



Mailing Address:  
139 East Fourth Street  
1212 Main / P.O. Box 960  
Cincinnati, Ohio 45202  
o 513-287-4315  
f 513-287-4386

RECEIVED

SEP 06 2013

PUBLIC SERVICE  
COMMISSION

**VIA HAND DELIVERY**

September 6, 2013

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

**Re: Case No. 2011-450**  
**An Investigation of the Reliability Measures of Kentucky's Jurisdictional Electric Distribution Utilities**

Dear Mr. Derouen:

Enclosed please find an original and twelve copies of the Responses of Duke Energy Kentucky, Inc. to Commission Staff's Initial Request for Information on Rehearing in the above captioned case.

Please note the objection and signature on Staff-DR-01-012.

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

Sincerely,

Kristen Ryan  
Senior Paralegal  
[kristen.ryan@duke-energy.com](mailto:kristen.ryan@duke-energy.com)

cc: Counsel of Record (w/enclosures)





## TABLE OF CONTENTS

<u>DATA REQUEST</u>	<u>WITNESS</u>	<u>TAB NO.</u>
STAFF-DR-01-001	Leroy S. Taylor, Jr. ....	1
STAFF-DR-01-002	Leroy S. Taylor, Jr. ....	2
STAFF-DR-01-003	Leroy S. Taylor, Jr. ....	3
STAFF-DR-01-004	Leroy S. Taylor, Jr. ....	4
STAFF-DR-01-005	Leroy S. Taylor, Jr. ....	5
STAFF-DR-01-006	Leroy S. Taylor, Jr. ....	6
STAFF-DR-01-007	Leroy S. Taylor, Jr. ....	7
STAFF-DR-01-008	Leroy S. Taylor, Jr. ....	8
STAFF-DR-01-009	Leroy S. Taylor, Jr. ....	9
STAFF-DR-01-010	Leroy S. Taylor, Jr. ....	10
STAFF-DR-01-011	Leroy S. Taylor, Jr. ....	11
STAFF-DR-01-012	Legal .....	12
STAFF-DR-01-013	Leroy S. Taylor, Jr. ....	13



**Duke Energy Kentucky**  
**Case No. 2011-450**  
**Staff's Request for Information on Hearing**  
**Date Received: August 23, 2013**

**STAFF-DR-01-001**

**REQUEST:**

Refer to the Direct Testimony of Leroy S. Taylor, Jr. (“Taylor Testimony”).<sup>1</sup> At numerous points throughout the Taylor Testimony, the terms “worse performing circuit,” “worse circuit” and “worst circuit” are used to indicate language utilized by the Commission in its order in this case establishing the circuit level reporting requirements to be filed annually. Identify any portion of the Commission’s order in this matter which establishes the reporting requirements as a “worst-performing circuit” methodology, or where the terms “worse performing circuit,” “worse-circuit” or “worst circuit” are used other than in describing the previous reporting requirements as ordered in Administrative Case No. 2006-00494.<sup>2</sup>

**RESPONSE:**

The order has specifically laid out a reporting requirement by circuit that clearly separates circuits as “better or worse than their average”, and then requires a filing of a corrective action plan for those circuits worse than their average. The term “worst circuit” is used frequently in the discussion part of the order and has been used in previous orders. If the Commission prefers another term to describe the reporting

---

<sup>1</sup> Direct Testimony of Leroy S. Taylor, Jr. on Behalf of Duke Energy Kentucky, Inc., p. 6, filed Aug. 8, 2013

<sup>2</sup> Administrative Case No. 2006-00494, An Investigation of the Reliability Measures of Kentucky’s Jurisdictional Electric Distribution Utilities and Certain Reliability Maintenance Practices (Ky. PSC Oct. 26, 2007).

methodology outlined in the Commission's Order, Duke Energy Kentucky will certainly be glad to use it.

**PERSON RESPONSIBLE:** Lee Taylor





**Duke Energy Kentucky**  
**Case No. 2011-450**  
**Staff's Request for Information on Hearing**  
**Date Received: August 23, 2013**

**STAFF-DR-01-002**

**REQUEST:**

On pages 4-5 of the Taylor Testimony, the term “circuit-by-circuit benchmarking” is used repeatedly to describe the reporting requirements set forth in the Commission’s order, along with details as to why Duke believes the additional data collection and reporting requirements ordered by the Commission are “not an appropriate benchmark for measuring reliability.” Identify where in the Commission’s Order issued in this case on May 30, 2013 (“May 30 Order”), the reporting requirements are referred to as a benchmark to be imposed by the Commission upon the utilities, or alternatively, what specific language in the order leads Duke to believe the requirements are to be used as a “circuit-by-circuit benchmarking” tool.

