



DUKE ENERGY CORPORATION

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**VIA OVERNIGHT DELIVERY**

April 4, 2011

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

RECEIVED

APR 05 2011

PUBLIC SERVICE  
COMMISSION

Re: Case No. 2010-00494

Dear Mr. Derouen:

Enclosed please find an original and twelve copies of Duke Energy Kentucky Inc.'s Brief in Support of its Publication of Notice of Hearing and Motion for Waiver in the above captioned case.

Please date-stamp the two copies of the letter and the Brief and return to me in the enclosed envelope.

Sincerely,

Kristen Cocanougher

cc: Hon. Dennis Howard

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

APR 05 2011

PUBLIC SERVICE COMMISSION

In the Matter of:

AN EXAMINATION OF THE  
APPLICATION OF THE FUEL  
ADJUSTMENT CLAUSE OF DUKE  
ENERGY KENTUCKY FROM  
NOVEMBER 1, 2008 THROUGH  
OCTOBER 31, 2010

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) Case No. 2010-00494  
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DUKE ENERGY KENTUCKY, INC.'S BRIEF IN SUPPORT OF ITS PUBLICATION OF  
NOTICE OF HEARING AND MOTION FOR WAIVER

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**I. Introduction**

Now comes Duke Energy Kentucky, Inc. (Duke Energy Kentucky or Company), by and through counsel, and hereby respectfully submits its Brief in Support of Publication of Notice of Hearing through the *Kentucky Enquirer* and Motion for Waiver. With regard to publication by the *Kentucky Enquirer*, Duke Energy Kentucky respectfully submits that this entity qualifies under KRS 424.120 for providing publication of notice of hearing in Duke Energy Kentucky's five-county service area and, as such, the proof of publication previously filed in this docket renders Duke Energy Kentucky substantially in compliance with the Commission's regulations for notice in this case.

Duke Energy Kentucky is a utility engaged in the gas and electric business. Duke Energy Kentucky generates electricity, which it distributes and sells in five contiguous counties in

Northern Kentucky. The five counties are Boone, Campbell, Grant, Kenton and Pendleton Counties.<sup>1</sup>

On January 26, 2011, the Commission issued its Order initiating the above-styled proceeding, involving the examination of Duke Energy Kentucky's Fuel Adjustment Clause (FAC) from the period of November 1, 2008 through October 31, 2010. Paragraph two of the aforementioned Order provided that "[n]ot less than 7 days nor more than 21 days prior to the scheduled hearing, Duke Energy Kentucky shall publish in a newspaper of general circulation in each area in which it serves, notice of the purpose, time, place and date of the scheduled hearing."<sup>2</sup> On March 17, 2011, Duke Energy Kentucky filed an affidavit of publication from the *Kentucky Enquirer*, stating that notice of the hearing of the above-styled matter was published on March 10, 2011. The publication in the *Kentucky Enquirer* was thus timely in accordance with the Commission's Order. As discussed below, the *Kentucky Enquirer* is also a qualified newspaper under KRS 424.120 that the publication made on March 10, 2011, serves to satisfy the Commission's Order.

## **II. Law and Argument**

### **A. The *Kentucky Enquirer* is a qualified newspaper pursuant to KRS 424.102.**

Duke Energy Kentucky respectfully submits that the *Kentucky Enquirer* is a qualified newspaper pursuant to KRS 424.120 and that the Company's publication of the notice in the above-styled proceeding substantially complies with the Commission's publication directive and the intent of 807 KAR 5:001, Section 4(2).

KRS 424.120 sets forth the qualifications for a newspaper to contain a legal advertisement for a publication area. In general, the statute provides that the newspaper shall be

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<sup>1</sup> In addition to the five counties in which it provides electric service, Duke Energy Kentucky also provides natural gas service in Gallatin County, Kentucky.

<sup>2</sup> Order at 1.

