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RECEIVED

May 9, 2024

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PUBLIC SERVICE  
COMMISSION

Ms. Linda Bridwell  
Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard  
Frankfort, Kentucky 40602-0615

**Re: Case No. 2022-00289**

In the Matter of: Elizabeth L. Eichelberger v. Duke Energy Kentucky, Inc.

Dear Ms. Bridwell:

Duke Energy Kentucky, Inc. hereby submits electronically pursuant to 807 KAR 5:001, Section 8, its *Application for Rehearing* in the above captioned matter.

I certify that the electronically filed document is a true and accurate copy of the original document. Pursuant to the Commission's July 22, 2021 Order in Case No. 2020-00085 no paper copies of this filing will be made.

Respectfully submitted,

/s/Larisa M. Vaysman

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Enclosures: As stated

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

In the Matter of:

ELIZABETH L. EICHELBERGER	)	
	)	
COMPLAINANT	)	Case No. 2022-00289
	)	
v.	)	
	)	
DUKE ENERGY KENTUCKY, INC.	)	
	)	
DEFENDANT	)	

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**DUKE ENERGY KENTUCKY, INC.’S APPLICATION FOR REHEARING**

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Comes now Duke Energy Kentucky, Inc. (Duke Energy Kentucky or the Company), by counsel, and petitions the Kentucky Public Service Commission (Commission) for rehearing, pursuant to KRS 278.400, of the Commission’s Order entered herein on April 19, 2024 (Final Order).<sup>1</sup> Specifically, Duke Energy Kentucky seeks rehearing and/or clarification with respect to the following Commission findings and directives in the Final Order:

- The finding that “The tariff was intended to use a single rate [to calculate the budget billing monthly amount], which Duke Kentucky did until inexplicably changing the way it calculated the bill in December 2022. This change constituted a violation of the plain language of the gas tariff.”<sup>2</sup> And the similar finding for the electric tariff.<sup>3</sup>
- The directive to “within 30 days of service of this Order, start a new gas budget billing year for Ms. Eichelberger’s account, and file into the post-case record a new settle-up calculation and calculation of a new gas budget billing amount.”<sup>4</sup>

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<sup>1</sup> *In the Matter of Elizabeth L. Eichelberger v. Duke Energy Kentucky, Inc.*, Case No. 2022-00289, Order (April 19, 2024) (Final Order).

<sup>2</sup> *Id.*, p. 6.

<sup>3</sup> *Id.*, p. 8.

<sup>4</sup> *Id.*, p. 9.

- The directive to “starting with the first bill after the settle-up, remove the following language from Ms. Eichelberger’s bills: ‘Your Annual Budget Billing Plan keeps you monthly charge steady throughout the year, even as your usage goes up or down. At renewal, we may adjust the amount of your monthly charge for the next plan year, based on your usage in this plan year.’”<sup>5</sup>
- The directive to “within 30 days of service of this Order, start a new electric budget billing year for Ms. Eichelberger’s account, and file into the post-case record a new settle-up calculation and calculation of a new electric budget billing amount.”<sup>6</sup>

In support of this petition, the Company states as follows:

### **I. Background**

On August 22, 2022, Ms. Elizabeth L. Eichelberger’s complaint was docketed in this case, alleging errors in Duke Energy Kentucky’s management of Ms. Eichelberger’s participation in the Company’s budget billing program. After several rounds of discovery, the Commission issued the Final Order, finding that the Company did not comply in certain respects with the Company’s Annual Budget Billing Plan gas and electric tariff provisions.<sup>7</sup> The Commission also issued a number of directives to Duke Energy Kentucky.

In this Application for Rehearing, the Company respectfully requests the Commission revisit and clarify certain aspects of the Final Order to ensure that the Company carries out the Commission’s directives in a customer-friendly manner and that the Company has adequate time to implement the directives.

Specifically, Duke Energy Kentucky seeks rehearing and/or clarification with respect to the following Commission findings and directives in the Final Order:

- The finding that “The tariff was intended to use a single rate [to calculate the budget billing monthly amount], which Duke Kentucky did until inexplicably changing the way it calculated the bill in December 2022. This

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<sup>5</sup> *Id.*, p. 10.

