

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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COMMISSION

In the Matter of:

APPLICATION OF DUKE ENERGY KENTUCKY,)
INC. FOR AN ENERGY EFFICIENCY COST)
RECOVERY MECHANISM AND FOR APPROVAL) CASE NO. 2012-0085
OF ADDITIONAL PROGRAMS FOR INCLUSION)
IN ITS EXISTING PORTFOLIO)

ATTORNEY GENERAL'S COMMENTS

Comes now the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention, and submits his comments in the above-referenced case.

I. Application Summary

Pursuant to KRS 278.285, Duke Energy Kentucky, Inc. (hereinafter referred to as "the Company") has filed its application for the continuation, modification and expansion of its demand-side management ("DSM") program portfolio, as last approved by Order of the Commission in Case No. 2011-00448. The Company seeks the Commission's approval of recovery of program costs, lost revenue margins and incentive (also described as shared savings) associated with the proposed DSM portfolio using the Company's existing DSM Program formula (Rider DSM) and DSM Rate (Rider DSMR).

In order to align its program offerings to achieve consistency between Duke Energy Ohio and Duke Energy Kentucky customers, the Company proposes to change some of the program names and to expand its array of DSM programs in Kentucky to match those of its parent company. As described in the Application, the Company proposes to continue ten (10) existing programs, which may be renamed for consistency purposes, including: Program 4: Energy Efficiency Education Program for Schools

Program (formerly Residential Comprehensive Energy Education Program (NEED), which will include as proposed a new live, theatrical production category; and Program 5: Low Income Services Program (formerly Residential Conservation and Energy Education and Payment Plus). The new programs proposed to be included in the Company's Portfolio are: Program 11: Appliance Recycling Program, Program 12: Low Income Neighborhood Program, and Program 13: My Home Energy Report Program. Finally, the Company requests that the Commission approve a limited automatic approval process for pilot programs within specific parameters set forth in the Application and related responses to data requests in the is matter.

II. Attorney General's Comments

The Attorney General generally applauds the Company's DSM efforts and stated goal to increase DSM impacts for 2012-2016 by approximately 23 percent or 23,000 MWh above the impacts achieved in its 2011 IRP for a total estimated cumulative net MWh impact (assuming full projected participation) of 122,000 MWh.¹ Consistent with prior comments concerning the Company's DSM program portfolio, the Attorney General offers the following comments and recommendations:

A. Separate Accounting of Employee-Related/Administrative DSM Cost

The Attorney General commends the Company's commitment in Case No. 2006-00172 to track and account for the company's employee-related DSM expenses within the DSM program only.² Without separate accounting, a utility could seek (1) to recover its full costs of Commission-approved programs and revenues lost by implementing those

¹ Application, Direct Testimony of Timothy J. Duff at p. 3, lines 14-20; *see also* Responses from Duke Energy Kentucky, Inc. to Commission Staff's First Set of Data Requests, Response to STAFF-DR-01-002

² *See also* Duke Energy Kentucky, Inc.'s Responses to Commission Staff's First Set of Data Requests, Response to STAFF-DR-01-001(b), in which the Company states that program administration costs will still be "calculated in the rider."

programs and incentives designed to provide financial rewards to the utility for implementing cost-effective DSM programs under KRS 278.285(2) (a) and (b), and (2) to recover a return on equity for such expenses under Chapter KRS 278.190. Accordingly, the Attorney General requests that the Commission renew in its Order the requirement that the Company continue to maintain a separate accounting of all its costs related to DSM or energy efficiency and not include those costs, including internal personnel costs relating to such programs, in its base rates.

B. Education Component – Energy Efficiency Education Program for Schools Program (formerly Residential Comprehensive Energy Education Program (NEED))

In response to the Company's 2011 DSM annual report and application in Case No. 2011-00448, the Attorney General commented on the negligible cost effectiveness of educational programs targeting school children.³ In its April 13, 2012 Order in Case No. 2011-00448, the Commission questioned these concerns, referencing the Total Resource Cost test results for a different program.⁴ The Attorney General wishes to clarify that it has not and does not question the cost-effectiveness associated with the current "Residential Conservation and Energy Education" program, which is to be renamed the "Low Income Services Program." Rather, the Attorney General questioned the reasonableness of the school education component of the Company's DSM program, which the Company subcontracts to the National Energy Education Development (NEED) Project.⁵

³ See also Attorney General Comments in Case No. 2007-00369.

