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VIA OVERNIGHT DELIVERY

December 4, 2009

RECEIVED

DEC 07 2009

**PUBLIC SERVICE
COMMISSION**

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

2009-00479

Re: *Notice of Duke Energy Kentucky, Inc. of Fulfillment of Its Commitment to Provide Merger Credits to Customers and Application to Discontinue the Electric Merger Savings Credit Rider*

Dear Mr. Derouen:

Enclosed please find an original and twelve copies of the *Notice of Duke Energy Kentucky Inc.* as referenced above to be filed in a new case opened by the Commission.

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

cc: Hon. Larry Cook

RECEIVED

DEC 07 2009

PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE NOTICE OF DUKE ENERGY KENTUCKY, INC))
 OF FULFILLMENT OF ITS))
 COMMITMENT TO PROVIDE MERGER CREDITS))
 TO CUSTOMERS AND APPLICATION) Case No. 2009-_____
 TO DISCONTINUE THE ELECTRIC MERGER))
 SAVINGS CREDIT RIDER))

NOTICE OF DUKE ENERGY KENTUCKY, INC OF FULFILLMENT OF ITS
 COMMITMENT TO PROVIDE MERGER CREDITS TO CUSTOMERS AND
 APPLICATION TO DISCONTINUE THE ELECTRIC MERGER SAVINGS CREDIT
 RIDER

Now comes Duke Energy Kentucky, Inc. (Duke Energy Kentucky or the Company) and hereby respectfully gives notice of the fulfillment of its merger commitment to provide customers with an upfront level of merger-related savings through a rate decrease and further petitions the Kentucky Public Service Commission (Commission) for an order permitting Duke Energy Kentucky to discontinue its electric merger savings credit rider (Rider MSR-E), KY.P.S.C. Electric No. 2, Original Sheet No. 81, effective the first billing cycle after the Commission approves this application.¹ Duke Energy Kentucky has satisfied its commitment to credit its customers an agreed upon level of up-front merger-related savings; said commitment reflected in the Stipulation and Recommendation (Stipulation) approved by this Commission in Case No. 2005-00228.² Attachment 1 is a schedule showing the level of merger credits provided

¹ The discontinuance of Duke Energy Kentucky's merger credit rider for natural gas, (Rider MSR-G) is part of Case No. 2009-00202.

² *In re: Joint Application of Duke Energy Corporation, Duke Energy Holding Corp., Deer Acquisition Corp., Cougar Acquisition Corp., Cinergy Corp., The Cincinnati Gas & Electric Company, and the Union Light Heat &*

to Duke Energy Kentucky's electric customers to date. Pursuant to the Stipulation, Duke Energy Kentucky agreed to provide its customers with a credit totaling \$7,634,100. This commitment will be satisfied, with the Company having already credited electric customers \$6,956,388 and gas customers \$563,447, for a total credit of \$7,519,835 through October 31, 2009.³ And, based on the expected monthly credit for November 2009, the Company will have fully credited electric and gas customers with more than the overall amount of \$7,634,100 by November 30, 2009.⁴ As of September 30, 2009, Duke Energy Kentucky fulfilled its commitment with respect to the credit amount attributable to electric customers is now providing credits in excess of its commitment.⁵

Duke Energy Kentucky has a pending natural gas base rate case (Case No. 2009-00202) and, pursuant to the terms of the Stipulation approved in Case No. 2005-00228, the merger savings credit rider for gas service (Rider MSR-G) will expire when new natural gas rates are implemented in that base rate case. Therefore, the gas merger credit will remain in effect until the Commission approves new natural gas base rates in Case No. 2009-00202 and the Company would continue applying the electric merger credit until the Commission approves this Application.

Although Duke Energy Kentucky does not have an electric base rate case pending, the Company has fulfilled its merger credit commitment insofar as it has credited customers with more than the agreed-to level of upfront savings.⁶ Therefore, Rider MSR-E must be discontinued to prevent further over-crediting to customers and the need to seek reversal of the Rider MSR-E to a charge or accelerate an electric base rate case. Accordingly, the Company

Power Company for Approval of a Transfer and Acquisition and Control., Case No 2005-00228, (Order at 5)(November 29, 2005).

³ See Attachment 1.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

requests Commission approval to discontinue its Rider MSR-E as the total agreed-upon credit amount, has been provided to customers. Although Duke Energy Kentucky has over-credited its customers with an amount greater than what was agreed upon and ordered, with this Application, the Company is not seeking to reverse the credit, but merely discontinue the Rider and stop the over-crediting to customers.

