside); Bulldog's Response to Duke Energy Kentucky's Supplemental Data Request, Request No. 3(a) (filed Feb. 15, 2012) (indicating the July 4<sup>th</sup> weekend event was held both indoors and outdoors and that the fundraiser was held indoors).

<sup>9</sup> See Bulldog's Response to Staff Supplemental Data Request, Staff-DR-02-001 (filed Jan. 12, 2012) (indicating no preparation occurred); Bulldog's Response to Duke Energy Kentucky's Supplemental Data Request, Request No. 2 (filed Feb. 15, 2012) (indicating no food or beverages were kept on the premises for the two events held during the period when the restaurant was closed).

<sup>10</sup> See Bulldog's Response to Duke Energy Kentucky's Data Requests, Response to Request for Production No. 6 (filed July 19, 2011) (Bulldog possessed no bills of sale, bills of lading, invoices, receipts or other documents arising from or relating to deliveries of food, beverages, goods or supplies to the Premises on or after June 1, 2010).

9) Duke Energy Kentucky's considerable efforts to work with Bulldog were met mostly with threats.<sup>11</sup>

10) Bulldog is unable to identify a specific statute, regulation and/or tariff that it believes Duke has violated.<sup>12</sup>

11) Bulldog's sensational claim in its Complaint that Duke Energy Kentucky had "tens of thousands of commercial customers utilizing its meters, of which thousands malfunction annually," turns out to have been made without any factual basis whatsoever.<sup>13</sup>

12) Not one of the "numerous customers" that, according to Bulldog, complained about Duke Energy Kentucky turned out to even be a customer of Duke Energy Kentucky.<sup>14</sup>

Based upon the foregoing, Duke Energy Kentucky does not believe there is a need to hold any hearing in this matter. Duke Energy Kentucky complied with its tariff and Kentucky law and it charged Bulldog appropriately. Bulldog failed to carry its burden of proof. See *Energy Regulatory Commission v. Kentucky Power Company*, 605 S.W. 2d 46, 50 (Ky. App. 1980); *In the Matter of Office of the Attorney General*,

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<sup>11</sup> See e.g. Duke Energy Kentucky's Response to Bulldog's First Request for Information, BDE-DR-01-002(e), p. 4 (filed July 15, 2011) ("You guys are unbelievable. I will 'kill' someone if they cut off my energy!").

<sup>12</sup> See Bulldog's Response to Duke Energy Kentucky's Data Requests, Response No. 9 (filed July 19, 2011).

<sup>13</sup> See Complaint, ¶ 15; Bulldog's Response to Duke Energy Kentucky's Data Requests, Response No. 5 (filed July 19, 2011) (indicating that information to support the allegation "was received from Duke."); Bulldog's Response to Duke Energy Kentucky's Supplemental Data Request, Request No. 5 (filed Feb. 15, 2012) (Bulldog was unable to identify or provide the information allegedly provided by Duke).

<sup>14</sup> See Bulldog's Response to Duke Energy Kentucky's Data Requests, Response No. 10 (filed July 19, 2011).

*Commonwealth of Kentucky v. Atmos Energy Corporation*, Order, Case No. 2005-00057, pp. 3-4 (Ky. P.S.C. Feb. 9, 2007). The Complaint should be dismissed with prejudice forthwith.

However, in the event that Bulldog seeks to further prolong this case<sup>15</sup> – and, by extension, its pending companion lawsuit in the Kenton Circuit Court – by requesting a hearing, Duke Energy Kentucky reserves the right to fully participate in such hearing through cross-examination, the calling of rebuttal witnesses and any other means available under due process.

This 9<sup>th</sup> day of March 2012.

Respectfully submitted,



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Mark David Goss  
David S. Samford  
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(859) 231-0011 (facsimile)

*Counsel for Duke Energy Kentucky, Inc.*

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<sup>15</sup> Thus far, Bulldog has failed to timely comply with four separate deadlines imposed by the Commission in this proceeding.

## 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 9<sup>th</sup> day of March 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

  
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*Counsel for Duke Energy Kentucky, Inc.*