“published in the publication area;” “be of regular issue and have a bona fide circulation in the publication area;” and “shall bear a title or name, consist of not less than four (4) pages without a cover and be of a time which the general public resorts for passing events of a political, religious, commercial, and social nature and for current happenings, announcements, miscellaneous reading matter, advertisements, and other notices.”<sup>3</sup> The statute further states that a newspaper shall be deemed to be published in the area if it “maintains its principal office in the area for the purpose of gathering news and soliciting advertisements and other general business of newspaper publications and has a periodicals class mailing permit issue for that office.”<sup>4</sup> In support of its position that the *Kentucky Enquirer* is a qualified newspaper under KRS 424.120, Duke Energy Kentucky submits the sworn affidavit of Mark Woodruff, Vice President for Market Development for the *Kentucky Enquirer*.<sup>5</sup> Mr. Woodruff attests to the *Kentucky Enquirer*’s qualifications as a newspaper under the statute. The *Kentucky Enquirer* is a newspaper of general circulation in each of the five contiguous counties in which Duke Energy Kentucky provides electric service.<sup>6</sup> The *Kentucky Enquirer* publishes seven days a week, fifty-two weeks per year without interruption.<sup>7</sup> Each edition of the *Kentucky Enquirer* contains more than four pages and is of the type to which the general public resorts for passing events of a political, religious, commercial and social nature and for current happenings, announcements, miscellaneous reading matter, advertisements and other notices.<sup>8</sup> The news content of the *Kentucky Enquirer* is at least twenty-five percent of the total column space in more than one-half of its issues during any

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<sup>3</sup> See KRS 424.120

<sup>4</sup> *Id.*

<sup>5</sup> Exhibit 1.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

twelve month period.<sup>9</sup> The *Kentucky Enquirer* maintains a bona fide circulation in each of the counties in which Duke Energy Kentucky provides electric service.<sup>10</sup>

The *Kentucky Enquirer* maintains a principal office in Kenton County, Kentucky, at 226 Grandview Drive, Ft. Mitchell and maintains a periodicals class mailing permit from the Post Office in Covington, Kentucky.<sup>11</sup> The *Kentucky Enquirer* also maintains additional offices, which it uses for general business in Campbell County and Boone County.<sup>12</sup> Those additional offices are shared with the *Kentucky Enquirer's* sister newspapers that provide weekly publications.<sup>13</sup> Those sister newspapers, as well as others, are owned by the same parent company as the *Kentucky Enquirer* and have periodical class mailing permits.<sup>14</sup>

Duke Energy Kentucky respectfully submits that its publication of the notice in the *Kentucky Enquirer* of the above-styled proceeding, as confirmed by the Affidavit of Publication, complies with the Commission's January 26, 2011, Order in this proceeding.

### **III. Request for Waiver**

To the extent the Commission believes that the *Kentucky Enquirer* does not qualify as a newspaper in each of the five counties in which Duke Energy Kentucky provides electric service, the Company respectfully requests the Commission find that the Company has substantially complied with the Commission's January 26, 2011, Order and grant a deviation and waiver pursuant to 807 KAR 5:001, Section 14 of the publication requirement set forth in 807 KAR 5:001, Section 4(2).

The requirement for publication of notice for hearing before this Commission is set forth in 807 KAR 5:001, Section 4(2). The rule provides the Commission with discretion in

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

implementing the publication of notice requirements providing, in part, that the Commission may designate the length of time for publication of notice as well as designate in such *newspaper or newspapers* the publication should occur.<sup>15</sup> Similarly, 807 KAR 5:001, Section 14 provides that the Commission may permit deviations from its rules for good cause.<sup>16</sup> The purpose of the Commission's rate change notice regulations is to ensure that members of the public have sufficient notice and a meaningful opportunity to participate, individually or through representative agencies, in this proceeding. The Kentucky Supreme Court has held:

Substantial compliance in regard to publication requirements has been authorized. The purpose of the statute is to allow the public an ample opportunity to become sufficiently informed on the public question involved.<sup>17</sup>

Duke Energy Kentucky respectfully submits that its publication of the notice in the above-captioned proceeding substantially complies with the Commission's Order and the requirements under 807 KAR 5:001, Section 4(2). The *Kentucky Enquirer* is a daily newspaper that has a bona fide circulation in each of the five counties that Duke Energy Kentucky serves. The *Kentucky Enquirer* also has regular business offices in three of the five counties served by Duke Energy Kentucky and maintains a periodicals mailing permit from the Covington Post office. Given the relatively small size of the Company's total service territory, and the contiguous nature of the five counties in which the Company serves customers, Duke Energy Kentucky submits that the *Kentucky Enquirer* provides a cost-effective method to meet the publication requirement. Furthermore, as a result of the scope of the newspaper's distribution, publication of notice in the *Kentucky Enquirer* provided interested persons, including the

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<sup>15</sup> 807 KAR 5:001 Section 4 (2). Emphasis added.

