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Rocco O. D'Ascenzo@duke-energy.com
Rocco O. D'Ascenzo
Associate General Counsel

VIA OVERNIGHT DELIVERY

August 25, 2014

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

RECEIVED

AUG 26 2014

PUBLIC SERVICE
COMMISSION

Re: Case No. 2014-00263
In the Matter of Duke Energy Kentucky, Inc. – Alleged Failure to Comply with KRS
278.042

Dear Mr. Derouen:

Enclosed please find an original and twelve copies each of the *Response of Duke Energy Kentucky, Inc.* in the above captioned case.

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

Sincerely,



Rocco D'Ascenzo

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVE

AUG 26 2014

In the Matter of:

DUKE ENERGY KENTUCKY, INC.

Case No. 2014-00263

PUBLIC SERVICE
COMMISSION

ALLEGED FAILURE TO COMPLY WITH
KRS 278.042

RESPONSE OF DUKE ENERGY KENTUCKY, INC.

On August 7, 2014, the Kentucky Public Service Commission (Commission) issued an Order (Order) directing Duke Energy Kentucky, Inc., (Duke Energy Kentucky) to file a written response to the allegations contained in the Incident Investigation Report (Report) prepared by the Commission Staff, dated June 2, 2014, and attached to the Commission's Order. For its Response to the Commission's Order, Duke Energy Kentucky states as follows:

1. Duke Energy Kentucky admits that the information contained in the Report, consisting of those sections titled "Brief," "Notification," "Time Line of Investigation and Interviews," "Recommendations," "Investigated By:," and "Attachments," are accurate.
2. With regard to the section on or about page 7 titled "Findings," Duke Energy Kentucky agrees with the statement that "No violations were discovered of any of the applicable regulations governing Duke Energy as a result of the investigation into this incident." Duke Energy Kentucky further agrees with the statement of the investigator's opinion that "the cause of this incident could remain unknown." Duke Energy Kentucky denies that it committed a violation of Kentucky Revised Statutes (KRS) 278.280(2) or 807 KAR 5:027, Section 3.

3. Duke Energy Kentucky denies that it failed to timely notify the Commission.

FIRST AFFIRMATIVE DEFENSE

4. With regard to the alleged violation contained in the Commission's Order regarding an alleged failure to provide telephonic notice of this incident to the Commission within two hours after Duke Energy Kentucky's discovery of the incident, Duke Energy Kentucky states:

- a. Duke Energy Kentucky, in good faith, relied upon and followed notification protocols published by the Commission to provide timely notice to the Commission. The notification to the Commission was made in good faith through the after-hours telephone number for the Kentucky Emergency Operations Center, 1-800-255-2587 (Emergency Number) as provided on a Commission-issued emergency notification document.¹

- i. At the time of Duke Energy Kentucky's discovery of the incident, on January 25, 2013 at approximately 5:09 A.M., the Kentucky Public Service Commission was closed.² Upon investigation of the incident, and within two hours, Duke Energy Kentucky called the Emergency Number. Duke Energy Kentucky, in good faith, believed it was notifying and did in fact notify the Commission through the Kentucky Emergency Operations Center Emergency Number. The Company called the Emergency Number twice on the morning of the incident. The first call was at approximately 6:21 A.M., and the second at approximately 6:28 A.M., both within the two hours provided by 807 KAR 5:027, Section 3.

¹ See Attachment 1.

² Upon information and belief, the incident occurred sometime around 4:30 A.M. Upon receipt of a trouble call, Duke Energy Kentucky dispatched its crew, which arrived on the scene at approximately 5:09 A.M.

- ii. At the time of the first call to the Emergency Number, the Company requested and received confirmation that the Emergency Number was “the number to call for after-hours pipeline reportable incidents in the State of Kentucky.”³ Following confirmation by the Kentucky Emergency Operations personnel, the operator then requested that the Company call back in approximately five to ten minutes because the officer who needed to take the Company’s information was not available. The Company then called again approximately seven minutes later to report the incident and spoke with the officer.
- b. At the time of the incident, the Emergency Number and directions for its use was published by the Commission in a notification guideline document (Notice Guideline)⁴. Upon information and belief, the Notice Guideline that included the Emergency Number was listed on the Commission’s own web site both prior to and at the time of the incident.⁵ The Commission’s Notice Guideline provided in relevant part, “in times of emergency, notice to the Kentucky Emergency Management-Emergency Operations Center at 1-800-255-2587 will result in the notification of all other emergency response personnel.”⁶
- c. Duke Energy Kentucky had previously used the Emergency Number to notify the Commission of after-hours natural gas emergencies, as recently as August 23, 2011, without question. As such, Duke Energy Kentucky believed in good faith

³ Duke Energy Kentucky has recordings of the conversations with the Kentucky Emergency Operations Center which were previously provided to the Commission Staff during their investigation.

