

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF DUKE ENERGY)
KENTUCKY, INC. FOR: 1) AN ADJUSTMENT OF)
THE ELECTRIC RATES; 2) APPROVAL OF AN)
ENVIRONMENTAL COMPLIANCE PLAN AND)
SURCHARGE MECHANISM; 3) APPROVAL OF)
NEW TARIFFS; 4) APPROVAL OF ACCOUNTING)
PRACTICES TO ESTABLISH REGULATORY)
ASSETS AND LIABILITIES; AND 5) ALL OTHER)
REQUIRED APPROVALS AND RELIEF)

CASE NO. 2017-00321

NORTHERN KENTUCKY UNIVERSITY'S RESPONSES TO DUKE ENERGY
KENTUCKY, INC.'S FIRST REQUEST FOR INFORMATION
DATED JANUARY 17, 2018

FILED: JANUARY 31, 2018

Duke Energy Kentucky, Inc.
Case No. 2017-00321
Northern Kentucky University's Responses to Duke Energy Kentucky, Inc.'s Requests
for Information
Dated January 17, 2018

Q-1. Other than Mr. Collins, please identify any persons, including experts whom NKU has consulted, retained, or is in the process of retaining with regard to evaluating the Company's Application in this proceeding.

A-1. Objection: Attorney-client privileged and/or work product privileged.

Without waiving this objection, Rebecca Lanter and Syed Zaidi, employees of NKU, have assisted in providing and evaluating information relative to NKU's energy consumption and tariffs; and, hence, they have participated in some limited level of review of the Application.

Insofar as to any other "persons, including experts whom NKU has consulted," this information is protected by the work product privilege and/or attorney-client privilege as prelitigation consultative evaluation reports¹ which are barred from disclosure under CR 26.02. Moreover, conversations with any such person would clearly include the mental impressions, conclusions, opinions or legal

¹ A prelitigation consultant has a qualified privileged status the same as trial counsel's partners, associates, paralegals and secretaries; the physician consultant was given a qualified immunity because, if full discovery was permitted, this rule would become frustrated or "documents and tangible things" would not be produced or recorded. *Newsome v. Lowe*, 699 S.W.2d 748, 1985 Ky. App. LEXIS 611 (Ky. Ct. App. 1985).

Duke Energy Kentucky, Inc.
Case No. 2017-00321
Northern Kentucky University's Responses to Duke Energy Kentucky, Inc.'s Requests
for Information
Dated January 17, 2018

theories of counsel in contemplation of litigation; and, similarly, the information
is privileged under CR 26.02.

Respondent: Counsel

Duke Energy Kentucky, Inc.
Case No. 2017-00321
Northern Kentucky University's Responses to Duke Energy Kentucky, Inc.'s Requests
for Information
Dated January 17, 2018

Q-2. For each person identified in (prior) response to Interrogatory No. 1 above, please state (1) the subject matter of the discussions/consultations/evaluations; (2) the written opinions of such persons regarding the Company's Application; (3) the facts to which each person relied upon; and (4) a summary of the person's qualifications to render such discussions/consultations/evaluations.

A-2. (1) See answer to request DEK-NKU Q-1. In addition, these individuals also discussed the riders included within Mr. Collins' testimony. With regard to matters discussed with counsel in contemplation of NKU's litigation in the case, these communications are protected by the attorney-client privilege and work product privilege. See *In the Matter of Application of Kentucky Utilities Company for an Adjustment of Base Rates*, Case No. 2009-00548 and its companion case *In the Matter of Louisville Gas and Electric Company for an Adjustment of Electric and Gas Base Rates*, Case No. 2009-00549.

(2) Neither individual has any written opinion related to the Application.

(3) Because neither individual has any written opinion regarding the Application, the question is inapplicable.

Duke Energy Kentucky, Inc.
Case No. 2017-00321
Northern Kentucky University's Responses to Duke Energy Kentucky, Inc.'s Requests
for Information
Dated January 17, 2018

(4) Rebecca Lanter has served NKU as Director of Sustainability and Energy Management for three years. She has previous energy management experience in both public institutions and private business. Academic qualifications include a Bachelor of Science in Mechanical Engineering. Syed Zaidi has served NKU as AVP for Facilities Management for the last two years. He previously worked as the chief facilities officer at a public comprehensive university in Pennsylvania for 9 years. His prior experience includes 14 years in facilities and energy management in public higher education and 12 years in the navy. Academic qualifications include a Bachelors in Science and a Masters in Educational Administration.

Insofar as to any other "persons, including experts whom NKU has consulted," this information is protected by the work product privilege and/or attorney-client privilege as prelitigation consultative evaluation reports² which are barred from disclosure under CR 26.02. Moreover, conversations with any such person would clearly include the mental impressions, conclusions, opinions or legal

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Duke Energy Kentucky, Inc.
Case No. 2017-00321
Northern Kentucky University's Responses to Duke Energy Kentucky, Inc.'s Requests
for Information
Dated January 17, 2018

theories of counsel in contemplation of litigation; and, similarly, the information
is privileged under CR 26.02.

