

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

DUKE ENERGY KENTUCKY, INC.	)	
ALLEGED FAILURE TO COMPLY WITH 807	)	CASE NO.
KAR 5:027, SECTION 3	)	2014-00263

ORDER

By Order dated August 7, 2014, the Commission initiated this proceeding to determine whether Duke Energy Kentucky, Inc. ("Duke Energy") should be subject to the penalties prescribed in KRS 278.992 for alleged violations arising under KRS 278.030, which requires every utility to furnish adequate, efficient and reasonable service, and 807 KAR 5:027, Section 3, which requires:

- (1) At the earliest practicable moment but no later than two (2) hours following discovery, each utility shall give notice to the commission in accordance with subsection (3) of this section of any incident that:
  - (a) Is reported to USDOT pursuant to 49 CFR Part 191, Federal Pipeline Safety Regulations.
  - (b) Requires taking any segment of pipeline or mains out of service.
  - (c) Results in gas ignition.
  - (d) Causes estimated damage to property of the utility, or others, or both, of \$25,000 or more.
  - (e) Results in the loss of service to forty (40) or more customers for four (4) or more hours.
  - (f) Causes the loss of a sizable amount of gas.
  - (g) Received extensive news coverage, or in the judgment of the utility is significant, even though it does not meet the criteria of paragraphs (a) through (g) of this subsection.
- (2) A utility need not give notice of an incident that meets only criteria of subsections (1)(b) and (c) of this section if it occurred solely as a result of, or in connection with, planned or routine maintenance or construction.

(3) Each notice required by subsection (1) of this section shall be made by telephone to the commission's chief engineer, gas pipeline safety branch, or designated staff . . .

(4) If designated staff cannot be contacted, required information shall be reported by telephone to the nearest post of Kentucky State Police, followed by confirmation via electronic mail addressed to the commission.

### PROCEDURAL HISTORY

The Commission's August 7, 2014 Order set forth a single violation of 807 KAR 5:027, Section 3, and required Duke Energy to file a written response to the alleged violation and to appear at a scheduled hearing. The violation arises from a January 25, 2013 incident wherein a house located at 1615 Water Works Road, Newport, Kentucky, exploded at approximately 4:30 a.m. Following the explosion, Duke Energy notified the Kentucky Emergency Operations Center of the incident. Duke Energy did not report the incident to the Commission until 11:04 a.m., over six hours after the incident.

On August 26, 2014, Duke Energy filed a response to the Commission's Order. In its Response, Duke Energy contended that its timely notification to the Kentucky Emergency Operations Center was sufficient to fulfill its obligation to notify the Commission of the explosion. In support, Duke Energy pointed to a notification guideline document posted on the Commission's website. The letter, as it was posted at the time of the incident, indicated that notice to the Kentucky Emergency Operations Center would result in notification of all emergency personnel. The letter was later amended to remove this reference. Duke Energy stated that it made a good faith effort to notify the Commission. Moreover, due to what Duke Energy characterized as the *de minimis* nature of the alleged violation, Duke Energy contended no monetary penalty

should be assessed. It further moved to dismiss the complaint and suspend the hearing.

By Order issued September 3, 2014, the Commission denied Duke Energy's motion to dismiss the case or suspend the hearing, but granted Duke Energy's alternative request for an informal conference, which was subsequently held on September 25, 2014.

Discussions in the course of the informal conference led to the filing of a Stipulation of Facts and Settlement Agreement ("Stipulation"), which is attached hereto as the Appendix and incorporated herein by reference. The Stipulation sets forth an agreed upon summary of the facts, provides for documentation of Duke Energy's notification procedures, and provides for the payment of \$1,000.00 in full settlement of this proceeding.

#### STIPULATION

In determining whether the terms of the Stipulation are in the public interest and are reasonable, the Commission has taken into consideration the comprehensive nature of the Stipulation and Duke Energy's actions taken after the incident, as well as Duke Energy's submission of documentation of its incident notification procedures as set forth in its safety manual.

Based on the evidence of record and being otherwise sufficiently advised, the Commission finds that the Stipulation is in accordance with the law and does not violate any regulatory principal. The Stipulation is a product of arm's-length negotiations among capable, knowledgeable parties, is in the public interest, and results in a reasonable resolution of all issues in this case.

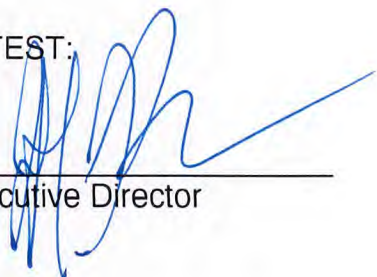
IT IS THEREFORE ORDERED THAT:

1. The Stipulation is adopted and approved in its entirety as a complete resolution of all issues in this case.
2. Duke Energy is assessed a civil penalty of \$1,000.00.
3. Duke Energy shall pay the amount of \$1,000.00 within 30 days of the date of this Order by cashier's check or money order made payable to the Kentucky State Treasurer and to be mailed or delivered to the Public Service Commission, Office of General Counsel, 211 Sower Boulevard, P. O. Box 615, Frankfort, KY 40602.
4. Upon the payment of \$1,000.00 by Duke Energy, this case shall be closed and removed from the Commission's docket without further Order of the Commission.

By the Commission

ENTERED
DEC 16 2014
KENTUCKY PUBLIC SERVICE COMMISSION

ATTEST:

  
\_\_\_\_\_  
Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2014-00263 DATED **DEC 16 2014**

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

DUKE ENERGY KENTUCKY, INC.

