

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC TARIFF FILING OF DUKE)	
ENERGY KENTUCKY, INC. FOR APPROVAL OF)	CASE NO.
AN ECONOMIC DEVELOPMENT INCENTIVE)	2022-00394
SERVICE AGREEMENT WITH DIVERSEY, INC.)	

ORDER

On October 24, 2022, Duke Energy Kentucky, Inc. (Duke Kentucky) filed, using the Commission’s electronic Tariff Filing system, an Economic Development Incentive Service Agreement (Agreement) with Diversey, Inc. (Diversey). The Agreement states that the effective date be no later than July 1, 2023, with Diversey providing Duke Kentucky with 30 days’ notice to begin receiving the reduction in rate set out in the Agreement. KRS 278.180(1) requires a utility to provide the Commission with 30 days’ notice before making changes to any rate. Therefore, the earliest possible effective date for the Agreement is November 23, 2022, which is 30 days after the filing date. Duke Kentucky responded to one request for information from Commission Staff. That response is included as Appendix B to this Order.

KRS 278.030 provides that a utility may collect fair, just and reasonable rates and that the service it provides must be adequate, efficient and reasonable. Having reviewed the proposed Agreement and being otherwise sufficiently advised, the Commission finds that an investigation is necessary to determine the reasonableness of the proposed Agreement and that such investigation cannot be completed by November 23, 2022. Therefore, pursuant to KRS 278.190(2), the Commission will suspend the effective date of the proposed Agreement for five months, up to and including April 22, 2023.

The Commission directs Duke Kentucky to the Commission's July 22, 2021 Order in Case No. 2020-00085¹ in which the Commission mandated the use of electronic filing procedures listed in 807 KAR 5:001, Section 8. The Commission finds that electronic filing procedures should be used, consistent with the filing procedures set forth in Case No. 2020-00085. The Commission further finds that a procedural schedule should be established to review the reasonableness of the proposed Agreement. The procedural schedule is attached as Appendix A to this Order and is incorporated here.

IT IS THEREFORE ORDERED that:

1. This proceeding is established to investigate the reasonableness of the proposed Agreement.
2. Duke Kentucky's proposed Agreement with Diversey is suspended for five months from November 23, 2022, up to and including April 22, 2023.
3. Duke Kentucky shall, by counsel, enter an appearance in this proceeding within seven days of the date of service of this Order. The entry of appearance shall include the name, address, telephone number, fax number, and electronic mail address of counsel.
4. Unless otherwise ordered by the Commission, the procedures set forth in 807 KAR 5:001, Section 8, related to service and electronic filing of papers shall be followed in this proceeding.
5. Pursuant to 807 KAR 5:001, Section 8(9), within seven days of service of this Order, Duke Kentucky shall file by electronic means a written statement that it waives

¹ Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19* (Ky. PSC July 22, 2021), Order (in which the Commission ordered that for case filings made on and after March 16, 2020, filers are NOT required to file the original physical copies of the filings required by 807 KAR 5:001, Section 8).

any right to service of Commission Orders by United States mail and that it or its authorized agent possess the facilities to receive electronic submissions.

6. Unless a party granted leave to intervene states its objection to the use of electronic filing procedures in a motion for intervention, the party shall:

a. Be deemed to have consented to the use of electronic filing procedures and the service of all papers, including Orders of the Commission, by electronic means; and

b. Within seven days of the date of service of an Order of the Commission, granting intervention, file with the Commission a written statement that:

(1) It or its authorized agent possesses the facilities to receive electronic transmissions; and

(2) Sets forth the electronic mail address to which all electronic notices and messages related to this proceeding shall be served.

7. If a party objects to the use of electronic filing procedures and the Commission determines that good cause exists to excuse that party from the use of electronic filing procedures, service of documents on that party and by that party shall be made in accordance with 807 KAR 5:001, Section 4(8).

8. The procedural schedule set forth in Appendix A to this Order shall be followed.

9. As set forth in 807 KAR 5:001, Section 4(11)(a), a person requesting permissive intervention in a Commission proceeding is required to demonstrate either (1) a special interest in the proceeding, which is not adequately represented in the case, or (2) that the person requesting permissive intervention is likely to present issues or develop facts that will assist the Commission in fully considering the matter without unduly

complicating or disrupting the proceedings. Therefore, any person requesting to intervene in a Commission proceeding must state with specificity the person's special interest that is not otherwise adequately represented, or the issues and facts the person will present that will assist the Commission in fully considering the matter. A mere recitation of the quantity of utility service consumed by the movant or a general statement regarding the potential impact of possible modification of rates will not be deemed sufficient to establish a special interest. In addition, any motion to intervene after the date established in the procedural schedule shall also show good cause for being untimely. If the untimely motion is granted, the movant shall accept and abide by the existing procedural schedule.