**RESPONSE:**

The Commission’s Order is clearly indicating a procedure where each circuit is compared to its 5-year average and that comparison processes are generally termed “benchmarking” in the industry. If the Commission prefers another term to describe this reporting comparison, Duke Energy Kentucky has no objection.

**PERSON RESPONSIBLE:** Lee Taylor



**Duke Energy Kentucky**  
**Case No. 2011-450**  
**Staff's Request for Information on Hearing**  
**Date Received: August 23, 2013**

**STAFF-DR-01-003**

**REQUEST:**

Refer to the Taylor Testimony, page 6, at lines 12-15. Mr. Taylor states that with respect to the management of their systems, many utilities, including Duke, take “a holistic view of the system and employ a reliability strategy that is focused upon consistently and strategically replacing or retrofitting weakness in the entire system from a design standpoint rather than try to solve all problems on a particular circuit.” Mr. Taylor further states, at line 23 on page 6, that circuit-by-circuit reporting is “inconsistent with the prioritization employed by Duke Energy Kentucky.” Identify which portion of the Commission’s May 30 Order specifically prohibits Duke from prioritizing its system reliability management in the manner currently utilized by the utility.

**RESPONSE:**

Duke Energy Kentucky can and will prioritize and implement its system reliability work in a manner that it has determined over many years to be the best method assuming the Commission is willing to accept a Corrective Action Plan for a particular circuit that states “No Action Planned” for a particular circuit that may appear on the list but is itself, not prioritized as part of a more systemic design maintenance and repair philosophy. However, the circuit by circuit benchmarking/comparison to determine worst circuits as ordered by the Commission then becomes a superfluous activity and will result in misdirected and wasted resources, even if in the analysis and reporting phases only.

**PERSON RESPONSIBLE:** Lee Taylor



**STAFF-DR-01-004**

**REQUEST:**

On page 6, at lines 21-22, of the Taylor Testimony, Mr. Taylor states a common theme throughout his testimony, i.e., that Duke's strategy for performance management focuses on attempting to "fix the worst problems on all its circuits rather than all problems on the worst circuit."

- a. Identify what portion of the Commission's May 30 Order prohibits Duke from addressing problems with its individual circuits and overall system in accordance with its policy, as stated by Mr. Taylor.
- b. Does Duke currently make its customers aware of its stated policy to prioritize particular circuits and provide information to those customers to indicate what level of priority their respective circuit is assigned?

**RESPONSE:**

- a) The Commission's Order does not directly prohibit Duke from addressing problems in accordance with the Company's current philosophy assuming the Commission recognizes that this reporting methodology of a circuit on a rolling 5 year average as set forth in the Commission's Order does not reflect the utility's actual reliability performance from an accountability standpoint. And that there is no nexus between how the system is maintained and how the Commission requires reporting. Nonetheless, if the Commission's order stands, then the Order

directs Company resources to compile annual reporting not reflective of how the distribution system is managed and seems wasteful and not particularly useful to the Commission in gauging utility reliability performance as stated in the answer to #3 above.

- b) Duke does not prioritize by circuits. Thus exists the reason for the Company's concern with the Commission's Order in this proceeding.

**PERSON RESPONSIBLE:** Lee Taylor



**Duke Energy Kentucky**  
**Case No. 2011-450**  
**Staff's Request for Information on Hearing**  
**Date Received: August 23, 2013**

**STAFF-DR-01-005**

**REQUEST:**

Refer to the Taylor Testimony, page 9, at lines 5-7. Mr. Taylor states that Duke will “incur additional costs for the enhanced data collection and reporting that is required by this change in the reporting requirements.” Additionally, at lines 10-11, Mr. Taylor states that the “costs will eventually be passed through in the Company’s rates.”

- a. Provide a breakdown of the estimated annual cost of Duke’s current reliability performance data collection and reporting methodology.
- b. Provide a breakdown of the estimated cost Duke anticipates to be incurred as a result of the updated reported requirements ordered by the Commission.
- c. With the understanding that the Commission’s Order does not require corrective actions to be taken for any specific circuit, explain the additional costs Duke will incur by reporting the corrective actions taken for those circuits identified by Duke as requiring such action.

**RESPONSE:**

- a) Annual Duke Energy Kentucky allocation of OMS system, support, applications, database etc. Ky only = \$35,500. Outage Follow-Up Specialist time spent on Kentucky circuits = \$55,000. Staff support, planning support, R&I governance support, everyone entering data in the system, first responders spending a small



amount on the data or on answering questions about what happened = \$65,000.