<sup>6</sup> *Id.*

<sup>7</sup> *See id.*, pp. 5-9, for detailed discussion.

change constituted a violation of the plain language of the gas tariff.”<sup>8</sup> And the similar finding for the electric tariff.<sup>9</sup>

- The directive to “within 30 days of service of this Order, start a new gas budget billing year for Ms. Eichelberger’s account, and file into the post-case record a new settle-up calculation and calculation of a new gas budget billing amount.”<sup>10</sup>
- The directive to “starting with the first bill after the settle-up, remove the following language from Ms. Eichelberger’s bills: ‘Your Annual Budget Billing Plan keeps you monthly charge steady throughout the year, even as your usage goes up or down. At renewal, we may adjust the amount of your monthly charge for the next plan year, based on your usage in this plan year.’”<sup>11</sup>
- The directive to “within 30 days of service of this Order, start a new electric budget billing year for Ms. Eichelberger’s account, and file into the post-case record a new settle-up calculation and calculation of a new electric budget billing amount.”<sup>12</sup>

## II. ARGUMENT

### A. Use of a Single Rate to Calculate Budget Billing Amount

During discovery, the Company, among other things, explained in detail how it had calculated Ms. Eichelberger’s payment amount in September 2022.<sup>13</sup> In a follow-up discovery response the Company explained that it had applied “the rates that were billed at the time” to the customer’s historical usage to calculate the new payment amount.<sup>14</sup> Among other things, the Commission stated in the Final Order:

[The tariff] says the bill is calculated by ‘using 11 months of customer’s usage, dividing the usage by 11, and using the result to calculate the bill.’ If the bill was meant to be calculated based on the average bill, the tariff language could have said so. Using the average usage to calculate the bill excludes the possibility of using different rates depending on rates in effect in different months. The tariff was intended to use a single rate, which Duke

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<sup>8</sup> *Id.*, p. 6.

<sup>9</sup> *Id.*, p. 8.

<sup>10</sup> *Id.*, p. 9.

<sup>11</sup> *Id.*, p. 10.

<sup>12</sup> *Id.*

<sup>13</sup> Duke Energy Kentucky’s Supplemental Response to Staff’s First Request, Item 3(b).

<sup>14</sup> Duke Energy Kentucky’s Response to Staff’s Fourth Request, Item 2(b).

Kentucky did until inexplicably changing the way it calculated the bill in December 2022. This change constituted a violation of the plain language of the gas tariff.<sup>15</sup>

Similarly, regarding the electric tariff, the Commission stated, “Duke Kentucky violated its electric tariff by calculating electric budget billing using variable rates.”<sup>16</sup>

Although the Company’s discovery responses were accurate regarding the budget billing calculations at issue in the discovery responses, they do not describe the Company’s *current* calculation method, which comports with the Commission’s interpretation of the tariff. Since April 2022, the Company has, for all customers commencing a *new* year of Budget Billing Annual plan, been calculating budget billing payment amounts using the rates in effect at the time of the calculation for all of the historical usage. Thus, the Company respectfully requests that the rehearing order in this case reflect that its practice for setting budget billing payment amounts at the start of a *new* budget billing year has complied with the Commission’s tariff interpretation regarding choice of rates since April 2022.

### **B. Gas: New Settle-Up and New Budget Billing Amount**

In the Final Order, the Commission directed the Company to reset Ms. Eichelberger’s gas budget billing as follows:

Duke Kentucky shall, within 30 days of service of this Order, start a new gas budget billing year for Ms. Eichelberger’s account, and file into the post-case record a new settle-up calculation and calculation of a new gas budget billing amount. The new billing amount should be calculated by taking the previous 12 months of usage, divided by 12, multiplied by the rate in place at the time of the settle-up.<sup>17</sup>

First, as Ms. Eichelberger is currently in the middle of an Annual Budget Billing year, completing the required settle-up and setting a new Annual Budget Billing amount will require an

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<sup>15</sup> Final Order, p. 6.

<sup>16</sup> *Id.*, p. 8.

<sup>17</sup> *Id.*, p. 9.

additional billing period to complete. Accordingly, the Company requests that the Commission allow up to 60 days after service of the Final Order, rather than the 30 days originally allowed.

Second, in order to ensure a customer-friendly experience, the Company will contact Ms. Eichelberger to explain that it is taking action pursuant to the Final Order. If Ms. Eichelberger makes a request that precludes the Company from fully complying (*e.g.*, such as being removed from Budget Billing entirely, enrolled in Quarterly Budget Billing, or something else within a customer's generally available options), the Company requests clarification that it be permitted to make a filing in the post-case record to document the customer's alternative request and action taken.

