

**BEFORE THE  
KENTUCKY PUBLIC SERVICE COMMISSION**

In the Matter of:

The Application of Duke Energy )  
Kentucky, Inc., for Deviation from ) Case No. 2016-00312  
Affiliate Pricing Requirements )

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**APPLICATION OF DUKE ENERGY KENTUCKY, INC.  
FOR DEVIATION FROM AFFILIATE PRICING REQUIREMENTS  
AND TO AMEND EXISTING SERVICE AGREEMENTS  
TO INCLUDE PIEDMONT NATURAL GAS COMPANY AS PARTY**

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Now comes Duke Energy Kentucky, Inc. (Duke Energy Kentucky), pursuant to KRS 278.2207(2) and 278.2219, and 807 KAR 5:080, Section 5, and respectfully requests the Kentucky Public Service Commission (Commission) approve amendments to several of its existing Commission-approved utility-affiliate agreements to incorporate the soon-to-be affiliate Piedmont Natural Gas Company (Piedmont). Upon consummation of the acquisition by Duke Energy Corporation (Duke Energy), Piedmont will become an affiliate of Duke Energy Kentucky and any transactions between Piedmont and Duke Energy Kentucky would then be subject to the pricing requirements of KRS 287.2207.

To allow consistency and equality between and among transactions with all of its utility affiliates, Duke Energy Kentucky requests the Commission permit the addition of Piedmont to the following existing service agreements and to the extent necessary, grant a deviation from the pricing requirements set forth in KRS 278.2207(1)(a) and (b), and any other necessary relief and accounting and financing authority:

- Intercompany Asset Transfer Agreement;
- Operating Companies Service Agreement;

- Duke Energy Corporation and Consenting Members of its Consolidated Group Fourth Amended Agreement for Filing Consolidated Income Tax Returns and for Allocation of Consolidated Income Tax (Tax Sharing Agreement); and
- Utility Money Pool Agreement.

### **Background**

1. Duke Energy Kentucky is a Kentucky corporation with its principal office and principal place of business at 139 East Fourth Street Cincinnati, Ohio 45202. The Company's local office in Kentucky is Duke Energy Envision Center, 4580 Olympic Boulevard, Erlanger, Kentucky 41018. The Company further states that its electronic mail address for purposes of this matter is [KYfilings@duke-energy.com](mailto:KYfilings@duke-energy.com).

2. Duke Energy Kentucky is a utility engaged in the gas and electric business. Duke Energy Kentucky purchases, sells, stores, and transports natural gas in Boone, Bracken, Campbell, Gallatin, Grant, Kenton, and Pendleton Counties, Kentucky. Duke Energy Kentucky also generates electricity, which it distributes and sells in Boone, Campbell, Grant, Kenton, and Pendleton Counties.

3. Pursuant to 807 KAR 5:001, Section 14(2), Duke Energy Kentucky states that it was originally incorporated in the Commonwealth of Kentucky on March 20, 1901, and attests that it is currently in good standing in said Commonwealth.

4. Duke Energy Kentucky is authorized to engage in transactions for products and services with affiliates provided the transactions are in compliance with Kentucky law and, where applicable, pursuant to Commission-approved affiliate agreements. Duke Energy Kentucky and many of its affiliates are already parties to Commission-approved services agreements that permit certain transactions to occur between the signatory parties and under defined pricing terms and conditions.

5. On October 24, 2015, Duke Energy announced its planned acquisition of Piedmont, a natural gas company providing service in North Carolina, South Carolina, and parts of Tennessee. Upon consummation of the transaction, Piedmont will become a wholly owned subsidiary of Duke Energy and an affiliate of Duke Energy Kentucky. To allow seamless operations and integration into the Duke Energy family of companies, Piedmont will be made a party to several existing affiliate agreements that have previously been reviewed and approved by this Commission, first as part of the merger between Duke Energy and Cinergy Corp., in Case No. 2005-00228, and as updated in Case No. 2011-00124 to reflect the merger between Duke Energy and Progress Energy. At this time, Duke Energy Kentucky expects that Piedmont will be added to the following affiliate agreements (collectively the Service Agreements):

- Intercompany Asset Transfer Agreement, which permits the transfer of inventory assets, excluding commodities, at the transferring company's fully allocated costs, subject to certain limitations;<sup>1</sup>
- Operating Companies Service Agreement, which allows the utilities to perform services for each other;
- Tax Sharing Agreement, which allows for joint filing of federal tax returns.
- Utility Money Pool Agreement, which allows for intercompany loans among the utility affiliates, service company, and holding company);
- Asymmetrically Priced Operating Company/Non-Utility Agreement, which allows the utilities and non-utility affiliates to perform various services for each other in accordance with Federal Energy Regulatory Commission pricing rules and KRS 278.2207(1), and

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<sup>1</sup> This agreement was originally approved by the Commission in Case No. 2008-00122 and was not part of the merger between Duke Energy and Cinergy Corp.