In support of this Application, Duke Energy Kentucky states as follows:

Background

1. Duke Energy Kentucky is a Kentucky corporation with its principal office and principal place of business at 139 East Fourth Street, Cincinnati Ohio, 45201. Duke Energy Kentucky's local business office is 525 West 5th Street, Suite 228, Covington, Kentucky 41011.

2. Duke Energy Kentucky is a utility engaged in the gas and electric business. Duke Energy Kentucky purchases, sells, stores and transports natural gas in Boone, Campbell, Gallatin, Grant, Kenton and Pendleton Counties, Kentucky. Duke Energy Kentucky also generates electricity, which it distributes and sells in Boone, Campbell, Grant, Kenton and Pendleton Counties.

3. Duke Energy Kentucky is regulated by the Commission pursuant to KRS Chapter 278.040.

4. A certified copy of Duke Energy Kentucky's Articles of Incorporation is on file with this Commission in Case Number 2009-00202 and is incorporated herein by reference pursuant to 807 KAR 5:001, Section 8(3).

5. By Order dated November 29, 2005, in Case No. 2005-00228, the Commission approved a Stipulation resulting in the merger between Duke Energy Corporation and Cinergy Corp. As part of this Stipulation, the Commission approved an upfront level of merger-related

savings to the Company's gas and electric customers totaling \$7,634,100. The Stipulation, in relevant part, provides:

Starting with the first billing cycle which begins 30 days but not more than 60 days following closing of the Duke / Cinergy merger, ULH&P will reduce its base rates by providing gas and electric rate credits. **The rate credits will total \$7,634,100 over the five-year period following merger closing**, and will be credited on a levelized basis as shown on Attachment 1 and will be allocated to customer classes based on operation and maintenance expense as discussed in Applicants' testimony.⁷

Attachment 1 of the Stipulation in Case No. 2005-00228 provides additional detail about the allocation of the savings between gas and electric service. Of the \$7,634,100 in overall savings to be credited to customers \$6,721,000 was for savings attributable to electric service and \$913,000 was attributable to gas service. As approved by the Commission, the agreed-upon level of savings has been credited to customers through a discrete rate-rider mechanism, which eventually became Rider MSR-E for electric customers and Rider MSR-G for natural gas customers.⁸

6. The Stipulation further provided that the rider mechanism would expire "upon the effective date of new rates in [Duke Energy Kentucky's] next gas and electric base rate cases (not including any electric or gas base rate case which results in rates effective prior to January 1, 2008)..."⁹ Duke Energy Kentucky has a gas base rate case in progress (Case No. 2009-00202) and as agreed, the merger credit rider for gas service will expire when new rates are implemented in that case. The proposed tariffs in Case No. 2009-00202 eliminate Rider MSR-G and all references to it.

7. Duke Energy Kentucky implemented its Rider MSR-E on or about April 3, 2006, and, immediately thereafter, began issuing credits to customers on a per kWh basis. In computing the

⁷ *Order at Appendix A, page 2-3.* (Emphasis added)

⁸ *Id.*

⁹ *Id.*

allocation of the credit at the time of the merger approval, the negotiating parties insisted that Duke Energy Kentucky use the most recent billing determinant data available at the time, which was from the Company's last electric rate case in 1991. Those billing determinants did not reflect any load growth adjustments from the then decade-old test year to the present. Consequently, the resulting electric merger savings credit rate, when applied to current actual sales data, is providing merger credits on an accelerated basis. Based upon current sales data, Duke Energy Kentucky projects that its electric customers will receive a total credit of \$7,283,091 by December 31, 2009, and, when combined with \$604,168 of gas merger savings credited to customers, the total amount credited to gas and electric customers is expected to be \$7,887,259 by December 31, 2009. The electric credits alone are approximately \$562,091 more than what was agreed to in the Stipulation. Because the Stipulation provides that "the rate credits will total \$7,634,100 over the five-year period following the merger," if the over-crediting continues, the Company will need to either seek approval to reverse the credit to a charge or accelerate the filing of an electric base rate case to ensure that no more than \$7,634,100 in merger credits are refunded to customers. If the credit persists throughout calendar year 2010, the Company will over-credit its customers by more than \$2 million.

8. Duke Energy Kentucky seeks Commission approval to immediately eliminate the merger credit for electric service as the total agreed-upon amount for electric customers has been provided. Because Duke Energy Kentucky does not have any immediate plans to file an electric base rate case, the electric credit will continue absent Commission approval to discontinue Rider MSR-E. And the Company will continue crediting electric customers an amount greater than what was agreed to in the Stipulation and approved by the Commission.