<sup>16</sup> 807 KAR 5:001 Section 14.

<sup>17</sup> *Conrad v. Lexington-Fayette Urban County Government*, 659 S. W.2d 190, 195 (1983) (citing *Queenan v. City of Louisville*, 233 S.W.2d 1010 (1950)). See also *Lyon v. County of Warren*, 325 S.W.2d 302 (1959) (publishing notice of bond referendum outside statutory time limits, accompanied by media attention and other means, held sufficient notice to public).

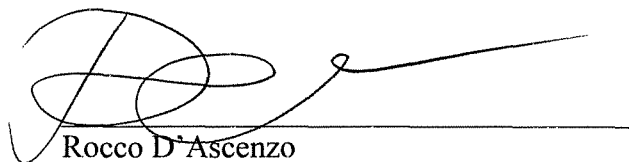
Company's customers, with timely information of the hearing and thus the opportunity to participate. Going forward, if the Commission determines that the *Kentucky Enquirer* is not a qualified newspaper sufficient to fulfill the intent of the Commission's publication requirement for each of the five counties in which Duke Energy Kentucky provides electric service, the Company will seek to publish in those counties where the *Kentucky Enquirer* is not a qualified newspaper.

#### **IV. Conclusion**

For the foregoing reasons, Duke Energy Kentucky submits that the placement of its notice of the hearing of the captioned matter in the *Kentucky Enquirer* complied with the requirement of the Commission's January 26, 2011, Order and that the *Kentucky Enquirer* is a qualified newspaper according to KRS 424.120. In the alternative, Duke Energy Kentucky requests the Commission grant a waiver of the notice requirement and find that the Company has substantially complied with the Commission's rules.

Respectfully submitted,

DUKE ENERGY KENTUCKY, INC.

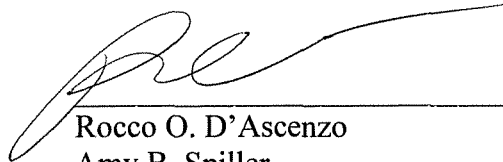


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**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing Brief has been served by overnight delivery to the following parties on this 4<sup>th</sup> day of April, 2011:

Hon. Dennis Howard  
Office of Attorney General  
Utility Intervention and Rate Division  
1024 Capital Center Drive  
Frankfort, Kentucky 40601



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Rocco O. D'Ascenzo  
Amy B. Spiller



AFFIDAVIT AS TO BONA FIDE CIRCULATION

State of Ohio )  
 )  
County of Hamilton )

Comes now the affiant, Mark Woodruff, and after being first duly sworn and cautioned, states as follows:

1) I am the Vice President for Market Development for the Kentucky Enquirer. The information contained in this Affidavit is within my personal knowledge. I am providing this affidavit for the purposes of informing the Kentucky Public Service Commission of the Kentucky Enquirer's qualifications for publishing public notices.

2) The Kentucky Enquirer maintains its principal office for the purpose of gathering news and soliciting advertisements and other general business at 226 Grandview Drive, Ft. Mitchell, Kenton County, Kentucky (the "Principal Office").

3) The Kentucky Enquirer maintains additional offices it uses for general business at 654 Highland Avenue, Ft. Thomas, Campbell County, Kentucky 41075 and 3635 O'Hara Road, Erlanger, Boone County, Kentucky 41018. These offices are shared with its weekly publications which are owned by The Kentucky Enquirer's parent company.

4) The Kentucky Enquirer has a periodicals class mailing permit for its Principal Office issued as Permit #024511 from the Covington, Kentucky Post Office.

5) The Kentucky Enquirer is of regular issue and has a bona fide circulation in each county referenced below. It is circulated generally in those counties, maintains a definite price and is paid for by not less than fifty percent (50%) of those to whom distribution is made.

6) The Kentucky Enquirer publishes seven (7) days per week, fifty-two (52) weeks per year, without interruption. Such publication schedule has been in effect for the immediate two (2) year period preceding this affidavit. Each edition of The Kentucky Enquirer contains more than four (4) pages and is the type to which the general public resorts for passing events of a political, religious, commercial and social nature and for current happenings, announcements, miscellaneous reading matter, advertisements and other notices. The news content of The Kentucky Enquirer is at least twenty-five percent (25%) of the total column space in more than one-half (1/2) of its issues during any twelve (12) month period.

