

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF DUKE ENERGY KENTUCKY, )  
INC. FOR (1) A CERTIFICATE OF PUBLIC )  
CONVENIENCE AND NECESSITY )  
AUTHORIZING THE CONSTRUCTION OF AN ) CASE NO.  
ADVANCED METERING INFRASTRUCTURE; (2) ) 2016-00152  
REQUEST FOR ACCOUNTING TREATMENT; )  
AND (3) ALL OTHER NECESSARY WAIVERS, )  
APPROVALS, AND RELIEF )

ATTORNEY GENERAL’S MOTION TO DISMISS WITHOUT PREJUDICE

The Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention, hereby moves that the Commission dismiss the application in the above-styled docket, without prejudice. In support of this motion, the Attorney General states as follows.

A. Cost-Benefit Analysis Failed to Consider Stranded Costs Arising From Retirement of Existing Meters

Duke Energy of Kentucky (DEK)’s application is premised in large part upon a cost-benefit analysis the company conducted which ostensibly depicts that if the application is approved, benefits to ratepayers would be greater than costs.<sup>1</sup> However, the application is also premised upon the premature retirement of existing meters and infrastructure, which would yield stranded costs of approximately \$9.7 million.<sup>2</sup> Significantly, DEK acknowledges that its cost-benefit analysis failed to take these stranded costs into consideration.<sup>3</sup> As highlighted in the testimony of Paul Alvarez, filed on behalf of the

<sup>1</sup> Schneider Direct Testimony, p. 26.

<sup>2</sup> Application, p. 18.

<sup>3</sup> Response to AG 2-3.

Office of the Attorney General, this sum represents a 20% premium over and above the \$49 million estimated total cost of the AMI deployment.<sup>4</sup>

The Attorney General believes that in analyzing the cost-benefit impact of any CPCN project upon ratepayers, it is absolutely *vital* that *all* costs should be taken into consideration. DEK's analysis inexplicably fails to do so. When these costs are taken into consideration, it is readily apparent that costs of the proposed project exceed estimated benefits by a significant factor. Moreover, the Attorney General finds it remarkable that DEK's affiliate, Duke Energy of Indiana, in a recent settlement in that state regarding a proposed AMI deployment, agreed to not seek recovery of the stranded costs resulting from premature retirement of existing meters and related infrastructure.<sup>5</sup> Unless or until DEK can develop an alternative to address the high cost of the premature retirement of existing assets, such as its Indiana affiliate did, the case should be dismissed without prejudice.

Due to DEK's extensive capital spending in the approximately ten (10) years that have elapsed since the filing of its last electric base rate case, DEK's ratepayers will be facing a very substantial base rate increase when the company files its next base rate application. Accordingly, ratepayers should not be saddled with additional costs for projects which are not necessary to maintain reliability of the company's distribution system.<sup>6</sup>

B. DEK Has Failed to Satisfy the Legal Requirements for a CPCN for the Proposed Smart Meter Plan

*In Kentucky Utilities Co. v. Public Service Com'n*, 252 S.W.2d 885 (Ky. 1952),

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<sup>4</sup> Alvarez Direct Testimony, p. 7.

<sup>5</sup> Indiana Utility Regulatory Commission Cause No. 44720, Final Order dated June 29, 2016, p. 17, accessible at: [https://myweb.in.gov/IURC/eds/Modules/Ecms/Cases/Docketed\\_Cases/ViewDocument.aspx?DocID=0900b631801da2fe](https://myweb.in.gov/IURC/eds/Modules/Ecms/Cases/Docketed_Cases/ViewDocument.aspx?DocID=0900b631801da2fe)

<sup>6</sup> Alvarez Direct Testimony, p. 8.

Kentucky's then-highest court held that in CPCN applications, the Commission must find both: “. . . the need for a new service system or facility from the standpoint of service requirements, and an absence of wasteful duplication resulting from the construction of the new system or facility.” *Id.* at 890. In the instant application, DEK has already acknowledged that the proposed AMI program is not based on data or survey research conducted with DEK's own customers, but rather upon the company's own *belief* of what its customers “want.”<sup>7</sup> Moreover, the company's plan to prematurely retire useful assets constitutes *prima facie* evidence that this project includes, and actually promotes, duplication of plant.<sup>8</sup> Having failed to establish true need and an absence of wasteful duplication, the application should be dismissed without prejudice.

C. DEK's Proposed AMI CPCN Should be Considered in the Context of its Next Base Rate Proceeding

The true rate impact of the premature retirement of DEK's existing assets cannot be determined outside of a base rate case. That impact will, of necessity, require a determination of the period of time over which those costs will be amortized, as well as the rate of return DEK will be allowed to earn on the stranded assets. It is striking that DEK's initial foray into smart meter technology was brought in the context of a base rate case,<sup>9</sup> but the instant filing – done between rate cases -- seeks approval of a much more extensive, system-wide AMI deployment requiring major capital spending.

Moreover, ratepayers will pay carrying costs on the stranded assets until the date that the final order in DEK's next rate case is issued, which could be several years. These carrying costs will include a rate of return established upon circumstances prevalent at the

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<sup>7</sup> Response to AG 1-4.

<sup>8</sup> Application, p. 18.

<sup>9</sup> Case No. 2006-00172, *In Re: Application of the Union Light, Heat and Power Company d/b/a Duke Energy Kentucky for and Adjustment of Electric Rates*, Final Order dated Dec. 21, 2006, pp. 6-7.

time of DEK's last base rate cases, which concluded seven (7) and ten (10) years ago, respectively.<sup>10</sup> The level of return awarded in those prior cases is clearly inappropriate today.<sup>11</sup>

Finally, as discussed at length in the direct testimony of Attorney General witness, Paul Alvarez, a CPCN awarded between base rate case proceedings unacceptably shifts several types of risk from shareholders to DEK's ratepayers.<sup>12</sup> All of these points strongly indicate that the Commission should dismiss the instant CPCN application with leave to refile it at the time DEK seeks its next adjustment of base rates, which is the same procedure the Commission followed with regard to DEK's initial smart meter program.<sup>13</sup>

**WHEREFORE**, the Attorney General respectfully moves that the Commission DISMISS the instant proceeding without prejudice, and order that any future filing requesting approval of a smart-meter deployment program substantially similar to the instant application instead be brought within the context of a base rate proceeding.

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<sup>10</sup> Case No. 2009-00202, *In Re: Application of Duke Energy Kentucky, Inc. for an Adjustment of Rates* (gas only), Final Order dated Dec. 29, 2009, which set DEK's rate of return for gas operations at 10.375%; and Case No. 2006-00172, *supra*, Final Order dated Dec. 21, 2006, in which the Commission accepted the parties' unanimous settlement which did not establish a specified rate of return.

<sup>11</sup> See, e.g., Case No. 2015-00210, in which DEK agreed to an ROE of 9.7% on its gas service line replacement program.

<sup>12</sup> Alvarez Direct Testimony, pp. 10-13.

<sup>13</sup> Case No. Case No. 2006-00172, *supra*.

Respectfully submitted,

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*Certificate of Service and Filing*

Counsel certifies that: (a) the foregoing is a true and accurate copy of the same document being filed in paper medium; (b) pursuant to 807 KAR 5:001 § 8(7)(c), there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and (c) the original and copy in paper medium is being filed with the Commission on July 21, 2016.

I further certify that in accordance with 807 KAR 5:001 § 4 (8), the foregoing is being contemporaneously provided via electronic mail to:

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this 20<sup>th</sup> day of July, 2016



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Assistant Attorney General