Total = \$155,500 per year.

- b) Duke Energy Kentucky previously estimated that analysis and reporting requirements would be equal to 12 man-hrs per circuit over their average. An average of 50% of circuits will be over their average, so with around 130 circuits currently in Kentucky, which would be  $65 \times 12 = 780$  man-hrs per year or approximately \$37,500 per year.
- c) See answer b) above. The Commission's order requires a Corrective Action Plan be filed for each circuit exceeding its 5-year average SAIFI and/or SAIDI and even assuming the Commission will accept an answer of "No Action Planned" the report will still have to be made for approximately 50% of our circuits each year. Cost increase in Kentucky due to the reporting requirements of the subject Order is  $\$37,500/\$155,500 = 24\%$ .

**PERSON RESPONSIBLE:** Lee Taylor



**Duke Energy Kentucky**  
**Case No. 2011-450**  
**Staff's Request for Information on Hearing**  
**Date Received: August 23, 2013**

**STAFF-DR-01-006**

**REQUEST:**

Refer to the Taylor Testimony, page 9, at lines 13-14. The statement is made that the reporting requirements ordered by the Commission include “developing a corrective action plan for any circuit failing the 5-year rolling average of various performance indices.” However, the Commission’s order states that for each circuit whose System Average Interruption Duration Index or System Average Interruption Frequency Index value in a given year is higher than the rolling five-year average for that circuit, excluding MEDs (Major Event Days), the utility shall provide “a Corrective Action Plan which describes any measures the utility has completed or plans to complete to improve the circuit’s performance.”<sup>1</sup> Does Duke believe there is a difference between its belief that the Commission’s intent is to require corrective action for “any circuit failing the 5-year rolling average” and the Commission’s stated requirement that the utilities describe “any measures the utility has completed or plans to complete?”

**RESPONSE:**

Duke Energy Kentucky does not take correction actions “by circuit.” Rather, the Company seeks to correct the problems that cause faults on the system in a manner that balances both reliability and cost. Thus, the Order’s requirement to file a corrective action plan “which describes any measures the utility has completed or plans to complete

---

<sup>1</sup> Final Order, p. 9 (May 30, 2013).

to improve the circuit's performance" does not reflect how the Company manages its system. The Company's response to such a requirement on a "by circuit" basis would likely be "No action planned," because the Company may not have a plan to improve any particular circuit's individual performance as compared to its five year rolling average performance. In fact, the Company may deploy resources to fix a problem with a design on part of the system that does not even appear on the list of circuits falling below their five year rolling average because it has the potential to proactively address a system weakness that has not yet come to fruition.

**PERSON RESPONSIBLE:** Lee Taylor



**Duke Energy Kentucky**  
**Case No. 2011-450**  
**Staff's Request for Information on Hearing**  
**Date Received: August 23, 2013**

**STAFF-DR-01-007**

**REQUEST:**

On page 9 of the Taylor Testimony, there is discussion of a similar order issued in Ohio that has been in place since before 2006. Additionally, at lines 16-17, Mr. Taylor states that Duke estimates “an additional 12 man-hours per circuit will be required to comply with the collecting and reporting of this requirement.”

- a. Provide the case name, docket number, and date of the order issued in Ohio that is referenced on page 9, lines 14-15 in the Taylor Testimony.
- b. Indicate whether the estimated 12 additional man-hours per circuit will be required on a weekly, monthly, or yearly basis.

**RESPONSE:**

- a) In 2008, in response to changes in the law, the Public Utilities Commission of Ohio revised its compliance rules related to reliability. As a result of those rule changes, electric distribution utilities in Ohio were required to submit applications to set standards for reliability. Duke Energy Ohio proposed its standards in Case No. 09-757-EL-ESS. The proposed standards were stipulated with intervenors and approved by the Commission on July 29, 2010.

In addition to meeting the requirements set forth in that proceeding, Duke Energy Ohio is also required to comply with and report compliance with standards set forth in the Ohio reliability reporting requirements as set forth in Ohio Administrative Code 4901:1-10-11. Please see Attachment STAFF DR-01-007A for the current effective provision.

Upon information and belief, this provision was proposed and approved by the Public Utilities Commission of Ohio in *The Matter of the Adoption of Electric Service and Safety Standards, Chapter 4901:1-10 of the Ohio Administrative Code, Case No. 97-1578-EL-ORD*, (Order)(July 22, 1998). The rule initially became effective July 1, 1999. The aforementioned docket for the creation of this regulation can be found here:

<http://dis.puc.state.oh.us/CaseRecord.aspx?Caseno=97-1578&link=DIVA>

Like all Ohio Administrative Regulations, 4901:1-10-11 is reviewed every five years in a formal rulemaking proceeding. The most recent rule making proceeding for this regulation is currently pending review in Case No. 12-2050-EL-ORD.

b) Yearly.