In summary, with regard to the directive to start a new gas budget billing year for Ms. Eichelberger's account, the Company requests (1) it be given 60 days, instead of 30, from the Final Order to comply; and (2) that it be permitted to comply with an appropriate alternative if requested by the customer.

### **C. Removal of Bill Message**

In the Final Order, the Commission directed Duke Energy Kentucky to remove a bill message from Ms. Eichelberger's bills:

Duke Kentucky shall, starting with the first bill after the settle-up, remove the following language from Ms. Eichelberger's bills: "Your Annual Budget Billing Plan keeps you monthly charge steady throughout the year, even as your usage goes up or down. At renewal, we may adjust the amount of your monthly charge for the next plan year, based on your usage in this plan year."<sup>18</sup>

The Company proposes to not only remove this message, as directed, but then to replace it with alternative messages:

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<sup>18</sup> *Id.*, p. 10.

**“Welcome to Annual Budget Billing Plan” Bill Message:**

Thank you for enrolling in the Budget Billing Annual Plan. **Your monthly Budget Billing amount will be \$%NEW\_BB\_AMT\_TOTAL%.** Every month, your bill will include a detailed graph showing the progression of your plan charges and your actual usage costs to date. To learn more, visit [duke-energy.com/BB](http://duke-energy.com/BB). Questions? Call %PHONE NUMBER%.

**Monthly Bill Message located beside the Usage Chart:**

Your Annual Budget Billing Plan provides you with predictable monthly bills. The graph on the left shows the progression of your plan charges and your actual usage costs to date. So far this year, you have a difference of \$%\$\$% between plan charges and actual usage costs.

The proposed change will take effect for all Annual Budget Billing customers, not only Ms. Eichelberger. The Company respectfully requests, that on rehearing, the Commission permit this bill message replacement.

**D. Electric: New Settle-Up and New Budget Billing Amount**

In the Final Order, the Commission directed the Company to reset Ms. Eichelberger’s gas budget billing as follows:

Duke Kentucky shall, within 30 days of service of this Order, start a new electric budget billing year for Ms. Eichelberger’s account, and file into the post-case record a new settle-up calculation and calculation of a new electric budget billing amount. The new billing amount should be calculated by taking the previous 12 months of usage, divided by 11, multiplied by the rate in place at the time of the settle-up.

First, as Ms. Eichelberger is currently in the middle of an Annual Budget Billing year, completing the required settle-up and setting a new Annual Budget Billing amount will require an additional billing period to complete. Accordingly, the Company requests that the Commission allow up to 60 days after service of the Final Order, rather than the 30 days originally allowed.

Second, in order to ensure a customer-friendly experience, the Company will contact Ms. Eichelberger to explain that it is taking action pursuant to the Final Order. If Ms. Eichelberger makes a request that precludes the Company from fully complying (*e.g.*, such as being removed from Budget Billing entirely, enrolled in Quarterly Budget Billing, or something else within a

customer's generally available options), the Company requests clarification that it be permitted to make a filing in the post-case record to document the customer's alternative request and action taken.

In summary, with regard to the directive to start a new electric budget billing year for Ms. Eichelberger's account, the Company requests (1) it be given 60 days, instead of 30, from the Final Order to comply; and (2) that it be permitted to comply with an appropriate alternative if requested by the customer.

### **III. Conclusion**

WHEREFORE, on the basis of the foregoing, Duke Energy Kentucky respectfully requests that the Commission grant rehearing of the Final Order in accordance with the above clarifications and modifications.

Respectfully submitted,

*/s/Larisa M. Vaysman*

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*Counsel for Duke Energy Kentucky, Inc.*

**CERTIFICATE OF SERVICE**

This is to certify that a true and accurate copy of the foregoing has been emailed to the Kentucky Public Service Commission at [PSCED@ky.gov](mailto:PSCED@ky.gov). In addition, a true and accurate copy of the foregoing was placed in the U.S. mail, postage prepaid, on May 9, 2024 addressed to the following:

Elizabeth Eichelberger  
6258 Taylor Mill Road  
Latonia, KY 41015

*/s/Larisa M. Vaysman*  
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*Counsel, Duke Energy Kentucky, Inc.*