

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC TARIFF FILING OF DUKE ENERGY)	
KENTUCKY, INC OF A WRITTEN CONSENT OF)	CASE NO.
SUB-METERING WITH SKYPOINT)	2020-00375
CONDOMINIUM OWNERS ASSOCIATION, INC.)	

ORDER

On October 29, 2020, Duke Energy Kentucky, Inc. (Duke Kentucky) filed, through the Commission's electronic Tariff Filing System, a Written Consent of Submetering with Skypoint Condominium Owners Association, Inc. (Agreement). An effective date was not specified in the Agreement. KRS 278.180(1) requires a utility to provide the Commission with 30 days' notice before making changes to any rate. Therefore, the earliest possible effective date for the Agreement is November 28, 2020, which is 30 days after the filing date. Duke Kentucky responded to one request for information on November 13, 2020. That response is attached to this Order as the Attachment, and it will be included in the evidentiary record on this matter.

KRS 278.030 provides that a utility may collect fair, just, and reasonable rates and that the service it provides must be adequate, efficient, and reasonable. Also, 807 KAR 5:011, Section 13, requires a utility to file with the Commission a copy of any special contracts containing rates, charges, or conditions of service not set forth in its tariff. Having considered the proposed Agreement and being otherwise sufficiently advised, the Commission finds that an investigation will be necessary to determine the reasonableness of the proposed Agreement and that such an investigation cannot be

completed by November 28, 2020. Pursuant to KRS 278.190, the Commission will, therefore, suspend the effective date of the proposed Agreement for five months, up to and including April 27, 2021.

The Commission finds that within seven days of the date of entry of this Order, Duke Kentucky should have its counsel enter an appearance into this proceeding that contains the name, address, telephone number, fax number, and electronic mail address of counsel.

As 807 KAR 5:001, Section 8, permits the Commission to direct the use of electronic filing procedures for proceedings that we initiate on our own motion, we find that electronic filing procedures should be used. As such, Duke Kentucky should follow the procedures set forth in 807 KAR 5:001, Section 8, when filing any document or paper in this matter. The Commission directs Duke Kentucky to the Commission's March 16, 2020 and March 24, 2020 Orders in Case No. 2020-00085¹ regarding filings with the Commission. The Commission expects the original documents to be filed with the Commission within 30 days of the lifting of the current state of emergency.

The Commission further finds that a procedural schedule should be established to ensure the orderly review of the reasonableness of the Agreement. The procedural schedule is attached hereto as an Appendix to this Order and is incorporated herein.

IT IS THEREFORE ORDERED that:

1. This proceeding is established to investigate the reasonableness of the proposed Agreement.

¹ Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19* (Ky. PSC Mar. 16, 2020), Order at 5–6. Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19* (Ky. PSC Mar. 24, 2020), Order at 1–3.

2. Duke Kentucky's proposed Agreement is suspended for five months from November 28, 2020, up to and including April 27, 2021.

3. Any interested party may, by counsel, file a motion to intervene no later than December 4, 2020.

4. Duke Kentucky shall, by counsel, enter an appearance in this proceeding within seven days of the date of entry of this Order. The entry of appearance shall include the name, address, telephone number, fax number, and electronic mail address of counsel.

5. Unless otherwise ordered by the Commission, the procedures set forth in 807 KAR 5:001, Section 8, related to service and electronic filing of papers shall be followed in this proceeding.

6. Pursuant to 807 KAR 5:011, Section 8(9), within seven days of entry of this Order, Duke Kentucky shall file by electronic means a written statement that it waives any right to service of Commission orders by United States mail and that it or its authorized agents possesses the facilities to receive electronic submissions. The paper original shall be filed within 30 days of the ending of the current state of emergency caused by COVID-19.

7. Unless a party granted leave to intervene states its objection to the use of electronic filing procedures in a motion for intervention, the party shall:

a. Be deemed to have consented to the use of electronic filing procedures and the service of all papers, including Orders of the Commission, by electronic means; and

b. Within seven days of the date of entry of an Order of the Commission, granting intervention, file with the Commission a written statement that:

(1) It, or its authorized agent possesses the facilities to receive electronic transmissions; and

(2) Sets forth the electronic mail address to which all electronic notices and messages related to this proceeding should be served.