**PERSON RESPONSIBLE:** Lee Taylor

### **4901:1-10-11 Distribution circuit performance.**

(A) General. This rule sets forth a method for determining the performance of each electric utility's distribution circuits.

(B) Circuit performance methodology. The following provisions apply to the determination of the appropriate method for calculating circuit performance.

(1) Circuit performance data during major events and transmission outages shall be excluded from the calculation of circuit performance.

(2) Each electric utility shall submit, for review and acceptance by the director of the service monitoring and enforcement department, a method to calculate circuit performance, based on the service reliability indices defined in paragraph (B)(1) of rule 4901:1-10-10 of the Administrative Code and other factors proposed by the electric utility, and supporting justification for that method. An electric utility may revise the method it uses for calculating circuit performance (starting with the next succeeding calendar year) by submitting such revisions and supporting justification for such revisions to the director of the service monitoring and enforcement department for review and acceptance.

(3) If the electric utility and the director of the service monitoring and enforcement department cannot agree on the method to calculate circuit performance, then the director of the service monitoring and enforcement department shall issue a letter rejecting the proposal within forty-five calendar days of its submittal. The electric utility or the director may request a hearing to establish the appropriate calculation methodology. At such hearing, the burden of proof to show that the calculation methodology is just and reasonable shall be upon the electric utility.

(4) No proposal shall be effective until it is either accepted by the director or, in the event of a hearing, approved by the commission.

(C) Worst performing circuits. The following provisions apply to the reporting of each electric utility's eight per cent worst performing circuits:

(1) Each electric utility shall submit, no later than ninety calendar days after the end of its reporting period, a report to the director of the service monitoring and enforcement department that identifies the worst performing eight per cent of the electric utility's distribution circuits during the previous twelve-month reporting period.

(2) Unless otherwise approved by the commission, each electric utility's reporting period for purposes of paragraph (C) of this rule shall begin on September first of each year and shall end on August thirty-first of the subsequent year.

(3) The report prescribed by paragraph (C) of this rule shall provide the following information for each reported distribution circuit:

- (a) The circuit identification number.
- (b) The location of the primary area served by the circuit.
- (c) The approximate number of customers on the circuit by customer class.
- (d) The circuit ranking value.



Lawriter - OAC - 4901:1-10-11 Distribution circuit performance.

Page 2 of 3

- (e) The values and supporting data for each circuit's service reliability indices for the reporting period:
  - (i) System average interruption frequency index (SAIFI) determined according to paragraph (B)(1) of rule 4901:1-10-10 of the Administrative Code.
  - (ii) Customer average interruption duration index (CAIDI) determined according to paragraph (B)(1) of rule 4901:1-10-10 of the Administrative Code.
  - (iii) System average interruption duration index calculated by multiplying the SAIFI times the CAIDI.
- (f) The number of safety and reliability complaints, based on the definition of complaint pursuant to paragraph (A) of rule 4901:1-10-21 of the Administrative Code.
- (g) The number of critical customers on the circuit.
- (h) An identification of each circuit lockout that occurred during the reporting period, together with an explanation of the cause and duration of each such circuit lockout.
- (i) The total number of outages experienced during the reporting period for each such outage.
- (j) The total number of out-of-service minutes experienced during the reporting period for each such outage.
- (k) An identification of any major factors or events that specifically caused the circuit to be reported among the worst performing circuits and, if applicable, the analysis performed to determine those major factors.
- (l) An action plan, including the start and completion dates of all remedial action taken or planned, to improve circuit performance to a level that removes the circuit from the report submitted pursuant to paragraph (C) of this rule within the next two reporting periods. If the electric utility does not believe remedial action is necessary, then the electric utility must state the rationale for not taking any remedial action.
- (D) If the director of the service monitoring and enforcement department believes that an action plan submitted pursuant to paragraph (C)(3)(l) of this rule is insufficient or unreasonable, the director shall provide written notice to the electric utility within forty-five calendar days of the submittal, otherwise the report is deemed approved. Should no agreement be reached between the electric utility and the director of the service monitoring and enforcement department on a modified action plan, within thirty calendar days following the rejection of the action plan, the electric utility shall apply to the commission for a hearing. At such hearing, the burden of proof to show that the modified action plan is just and reasonable shall be upon the electric utility.
- (E) Each electric utility shall submit the reports required by this rule, on electronic media, in a format prescribed by the commission or its staff.
- (F) Electric utilities shall take sufficient remedial action to cause each listed circuit to be removed from the list within two years. The inclusion of a given circuit in the report under paragraph (C) of this rule for three consecutive reporting periods shall create a rebuttable presumption of a violation of this rule.

