

FAX



Duke Energy Shared Services, Inc.
139 E. Fourth Street
Cincinnati, Ohio 45202

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JAN 27 2010

PUBLIC SERVICE
COMMISSION

DATE: January 27, 2010

TO: File Room: Brian or Renee

COMPANY: KY PSC

FAX: (502) 564 - 3960

PHONE:

FROM: Dianne Kuhnell

FAX: (513) 419-1846

PHONE: (513) 419 - 1854

NO. OF PAGES:

COMMENTS: **PLEASE FILE TODAY**

Original & copies will be sent out overnight mail today.

Thank you,

Dianne

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Dianne B. Kuhnell
Senior Paralegal

VIA OVERNIGHT DELIVERY AND FACSIMILE

January 27, 2010

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PUBLIC SERVICE
COMMISSION

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

Re: Case No. 2008-495

Dear Mr. Derouen:

Enclosed please find an original and twelve copies of Duke Energy Kentucky Inc.'s Motion for Dismissal *Without Prejudice* in the above captioned case.

Please note this filing was also sent via facsimile for filing to the Commission on January 27, 2010

Please date-stamp the two copies of the letter and the filing and return to me in the enclosed envelope.

Sincerely,

Dianne B. Kuhnell
Senior Paralegal

COMMONWEALTH OF KENTUCKY
BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION

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JAN 27 2010

PUBLIC SERVICE
COMMISSION

In the Matter of the Application of) Case No. 2008-00495
Duke Energy Kentucky, Inc. for Approval)
Of Energy Efficiency Plan Including An Energy)
Efficiency Rider And Portfolio Of)
Energy Efficiency Programs)

**DUKE ENERGY KENTUCKY, INC.'S MOTION FOR DISMISSAL
WITHOUT PREJUDICE**

Duke Energy Kentucky, Inc. (Duke Energy Kentucky or Company), pursuant to Kentucky Rule 41.01, hereby moves the Kentucky Public Service Commission (Commission) for Dismissal Without Prejudice of Case No. 2008-00495. Duke Energy Kentucky seeks to voluntarily dismiss the above-styled proceeding without prejudice and reserves the right to re-file its Application for Approval of Energy Efficiency Plan Including An Energy Efficiency Rider and Portfolio Of Energy Efficiency Programs (Application) in the future.

Kentucky Civil Procedure Rule 41.01(2) permits an applicant or plaintiff to voluntarily dismiss an action upon motion, providing in relevant part:

Except as provided in paragraph (1) of this rule, an action, or any claim therein, shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper... .

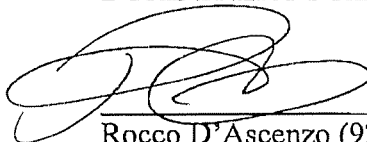
Duke Energy Kentucky filed its Application in Case No. 2008-00495 on December 1, 2008, seeking the approval of a new energy efficiency plan and rider known as save-a-watt. This matter is scheduled for evidentiary hearing on February 4, 2010. Duke Energy's save-a-watt model has received regulatory approval in Ohio, North Carolina, and South Carolina and a settlement is under consideration in Indiana. Duke Energy Kentucky's Application was

founded on data that was available in early 2008. Since Duke Energy Kentucky's December 2008 filing, new energy efficiency programs are being piloted or implemented in jurisdictions that have already received save-a-watt model approval. Rather than proceed with the currently scheduled hearing founded on the 2008 data, Duke Energy Kentucky is electing to withdraw its Application and re-consider energy efficiency in a future filing with an updated portfolio based upon lessons learned in the other states.

As the evidentiary hearing is still approximately a week away, a voluntary dismissal should not cause undue inconvenience or penalty to any party. Further, customers will not be affected as Duke Energy Kentucky's current energy efficiency portfolio and recovery mechanism are still in place and are under the Commission's review in Case Number 2009-00444.¹ Accordingly, the Company seeks to withdraw its Application and requests that the Commission issue an Order dismissing this Case *without prejudice*.

Respectfully submitted,

DUKE ENERGY KENTUCKY, INC.



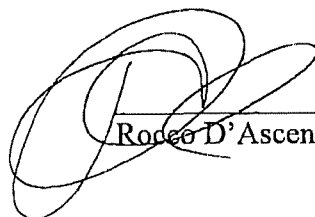
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¹ In the Application filed November 16, 2009, Duke Energy Kentucky requested the Commission approve its proposed Rider DSM adjustment and approve the portfolio of programs through the earlier of approval of Case No. 2008-00495 or December 31, 2012.

Of Counsel:
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Frost Brown Todd LLC
Lexington Financial Center 250 West Main,
Suite 2800
Lexington, Kentucky 40507-1749

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing, was served on the following by overnight mail, this 27th day of January 2010.



Rocco D'Ascenzo

Honorable Dennis G. Howard, II
1024 Capital Center Drive, Suite 200
Frankfort, Kentucky 40601

Honorable Michael L. Kurtz
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, OH 45202