9. The Stipulation approved a firm rate credit amount of \$7,634,100. Accordingly,

customers enjoyed the benefit of reduced electric and natural gas rates derived from the anticipated merger-related savings. Customers received an even greater benefit by Duke Energy Kentucky meeting its obligation sooner than expected.

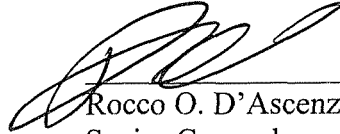
10. Waiting for Duke Energy Kentucky to file an electric rate case to discontinue the Rider MSR-E will have the unintended consequence of crediting more than the agreed upon amount through the rider mechanism. Since Duke Energy Kentucky does not presently have an electric rate case pending, failure to discontinue Rider MSR-E will now result in excess credits to its electric customers of approximately \$165,000 per month, which translates to more than \$2 million per year. Unless the Rider is discontinued, such excess credits will serve to encourage the accelerated filing of an electric rate case or support a request to reverse Rider MSR-E to recoup the amounts credited in excess of the Company's commitment.

11. Discontinuing Rider MSR-E will not harm customers as they have already received more than the amount agreed upon by the Parties and approved by the Commission in Case No. 2005-00228. Further, customers will continue to receive benefits of merger-related efficiencies and cost savings through future base rate proceedings. As Duke Energy Kentucky continues to realize the benefits of the efficiencies created through the Duke Energy Corporation/ Cinergy Corp. merger, so too, will customers. And failure to discontinue Rider MRS-E only serves to prejudice Duke Energy Kentucky by forcing it to render payments – in the form of bill credits – that it is not required to do.

WHEREFORE, Duke Energy Kentucky respectfully requests that the Commission expeditiously issue an order granting its application to discontinue Rider MSR-E due to the fulfillment of the merger commitment to provide customers with an upfront and guaranteed level of merger savings in the amount of \$7,634,100.

Respectfully submitted,

DUKE ENERGY KENTUCKY, INC.



Rocco O. D'Ascenzo (92796)

Senior Counsel

Amy B. Spiller (85309)

Associate General Counsel

Duke Energy Kentucky, Inc.

139 East Fourth Street, 25 ATII

Cincinnati, Ohio 45201-0960

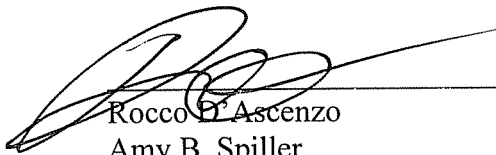
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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Application of Duke Energy
Kentucky, Inc. has been served via overnight mail to the following party on this 4th
day of December, 2009:



Rocco D. Ascenzo
Amy B. Spiller

Hon. Larry Cook
Office of the Attorney General
Utility Intervention and Rate Division
1024 Capital Center Drive
Frankfort, Kentucky 40601

DUKE ENERGY KENTUCKY
 CASE NO. 2005-00228
 ELECTRIC AND GAS MERGER CREDITS (RIDERS MSR-E AND MSR-G)

	ACTUAL ⁽¹⁾ 2006 (a)	ACTUAL ⁽¹⁾ 2007 (b)	ACTUAL ⁽¹⁾ 2008 (c)	ACTUAL ⁽¹⁾ YTD OCT 2009 (d)	PROJECTED ⁽²⁾ Nov-09 (f)	PROJECTED ⁽²⁾ Dec-09 (g)	TOTAL 2009 (h)	GRAND TOTAL 2006 - 2009 (i) (a)+(b)+(c)+(h)	MERGER REQUIREMENT ⁽³⁾ (j)	VARIANCE (i) - (j) (k)
GAS	\$ 66,160.46	\$ 174,061.35	\$ 183,760.16	\$ 139,465.37	\$ 11,357.79	\$ 29,363.00	\$ 180,186.16	\$ 604,168.13	\$ 913,100.00	\$ (308,931.87)
ELECTRIC	\$ 1,278,844.00	\$ 2,069,541.58	\$ 1,997,675.96	\$ 1,610,326.69	\$ 135,117.79	\$ 191,584.53	\$ 1,937,029.01	\$ 7,283,090.55	\$ 6,721,000.00	\$ 562,090.55
TOTAL	\$ 1,345,004.46	\$ 2,243,602.93	\$ 2,181,436.12	\$ 1,749,792.06	\$ 146,475.58	\$ 220,947.53	\$ 2,117,215.17	\$ 7,887,258.68	\$ 7,634,100.00	\$ 253,158.68

⁽¹⁾ Source: GI/Business Objects
⁽²⁾ Projected months equal to actual November and December of 2008.
⁽³⁾ Order in Case No. 2005-00228, attachment on page 15 of Order.