Replaces: 4901:1-10-11

Lawriter - OAC - 4901:1-10-11 Distribution circuit performance.

Page 3 of 3

Effective: 06/29/2009

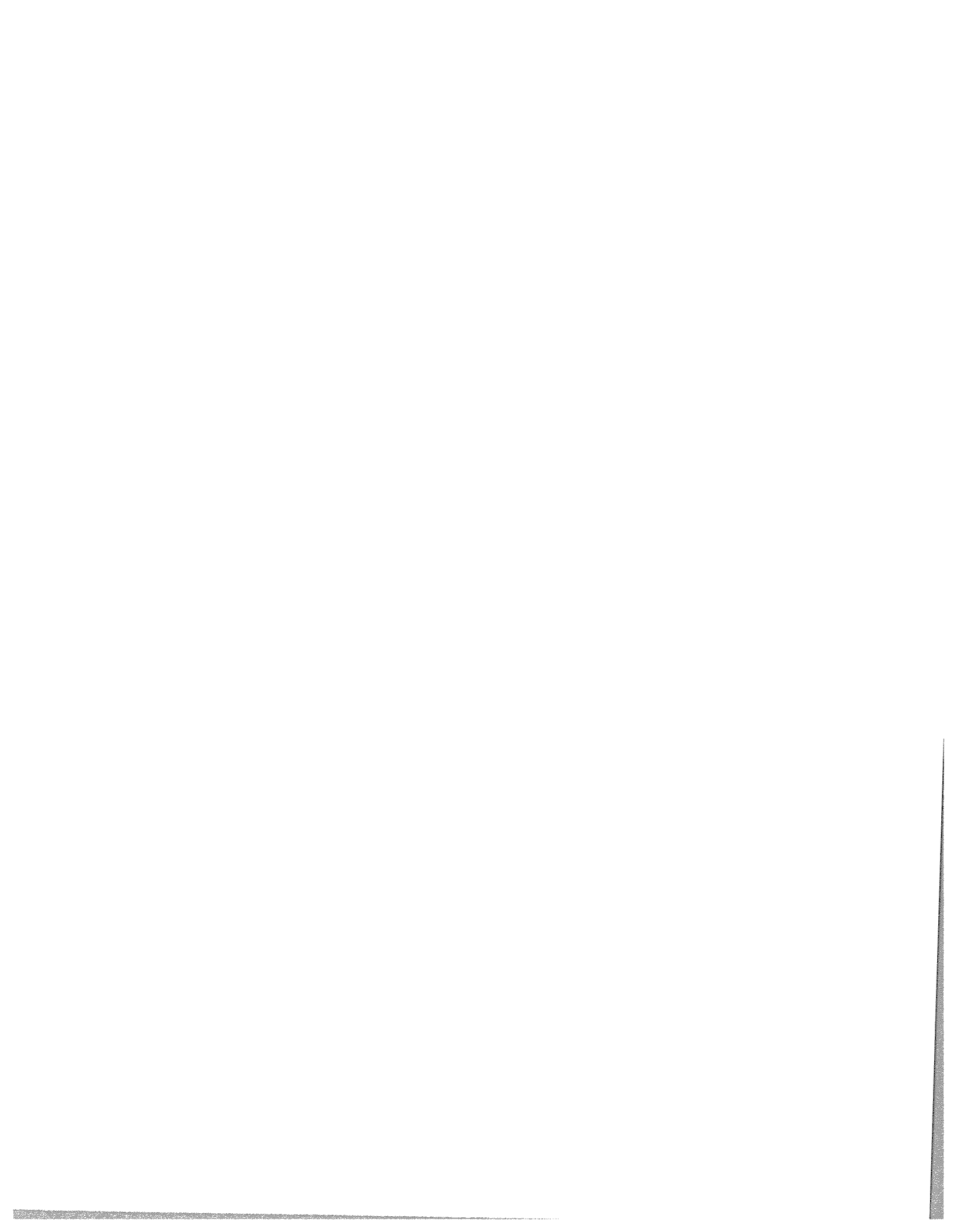
R.C. 119.032 review dates: 09/30/2012

Promulgated Under: 111.15

Statutory Authority: 4905.22, 4905.04, 4928.06, 4928.11

Rule Amplifies: 4905.06, 4905.22, 4905.28, 4928.11

Prior Effective Dates: 7/1/99, 9/18/00, 1/1/04



**Duke Energy Kentucky**  
**Case No. 2011-450**  
**Staff's Request for Information on Hearing**  
**Date Received: August 23, 2013**