⁴ Attachment 1.

⁵ Id.

⁶ Id.

that it had timely notified the Commission in accordance with the Commission's Notice Guideline by using the Emergency Number.

5. At approximately, 11:04 AM on January 25, 2013, believing that the Commission had been timely notified several hours earlier in accordance with the published guidelines, Duke Energy Kentucky directly contacted the Commission Investigator to provide an update on the incident and to inquire about the investigator's arrival at the premises.

THIRD AFFIRMATIVE DEFENSE

6. Duke Energy Kentucky has since changed its after-hours notification procedures to reflect the Commission's current notification guidelines that include direct notification to Commission's inspectors and the removal of the Emergency Number.⁷

FOURTH AFFIRMATIVE DEFENSE

7. Duke Energy Kentucky notes that KRS 278.992, among other things, authorizes the assessment of penalties for certain pipeline violations stemming from regulations adopted by the Public Service Commission that govern the safety of pipeline facilities or transportation as defined in the Natural Gas Pipeline Safety Act.⁸
8. KRS 278.992 further provides mitigating factors to determine the amount of any civil penalty or amount agreed upon in compromise for a violation, including "the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance, after notification of the violation, shall be considered."⁹ Duke Energy Kentucky respectfully states that no violation has occurred. In the alternative, if there was a technical violation, a monetary assessment is not warranted because:

⁷ See Attachment 2.

⁸ KRS 278.992(1)

⁹ Id.

- a. Duke Energy Kentucky, in good faith, and based upon past practice, relied upon the Commission's documents that indicated how to achieve notice to the Commission, and that during an emergency, using the Emergency Number would result in notification of the Commission;
- b. Duke Energy Kentucky received confirmation from the Emergency Number operator that the Emergency Number was the number to provide notice of after-hours gas emergencies in the state of Kentucky;
- c. The Commission must establish the procedures utilities under its jurisdiction must use to provide notice during emergencies and timely and properly inform utilities of changes to these procedures. Utilities must also be able to reasonably rely upon documents published by the Commission that describe how to notify the Commission. To the extent such documents are unclear or incorrect, utilities should not be penalized for their good faith attempt to follow such documents;
- d. Prior to the date of the incident, Duke Energy Kentucky had not received, nor was it aware of any change in the Commission's Notice Guidelines that removed the Emergency Number. In fact, upon information and belief the Notice Guidelines relied upon by the Company were present on the Commission's website on the date of the incident and for a brief period thereafter; and
- e. The gravity of the alleged violation is minimal. Duke Energy Kentucky, in good faith, timely notified the Commission by following Commission-published Notice Guideline. To the extent the Notice Guideline was incorrect or unclear at the time of the incident, this has been corrected by the Commission and Duke Energy Kentucky by removing the Emergency Number, as well as, eliminating the

statement that use of the Emergency Number during an emergency perfects notice to emergency personnel from all notice protocols.

NOW, THEREFORE, Duke Energy Kentucky requests that the case be dismissed, or in the alternative, that the hearing date of October 29, 2014, be suspended and an informal conference be scheduled with the Commission Staff for the purpose of discussing settlement and expediting resolution of this proceeding. Duke Energy Kentucky's willingness to discuss settlement is not, and should not be construed as, an admission of liability on its part.

Respectfully submitted,

DUKE ENERGY KENTUCKY, INC.



