

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE  
COMMISSION

In the Matter of:

THE APPLICATION OF THE UNION LIGHT, HEAT )  
AND POWER COMPANY D/B/A DUKE ENERGY ) CASE NO. 2006-00172  
KENTUCKY TO INCREASE ITS ELECTRIC RATES )

ATTORNEY GENERAL'S RESPONSE TO APPLICANT'S  
ALTERNATIVE MOTIONS (1) FOR REHEARING,  
(2) FOR WAIVER OF FILING REQUIREMENTS, OR (3) FOR LEAVE TO  
AMEND OR SUPPLEMENT ITS APPLICATION

Pursuant to KRS 278.040(3), the Commission may adopt regulations to implement the provisions of KRS Chapter 278. With reference to current and proposed tariffs for a general rate case application, the Commission has adopted 807 KAR 5:001 Section 10 (b)8 which requires presentation of proposed and current tariffs in one of two formats; (1) in comparative form side-by-side on the same or facing pages, or (2) by presentation of the current tariff with proposed additions italicized or underscored and deletions struck through. Under 807 KAR 5:001 Section 10(b) 8 and 7, the tariffs so presented also have to comply with all of the filing requirements for a tariff set out in 807 KAR 5:011, including of particular note here, the issued and effective dates of the tariff. The Union Light Heat and Power Company d/b/a/ Duke Energy Kentucky ("DEK") has filed motions requesting a variety of relief with regard to its failure to file the current and proposed tariffs for review by the Commission in the format required by 807 KAR 5:001 Section 10 (b)8. Among the relief requested is to rehear and overturn its decision that the filing is deficient and an acceptance of the two-part filing it has used in this case on the basis of substantial compliance or as an acceptable deviation, or if the newly offered Schedules L-1 and

L-2.2 are accepted as a means to cure the deficiency, to grant a 20 day suspension only for good cause shown.

The Attorney General understands that meeting the requirements of a complex rate filing is difficult and DEK's reasoning behind presenting that filing in a format that has not been previously challenged as deficient. That the format has not been previously challenged, however, does not mean the deficiency does not exist and need not be cured.

The very purpose of the regulation pertaining to the presentation of tariffs is to allow ready comparisons of technical and extensive documents whose very essence lies in the detail and whose meaning and implementation can be readily varied. The initial presentation in two sections, with some deletions/additions noted on the current tariffs and other deletions/additions noted on the proposed tariffs simply fails to comport with the requirements of the regulation and does not allowed for ready comparison of what now is and what the company proposes is to be. The deficiency finding is appropriate and should be sustained.

Because the filing does not allow the sort of ready comparison that is the very benefit the tariff presentation regulation is designed to create it would be inappropriate to grant the request to permit a deviation and to find the filing acceptable. A deviation that reduces that ready comparison is not appropriate even though the utility was merely repeating a process it has previously followed. Further, while deviations from the filing requirements are allowed under Section 10 of the regulation, a deviation request should accompany or precede a filing in order to alert the Commission to the fact that the filing will vary from the expectation rather than being granted on a remedial basis after the fact and only in the event that the error in the filing is caught by the Commission.

Finally, as the time to process the action runs from the acceptance of the filing, any waiver of filings that fail to comport entirely with regulatory requirements slides down the slippery slope of establishing precedent. DEK has pointed to other instances in which substantial compliance has been accepted rather than requiring the less than compliant filing to be cured as a prerequisite to acting on the filing. A finding of substantial compliance may be appropriate where the incomplete/incorrect filing does not negate the very benefit that is the object of the regulatory requirement, but it is not appropriate here.

Further, while the acceptance of a deviation and the allowance of a waiver of starting the time from the completion of a filing that meets the regulatory requirements in full may not be harmful in a case where the statutes allow relatively substantial time for processing, it creates a terrible potential precedent for those cases with a short term turn around like applications for mergers and changes of control. This very situation arose recently in connection with the Alltel change of control action Case No. 2005-00534.<sup>1</sup>

Lastly, both Schedules L-1 and L-2.2 as originally filed and as filed again on June 19, 2006 are missing, at a minimum, Sheet 82 for Rider PSM, Off-System Sales Profit Sharing Mechanism, Sheet 100 for Rider for Emergency Electric Procedures and Sheet 101 for Rate MDC, Meter Data Charges. No doubt these omissions and any other sheets that may be missing were left out inadvertently, but the filing is still not complete.

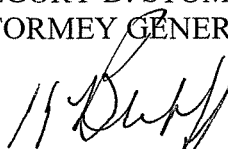
The Attorney General does not object to utilizing the power to grant a shortened 20 day suspension permitted by KRS 278.180 for good cause shown in recognition of DEK's reliance on the previously filed cases for its submission of tariffs.

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<sup>1</sup> See, *In the Matter of: Application for the Transfer of Control of Alltel Kentucky, Inc. and for Authorization to Guarantee Indebtedness*, Case No. 2005-00534, Applicant's March 24, 2006 Response to International Brotherhood of Electrical Worker's Motion for Full Intervenor Status.

Respectfully submitted,

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Certificate of Service and Notice of Filing

I hereby give notice that I have filed the original and ten true copies of the foregoing with the Executive Director of the Kentucky Public Service Commission at 211 Sower Boulevard, Frankfort, Kentucky, 40601, this the 21st day of June, 2006, and certify that this same day I have served the parties by mailing a true copy, postage prepaid, to the following:

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