

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN ADJUSTMENT OF THE)	
ELECTRIC RATES OF THE)	
UNION LIGHT, HEAT AND)	CASE NO. 2006-00172
POWER COMPANY D/B/A)	
DUKE ENERGY KENTUCKY, INC.)	

O R D E R

On May 31, 2006, The Union Light, Heat and Power Company d/b/a Duke Energy Kentucky, Inc. ("Duke Kentucky") tendered for filing an application for a general adjustment in electric rates based on a forward-looking test period. The rate application was reviewed to determine whether it complied with all applicable statutes and regulations. By Commission letter dated June 9, 2006, Duke Kentucky was notified that its rate application was rejected as deficient because the proposed tariff changes were not shown as required by Commission regulation 807 KAR 5:001, Section 10(1)(b)8. The Commission's June 9, 2006 letter also noted that the proposed electric tariff which was included in the rate application at Schedule L-1 and filed in compliance with 807 KAR 5:001, Section 10(1)(b)7, did not contain an effective date and, thus, could not be implemented unless it was refiled with an effective date in accordance with KRS 278.180.

On June 16, 2006, Duke Kentucky filed a motion requesting, in the alternative, the following relief: (1) rehearing of the June 9, 2006 deficiency notice; (2) a waiver of the filing requirements set forth in 807 KAR 5:001, Section 10(1)(b)8; or (3) authority to

amend or, in the alternative, to supplement its May 31, 2006 tendered application with the tariff sheets that were appended to its motion, along with a request to shorten from 30 days to 20 days the time in which its new rates can become effective pursuant to KRS 278.180(1). In support of its request for rehearing, Duke Kentucky claims that its rate application as tendered on May 31, 2006 substantially complied with 807 KAR 5:001, Section 10(1)(b)8, by providing its proposed tariff changes in two separate documents, identified as Schedules L-2.1 and L-2.2, with the proposed tariff deletions shown in Schedule L-2.1 and the proposed tariff additions shown in Schedule L-2.2. Duke Kentucky further states that the deficiency letter was issued because the proposed tariff changes were presented in two separate documents, rather than in one document as required by the regulation, and because the rates to be deleted were underscored instead of stricken through. Duke Kentucky characterizes this as a “minor variance” from the Commission’s regulation and notes that in its last two gas rate cases, Case Nos. 2001-00092 and 2005-00042,¹ it similarly presented its proposed tariff changes in two separate documents and the Commission did not reject as deficient either of those applications.

Alternatively, Duke Kentucky requests the Commission to grant a waiver, pursuant to 807 KAR 5:001, Section 10(1), from the requirement to present proposed tariff changes in the format specified in 807 KAR 5:001, Section 10(b)8, and to accept its application as of May 31, 2006, the date it was tendered. Duke Kentucky states that good cause exists to grant a waiver, arguing that the information on its tariff changes as

¹ Case No. 2001-00092, Adjustment of Gas Rates of The Union Light, Heat and Power Company; Case No. 2005-00042, Adjustment of Gas Rates of The Union Light, Heat and Power Company.

presented in two separate documents will allow the Commission to effectively and efficiently review that information. Duke Kentucky also claims that the information required by 807 KAR 5:001, Section 10(b)8, relating to its proposed tariff changes, is available within Duke Kentucky, but not in the format specified in the regulation.

Finally, the third alternative relief requested by Duke Kentucky is for: (1) authority to amend its application by including the revised Schedule L-2.2, which was attached to its motion; (2) a declaration that the amendment relates back to May 31, 2006, the date the application was tendered; and (3) acceptance of its application for filing as of May 31, 2006. Alternatively, Duke Kentucky requests its revised Schedule L-2.2 to be accepted as a supplemental filing that cures the filing deficiency and that its rate application be accepted for filing as of June 16, 2006, the date that the revised schedule was filed. Duke Kentucky also requests the Commission to make a finding of good cause to shorten, from 30 days to 20 days, the notice required to be given under KRS 278.180(1) before a utility can make a change in any rate. Duke Kentucky states that the circumstances discussed in its motion constitute good cause to shorten the notice to 20 days and that no one will be prejudiced by doing so because there had been widespread publicity regarding a change in rates on July 1, 2006 by Duke Kentucky.

