

BOEHM, KURTZ & LOWRY

ATTORNEYS AT LAW
36 EAST SEVENTH STREET
SUITE 1510
CINCINNATI, OHIO 45202
TELEPHONE (513) 421-2255
TELECOPIER (513) 421-2764

RECEIVED

APR 01 2008

PUBLIC SERVICE
COMMISSION

Via Overnight Mail

March 31, 2008

Beth A. O'Donnell, Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40602

Re: Administrative Case No. 2007-00477

Dear Ms. O'Donnell:

Please find enclosed the original and twelve (12) copies of THE SUPPLEMENTAL DIRECT TESTIMONY OF KEVIN C. HIGGINS ON BEHALF OF THE KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC. to be filed in the above-referenced matter.

By copy of this letter, all parties listed on the attached Certificate of Service been served. Please place these documents of file.

Very Truly Yours,



David F. Boehm, Esq.
Michael L. Kurtz, Esq.
BOEHM, KURTZ & LOWRY

MLKkew
Attachment
cc: Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by mailing a true and correct copy, by regular U.S. mail (unless otherwise noted) to all parties on the 31st day of March, 2008.

Paul D Adams
Office of the Attorney General Utility & Rate
1024 Capital Center Drive
Suite 200
Frankfort, KY 40601-8204

John J Finnigan, Jr.
Duke Energy Kentucky, Inc.
139 East Fourth Street, EX 400
Cincinnati, OH 45202

Lonnie E Bellar
Vice President - State Regulation
Kentucky Utilities Company
220 West Main Street
P. O. Box 32010
Louisville, KY 40202

Honorable Tyson A Kamuf
Attorney at Law
Sullivan, Mountjoy, Stainback & Miller, PSC
100 St. Ann Street
P.O. Box 727
Owensboro, KY 42302-0727

Lonnie E Bellar
E.ON U.S. Services, Inc.
220 West Main Street
Louisville, KY 40202

Honorable Lisa Kilkelly
Attorney at Law
Legal Aid Society
416 West Muhammad Ali Boulevard
Suite 300
Louisville, KY 40202

Lonnie E Bellar
Vice President - State Regulation
Louisville Gas and Electric Company
220 W. Main Street
P. O. Box 32010
Louisville, KY 40202

Honorable Charles A Lile
Senior Corporate Counsel
East Kentucky Power Cooperative, Inc.
4775 Lexington Road
P. O. Box 707
Winchester, KY 40392-0707

Joe F Childers
Getty & Childers
1900 Lexington Financial Center
250 West Main Street
Lexington, KY 40507

Timothy C Mosher
President - Kentucky Power
American Electric Power
101A Enterprise Drive
P. O. Box 5190
Frankfort, KY 40602

Michael H Core
President/CEO
Big Rivers Electric Corporation
201 Third Street
P. O. Box 24
Henderson, KY 42420

Honorable Mark R Overstreet
Attorney at Law
Stites & Harbison
421 West Main Street
P. O. Box 634
Frankfort, KY 40602-0634

Honorable John M Dosker
General Counsel
Stand Energy Corporation
1077 Celestial Street
Building 3, Suite 110
Cincinnati, OH 45202-1629

Stephen A Sanders
Appalachian Citizens Law Center, Inc
52 Broadway, Ste B
Whitesburg, KY 41858

Ronnie Thomas
Operations Superintendent
East Kentucky Power Cooperative
4775 Lexington Road
P. O. Box 707
Winchester, KY 40392-0707

Patty Walker
Senior Vice President
Duke Energy Kentucky, Inc.
139 East Fourth Street, EX 400
Cincinnati, OH 45202

A handwritten signature in black ink, appearing to read "M. L. Kurtz", written over a horizontal line.

David F. Boehm, Esq.
Michael L. Kurtz, Esq.

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

AN INVESTIGATION OF THE ENERGY AND
REGULATORY ISSUES IN SECTION 50 OF
KENTUCKY'S 2007 ENERGY ACT

)
) ADMINISTRATIVE CASE
) NO. 2007-00477

RECEIVED

APR 01 2008

PUBLIC SERVICE
COMMISSION

Supplemental Direct Testimony of Kevin C. Higgins

on behalf of

Kentucky Industrial Utility Customers, Inc.

April 1, 2008

1 **SUPPLEMENTAL DIRECT TESTIMONY OF KEVIN C. HIGGINS**

2

3 **Introduction**

4 **Q. Please state your name and business address.**

5 A. Kevin C. Higgins, 215 South State Street, Suite 200, Salt Lake City, Utah, 84111.

6 **Q. By whom are you employed and in what capacity?**

7 A. I am a Principal in the firm of Energy Strategies, LLC. Energy Strategies is a private consulting
8 firm specializing in economic and policy analysis applicable to energy production,
9 transportation, and consumption.

