COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF DUKE ENERGY KENTUCKY, INC. FOR APPROVAL OF ENERGY EFFICIENCY PLAN, INCLUDING AN ENERGY EFFICIENCY RIDER AND PORTFOLIO OF ENERGY EFFICIENCY PROGRAMS	)))))	CASE NO. 2008-00495

O R D E R

On August 17, 2009, Duke Energy Kentucky, Inc. ("Duke Kentucky") moved the Commission for leave to substitute the direct testimony and attachments of Donald L. Storck for the direct testimony and attachments of Paul G. Smith. In response to Duke Kentucky's motion, the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention ("Attorney General"), filed a motion requesting that the Commission postpone the hearing scheduled for August 27, 2009 and allow his office the opportunity for discovery on the newly submitted documents. On August 20, 2009, Duke Kentucky filed a response to the Attorney General's motion, requesting that the Commission deny the motion and accept Mr. Storck's testimony and attachments.

Duke Kentucky states, in support of its motion, that the primary purpose of Mr. Storck's testimony is to adopt the testimony of Mr. Smith, who has taken a new position outside the company's rate department, and to correct errors in Mr. Smith's testimony and attachments. The Attorney General has no objection to the requested substitution but asserts that Mr. Storck's modifications and corrections, which include a new tariff to address the allocation of the costs associated with the proposed rider to

Duke Kentucky's natural gas customers, have not been subject to Intervenor discovery. He asserts that the Intervenors will be unduly prejudiced unless the Commission postpones the scheduled hearing and establishes an opportunity for discovery on the new testimony and attachments. Duke Kentucky denies that the Attorney General will be unduly prejudiced. It asserts that the corrections addressed in Mr. Storck's testimony and attachments are not substantial and merely involve typographical errors and omissions in the company's proposed cost recovery tariff, Rider SAW. It contends that, while a gas tariff was not attached to Mr. Smith's original testimony, the Attorney General had adequate opportunity to conduct discovery on Mr. Smith's testimony, that his testimony described how gas customers would be allocated a portion of the cost for the proposed energy programs, and that his PGS-2 Attachment included the calculation of the gas revenue requirement and the rate.

The Commission has reviewed the record and the parties' recent filings and finds that good cause has been shown that Donald L. Storck's testimony and attachments should be accepted for filing in substitution for Paul G. Smith's testimony and attachments, but finds that the proposed modifications and/or corrections are not merely typographical or benign as Duke Kentucky asserts.

The Commission agrees with Duke Kentucky that the modifications and corrections proposed to be made do not change how the recovery mechanism and rate formula are calculated and agrees that the Intervenors were sufficiently on notice that Duke Kentucky's natural gas customers would be allocated a portion of the cost recovery for the proposed energy efficiency programs. However, we do not agree that Duke Kentucky's proposed modifications to the "Applicability" section of its proposed

electric Tariff Rider SAW are no different than the typographical errors the Commission routinely allows to be made at hearing. Duke Kentucky's originally proposed electric Rider SAW tariff, submitted as a part of its application, provided that it would be applicable to services rendered under the provisions of Rate RS and Rate TT and that a non-residential customer whose total aggregate load exceeds 25 MW could opt out of the tariff. Mr. Storck's testimony and attachments significantly modify this section of the tariff. The proposed modified tariff provides that the rider is applicable to customers taking service pursuant to several rate schedules other than those originally proposed and reflects a complete change as to which customers Duke Kentucky proposes to be eligible to opt out of the tariff. Specifically, Duke Kentucky's modified tariff provides, in part, as follows:

Applicability

> Applicable to services rendered under the provisions of Rate RS, DS, DT, EH, SP, GS-FL, DP and TT. Industrial customers with an energy intensive load, located in the Company's certified territory, may opt [sic] of the tariff.

The Commission finds that a Duke Kentucky customer taking electric service under a rate schedule other than Rate RS or TT could reasonably have determined, after a review of Duke Kentucky's published notice and its originally proposed tariff, that Rider SAW would not be applicable to his or her service. Likewise, we find that a non-residential customer with an aggregate load greater than 25 MW could have determined that it would not be subject to the tariff since it could simply opt out.

Having reviewed the record and being otherwise sufficiently advised, the Commission finds as follows:

1. Duke Kentucky's motion to substitute Donald L. Storck's direct testimony and attachments for the testimony and attachments of Paul G. Smith should be granted.

2. The modifications and corrections made by Donald L. Storck to Duke Kentucky's electric Tariff Rider SAW should be accepted as filed as of the date of this Order.

3. The modifications and corrections made by Donald L. Storck constitute a revised electric Tariff Rider SAW that restarts the 10-month period for review set forth in KRS 278.190(3), but this case should be concluded as soon as reasonably possible.

4. Duke Kentucky should publish notice of its amended proposal to place its customers on notice as to the applicability of its proposed rider.

5. The Attorney General's motion to postpone the hearing scheduled for August 27, 2009 should be granted, and a very limited procedural schedule should be established to allow discovery on Mr. Storck's testimony and attachments.

IT IS THEREFORE ORDERED that:

1. Duke Kentucky's motion to substitute Donald L. Storck's direct testimony and attachments for the testimony and attachments of Paul G. Smith is granted.

2. The procedural schedule appended hereto shall be followed.

3. The hearing scheduled in this matter for August 27, 2009 at 10:00 a.m., Eastern Daylight Time, is cancelled and shall be rescheduled as soon as practicable after the conclusion of the discovery established in the attached procedural schedule.

4. Duke Kentucky shall publish notice of its amended proposal as set forth in the procedural schedule.

By the Commission

ENTERED

AUG 21 2009

KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:

Executive Director

APPENDIX

AN APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2008-00495 DATED AUG 2 1 2009

Duke Kentucky shall publish notice of its amended proposal in a manner similar to that provided when it filed its original application. Said notice shall clearly state the rate schedules that will be affected by the new proposal and new opt-out provision. The first notice shall be published no later than..... 09/01/09

Intervenors and Commission Staff may serve interrogatories and requests for production of documents upon Duke Kentucky related to the testimony and attachments of Donald L. Storck no later than..... 09/07/09

Duke Kentucky shall file with the Commission and serve upon all parties of record responses to interrogatories and requests for production of documents no later than 09/18/09

Last day for Duke Kentucky to publish notice of hearing ..... To Be Determined ("TBD")

Public Hearing to be held in Hearing Room 1 of the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky, for the purpose of cross-examination of witnesses of Duke Kentucky and Intervenors ..... TBD

Simultaneous Briefs shall be filed no later than ..... TBD

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