⁴ See Order at p. 8 wherein the Commission references the "Residential Comprehensive Energy Education Program [sic] ... to be renamed the Low Income Services Program."

⁵ In 2007, the Attorney General recommended discontinuing this education component. Supra at n 3.

While the Attorney General agrees that efforts to inform the new generation regarding energy efficiency are important, the efficient use of ratepayer funds is equally important. The Attorney General has consistently maintained in this and other DSM cases that most school education programs are essentially goodwill exercises on behalf of a company and have little or no measureable impact on energy usage.

In response to the Commission Staff's data requests, the Company admits that "the program is currently not cost effective."⁶ The Company proposes that adding a series of live, theatrical programs will improve the overall cost effectiveness of the program. There is simply little to no verifiable data that may be offered to support assumptions that school-age education efforts, including memorable, highly participatory theatrical events, will have a demonstrable effect on energy consumption. Rather, it is much more likely that such a program, even in the context of a public/private partnership including arts engagement, will merely result in increased goodwill to the company.

Despite these continuing concerns as to the school-based education component of the Company's portfolio, the Attorney General supports efforts by the Kentucky Department for Energy Development and Independence (DEDI) in partnership with the Kentucky NEED Project to expand program goals and facilitate energy saving planning within the schools. The Kentucky High Performance Sustainable Schools Program, which focuses more on training school operations and maintenance staff to develop energy plans and energy savings behavior by all members of the school community, appears to be a step in the right direction. Similarly, the Attorney General supports the Company's continued efforts to improve and better document energy savings (i.e. home surveys,

⁶ See Responses from Duke Energy Kentucky, Inc. to Commission Staff DR 01-011(i) at p. 3

contract terms requiring demonstrable kWh savings) associated with Energy Efficiency Starter Kits distributed via the school education component.

C. Automatic Approval Process for Pilot Programs

Regarding the Company's request that the Commission approve an automatic approval process for pilot programs under defined parameters, including that the total pilot program cost including EM&V is projected to be less than \$75,000, the Attorney General believes that the Commission should proceed with caution. Under general ratemaking principles, mechanisms that shift risk from a utility's shareholders to its ratepayers are viewed with skepticism. A utility's shareholders should bear the costs of retooling the internal processes and programs they offer, including DSM programs. The Company has previously acknowledged that it views at least some DSM offerings as profit centers. The Attorney General believes that automating the approval process would merely automate the enhancement of the Company's profit and performance levels. Moreover, the Attorney General believes the costs associated with any program eligible for automated approval would likely skyrocket given the lack of meaningful review.

The Attorney General appreciates the Collaborative process, which is favored under KRS 278.285. However, neither stakeholder input nor cost-effectiveness testing may replace the judgment of the Commission. While the Commission encourages the development and deployment of DSM programs, it does so in its role as regulator of those programs under KRS 278.285. Further, it should be noted that in recent cases involving pilot programs that have been vetted by the Collaborative and are a logical and reasonable outgrowth of the Company's existing portfolio, the Commission has been able

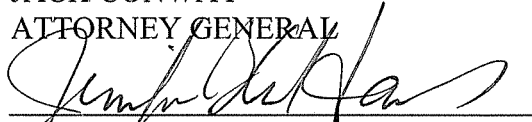
to review and provide its approval in a few short months.⁷ Therefore, the Attorney General does not support an automatic approval process for pilot programs.

CONCLUSION

Subject to the above comments, the Attorney General makes no further recommendations as to the Application and does not seek a hearing concerning this matter.

Respectfully submitted,

JACK CONWAY
ATTORNEY GENERAL



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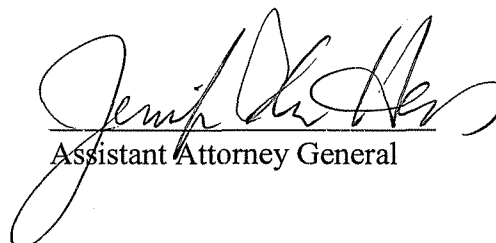
⁷ See e.g. In the Matter of Application of Duke Energy Kentucky, Inc. to Implement a Pilot Nonresidential Smart Saver Custom Energy Efficiency Program, Case No. 2011-00471 (Final Order, April 12, 2012)

Certificate of Service and Filing

Counsel certifies that an original and ten photocopies of the Attorney General's Comments were served and filed by hand delivery to Jeff Derouen, Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601; furthermore, it was served by mailing a true and correct copy of the same, first class postage prepaid, to:

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all on this 31st day of May 2012.


Assistant Attorney General