10 **Q. Are you the same Kevin C. Higgins who filed direct testimony in this proceeding on behalf**
11 **of KIUC on February 29, 2008?**

12 A. Yes, I am.

13 **Q. Have you reviewed the report prepared by Overland Consulting filed in this docket?**

14 A. Yes.

15 **Q. Do you have any comments on Overland’s recommendation that industrial customers**
16 **“make a showing of their energy efficiency efforts, before they are allowed an exemption**
17 **from the DSM surcharge and related programs” as discussed on pages 54-56 of the**
18 **Overland report?**

19 A. It is not entirely clear what Overland is recommending with regard to this issue. I agree that it is
20 appropriate for the Commission to gather more information concerning the energy efficiency
21 efforts of industrial customers that have opted-out of the State’s program. However, if Overland

1 is recommending that each customer make a showing of their energy efficiency efforts prior to
2 being granted an opt-out than I disagree with this recommendation.

3 Kentucky's DSM statute does not require industrial customers to make a showing that they are
4 implementing energy efficiency measures. The Commission has never required such a showing
5 from industrial customers in the 14 years that the statute has been on the books. It would be
6 overly burdensome to the Commission and Kentucky's industrial customers if each of
7 Kentucky's over 4,000 industrial customers were suddenly required to file an application with
8 the Commission in order to substantiate their energy efficiency efforts.

9 Instead the Commission should consider requiring each utility to compile information and submit
10 a report on the energy efficiency efforts of the industrial customers in their service territory.
11 This will help all interested parties to quantify the benefits of the DSM programs utilized by
12 industrial customers.

13 **Q. Do you have any comments on Overland's recommendation that the Commission consider**
14 **if DSM programs should be allocated to all jurisdictional customers?**

15 A. Yes, I disagree with this statement for several reasons. First, the Commission is barred by KRS
16 278.285(3) from allocating the costs of DSM programs outside of the class of customers which
17 benefits from the programs. KRS 278.285(3) states:

18 *"The commission shall assign the cost of demand-side management programs*
19 *only to the class or classes of customers which benefit from the programs. The*
20 *commission shall allow individual industrial customers with energy intensive*
21 *processes to implement cost-effective energy efficiency measures in lieu of*
22 *measures approved as part of the utility's demand-side management programs if*
23 *the alternative measures by these customers are not subsidized by other customer*
24 *classes. Such individual industrial customers shall not be assigned the cost of*
25 *demand-side management programs."*

1 This Section appears to bar the Commission from allocating the DSM costs of one customer
2 class to other classes. This has been the interpretation of the Commission since the statute's
3 enactment in 1994.

4 Overland's recommendation also ignores the important issue of how customers who have opted
5 out of the DSM program would be treated if the Commission were to change its interpretation of
6 KRS 278.285(3) and allocate all DSM program costs across all customer classes. If costs were
7 to be allocated across customer classes they should not be spread to customers that have opted-
8 out of the DSM program. Such an allocation would be in violation of KRS 278.285(3) as it
9 would effectively eliminate industrial customers' statutory right to opt-out of the DSM program.
10 Allocating DSM costs to opt-out customers would also be inequitable because these Customers
11 do not receive ratepayer-funded assistance for their DSM efforts, but would be forced to pay for
12 the assistance received by other customers.

13 Industrial customers are allowed to opt-out of the DSM program *because* they incur cost to
14 implement energy efficiency enhancements on their own. Just as the residential and commercial
15 DSM program may have a positive impact on all customers due to a decreased need for
16 additional generating capacity, so do the energy efficiency efforts of industrial customers.
17 However unlike the DSM programs for residential and commercial customers, the efforts of the
18 opt-out customers do not cost other ratepayers anything through the DSM surcharge.

19 **Q. The Overland report discusses the overall lack of participation of industrial customers in**
20 **the DSM program and the fact that some utilities do not offer an industrial DSM program.**
21 **Is this a cause for concern?**

22 No. The competitive market provides strong incentives for industrial customers to take steps to
23 reduce energy consumption. Whereas many residential customers do not have the knowledge or

1 resources to install energy efficient light bulbs, energy efficient appliances, etc. in their homes,
2 industrial customers spend an enormous amount of time and money devising ways to reduce
3 energy consumption. They must reduce their energy consumption as much as possible in order
4 to remain competitive.

5 Industrial customers, not utilities, are in the best position to implement cost and energy saving
6 upgrades at their own facilities.

7 **Q. Does this conclude your supplemental direct testimony?**

8 A. Yes, it does.