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COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

FEB 23 2007

PUBLIC SERVICE  
COMMISSION

In the Matter of:

AN EXAMINATION OF THE APPLICATION )  
OF THE FUEL ADJUSTMENT CLAUSE OF )  
KENTUCKY UTILITIES COMPANY FROM )  
NOVEMBER 1, 2004 THROUGH )  
OCTOBER 31, 2006 )

CASE NO. 2006-00509

**MOTION OF KENTUCKY UTILITIES COMPANY TO STRIKE  
KENTUCKY INDUSTRIAL UTILITIES CUSTOMERS, INC.'S  
FIRST SET OF DATA REQUESTS QUESTION NO. 14**

Kentucky Utilities Company ("KU") hereby moves the Public Service Commission ("Commission") to strike Question No. 14 of Intervenor Kentucky Industrial Utility Customers, Inc.'s ("KIUC") First Set of Data Requests to KU ("Question No. 14") because Question No. 14 violates the express written terms of the settlement agreement approved by the Commission in Case No. 2006-00172.

In support of this Motion, KU states as follows:

During Duke Energy Kentucky's ("DEK") most recent base rate proceeding before this Commission (Case No. 2006-00172), DEK and the intervenors therein reached a written unanimous settlement agreement ("DEK Settlement Agreement").<sup>1</sup> KIUC's counsel in this proceeding signed the DEK Settlement Agreement in Case No. 2006-00172. The DEK Settlement Agreement expressly states:

**33. Admissibility and Non-Precedential Effect.** Neither the Settlement Agreement nor any of the terms shall be admissible in any court or Commission except insofar as such court or Commission is addressing litigation arising out of the implementation of the terms herein or the approval of this

<sup>1</sup> *In the Matter of Application of Union Light, Heat and Power Company d/b/a Duke Energy Kentucky for an Adjustment of Electric Rates*, Case No. 2006-00172, Order at Appx. B ("DEK Settlement Agreement").

Settlement Agreement. This Settlement Agreement shall not have any precedential value in this or any other jurisdiction.

**34. No Admissions.** Making this Settlement Agreement shall not be deemed in any respect to constitute an admission by any Party hereto that any computation, formula, allegation, assertion or contention made by any other Party in these proceedings is true or valid. Nothing in this Settlement Agreement shall be used or construed for any purpose to imply, suggest or otherwise indicate that the results produced through the compromise reflected herein represent fully the objectives of a Party.<sup>2</sup>

Question No. 14 should be stricken because it violates the terms of the written unanimous DEK Settlement Agreement approved by the Commission. The document referenced in, and attached to, Question No. 14 is a handout from an informal conference in Case No. 2006-00172 for the purpose of discussing the implementation of the then-approved DEK Settlement Agreement. As the above-quoted portions of the DEK Settlement Agreement show, neither the DEK Settlement Agreement nor any of its terms are admissible in any other case, except for the purpose of addressing litigation arising out of its implementation. The DEK Settlement Agreement also states that it does “not have any precedential value in this or any other jurisdiction.” The DEK Settlement Agreement further states that the making of the DEK Settlement Agreement could not be deemed to be an admission by any party thereto that any assertion or contention by any other party was true or valid, and that nothing in the DEK Settlement Agreement could be used “for any purpose to imply, suggest or otherwise indicate that the results produced through the compromise reflected herein represent fully the objectives of a Party.” By using Question No. 14 to introduce language into this proceeding from the informal conference to implement the DEK Settlement Agreement, KIUC’s counsel is violating both the letter and spirit of the DEK Settlement Agreement, for which cause the Commission should strike Question No. 14.

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<sup>2</sup> DEK Settlement Agreement at 9.

**WHEREFORE**, KU respectfully moves the Commission to enter an order striking Question No. 14 of KIUC's First Set of Data Requests to KU.

Dated: February 23, 2007

Respectfully submitted,



Kendrick R. Riggs  
W. Duncan Crosby III  
Stoll Keenon Ogden PLLC  
2000 PNC Plaza  
500 West Jefferson Street  
Louisville, Kentucky 40202-2828  
Telephone: (502) 333-6000

Allyson K. Sturgeon  
Regulatory Counsel  
E.ON U.S. LLC  
220 West Main Street  
Post Office Box 32010  
Louisville, Kentucky 40202  
Telephone: (502) 627-2088

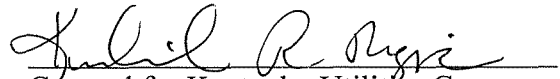
Counsel for Kentucky Utilities Company

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the above and foregoing Motion to Modify Procedural Schedule was served, via United States mail, postage prepaid, and electronic email to the following persons on the 23rd day of February 2007:

Elizabeth E. Blackford  
Assistant Attorney General  
Office of the Attorney General  
Office of Rate Intervention  
1024 Capital Center Drive, Suite 200  
Frankfort, Kentucky 40601-8204

David F. Boehm  
Michael L. Kurtz  
Boehm Kurtz & Lowry  
36 East Seventh Street, Suite 1510  
Cincinnati, Ohio 45202

  
Counsel for Kentucky Utilities Company