7) The Kentucky Enquirer's average circulation in Kenton County as audited and verified by the Audit Bureau of Circulations (ABC) in its March 2010 Annual Audit Report is as follows:

- a) weekly paid circulation – **15,366**
- b) Saturday paid circulation – **13,964**
- c) Sunday paid circulation – **19,739**

8) The Kentucky Enquirer's average circulation in Boone County as audited and verified by the Audit Bureau of Circulations (ABC) in its March 2010 Annual Audit Report is as follows:

- a) weekly paid circulation – **9,062**
- b) Saturday paid circulation – **9,515**
- c) Sunday paid circulation – **16,726**

9) The Kentucky Enquirer's average circulation in Campbell County as audited and verified by the Audit Bureau of Circulations (ABC) in its March 2010 Annual Audit Report is as follows:

- a) weekly paid circulation – **7,981**
- b) Saturday paid circulation – **8,608**
- c) Sunday paid circulation – **12,240**

10) The Kentucky Enquirer's average circulation in Grant County as audited and verified by the Audit Bureau of Circulations (ABC) in its March 2010 Annual Audit Report is as follows:

- a) weekly paid circulation - **482**
- b) Saturday paid circulation - **507**
- c) Sunday paid circulation - **967**

11) The Kentucky Enquirer's average circulation in Pendleton County as audited and verified by the Audit Bureau of Circulations (ABC) in its March 2010 Annual Audit Report is as follows:

- a) weekly paid circulation - **418**
- b) Saturday paid circulation - **415**
- c) Sunday paid circulation – **878**

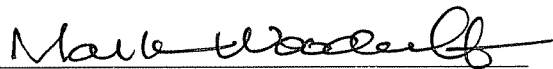
12) The Kentucky Enquirer's average circulation in Gallatin County as audited and verified by the Audit Bureau of Circulations (ABC) in its March 2010 Annual Audit Report is as follows:

- a) weekly paid circulation - **192**
- b) Saturday paid circulation - **208**
- c) Sunday paid circulation - **464**

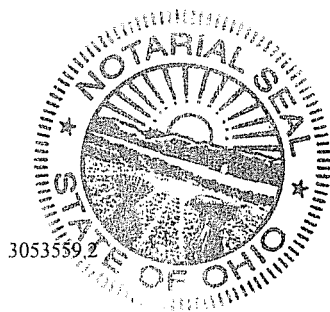
13) The Kentucky Enquirer's parent company also publishes weekly newspapers with primary distribution as follows: a) within Kenton County (i) The Kenton County Recorder (13,124), the Erlanger Recorder (6,498) and the Community Recorder (12,406); b) within Campbell County (i) The Campbell County Recorder (1,960); (ii) The Ft. Thomas Recorder (5,007); (iii) the Alexandria Recorder (3,597); and (iv) The Campbell Community Recorder (7,202); and c) within Boone County (i) The Boone County Recorder (3,459); (ii) The Florence

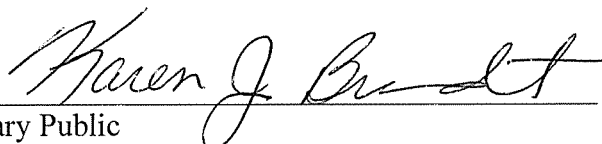
Recorder (13,298); and (iii) The Boone Community Recorder (5,572). The Campbell County Recorder has a periodicals class mailing permit issued as Permit 450130. The Boone County Recorder has a periodicals class mailing permit issued as Permit #060 780. The remaining publications listed in this paragraph 13 do not meet the requirements of KRS § 424.130 in that, amongst other things, they do not maintain a periodicals class mailing permit for their offices and/or each publication has paid circulation less than ten percent (10%) of its total circulation.

Further affiant sayeth naught.

  
\_\_\_\_\_  
Mark Woodruff

The foregoing Affidavit as to Bona Fide Circulation was executed before me by Mark Woodruff, the Vice President of Circulation for The Kentucky Enquirer this 21 day of March, 2011.



  
\_\_\_\_\_  
Notary Public

My commission expires: KAREN J. BRANDT  
Notary Public, State of Ohio  
My Commission Expires 11-26-2013