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**RECEIVED**

MAR 09 2007

PUBLIC SERVICE  
COMMISSION

Via Overnight Mail

March 8, 2007

Beth A. O'Donnell, Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard  
Frankfort, Kentucky 40602

**Re: Case No. 2006-00509**

Dear Ms. O'Donnell:

Please find enclosed the original and twelve (12) copies of the Reply of Kentucky Industrial Utility Customers, Inc. to the Motion to Strike of Kentucky Utilities Company to be filed in the above-referenced matter. By copy of this letter, all parties listed on the Certificate of Service have been served.

Please place this document of file.

Very Truly Yours,

  
Michael L. Kurtz, Esq.  
Kurt J. Boehm, Esq.  
**BOEHM, KURTZ & LOWRY**

MLK:kew  
Attachment  
cc: Certificate of Service

## CERTIFICATE OF SERVICE

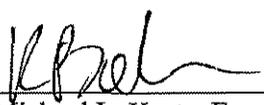
I hereby certify that a copy of the foregoing was served by mailing a true and correct copy, by first-class postage prepaid mail, (unless otherwise noted) to all parties on the 8<sup>th</sup> day of March, 2007.

Mr. Kent Blake, Director - Rates & Regulatory  
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Honorable Dennis Howard  
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Michael L. Kurtz, Esq.  
Kurt J. Boehm, Esq.

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

MAR 09 2007

PUBLIC SERVICE  
COMMISSION

In The Matter Of: : Case No. 2006-00509  
: :  
An Examination Of The Application Of The Fuel :  
Adjustment Clause Of Kentucky Utilities :  
Company From November 1, 2004 Through :  
October 31, 2006 :

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REPLY OF KIUC TO THE MOTION TO STRIKE OF  
KENTUCKY UTILITIES COMPANY

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On February 23, 2007 Kentucky Utilities Company ("KU") filed a Motion to Strike Question No. 14 and its Attachment (referenced herein as "the Attachment") of Kentucky Industrial Utility Customers, Inc.'s ("KIUC") First Set of Data Requests to KU on the grounds that the inclusion of the Attachment violates the express written terms of the Settlement Agreement approved by the Commission in Case No. 2006-00172. For the reasons articulated below KIUC requests that the Commission deny KU's Motion to Strike.

1. The Question No. 14 And Its Attachment Are Admissible To KIUC's Data Request Is Admissible.

The Attachment at issue in KU's Motion to Strike was a handout distributed by Duke Energy Kentucky's ("DEK") during an informal conference in Case No. 2006-00172. KU claims that this handout is inadmissible according to the terms of the Settlement Agreement later signed in that case because the Settlement Agreement states that "*neither the Settlement Agreement nor any of the terms shall be admissible in any court or Commission...*"

This language does not restrict the admissibility of the Attachment because the Attachment was not made a part of, or attached to, the Settlement Agreement in Case No. 2006-00172 and does not contain terms of the Settlement Agreement. The language in the Case No. 2006-00172, Settlement Agreement cited by KU only applied to the Settlement Agreement itself and its terms, it does not bar admission of every document in the Commission's files related to that case. The document attached to KIUC's data request and Question No. 14 itself do not violate the language of the Settlement Agreement.

The Attachment is a document that is on file with the Commission and its use is not restricted by the language contained in the 2006-00172, Settlement Agreement. It is admissible in this case according to the Commission's rules of evidence. KRS 278.240 states that:

*"Copies of official documents and orders filed or deposited according to law in the office of the commission, certified by a commissioner, or by the executive director under the seal of the commission, to be true copies of the originals, shall be evidence in like manner as the originals in all matters before the commission and in courts of competent jurisdiction."*

KRS 278.240 asserts that copies of documents on file with the Commission, such as the Attachment in question here, *"shall be evidence in like manner as the originals in all matters before the Commission."*

2. KIUC's Makes No Claim That The Attachment To Question No. 14 Has Precedential Effect.

KU also argues that the Commission should strike Question No. 14 and its Attachment because the Case No. 2006-00172, Settlement Agreement states that the Settlement Agreement does *"not have any precedential value in this or any other jurisdiction."* This argument is meritless because 1) as explained above KIUC has not introduced the 20006-00172 Settlement Agreement; and 2) KIUC has not made any claim and has not implied that the Settlement Agreement or the Attachment has precedential value.

3. KU Was Not A Party To The Case No. 2006-00172 Settlement Agreement.

KU's final argument in support of its Motion to Strike Question No. 14 and its Attachment is that the Case No. 2006-00172 Settlement Agreement states that the Settlement Agreement can not be used "for any purpose to imply, suggest or otherwise indicate that the results produced through the compromise reflected herein represent fully the objectives of a Party." KU argues that KIUC violates the letter and spirit of this language by introducing documents introduced at an informal conference in Case No. 2007-00172. This cannot be true given the fact that KU was not a Party to Case No. 2007-00172. The language cited by KU explicitly applies to Parties to that Settlement Agreement, not third parties such as KU. KU nor KIUC were parties to the Case No. 2007-00172 so language in the Settlement Agreement carving out the rights and entitlements of Parties are inapplicable to KU.

For the foregoing reasons KIUC respectfully requests that the Commission deny the KU's Motion's to Strike.

Respectfully Submitted,



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Michael L. Kurtz, Esq.

Kurt J. Boehm, Esq.

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**COUNSEL FOR KENTUCKY INDUSTRIAL  
UTILITY CUSTOMERS, INC.**

March 8, 2007