**STAFF-DR-01-008**

**REQUEST:**

Refer to the Taylor Testimony, page 9, line 18, through page 10, line 4. Mr. Taylor provides a discussion regarding the re-allocation of resources within Duke to address the Commission's reporting requirements. Specifically, the statement is made that Duke will be forced to "re-deploy capital from programs already earmarked for reliability enhancements that benefit the entire system performance to address these so-called worst circuits" and that Duke "has a wide variety of existing reliability programs and processes that will be re-directed to the so-called 'worst circuits' by curtailing these programs on other circuits."

a. Provide detailed information related to the programs currently in existence within Duke that are earmarked to address reliability enhancements as indicated in its response.

- (1) Include any information available to indicate the process in place to review and analyze the performance of individual circuits annually based upon the reliability indices.
- (2) Include any information available to determine which circuits require corrective action, as well as what corrective action plans will be enacted to address any reliability concerns.

(3) Estimate the amount of time Duke and its staff invests in the process of analyzing the reliability and prescribing corrective action plans within the programs currently in place that are referenced in Duke's response.

b. Identify the estimated annual costs of the programs and processes identified previously that Duke believes will be negatively impacted by the Commission's reporting requirements.

c. Compare the estimated annual cost of the programs currently in place to the projected cost that Duke anticipates to incur as a result of the Commission's reporting requirements.

**RESPONSE:**

a) Duke Energy has numerous reliability improvement programs such as outage follow-up investigations, construction quality audits, standing orders, circuit sectionalization, and transformer retrofit just to name some of them. These programs will be applied to all the circuits in Kentucky over time because they are designed to address the problems on all our circuits not just the ones that perform below their 5-year average SAIFI and/or SAIDI in any given year.

(1) Duke analyses reliability problems, not circuits.

(2) Duke analyses reliability problems, not circuits.

(3) Duke estimates that it invests 1500 hours in the process of analyzing the reliability and prescribing corrective action plans.

b) The Commission's reporting requirements will draw resources away from reliability programs by the amount estimated in the answer to question Staff-DR-01-005b.

c) The incremental cost of the Commission's reporting requirements are small as compared to the cost of reliability programs the Company currently has in place. Nonetheless, the proposed reporting requirements incur an incremental cost that does not provide any benefit.

**PERSON RESPONSIBLE:** Lee Taylor



**Duke Energy Kentucky**  
**Case No. 2011-450**  
**Staff's Request for Information on Hearing**  
**Date Received: August 23, 2013**

**STAFF-DR-01-009**

**REQUEST:**

Refer to the Taylor Testimony, page 11, at lines 2-4. The statement is made that the Commission's May 30 Order in this case "will cause the Company to shift to an emphasis upon acute care that is directed towards particular problem areas and not the well-being of the whole system." Indicate language in the Commission's order which specifically prescribes for utilities how to address problems on its system.

**RESPONSE:**

Duke Energy Kentucky thinks that the concept of "worst circuit" is invalid. The Commission has ordered reporting that focuses on circuits, divides circuits into above and below their average, and therefore the commission clearly believes in the concept of "worst circuit." The Commission, therefore, is directing that utilities should focus reliability improvements in this manner.

**PERSON RESPONSIBLE:** Lee Taylor





**Duke Energy Kentucky**  
**Case No. 2011-450**  
**Staff's Request for Information on Hearing**  
**Date Received: August 23, 2013**

**STAFF-DR-01-010**

**REQUEST:**

Refer to the Taylor Testimony, page 11, lines 15-19. Mr. Taylor states that “the degree of particularly required by the Final Order removes much of the discretion that utility operations managers currently have to manage their entire system, thereby shifting responsibility for achieving system reliability away from the utility and towards a regulatory trigger that may or may not be accurate.”

- a. Given the Commission’s stated requirement that the utilities describe “any measures the utility has completed or plans to complete,”<sup>1</sup> explain how the Commission’s May 30 Order removes managerial oversight and attempts to micro-manage any decision to be made by Duke staff.
- b. Identify language in the Commission’s order in this case which establishes a “regulatory trigger,” as stated by Mr. Taylor.

**RESPONSE:**

- a) The Commission is requiring reporting on a circuit by circuit basis which Duke Energy Kentucky believes is an invalid concept. This reporting requirement would include submission of a corrective action plan by circuit if the circuit fails the five year average for performance. Duke Energy Kentucky does not manage its system or makes decisions on a circuit by circuit basis. Unless the Commission

---

<sup>1</sup> May 30 Order, p. 9.

is willing to accept a “No Action Planned” response to this by circuit reporting requirement, then by necessity to comply with the reporting requirement, Duke Energy Kentucky must change its current strategy and develop a strategy to evaluate circuit by circuit performance.