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Amy B. Spiller (85309)
Deputy General Counsel
Duke Energy Kentucky, Inc.
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Cincinnati, Ohio 45202
Phone: (513) 287-4320
Fax: (513)287-4385
e-mail:rocco.d'ascenzo@duke-energy.com

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Response has been served via hand delivery to the following party on this 25th day of August, 2014:

Staff Counsel
Kentucky Public Service Commission
211 Sower Blvd.
Frankfort, Kentucky 40601



Rocco O. D'Ascenzo
Amy B. Spiller

KENTUCKY PUBLIC SERVICE COMMISSION (502) 564-3940

In the event of an accident or emergency that may possibly relate to natural gas, hazardous liquid or propane as its origin, the following action is required:

Telephonic notice at the earliest possible moment (not to exceed two hours) following discovery of:

1. Death or Personal Injury
2. Gas Igniting Unintentionally
3. Damage to Property (\$25,000 or more)
4. Unscheduled Outage for 40 or More Customers for 4 or More Hours
5. Any Other Significant Occurrence (i.e. Newsworthy)

Reference: 807 KAR 5:006, Section 26
807 KAR 5:022, Section 13(16)(a)
807 KAR 5:027, Section 3(1)(a),(b),(c),(d),(f),(g)
807 KAR 5:027, Section 4
49 CFR Part 191.5

This reporting does not relieve you of your responsibility of reporting to the U.S. Department of Transportation (DOT) in accordance with 49 CFR Part 191.5.

During office hours (8:00 a.m. to 4:30 p.m.), please call Mr. Jason Brangers at (502) 564-3940, ext. 416. If Mr. Brangers is unavailable, you will be transferred to other staff who will take the information concerning the incident. At any other time, please call one of the following:

<u>Personnel</u>	<u>Title</u>	<u>Work Cell</u>	<u>Personal</u>
William (Bill) Aitken	Senior Utility Investigator	(502) 330-5972	(502) 695-4252
Melissa Holbrook	Utility Investigator	(502) 229-7542	(606) 743-4602
Steve Samples	Utility Investigator	(502) 330-5985	(502) 223-3245
Joel Grugin	Utility Investigator	(502) 545-2141	(502) 514-1204
Jason Brangers	Gas Branch Manager	(502) 330-5970	(502) 633-5268
Reggie Chaney	Director of Engineering	(502) 229-1096	

Notification to the Commission's voice mailbox or fax number will not be considered proper notification.

In time of emergency, notice to the Kentucky Emergency Management – Emergency Operations Center at 1-800-255-2587 will result in the notification of all other emergency response personnel.

Recurring events and further investigation will dictate additional telephonic reporting.

Follow-up written notification to the Commission is to be submitted within 30 days.

Jeff DeRoeun
Executive Director

Date



PLEASE POST



EMERGENCY NOTIFICATION GUIDELINES
KENTUCKY PUBLIC SERVICE COMMISSION
(502) 564-3940

Telephonic notice to the commission is required at the earliest possible moment [not to exceed two (2) hours] following discovery of any incident or emergency possibly related to natural gas, hazardous liquid, or propane that:

1. Is reported to USDOT pursuant to 49 CFR Part 191, Federal Pipeline Safety Regulations.
2. Requires taking any segment of pipeline or mains out of service.
3. Results in the unintentional ignition of gas.
4. Causes estimated damage to property of the utility, or others, or both, of \$25,000 or more.
5. Results in the loss of service to forty (40) or more customers for four (4) or more hours.
6. Causes the loss of a sizable amount of gas.
7. Received extensive news coverage, or in the judgment of the utility is significant.
8. Resulted in a death or personal injury requiring in-patient hospitalization.

References: 807 KAR 5:006, Section 26; 807 KAR 5:022, Section 13(16)(a); 807 KAR 5:027, Sections 3 and 4
49 CFR Parts 191.5, 191.7, 191.9, and 191.15

This reporting does not relieve you of your responsibility of reporting to the U.S. Department of Transportation (DOT) in accordance with 49 CFR Part 191.5.

During office hours (8:00 a.m. to 4:30 p.m.), please call Jason Brangers at (502) 564-3940, ext. 416. If Mr. Brangers is unavailable, you will be transferred to other staff who will take the information concerning the incident. At any other time, please call one of the following:

<u>Personnel</u>	<u>Title</u>	<u>Work Cell</u>
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Melissa Holbrook	Utility Investigator	(502) 229-7542
Steve Samples	Utility Investigator	(502) 330-5985
Joel Grugin	Utility Investigator	(502) 545-2141
Jason Brangers	Gas Branch Manager	(502) 330-5970
Kimra Cole	Director of Engineering	(502) 564-3940 (office)

Notification to the Commission's voice mailbox, e-mail, or fax number **will not** be considered proper notification.

Recurring events and further investigation will dictate additional telephonic reporting by the utility.

Follow-up written notification to the Commission is to be submitted **within 30 days** of the incident.

Jeff Derouen
Executive Director

Date

PLEASE POST FOR UTILITY PERSONNEL