On June 21, 2006, the Attorney General's Office ("AG") filed a response to the Duke Kentucky motion. The AG objects to both the request for a rehearing of the notice rejecting the rate application as deficient and the request for a waiver of the filing requirements. The AG argues that the rate application as tendered "simply fails to comport with the requirements of the regulation," and that the Commission's "deficiency

finding is appropriate and should be sustained.” Noting the statutory time limits for reviewing rate applications, the AG opposes accepting the Duke Kentucky application prior to the date the deficiency is cured. Finally, the AG states that he does not object to a finding of good cause to allow the proposed tariff changes to be effective within 20 days, as authorized under KRS 278.180(1).

Based on the motion and being otherwise sufficiently advised, the Commission finds that 807 KAR 5:001, Section 10(b)8, requires a utility to file its proposed tariff changes in one document or, alternatively, in comparative form on the same sheet side by side or on facing sheets side by side, to enable to Commission and any interested person to readily determine the nature and extent of each proposed tariff change. Presenting the tariff deletions in a document separate from that which contains the tariff additions defeats the intent of the regulation and creates a situation where one or more of the proposed tariff changes may be inadvertently overlooked and not properly investigated. Consequently, the Commission is unable to find that Schedules L-2.1 and L-2.2 as tendered by Duke Kentucky on May 31, 2006 substantially comply with the requirements of 807 KAR 5:001, Section 10(b)8. Although the Commission accepted Duke Kentucky’s prior gas rate applications in which the proposed tariff changes were presented in two separate documents, our prior failure to properly enforce this regulation does not now bar a proper enforcement here. Thus, the request for rehearing should be denied.

Commission regulation 807 KAR 5:001, Section 10(11), authorizes the granting of a waiver from the filing requirements upon the showing of good cause by a utility. In

reviewing such a request, the regulation states that the Commission may consider the following factors:

- a. Whether other information which the utility would provide if the waiver is granted is sufficient to allow the commission to effectively and efficiently review the rate application;
- b. Whether the information which is the subject of the waiver request is normally maintained by the utility or reasonably available to it from the information which it maintains; and
- c. The expense to the utility in providing the information which is the subject of the waiver request.

807 KAR 5:001, Section 10(11). In this case, our review of the proposed tariff changes cannot be conducted as effectively and efficiently when the tariff deletions are presented in one schedule and the tariff additions are presented in a separate schedule. Further, Duke Kentucky has acknowledged that it has the information necessary to present all tariff changes in one document, and in fact has presented those changes in one document, revised Schedule L-2.2, attached to its June 16, 2006 motion. As to the third and final criteria cited above, Duke Kentucky makes no claim that it would incur a substantial expense to present its proposed tariff changes in one document. Consequently, the Commission finds that Duke Kentucky has not presented good cause to justify a waiver from the filing requirements of 807 KAR 5:001, Section 10(1)(b)8.

Finally, the Commission will allow Duke Kentucky to supplement its application, as tendered on May 31, 2006, with revised Schedule L-2.2 which was filed on June 16, 2006. Since the rate application was properly determined to be deficient when tendered on May 31, 2006, and the deficiency was cured by the supplemental filing made on

June 16, 2006, the application should be accepted as administratively complete as of June 16, 2006, the date that the filing deficiency was cured.

Duke Kentucky also included with its June 16, 2006 motion two copies of its proposed tariff: one bearing an effective date of July 1, 2006; and the other bearing an effective date of July 6, 2006. Although Duke Kentucky had included a copy of its proposed tariff in the rate application it tendered on May 31, 2006, that proposed tariff did not include an effective date. Under KRS 278.180(1), no change can be made in any rate by a utility except upon 30 days' notice to the Commission, and under 807 KAR 5:001, Section 10(1)(b)7, a rate application must include a proposed tariff "with an effective date not less than thirty (30) days from the date the application is filed."

While Duke Kentucky stated in the text of its tendered rate application that its proposed tariff changes are to be effective July 1, 2006, and its newspaper notice referenced an effective date of July 1, 2006, its proposed tariff filed in compliance with 807 KAR 5:001, Section 10(1)(b)7, contained no effective date. Considering the text of the rate application as tendered on May 31, 2006 and the contents of the newspaper notice, the Commission finds good cause to shorten the statutory notice period from 30 days to 20 days, as is discretionary under KRS 278.180(1). Since Duke Kentucky filed its proposed tariff on June 16, 2006 with an effective date, the earliest that the tariff can become effective with a 20-day notice period is July 6, 2006.