8. If a party objects to the use of electronic filing procedures and the Commission determines that good cause exists to excuse that party from the use of electronic filing procedures, service of documents on that party and by that party shall be made in accordance with 807 KAR 5:001, Section 4(8).

9. The procedural schedule set forth in the Appendix to this Order shall be followed.

10. a. Responses to requests for information in paper medium shall be appropriately bound, tabbed, and indexed. Electronic documents shall be in portable document format (PDF), shall be searchable, and shall be appropriately bookmarked. The paper original shall be filed within 30 days of the ending of the current state of emergency caused by COVID-19.

b. Each response shall include the name of the witness responsible for responding to the questions related to the information provided and shall be answered under oath or, for representatives of a public or private corporation or a partnership or an association or a governmental agency, be accompanied by a signed certification of the preparer or person supervising the preparation of the response on behalf of the entity that

the response is true and accurate to the best of that person's knowledge, information, and belief formed after a reasonable inquiry.

c. A party shall make timely amendment to any prior response if it obtains information that indicates the response was incorrect when made or, though correct when made, is now incorrect in any material respect.

d. For any request to which a party fails or refuses to furnish all or part of the requested information, that party shall provide a written explanation of the specific grounds for its failure to completely and precisely respond.

e. Careful attention should be given to copied material to ensure that it is legible. When the requested information has been previously provided in this proceeding in the requested format, reference may be made to the specific location of that information in responding to this request.

f. Any party filing a paper containing personal information shall, in accordance with 807 KAR 5:001, Section 4(10), encrypt or redact the paper so that the personal information cannot be read.

11. As set forth in 807 KAR 5:001, Section 4(11)(a), a person requesting permissive intervention in a Commission proceeding is required to demonstrate either (1) a special interest in the proceeding which is not adequately represented in the case, or (2) that the person requesting permissive intervention is likely to present issues or develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings. Further, KRS 278.040(2) requires that a person seeking intervention must have an interest in the rates or service of a utility, as those are the only matters that are subject to the Commission's jurisdiction. Therefore,

any person requesting to intervene in a Commission proceeding must state with specificity the person's special interest that is not otherwise adequately represented, or the issues and facts that the person will present that will assist the Commission in fully considering the matter. A mere recitation of the quantity of utility service consumed by the movant or a general statement regarding the potential impact of possible modification of rates will not be deemed sufficient to establish a special interest. In addition, any motion to intervene after the date established in the procedural schedule shall also show good cause for being untimely. If the untimely motion is granted, the movant shall accept and abide by the existing procedural schedule.

12. Duke Kentucky shall give notice of the hearing in accordance with the provisions set forth in 807 KAR 5:001, Section 9(2). In addition, the notice of the hearing shall include the following statements: "This hearing will be streamed live and may be viewed on the PSC website, psc.ky.gov"; and "Public comments may be made at the beginning of the hearing. Those wishing to make oral public comments may do so by following the instructions listed on the PSC website, psc.ky.gov." At the time publication is requested, Duke Kentucky shall forward a duplicate of the notice and request to the Commission.

13. At any public hearing in this matter, neither opening statements nor summarization of direct testimonies shall be permitted.

14. Pursuant to KRS 278.360 and 807 KAR 5:001, Section 9(9), a digital video recording shall be made of the hearing.

15. The Commission does not look favorably upon motions of continuance. Accordingly, motions for extensions of time with respect to the schedule herein shall be made in writing and will be granted only upon a showing of good cause.

16. Nothing contained herein shall prevent the Commission from entering further Orders in this matter.

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By the Commission



ATTEST:



Deputy Executive Director

Case No. 2020-00375

ATTACHMENT

ATTACHMENT TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2020-00375 DATED NOV 25 2020

[SEVEN PAGES TO FOLLOW]

Duke Energy Kentucky
TSF No. 2020-00487
Staff's First Set of Data Requests
Date Received: November 12, 2020

STAFF-DR-01-001

REQUEST:

Explain how this proposed sub-metering agreement comports with the Commission's findings and decision in Case No. 2018-00261 with respect to sub-metering.