- Service Company Utility Service Agreement, which allows the service company to perform services for each of the public utilities.

6. Copies of the existing Service Agreements are on file with this Commission as part of Duke Energy Kentucky's annual reporting filings and as updated in its Cost Allocation Manual.<sup>2</sup> Of the aforementioned agreements, only those directly authorizing transactions between Duke Energy Kentucky and Piedmont at a price based upon cost will need Commission approval for a deviation from KRS 278.2207. There are four such agreements that require Commission approval. Duke Energy Kentucky hereby submits those agreements in two versions depicting both tracked changes and final form<sup>3</sup> for the Commission's review and approval pursuant to KRS 278.2207(2) as follows:

- Intercompany Asset Transfer Agreement;<sup>4</sup>
- Operating Companies Services Agreement;<sup>5</sup>
- Tax Sharing Agreement;<sup>6</sup> and
- Utility Money Pool Agreement.<sup>7</sup>

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<sup>2</sup> Duke Energy Kentucky last filed its Cost Allocation Manual and updated services agreements in March 2016.

<sup>3</sup> For ease of reference, copies of the agreements in a final form are designated as Exhibit #(a) and copies of the agreements in tracked changes format are designated as Exhibit #(b).

<sup>4</sup> See Exhibit 1(a) and 1(b)

<sup>5</sup> See Exhibit 2(a) and 2(b)

<sup>6</sup> See Exhibit 3(a) and 3(b)

<sup>7</sup> See Exhibit 4(a) and 4(b)

7. The addition of Piedmont to other two agreements, namely the Asymmetrically Priced Operating Company-Non-Utility Agreement and the Service Company-Utility Service Agreement does not require Commission approval.<sup>8</sup>

8. The addition of Piedmont to the aforementioned agreements and the proposed deviation from affiliate pricing rules is reasonable and in the public interest in that it will enable Duke Energy Kentucky to engage in transactions with Piedmont on identical terms as it does with its other utility affiliates.

9. The addition of Piedmont to the Duke Energy family of companies provides an additional benefit for Duke Energy Kentucky as a natural gas company, which to date has only been able to pool resources and share inventories with its parent Duke Energy Ohio, the only other natural gas distribution company in the Duke Energy family. Thus, the addition of Piedmont to the Intercompany Asset Transfer Agreement will enable the transfer of assets, other than commodities, with its utility affiliates for the purpose of realizing economies of scale and improved reliability. One of the benefits of being part of a large public utility holding company is the ability to leverage the relationship among affiliated utility companies to realize operational efficiencies. The proposed addition of Piedmont to the Service Agreements enables Duke Energy Kentucky and its affiliated utility operating companies to realize such efficiencies by, among other things, pooling resources and providing each company access to a wider supply of

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<sup>8</sup> The Asymmetrically Priced Operating Company-Non-Utility Agreement does not require Commission approval because it simply requires services between Duke Energy utilities and non-utility companies to be prices asymmetrically, which is already permitted under KRS 278.2207. The Service Company Utility Service Agreement only governs services that Duke Energy Business Services (DEBS) provides to the Duke Energy affiliate companies. Although Commission approval of this agreement was obtained in prior Duke Energy merger transactions, such as the 2011 merger with Progress Energy, that prior approval was necessary due to the addition of a second service company that would be providing post-merger services to Duke Energy Kentucky. Such is not the case with the Piedmont acquisition. The addition of Piedmont to this agreement merely permits DEBS to begin providing services to Piedmont, as it does all other Duke Energy affiliates. This agreement does not contemplate Piedmont providing any services to Duke Energy Kentucky, as such services would fall under the Operating Companies Service Agreement that is being submitted for approval.

equipment and inventory assets while in no way harming the customers of the respective utilities. Pursuant to KRS 278.2207(2), in order to transact with its affiliates at cost as provided in the relevant Service Agreements, Duke Energy Kentucky must obtain Commission approval for a deviation from the affiliate transaction pricing requirements set forth in KRS 278.2207(1)(a) and(b).<sup>9</sup>

10. Kentucky's affiliate pricing rules discourage Duke Energy Kentucky's affiliates from transferring equipment to Duke Energy Kentucky. Where, for example, a utility affiliate could only charge the lesser of cost or market in transferring equipment to Duke Energy Kentucky, it would have to pay the greater of cost or market if it were receiving equipment from Duke Energy Kentucky.<sup>10</sup> The affiliate will not be inclined to transact with Duke Energy Kentucky where it is at such a disadvantage.