- b) The Commission is establishing a “worst circuit” trigger at the “worse than their average” level. If the Commission would like to state this requirement more clearly, we do not object.

**PERSON RESPONSIBLE:** Lee Taylor



**Duke Energy Kentucky**  
**Case No. 2011-450**  
**Staff's Request for Information on Hearing**  
**Date Received: August 23, 2013**

**STAFF-DR-01-011**

**REQUEST:**

On page 12 of the Taylor Testimony, at lines 16-17, Mr. Taylor claims that as a result of the Commission's reporting requirements, "approximately one-half of every utility's circuits will fail the reliability test in any given year." Provide evidence and any calculations utilized to support Duke's claim that one-half of all circuits in Kentucky will fall below the five-year averages annually.

**RESPONSE:**

Mathematically, there can be no other result if the data is correct and the calculation is correct. It is true that if there is a light weather year, then the number of circuits above their average for that year will likely be less than 50%. However, if there is a more stormy weather year, then it is also likely that the number of circuits above their historical average will be more than 50%. If a utility system has a long term reliability improvement trend, then the trend of circuits above their average should be slightly less than 50%, and a utility with a long term reliability worsening trend may be somewhat higher than 50%. But, overall, the average number of circuits failing the test will be around 50%, especially if measured over several years.

**PERSON RESPONSIBLE:** Lee Taylor



**Duke Energy Kentucky**  
**Case No. 2011-450**  
**Staff's Request for Information on Hearing**  
**Date Received: August 23, 2013**

**STAFF-DR-01-012**

**REQUEST:**

Refer to the Taylor Testimony, page 13, at lines 7-9. Mr. Taylor states that Duke “thinks that the final Order with respect to any reporting should be issued as a regulation so that the requirement is clear going forward.” Pursuant to KRS 278.230(c), “Every utility, when required by the commission, shall file with it any reports, schedules, classifications or other information that the commission reasonably requires. The commission shall prepare and distribute to the utilities blank forms for any information required under this chapter.”

a. Does Duke believe the reporting requirements established in the Commission’s Order in this case are covered by the specific statute?

(1) If so, explain why a regulation should be enacted to supplement statute that currently exists.

(2) If not, explain why Duke believes the requirement to provide records related to the reliability indices and circuit information for individual circuits falling outside of the five-year averages should be classified as something other than “reports, schedules, classifications or other information that the commission reasonably requires,” as stated in the Commission’s statutes.

b. Does Duke believe that the reporting requirements ordered in Administrative Case No. 2006-00494, and in place prior to this case, should have been issued as a regulation?

**RESPONSE:**

a) Objection. This response calls for a legal opinion and involves an analysis of the requirements of two separate statutes. Duke Energy Kentucky's discussion of this position was offered to raise the issue for the Commission to consider. The two statutes implicated by this proceeding are KRS 278.230(c), which specifies the nature of the Commission's authority to require utilities to provide various items to the Commission, and KRS 13A.100, which imposes obligations upon all administrative agencies with regard to the promulgation of rules of general applicability. Duke Energy Kentucky does not believe that these statutes are mutually exclusive and understands Kentucky law to require that they must be harmoniously construed so as to give effect to each. Duke Energy Kentucky does not believe that KRS 278.230(c) is a "specific" statute and that KRS 13A.100 is a "general" statute. Rather, Duke Energy Kentucky reads KRS 278.230(c) to define the scope of the Commission's authority and KRS 13A.100 to define the procedure by which the Commission may exercise that authority. Moreover, to the extent that any conflict may exist between KRS 278.230(c) and KRS 13A.100, the latter statute is more recent and, under a line of cases, must be given precedence if a harmonious construction is not possible. *See e.g. Commonwealth v. Hunt*, 619 S.W.2d 733, 734 (Ky. Ct. App. 1981), citing *Butcher v. Adams*, 310 Ky. 205, 220 S.W.2d 398. Thus, so long as the mandates of the Commission's Final Order in this case fall within the scope of administrative pronouncements which are subject to KRS 13A.100, and in the absence of express exemption from KRS 13A.100, Duke Energy Kentucky believes that a regulation is the most appropriate way for the Commission to implement its decision in this proceeding. The promulgation of a regulation also provides for greater



transparency and a broader opportunity for comment by members of the public and legislators.