RESPONSE:

This property was a converted nursing home where there was originally a single natural gas service to the premises. There were not separate or individual natural gas meters for the individual rooms or residents. The building has since been renovated to a condominium complex, but maintained the single natural gas service and meter to the premises. Individual natural gas services were not requested from Duke Energy Kentucky, nor were they designed for the renovation. Apparently some, but not all of the individual tenants of the condominium requested natural gas service to their individual units. This was all done by the developer who intended to simply allocate the gas bills among those tenants using natural gas according to individual unit consumption and was preparing install the submetering equipment without Duke Energy Kentucky's knowledge or consent. The developer maintains that he has done this in several properties in other cities in Kentucky, including Louisville. Duke Energy Kentucky only learned of the submetering intent by the developer when service was requested to be initiated. Upon learning of the submetering intent by the developer, Duke Energy Kentucky explained the Commission's Order in Case No. 2018-00261. Skypoint's developer then requested that the Company consider solutions

to allow the sub-metering to occur as the developer has done in other cases with other Kentucky utilities and indicated to the Company that it was considering its legal options. The Company reviewed other utility tariffs and found that they do permit this sort of arrangement. The Company also reviewed prior special contracts for master-meter systems that have been filed with and accepted by the Commission historically. As a result, the Company discussed the possibility of a submitting a special contract to the Commission to possibly authorize this arrangement to occur with protections for occupants.

Before entering into this agreement, the Company reviewed several Commission decisions including, but not limited to, Case Nos. 2018-00261 and 2016-00395, other Ky utility tariffs, and Staff Opinion Number 2015-007. Duke Energy Kentucky believes that the situation at issue here does not meet the definition of a master meter. The premises at issue is a single building with multiple interior units within that single building. The units are all residential. Duke Energy Kentucky is providing a single natural gas service and meter to the building itself. The customer of record is Skypoint Condominium Owners Association (Skypoint), who will be responsible for paying for the natural gas service to the building. The submetering will be installed behind Duke Energy Kentucky's equipment and meter and on the customer's interior piping for specific units that are using natural gas. It is Duke Energy Kentucky's understanding that some, but not all of the units will have natural gas usage capability for cooking/heating purposes. As the Commission Staff has recognized, the Office of Pipeline Safety policy is that the term master meter system applies only to gas distribution systems serving multiple buildings and does not include gas distribution systems consisting entirely or primarily of interior piping located within a single building. *See Staff Opinion 2015-007, citing U.S. D.O.T. for the Office of Pipeline Safety "Assessment of the Need for an Improved Inspection Program for Master Meter*

Systems,” a Report of the Secretary of Transportation to the Congress, prepared pursuant to Section 108 of Public Law 100-561 (Jan.2002) at 5; *Also citing “U.S. DOT “Research and Special Programs Administration Responses to National Association of Pipeline Safety Representatives Resolutions,”* pp. 115-116.

The Commission’s Order in Case No 2018-00261 expressed a concern that the tariff language amendment the Company proposed would “expressly authorize the allocation of natural gas bills by master-metered customer to others without any monitoring of the allocation process by Duke Energy Kentucky,” and that “[a]bsent monitoring of the allocation processes by Duke Kentucky, those residing in condominiums and apartments with master meters would have no assurance that their allocated share of the gas bill is accurate and does not represent a resale of service at a profit.” The Company interpreted this as the Commission’s concern was ensuring that customers pay only for the natural gas consumed and that the submetering does not result in a resale of service for a profit. Because the Company does not have the capability, or personnel to monitor allocations that may occur in sub-metering situations, the Company, in its attempt to both manage its costs and assist Skypoint with its desire to sub-meter behind Duke Energy Kentucky’s service, the Company developed the proposed contract for Commission consideration. The Company’s current tariff, KY.P.S.C. Gas No. 2 Fourth Revised Sheet No. 21 , Section 6 Use of Service, states as follows:

... Service is for Customer's use only and under no circumstances may Customer or Customer's agent or any other individual, association or corporation install meters for the purpose of reselling or otherwise disposing of service supplied Customer...

In case of unauthorized remetering, sale, extension or other disposition of service, Company may immediately discontinue the supplying of service to Customer until such unauthorized act is discontinued and full payment is made for all service supplied or used, billed on proper classification and Rate Schedule, and reimbursement in full made to Company for all extra expenses incurred, including expenses for clerical work, testing and inspections.