Based on a review of Duke Kentucky's rate application, the Commission finds that an investigation is necessary to determine the reasonableness of the proposed rates and that investigation cannot be concluded by July 6, 2006. Therefore, pursuant to KRS 278.190(2), Duke Kentucky's proposed rates should be suspended for the

maximum time allowed and a procedural schedule should be established to conduct the investigation.

The Commission expects the parties to use their best efforts to informally resolve any discovery disputes or requests for extensions of time. Any such informal resolution should be promptly reduced to writing and filed with the Commission and all parties of record. Absent informal resolution, an objection or motion should be filed at least 4 business days prior to the established due date or should explain why it could not have been filed upon 4 business days' notice.

IT IS THEREFORE ORDERED that:

1. Duke Kentucky's motion for rehearing of the notice of filing deficiency, and for waiver of the filing requirements, is denied.
2. Duke Kentucky's motion to amend and supplement its application as of June 16, 2006 is granted, but the request for the amendment and supplementation to relate back to May 31, 2006, when the rate application was first tendered, is denied.
3. Duke Kentucky's rate application is accepted for filing as of June 16, 2006, the date the filing deficiency was cured.
4. The earliest date that Duke Kentucky's proposed tariff can become effective is July 6, 2006.
5. Duke Kentucky's proposed rates are suspended for 6 months from July 6, 2006 up to and including January 5, 2007.
6. The procedural schedule set forth in Appendix A, which is attached hereto and incorporated herein, shall be followed.

7. All requests for information and responses thereto shall be appropriately indexed and 6 copies shall be filed with the Commission, with copies to all parties of record. Any request for information from the Commission Staff shall be responded to as if set forth in a Commission Order. All responses shall include the name of the witness who will be responsible for responding to questions at any hearing in this proceeding related to the information provided.

8. Any party filing testimony shall file an original and 9 copies.

9. Duke Kentucky shall give notice of the hearing in accordance with the provisions set out in 807 KAR 5:011, Section 8(5). At the time publication is requested, Duke Kentucky shall forward a duplicate of the notice and request to the Commission.

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

11. Any objections or motions relating to discovery or procedural dates shall be filed upon 4 business days' notice or shall include an explanation why such notice was not possible.

12. Nothing contained herein shall prevent the Commission from entering further Orders in this matter.

Done at Frankfort, Kentucky, this 27th day of June, 2006.

By the Commission

ATTEST:

A handwritten signature in black ink, consisting of several overlapping loops and flourishes, positioned above a horizontal line.

Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2006-00172 DATED June 27, 2006.

All initial requests for information to Duke Kentucky shall
be filed no later than..... 07/12/06

Duke Kentucky shall file responses to initial requests for
information no later than..... 07/26/06

All supplemental requests for information to Duke Kentucky
shall be filed no later than 08/09/06

Duke Kentucky shall file responses to supplemental requests
for information no later than 08/23/06

Intervenor testimony, if any, in verified prepared form
shall be filed no later than 09/13/06

All requests for information to Intervenors shall be
filed no later than..... 09/26/06

Pursuant to 807 KAR 5:001, Section 10(8)(d), last day
to file corrections of mathematical errors in the forecasted
test period or revisions reflecting statutory or regulatory
enactments that could not, with reasonable diligence,
have been included in the forecast on the date it was filed 09/29/06

Intervenors shall file responses to requests for
information no later than..... 10/10/06

Pursuant to KRS 278.192(2)(b), actual results for the estimated
months of the base period shall be filed no later than 10/16/06

Duke Kentucky shall file rebuttal testimony, in verified
form, no later than 10/23/06

Last day for Duke Kentucky to publish notice of hearing..... 10/23/06

Public Hearing shall begin at 9:00 a.m., Eastern
Standard Time, in Hearing Room 1 of the Commission's
offices at 211 Sower Boulevard, Frankfort, Kentucky,
for the purpose of cross-examination of witnesses of
Duke Kentucky and Intervenors 10/30/06

Briefs, if any, shall be filed by..... 12/05/06