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December 27, 2011

VIA HAND-DELIVERY

Mr. Jeff Derouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, KY 40601

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DEC 27 2011

PUBLIC SERVICE
COMMISSION

RE: *Bulldog's Enterprises, Inc., et al. v. Duke Energy Kentucky, Inc.*
PSC Case No. 2010-00404

Dear Mr. Derouen:

Enclosed please find an original and ten (10) copies of the Duke Energy Kentucky, Inc.'s Motion to Amend Procedural Schedule. Please file these documents in the record and return three file-stamped copies to me.

Please do not hesitate to contact me if you have any questions.

Sincerely,

David S. Samford

David S. Samford

Enclosures

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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE
COMMISSION

In the Matter of:

BULLDOG'S ENTERPRISES, INC. D/B/A)
BULLDOG'S ROAD HOUSE)
)
COMPLAINANT)
)
V.)
)
DUKE ENERGY KENTUCKY, INC.)
)
)
DEFENDANT)

CASE NO. 2010-00404

DUKE ENERGY KENTUCKY, INC.'S
MOTION TO AMEND PROCEDURAL SCHEDULE

Comes now the Defendant, Duke Energy Kentucky, Inc. ("Duke Energy"), by counsel, and moves the Commission to amend the procedural schedule, for the reasons set forth below:

1. The Complainant, Bulldog's Enterprises, Inc. d/b/a Bulldog's Roadhouse ("Bulldog") has not met its burden of proof to sustain the allegations in its Complaint and its case should be dismissed with prejudice. In the event the Commission is unwilling to dismiss the Complaint on the merits based on the record as it now exists, then the current procedural schedule should be amended so that the documentary record is established and a hearing may be requested or waived by Duke Energy on an informed basis.

2. On November 17, 2011, the Commission issued an order establishing a new procedural schedule in this matter that included one round of supplemental

information requests and a deadline for requesting a hearing. The milestones set forth in the procedural schedule were agreed to by Bulldog at an informal conference held in September.

3. In accordance with its November 17th Order, the Commission issued supplemental information requests to Bulldog and Duke Energy on November 30, 2011. Duke Energy also tendered a supplemental information request to Bulldog on that same date, but Bulldog did not tender any supplemental information requests to Duke Energy. Duke Energy tendered its response to the Commission's supplemental information requests on December 12, 2011.

4. Despite the filing deadline having passed on December 15, 2011, Bulldog has yet to tender responses to either the Commission's supplemental information requests or to Duke Energy's supplemental information requests. Responses to both sets of supplemental data requests will most certainly shed light on the veracity of Bulldog's claim.

5. The November 17, 2011 procedural Order requires the parties to request a hearing on or before December 28, 2011. Duke Energy cannot know with certainty whether a hearing is necessary until it has had a reasonable opportunity to review the substance and sufficiency of Bulldog's response to the supplemental information requests.

6. Duke Energy respectfully requests the Commission to amend the procedural schedule so that it is not required to request or waive a hearing until after it has had a reasonable opportunity to review Bulldog's responses to the supplemental

information requests. If Bulldog will not voluntarily tender said responses, it should be compelled to do so.¹

7. Duke Energy also respectfully requests the Commission to take note of the entry of an order entered on December 2, 2011 in the Kenton Circuit Court holding that Bulldog's civil action against Duke Energy – which arises from the same operative facts as the billing dispute at issue herein – will be held in abeyance until such time as this administrative complaint is finally adjudicated.² The entry of the Kenton Circuit Court's order is important because simply dismissing Bulldog's complaint without prejudice, the sanction the Commission has given in the past for complainants who fail to comply with requests for information, would appear to be inadequate in this context. A formal adjudication of the merits of Bulldog's complaint is necessary in order to resolve both the billing dispute and the ancillary claims raised in the Kenton Circuit Court civil action.

8. Without having a chance to review the information and documents that Bulldog has thus far failed to produce, Duke Energy cannot be sufficiently informed so as to make the important decision as to whether to request or waive a formal hearing.

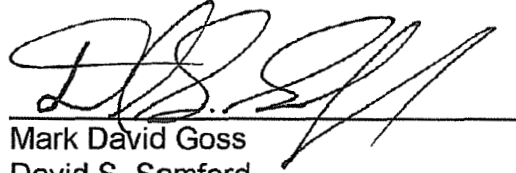
WHEREFORE, on the basis of the foregoing, Duke Energy respectfully requests the Commission to amend the procedural schedule so that it may have reasonable time in which to review Bulldog's responses to the supplemental information requests before it is required to request or waive a hearing.

¹ Duke Energy reserves the right to move to compel responses to the supplemental information requests in the event that Bulldog does not tender its responses very soon or if its tendered responses are – as in the first round of information requests – incomplete.

² A copy of the Kenton Circuit Court's order is attached hereto as Exhibit A.

This 27th day of December, 2011.

Respectfully submitted,



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Counsel for Duke Energy Kentucky, Inc.

CERTIFICATE OF SERVICE

This will certify that a true and correct copy of the foregoing was served by depositing same in the custody and care of the U.S. Mail, postage prepaid, on this 27th day of December, 2011, addressed to the following:

Eric C. Deters
James Y. Moore
Charles T. Lester, Jr.
Eric Deters & Associates, P.S.C.
5247 Madison Pike
Independence, KY 41051



Counsel for Duke Energy Kentucky, Inc.

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12/16/11

GJS/jlb
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COMMONWEALTH OF KENTUCKY
KENTON CIRCUIT COURT
THIRD DIVISION
CASE NO: 11-CI-307

ENTERED
KENTON CIRCUIT/DISTRICT COURT
DEC 02 2011
JOHN C. MIDDLETON
BY AK D.C.

BULLDOG'S ENTERPRISES, INC.,
d/b/a BULLDOG'S ROADHOUSE

PLAINTIFF

vs.

DUKE ENERGY, a/k/a DUKE ENERGY
OF KENTUCKY, et al.

DEFENDANTS

ORDER

The above matter is before the Court on the Motion of the Defendant to dismiss the Plaintiff's Complaint. The matter has been fully briefed by the parties and the same was heard before the Court on its regular motion hour on Monday, November 21, 2011. The Court having reviewed the record and having heard the parties, now orders as follows:

1. That the matter should be and the same hereby is held in abeyance pending the entry of a final order from the Kentucky Public Service Commission.
2. This Order holding the case in abeyance shall remain in effect for six months from and after November 21, 2011 and the matter shall be placed on this Court's motion docket in May, 2012 for a status report to the Court.

DATED THIS 1ST DAY OF Dec., 2011.

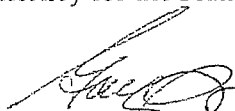
Gregory M. Bartlett
HON. GREGORY M. BARTLETT, JUDGE

EXHIBIT
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A

HAVE SEEN:



CHARLES LESTER, ESQ. (Per E-mail authorization 11/23/11)
Attorney for the Plaintiff



GARY J. SERGENT, ESQ.
Attorney for Defendant

THIS ORDER DRAFTED BY:



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