The Company's tariff clearly provides a remedy for "unauthorized" remetering, sale etc... or other disposition of service. Therefore, the Company believes that if a contract submitted to the Commission meets its approval, then the remetering would be authorized. Additionally, because the situation at issue does not involve a master metering situation as that term is defined under the law and as referenced in the Commission's Order in Case No. 2018-00261, the Company attempted to work with the customer, Skypoint, to identify a way to develop an "authorized" remetering arrangement. While Duke Energy Kentucky simply cannot insert itself between Skypoint and its occupant/members, the Company can nonetheless provide certain protections via the contract to attempt to satisfy the Commission's concern regarding "resale for profit" as stated in the Commission's Order in Case No. 2018-00261. These commitments include acknowledgements that Skypoint will not charge any additional fees and will not bill more than the total natural gas bill for utility service. Failure to do so will result in cancellation of the arrangement and potential disconnection if the unauthorized submetering is not discontinued. The Company believes these provisions will provide protection to the occupants from any improper allocations.

Duke Energy Kentucky regularly receives sub-metering requests from multi-unit single premises buildings. The Company believed a special contract would be a reasonable alternative for customers wishing this service rather than continually prohibiting the arrangement to occur.

Duke Energy Kentucky
TSF No. 2020-00487
Staff's First Set of Data Requests
Date Received: November 12, 2020

STAFF-DR-01-002

REQUEST:

Explain how Duke Kentucky will monitor the allocation process.

RESPONSE:

Duke Energy Kentucky will not monitor the allocation process. The Company does not provide sub-metering services and does not have the capability or personnel to monitor the submetering equipment, reading such equipment on a monthly basis, or Skypoint's allocations. The submetering is being done by Skypoint, at its own volition, and for its own benefit and that of its occupants. The sub-metering system is being installed behind the Company's meter and equipment, and on the interior piping to the building. The submetering equipment is not Duke Energy Kentucky equipment and we do not have capability or responsibility for operating or maintaining this submetering equipment. Duke Energy Kentucky will not perform monthly reading of this submetering equipment selected by Skypoint.

Rather than deny natural gas service altogether and insist that no submetering be installed before initiating service, particularly before the winter heating season, the Company has attempted to work with the customer to develop a reasonable process that balances interests. In order to protect the occupants at the building, the Company negotiated protections for the occupants to allow the sub-metering to conditionally occur under the Company's tariff. By contract, Skypoint is agreeing that it will not charge any additional

fees or charges to the occupants and will not charge any more than the pro-rated amount of Duke Energy Kentucky's total natural gas bill. Skypoint is agreeing that it will keep adequate records and will make those records available for inspection upon request and will cooperate and participate in any Commission investigation should one arise. In the interest of safety, while the Company is not maintaining or operating the submetering system, Skypoint is agreeing to provide the Company access to this equipment in the event of an emergency. Occupants will maintain the right to claim that Skypoint is not allocating properly and Duke Energy Kentucky reserves its right to terminate the agreement and disconnect the premises if Skypoint is not billing properly and/or profiting from the resale of natural gas. The contract does not prohibit an occupant from filing a complaint with the Commission. Skypoint remains the customer of Duke Energy Kentucky and will be subject to all the terms and conditions of Duke Energy Kentucky's tariffs, including those regarding unauthorized remetering. If Skypoint is not abiding by the terms of the contract, the remetering will be deemed unauthorized and they will be subject to disconnection unless the submetering is removed.

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2020-00375 DATED NOV 25 2020

- Requests for intervention shall be filed no later than 12/04/2020
- All initial requests for information to Duke Kentucky shall be filed no later than 12/11/2020
- Duke Kentucky shall file responses to initial requests for information no later than.....12/21/2020
- Intervenor Testimony, if any, in verified prepared form shall be filed no later than..... 01/06/2021
- All requests for information to Intervenors shall be filed no later than..... 01/19/2021
- Intervenors shall file responses to requests for information no later than..... 01/26/2021
- Duke Kentucky or any Intervenor shall request either a hearing or that the case be submitted for decision based on the record no later than 02/02/2021

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