10. Duke Kentucky shall give notice of the hearing in accordance with the provisions set forth in 807 KAR 5:001, Section 9(2). In addition, the notice of the hearing shall include the following statements: "This hearing will be streamed live and may be viewed on the PSC website, psc.ky.gov"; and "Public comments may be made at the beginning of the hearing. Those wishing to make oral public comments may do so by following the instructions listed on the PSC website, psc.ky.gov." At the time publication is requested, Duke Kentucky shall forward a duplicate of the notice and request to the Commission.

11. At any public hearing in this matter, neither opening statements nor summarization of direct testimonies shall be permitted.

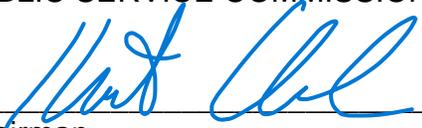
12. Pursuant to KRS 278.360 and 807 KAR 5:001, Section 9(9), a digital video recording shall be made of the hearing.

13. The Commission does not look favorably upon motions for continuance. Accordingly, motions for extensions of times with respect to the schedule herein shall be made in writing and will be granted only upon a showing of good cause.

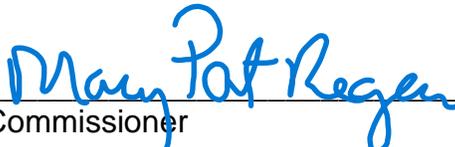
14. The Commission does not look favorably upon motions to excuse witnesses from testifying at Commission hearings. Accordingly, motions to excuse a witness from testifying at a Commission hearing or from testifying in person at a Commission hearing shall be made in writing and will be granted only upon a showing of good cause.

15. Nothing contained in this Order shall prevent the Commission from entering further Orders in this matter.

PUBLIC SERVICE COMMISSION


Chairman

Vice Chairman


Commissioner



ATTEST:


Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2022-00394 DATED NOV 22 2022

Requests for intervention shall be filed no later than 11/30/2022

Initial requests for information to Duke Kentucky
shall be filed no later than 12/07/2022

Duke Kentucky shall file responses to
initial requests for information no later than..... 12/21/2022

All supplemental requests for information to Duke Kentucky
shall be filed no later than 01/13/2023

Duke Kentucky shall file responses to supplemental requests
for information no later than 01/27/2023

Intervenor testimony, if any, in verified prepared
form shall be filed no later than..... 02/03/2023

All requests for information to Intervenors shall
be filed no later than..... 02/17/2023

Intervenors shall file responses to requests for
information no later than..... 03/03/2023

Duke Kentucky shall file, in verified form, its rebuttal
testimony no later than.....03/10/2023

Duke Kentucky or any Intervenor shall request either a
hearing or that the case be submitted for decision
based on the record no later than.....03/17/2023

APPENDIX B

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2022-00394 DATED NOV 22 2022

TWO PAGES TO FOLLOW

Duke Energy Kentucky
TFS2022-00519
STAFF First Set Data Requests
Date Received: November 3, 2022

STAFF-DR-01-001

REQUEST:

Explain how the proposed contract complies with findings 3 through 17 in the Commission's September 24, 1990 Order in Administrative Case No. 327 (see attached).

RESPONSE:

Individual Rider DIR contracts are filed with the Commission as any other special contract. The submitted contract follows the Company's Commission-approved economic development tariff, Rider DIR, Ky.P.S.C. Electric No. 2, Sheet No. 86 (https://psc.ky.gov/tariffs/Electric/Duke_Energy_Kentucky/Tariff.pdf), and follows the tariff's terms as previously authorized by the Commission. The Rider DIR tariff was approved by the KYPSC in its April 19, 2005 Opinion and Order in Case No. 2004-00253, which held the Rider DIR terms were consistent with the Commission's Admin 327 Order, providing in relevant part:

“Although the Commission determined in Admin. 327 that economic development rates should be offered by special contract rather than by a tariff, ULH&P's amended EDR tariffs are consistent with that guideline. ULH&P's tariffs condition the incentive rates on the negotiation of a customer-specific contract, which should all but ensure that incentives will be offered only when necessary. In addition, ULH&P has shown that its proposed economic development incentive rates are designed to recover the variable costs of serving the new or expanded load and make a contribution to its fixed costs. With the incentive rates designed in this manner, the other customers of ULH&P will be expected to benefit from the new or expanded load during the incentive period.”

The Commission's opinion and the Company's economic development tariffs were affirmed by the Supreme Court of Kentucky. *See* PSC of Kentucky v. Commonwealth, 320

S.W.3d 660 (Ky.2010). The Company's economic development tariff has remained available for qualifying customers since its approval by the Commission with no material modification. The Commission most recently reviewed the Company's Rider DIR as part of Case No. 2019-00271.

PERSON RESPONSIBLE: Legal

*Minna Sunderman
Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45201

*Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45202

*Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45202

*Rocco O D'Ascenzo
Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45201