

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION OF DUKE ENERGY KENTUCKY, INC.)	
AND DUKE ENERGY ONE, INC. FOR)	CASE NO.
AUTHORIZATION TO DEVIATE FROM 807 KAR)	2019-00195
5:080, SECTION 6 REQUIREMENTS)	

ORDER

On June 10, 2019, Duke Energy Kentucky, Inc. (Duke Kentucky),¹ and Duke Energy One, Inc. (DEOne), (collectively Joint Applicants) filed a joint application requesting authorization to deviate from the requirements of 807 KAR 5:080, Section 6, to permit DEOne to use a disclaimer that differs from the required language. DEOne is a nonregulated affiliate of Duke Kentucky that offers a variety of energy services to residences and businesses throughout the United States. The requested deviation would allow DEOne to use a single disclaimer for its operations throughout the United States and to comply with similar affiliate requirements in which DEOne operates in the same jurisdictions as Duke Energy Corporation's (Duke Energy) regulated utilities, including Duke Kentucky.

KRS 278.2213(13) prohibits a utility's name, trademark, brand, or logo from being used by a nonregulated affiliate in any type of visual or audio media without a disclaimer, and 807 KAR 5:080, Section 6(1), sets forth the specific content of the disclaimer.

¹ The Commission takes administrative notice that Duke Kentucky is a wholly owned subsidiary of Duke Energy Ohio, Inc. (Duke Ohio) and that Duke Energy is the ultimate parent company of Duke Ohio, Duke Kentucky, and DEOne.

Pursuant to KRS 278.2219, a utility can request a deviation from the requirements of KRS 278.2213. In requesting a deviation, a utility must, among other things, demonstrate the basis for the deviation² and establish that compliance with the disclaimer requirement is impracticable or unreasonable.³

In support of their application, Joint Applicants state that the proposed disclaimer is substantially identical to that required by 807 KAR 5:080, Section 6(1),⁴ and will not degrade or impair the quality of the required disclaimer or the intent of the regulation.⁵ Joint Applicants propose that, in lieu of the prescribed language, DEOne utilize the following disclaimer:⁶

Duke Energy One ("DEOne") is not the same company as Duke Energy Corporation's regulated utilities, including Duke Energy Carolinas, Duke Energy Florida, Duke Energy Kentucky, Duke Energy Indiana, Duke Energy Ohio and Duke Energy Progress ("Regulated Utilities"); DEOne is not in any way sanctioned by the state utility commissions regulating the Regulated Utilities; Purchasers of products or services from DEOne will receive no preference or special treatment from the Regulated Utilities; and a customer does not have to buy products or services from DEOne in order to continue to receive the same safe and reliable electric or gas service from the Regulated Utilities. Nonpayment for these products or services may result in removal from the program, but will not

² KRS 278.2219(2)(a).

³ KRS 278.2219(3).

⁴ 807 KAR 5:080, Section 6(1), provides in full as follows:

The disclaimer shall state that "(affiliate's name) is not the same company as (utility's name). (Affiliate's name) is not regulated by the Kentucky Public Service Commission. You do not have to buy (the affiliate's) (products or services, as applicable) in order to receive quality regulated services from the utility."

⁵ Joint Application at 3

⁶ *Id.* See also Duke Kentucky's response to Staff's First Request, Item 2. Minor revisions were made through discovery.

result in disconnection of electric or gas service by the Regulated Utilities. THIS MESSAGE IS PAID FOR BY THE SHAREHOLDERS OF DUKE ENERGY CORPORATION.

Joint Applicants state that the proposed language includes the information required by 807 KAR 5:080, Section 6(1), and additionally includes language to clarify that regulated utility services cannot be terminated due to nonpayment for DEOne's products or services and that the cost of the disclaimer is paid for by the shareholders of Duke Energy.⁷ Joint Applicants assert that multiple disclaimers result in unnecessary expense and customer confusion;⁸ a single disclaimer will promote more efficient use of employee labor and printed materials and reduce customer confusion.⁹ Duke Energy's regulated utilities operate in Florida, Indiana, Kentucky, North Carolina, Ohio, and South Carolina.¹⁰ Joint Applicants state that DEOne has requested deviations from similar nonregulated affiliate requirements in North Carolina and South Carolina; the remaining jurisdictions do not require a deviation to modify the disclaimer.¹¹

Having reviewed the application and being otherwise sufficiently advised, the Commission finds that Joint Applicants have shown good cause to permit a deviation from the disclaimer requirements of 807 KAR 5:080, Section 6(1).

⁷ Joint Application at 4.

⁸ *Id.*

⁹ Duke Kentucky's response to Staff's First Request, Item 4.

¹⁰ Joint Application at 3

¹¹ Duke Kentucky's response to Commission Staff's First Request for Information (Staff's First Request), Item 1.

IT IS THEREFORE ORDERED that:

1. Duke Kentucky and DEOne's application, as revised through discovery, for a deviation from 807 KAR 5:080, Section 6(1), is granted.
2. This case is closed and removed from the Commission's docket.

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By the Commission

ENTERED
AUG 13 2019
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

Case No. 2019-00195

*Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45202

*Rocco O D'Ascenzo
Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45201