11. In furtherance of the public interest, Duke Energy Kentucky is not asking this Commission to waive or cede any of its authority over transactions involving an asset with an original book value of one million dollars or more. Duke Energy Kentucky agrees to continue to abide by KRS 278.218 for any transactions involving assets having an original book value of one million dollars or more and Duke Energy Kentucky would first seek Commission approval before engaging in such a transfer.<sup>11</sup>

12. Duke Energy Kentucky will continue its existing commitment to maintain a list of

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<sup>9</sup> The transactions permitted pursuant to the money pool and tax sharing agreement are both short-term in nature (less than two years in nature) and do not require approval under KRS 278.300.

<sup>10</sup> KRS 278.2207(1)(a)-(b) (2008); Providing in relevant part the utility providing products or services to the affiliate is to be compensated at cost, but *no less than market*. The products or services provided by the affiliate to the utility are to be priced at cost but *no greater than market*.

<sup>11</sup> *In the Matter of the Application of Duke Energy Kentucky, Inc. for Deviation from Affiliate Pricing Requirements and Approval of An Intercompany Asset Transfer Agreement*, Case No. 2008-00122, Order, at pg. 3 (July 18, 2008) (Duke Energy Kentucky agreed that it would also seek Commission authority over all transactions involving gas utility assets under the same terms and conditions as in KRS 278.218.) Further, the Intercompany Asset Transfer Agreement specifically recognizes the limitations placed on Duke Energy Kentucky by KRS 278.218. *See* Section 1.1(iii) of the Intercompany Asset Transfer Agreement.

all transactions occurring under the Intercompany Asset Transfer Agreement in its Cost Allocation Manual for Commission inspection pursuant to KRS 278.2205(2)(e).

13. The parties to the Agreements will maintain their own records and inventories and will document any such transactions to ensure compliance with KRS 278.2213, including, but not limited to requirements for separate accounting and avoidance of cross subsidies, and to ensure that no utility assets are used to finance a non-regulated activity or a utility affiliate.

14. The aforementioned Service Agreements, as applicable, are also being submitted by Duke Energy Kentucky's utility affiliates to the state utility commissions in North Carolina, South Carolina, and Indiana.<sup>12</sup>

15. Good cause exists for the requested deviation in this petition. The Commission's grant of the relief requested herein will enable Duke Energy Kentucky to improve both the cost and reliability of providing electric and gas service to its customers and continue to operate in much the same manner as it does today.

**Requested Relief**

16. Duke Energy Kentucky respectfully requests that the Commission approve the amendments to its Service Agreements to allow the inclusion of Piedmont and grant to Duke Energy Kentucky a deviation from the affiliate pricing standards of KRS 278.2207 to the extent necessary to permit Duke Energy Kentucky to engage in transactions with its affiliates under the terms of, and otherwise approve, the Service Agreements.

17. Duke Energy Kentucky also respectfully request that the Commission grant the relief requested herein expeditiously.

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<sup>12</sup> No regulatory approval of the Agreements is required in Ohio or Florida.

WHEREFORE, Duke Energy Kentucky respectfully request that the Commission expeditiously issue an order granting approval of the addition of Piedmont to the existing Service Agreements and to the extent necessary, a deviation from the pricing requirements of KRS 278.2207 to allow Duke Energy Kentucky to transact with Piedmont (like other affiliated parties to said agreements) and grant such other and further relief as necessary to authorize the Agreement.

Respectfully submitted,

DUKE ENERGY KENTUCKY, INC.



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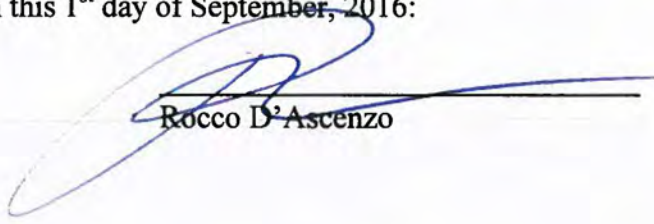
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**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing Application of Duke Energy Kentucky, Inc. has been served via electronic mail, U.S. Mail (postage prepaid) or overnight mail to the following party on this 1<sup>st</sup> day of September, 2016:



Rocco D'Ascenzo

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