\_\_\_\_\_  
ALLEGED FAILURE TO COMPLY WITH  
807 KAR 5:027, SECTION 3

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CASE NO. 2014-00263

STIPULATION OF FACTS AND SETTLEMENT AGREEMENT

By Order dated August 7, 2014, the Commission initiated this proceeding to determine whether Duke Energy Kentucky, Inc. ("Duke Energy") should be subject to the penalties prescribed in KRS 278.992, which establishes penalties for violations of certain pipeline safety laws.

KRS 278.495 authorizes the Commission to regulate the safety of natural gas violations owned or operated by a public utility. This action was commenced regarding the potential violation of 807 KAR 5:027, Section 3, which provides in part:

At the earliest practicable moment but no later than two (2) hours following discovery, each utility shall give notice to the commission in accordance with subsection (3) of this section of any incident that: (a) Is reported to USDOT pursuant to 49 CFR Part 191, Federal Pipeline Safety Regulations. (b) Requires taking any segment of pipeline or mains out of service. (c) Results in gas ignition. (d) Causes estimated damage to property of the utility, or others, or both, of \$25,000 or more. (e) Results in the loss of service to forty (40) or more customers for four (4) or more hours. (f) Causes the loss of a sizable amount of gas. (g) Received extensive news coverage, or in the judgment of the utility is significant, even though it does not meet the criteria of paragraphs (a) through (g) of this subsection.

The Commission's Order arose out of an incident which occurred on January 25, 2013. At approximately 4:30 a.m., a house exploded at 1615 Water Works Road in Newport, Kentucky. Two of the three occupants were hospitalized with injuries and one of the two individuals died three days later from injuries received in the explosion.

At approximately 6:33 a.m. on January 25, 2013, Duke Energy Gas Control personnel informed the Kentucky Emergency Operations Center of the incident. At 11:04 a.m., Duke Energy directly notified the Commission of the explosion.

On August 26, 2014, Duke Energy filed a response to the Commission's Order. In its response, Duke Energy sets forth several defenses to the alleged violation. It first states that Duke Energy, in good faith, believed notifying the Kentucky Emergency Operations Center was sufficient to provide notice to the Commission, in accordance with a Commission issued emergency notification document. Second, it notes that the subsequent to the incident, the Commission emergency notification document was modified to remove the reference to the Kentucky Emergency Operations Center. Duke Energy generally agreed with the information contained in the Incident Investigation Report attached as an Appendix to the Commission's August 7, 2014 Order.

At an informal conference held on September 25, 2014, Duke Energy stated that it did not willfully fail to directly notify the Commission within two hours of the incident and believed due to the ambiguity of the Commission's emergency notification document that no willful violation was committed.

As a result of information provided by Duke Energy, and negotiations between Commission Staff and Duke Energy in the course of the informal conference, Duke Energy and the Commission Staff submit the following Stipulation of Facts and

Settlement Agreement ("Stipulation") for the Commission's consideration in rendering its decision in this proceeding:

1. Duke Energy agrees that the Incident Investigation attached as an Appendix to the Commission's August 7, 2014 Order in this case, accurately describes and sets forth the facts and circumstances surrounding the incident giving rise to the Order.

2. Duke Energy has submitted to the Commission hard copies of its incident notification procedures.

3. Duke Energy agrees to pay the amount of \$1,000 in full settlement of the proceeding. The scope of this proceeding is limited by the Commission's August 7, 2014 Order as to whether Duke Energy should be assessed penalties under KRS 278.992 for an alleged violation of the 807 KAR 5:027, Section 3, Telephonic Notice of Certain Incidents, promulgated consistent with Federal Pipeline Safety regulations as made applicable under KRS 278.495. Neither the payment of \$1,000, nor any agreement contained in this Stipulation, shall be construed as an admission by Duke Energy of any liability in any legal proceeding or lawsuit arising out of the facts set forth in the Report, nor shall the Commission's acceptance of this Stipulation be construed as a finding of a willful violation of any Commission regulation, statute, or rules within Duke Energy's safety manual.

4. In the event that the Commission does not accept this Stipulation in its entirety, Duke Energy reserves the right to withdraw therefrom and require that a hearing be held on any and all issues herein, and that none of the provisions contained herein shall be binding upon the parties hereto, used as an admission by Duke Energy

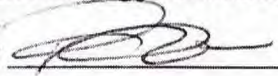


of any liability in any legal proceeding or lawsuit arising out of the facts set forth in the Report, or otherwise used as an admission by either party.

5. This Stipulation is for use in Commission Case No. 2014-00263. None of the provisions in this Stipulation establishes any precedent for any other case and neither Duke Energy nor Staff shall be bound by any part of this Stipulation in any other proceeding, except that this Stipulation may be used in any proceeding by the Commission to enforce the terms of this Stipulation or to conduct a further investigation of Duke Energy's service, and Duke Energy shall not be precluded or estopped from raising any issue, claim, or defense, therein by reason of the execution of this Stipulation.

6. Duke Energy and Staff agree that the foregoing Stipulation is reasonable, is in the public interest, and should be adopted in its entirety by the Commission. If so adopted by the Commission, Duke Energy agrees to waive its right to a hearing and will not file any petition for rehearing or seek judicial appeal.

**Duke Energy Kentucky, Inc.**

By  (Kevin O. DiAsenzo)

Title Associate General Counsel

Date 10-31-12

**Staff of the Kentucky Public Service Commission**

By *Joseph Taylor*

Title *Staff Attorney II*

Date *11/3/2014*

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