KRS 13A.100 says that if a Commission Order is generally applicable, the Commission must issue it as an administrative regulation. The Company believes that the Commission's Final Order in this proceeding, which sets forth the requirement for utilities to provide annual reporting of reliability performance in a specific manner and level of detail, is a statement of general applicability, policy, procedure... that interprets and prescribes law or policy." This interpretation is consistent with the Franklin Circuit Court's opinion in *Commonwealth of Kentucky, ex rel. Frederic J. Cowan, Attorney General, et al. v. Public Service Commission*, Franklin Circuit Court, Division I, Civil Action No. 90-CI-00798 (July 10, 1991), wherein the Court ruled that a Commission Order establishing filing requirements for a forecasted test year was a statement of general applicability that implemented a new policy of the Commission as an "administrative regulation" as defined in 13A.010(2) and that the Commission was required to observe proper procedures in creating that regulation.

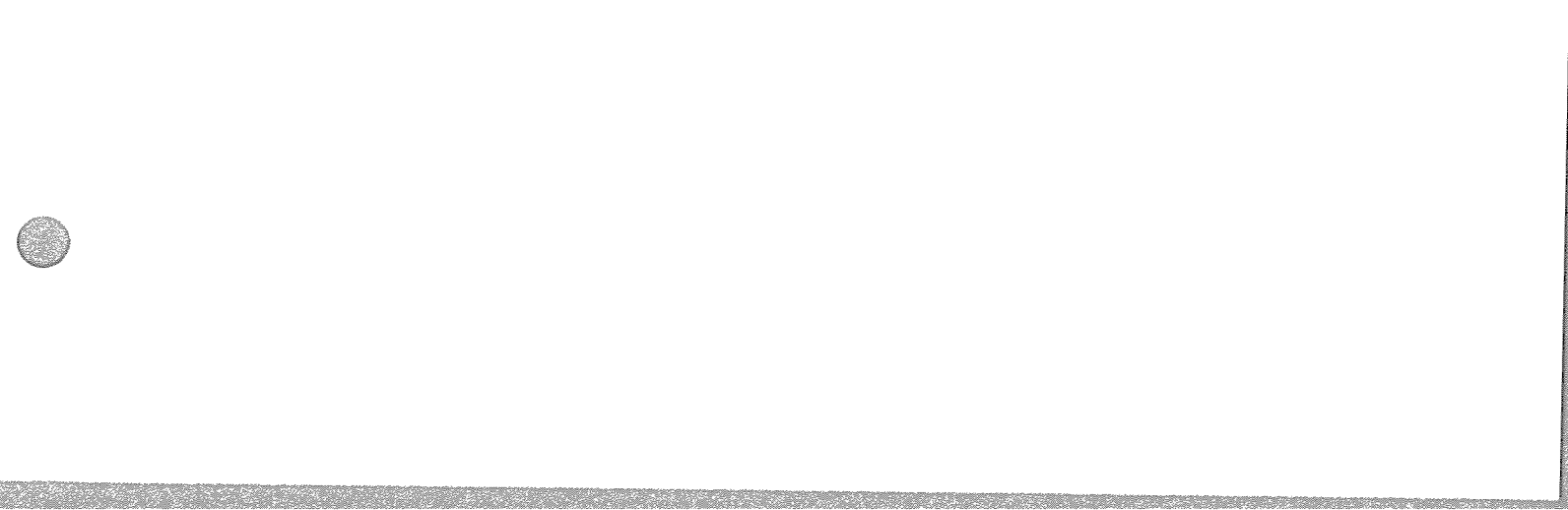
b) Yes, but Duke Energy Kentucky had already agreed to filing annual/yearly CAIDI, SAIDI, SAIFI data in Case No. 2005-00228 as a regulatory condition of approval of the merger of Duke Energy Corporation and Cinergy Corporation.

**PERSON RESPONSIBLE:** Legal

For the Objections



Rocco D'Ascenzo



**Duke Energy Kentucky**  
**Case No. 2011-450**  
**Staff's Request for Information on Hearing**  
**Date Received: August 23, 2013**

**STAFF-DR-01-013**

**REQUEST:**

Refer to the Taylor Testimony, page 12, at lines 10-14. Mr. Taylor proposes that the Commission eliminate the circuit-level reporting requirements, but should the Commission decide to require some additional level reporting, “the Commission should reduce the administrative burden of any reporting requirement to a reasonable level.” Provide any alternative reporting requirements that Duke believes to be “reasonable” for the Commission to consider.

**RESPONSE:**

Duke Energy Kentucky has not challenged the reporting requirements prior to this Order and thinks the requirements in place prior to this order are sufficient.

**PERSON RESPONSIBLE:** Lee Taylor