

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF DUKE ENERGY)	
KENTUCKY, INC. FOR (1) AN ADJUSTMENT OF)	
ELECTRIC RATES; (2) APPROVAL OF NEW)	CASE NO.
TARIFFS; (3) APPROVAL OF ACCOUNTING)	2022-00372
PRACTICES TO ESTABLISH REGULATORY)	
ASSETS AND LIABILITIES; AND (4) ALL OTHER)	
REQUIRED APPROVALS AND RELIEF)	

ORDER

On December 1, 2022, Duke Energy Kentucky, Inc. (Duke Kentucky) filed an application for an adjustment of electric rates, approval of new tariffs, approval of changes to accounting practices when establishing regulatory assets, and any other necessary approval or relief. On December 6, 2022, the Commission issued a deficiency letter, noting multiple deficiencies in the filing, including but not limited to Duke Kentucky's failure to comply with rate case public notice requirements regarding the notice contents and notice methodology. As noted in the deficiency letter, Duke Kentucky, among other things, omitted required information regarding several rate changes. On December 8, 2022, Duke Kentucky responded to the deficiency letter, asserting that Duke Kentucky had remedied all the deficiencies noted in the filing.

LEGAL STANDARD

The notice requirements for a general rate adjustment are set forth in 807 KAR 5:001E, Section 17. Relevant here, 807 KAR 5:001E, Section 17(2)(b)(3) requires an applicant for a general rate adjustment to publish notice once a week for three

consecutive weeks in a prominent manner in a newspaper of general circulation in the utility's service area, with the first publication to be made no later than the date the application is submitted to the Commission.

Commission regulation 807 KAR 5:001E, Section 17(4) requires the public notice to include, among other things, the present rates and proposed rates for each customer classification to which the proposed rates will apply, and the amount of change in both dollar amounts and percentage change.

Commission regulation 807 KAR 5:001E, Section 22 permits the Commission to grant deviations from the regulations in 807 KAR 5:001 for good cause shown.

DUKE KENTUCKY'S RESPONSE TO THE DEFICIENCY LETTER

In response to the deficiency letter, Duke Kentucky stated that a corrected notice of the rate filing made pursuant to 807 KAR 5:001, Section 17(2)(b)(3)¹ will not run in the required newspaper publications until December 15, 2022.² This would be the third consecutive week of publication of the notice pursuant to Commission regulation.³ Duke Kentucky acknowledged that the third week of publication would be the sole publication of the correct notice.⁴

¹ The current regulation is 807 KAR 5:001E. The emergency regulation took effect on September 9, 2022.

² Duke Kentucky's Response to the December 6, 2022 Deficiency Notice and to the Extent Necessary, Request for Waiver of 807 KAR 5:001, Section 17(2)(b)(3) to Avoid Publishing Additional Notice (filed Dec. 8, 2022) (Duke Kentucky's Response).

³ Duke Kentucky's Response at 5.

⁴ Duke Kentucky's Response at 5.

As part of this acknowledgment, Duke Kentucky requested a “waiver” of 807 KAR 5:001, Section 17(2)(b)(3).⁵ As a basis for this request, Duke Kentucky asserted that the deficiencies were ministerial in nature and did not affect the information related to the proposed revenue requirement or the estimated bill impacts to customer classes.⁶ Duke Kentucky alleged that the publications are expensive and are recovered as a rate case expense.⁷ As a result, the ratepayer will bear the additional publication expense through higher rates to recover the additional expense.⁸ In conclusion, Duke Kentucky averred that the one week of correct notice should be deemed sufficient to satisfy the regulation requirement.⁹

DISCUSSION AND FINDINGS

Based upon the motion and case record, and being otherwise sufficiently advised, the Commission finds that Duke Kentucky has not established good cause to grant the motion for a deviation, and therefore the request should be denied for the following reasons. There were multiple omissions related to proposed rate increases in the notice, and the corrected notice will only be published one week instead of the required three consecutive weeks.¹⁰ Duke Kentucky averred that the excessive expense to rate payers and one week of publication of the corrected notice was reasonable and demonstrated compliance with the regulation. This argument presumes two facts: that the Commission

⁵ Duke Kentucky’s Response at 5.

⁶ Duke Kentucky’s Response at 5.

⁷ Duke Kentucky’s Response at 5.

⁸ Duke Kentucky’s Response at 5.

⁹ Duke Kentucky’s Response at 5–6.

¹⁰ 807 KAR 5:001E Section 17(2)(b)(3).

will allow recovery from the ratepayers for Duke Kentucky's mistakes and that one week of publication of the notice is sufficient. Customers who read the notice published the first or second week have not received notice of all of the general rate increases. Additionally, the Commission reminds Duke Kentucky that recovery of rate case expenses is not guaranteed; there must be sufficient evidence that supports a finding that the expense is just and reasonable..

The Commission's decision is consistent with prior cases.¹¹ Duke Kentucky does not provide any estimates or quotes as to the financial impact of two additional weeks of publication; neither does Duke Kentucky request the opportunity to publish an abbreviated notice for any of the weeks or provide reasonable alternatives to ensure that its customers receive notice regarding all of the rate increases.¹²

The Commission's decision to deny the deviation is influenced by the fact that, 11 days after the application was filed and six days after Duke Kentucky received a deficiency letter, a ratepayer cannot find the correct notice or a link to PSC case information on Duke Kentucky's website.¹³ The lack of transparency does not support Duke Kentucky's assertion that the ratepayers are on notice of this case. Although not technically a deficiency, at this point, the failure to provide accessible information on Duke Kentucky's website supports the denial of a deviation of the notice regulation.

¹¹ Case No. 2020-00174, *Electronic Application of Kentucky Power Company for (1) A General Adjustment of Rates for Electric Service; (2) Approval of Tariffs and Riders; (3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; (4) Approval of a Certificate of Public Convenience and Necessity; and (5) All Other Required Approvals and Relief*, (Ky. PSC July 2, 2020), Order and Case No. 2021-00185, *Electronic Application of Delta Natural Gas Company, Inc. for an Adjustment of its Rates and a Certificate of Public Convenience and Necessity*, (Ky. PSC June 9, 2021), Order.

¹² The Commission has granted deviations from the requirements in 807 KAR 5:001E Section 17(2)(b)(3).

¹³ 807 KAR 5:001E Section 17(1)(b).

IT IS HEREBY ORDERED that:

1. Duke Kentucky's request for a deviation from rate case public notice requirements is denied.
2. Duke Kentucky's application tendered on December 1, 2022, is rejected for filing.

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PUBLIC SERVICE COMMISSION



Chairman

Vice Chairman



Commissioner



ATTEST:



Executive Director

Case No. 2022-00372

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