Respondents: Counsel, Rebecca Lanter and Syed Zaidi

Duke Energy Kentucky, Inc.
Case No. 2017-00321
Northern Kentucky University's Responses to Duke Energy Kentucky, Inc.'s Requests
for Information
Dated January 17, 2018

Q-3. For each person identified in response to Interrogatory No. 1 above, please identify all proceedings in all jurisdictions in which the witness/persons has offered evidence, including but not limited to, pre-filed testimony, sworn statements, and live testimony. For each response, please provide the following:

- (a) the jurisdiction in which the testimony or statement was pre-filed, offered, given, or admitted into the record;
- (b) the administrative agency and/or court in which the testimony or statement was pre-filed, offered, admitted, or given;
- (c) the date(s) the testimony or statement was pre-filed, offered, admitted, or given;
- (d) the identifying number for the case or proceeding in which the testimony or statement was pre-filed, offered, admitted, or given;
and
- (e) whether the person was cross-examined.

- A-3. (a) None for either Rebecca Lanter or Syed Zaidi.
- (b) None for either Rebecca Lanter or Syed Zaidi.
- (c) None for either Rebecca Lanter or Syed Zaidi.
- (d) None for either Rebecca Lanter or Syed Zaidi.
- (e) None for either Rebecca Lanter or Syed Zaidi.

Respondents: Counsel, Rebecca Lanter and Syed Zaidi.

Duke Energy Kentucky, Inc.
Case No. 2017-00321
Northern Kentucky University's Responses to Duke Energy Kentucky, Inc.'s Requests
for Information
Dated January 17, 2018

Q-4. Identify and provide all documents or other evidence that NKU may seek to introduce as exhibits or for purposes of witness examination in the above-captioned matter.

A-4. NKU has not yet made a final determination as to the documents which it intends to introduce as exhibits at the hearing. However, it may introduce documents either in the record, documents which can be compiled or produced from information in the record, or documents which relate either directly or indirectly to issues, facts or assertions in the record.

Respondent: Counsel

Duke Energy Kentucky, Inc.
Case No. 2017-00321
Northern Kentucky University's Responses to Duke Energy Kentucky, Inc.'s Requests
for Information
Dated January 17, 2018

Q-5. Please identify all proceedings in all jurisdictions in which Mr. Collins has offered evidence, including but not limited to, pre-filed testimony, sworn statements, and live testimony and analysis. For each response, please provide the following:

- (a) the jurisdiction in which the testimony, statement or analysis was pre-filed, offered, given, or admitted into the record;
- (b) the administrative agency and/or court in which the testimony, statement or analysis was pre-filed, offered, admitted, or given;
- (c) the date(s) the testimony, statement or analysis was pre-filed, offered, admitted, or given;
- (d) the identifying number for the case or proceeding in which the testimony, statement or analysis was pre-filed, offered, admitted, or given;
- (e) whether the witness was cross-examined;
- (f) the custodian of the transcripts and pre-filed testimony, statements or analysis for each proceeding; and
- (g) copies of all such testimony, statements or analysis.

- A-5. (a) Please see DEK-NKU A-5 Attachment 1.
- (b) Please see the response to part a. above.

Duke Energy Kentucky, Inc.

Case No. 2017-00321

Northern Kentucky University's Responses to Duke Energy Kentucky, Inc.'s Requests
for Information

Dated January 17, 2018

- (c) Please see the response to part a. above.
- (d) Please see the response to part a. above.
- (e) Please see the response to part a. above.
- (f) The custodian is the Administrative Agency identified in part a.
above.
- (g) The requested information is in the public domain and available
from the Administrative Agency identified in part a. above.

Respondent: Brian C. Collins

Duke Energy Kentucky, Inc.

Case No. 2017-00321

Northern Kentucky University's Responses to Duke Energy Kentucky, Inc.'s Requests
for Information

Dated January 17, 2018

Q-6. Please provide copies of any and all documents, analysis, summaries, white papers, work papers, spreadsheets (electronic versions with cells intact), including drafts thereof, as well as any underlying supporting materials created by Mr. Collins as part of his evaluation of the Company's Application or used in the creation of Mr. Collins' testimony.

A-6. With regard to information created as part of his evaluation of the Company's Application, please see DEK-NKU A-6 Attachment 1. With regard to information "used in the creation of Mr. Collins' testimony", see the answer to DEK-NKU Q-7.

Respondent: Brian C. Collins

Duke Energy Kentucky, Inc.

Case No. 2017-00321

Northern Kentucky University's Responses to Duke Energy Kentucky, Inc.'s Requests
for Information

Dated January 17, 2018

Q-7. Please provide copies of any and all documents not created by Mr. Collins, including but not limited to, analysis, summaries, cases, reports, evaluations, *etc.*, that Mr. Collins relied upon, referred to, or used in the development of his testimony.

A-7. Please see DEK-NKU A-7 Attachment 1 which is a newsletter prepared by Brubaker & Associates, Inc. containing an article related to riders and trackers.

Respondent: Brian C. Collins

Duke Energy Kentucky, Inc.
Case No. 2017-00321
Northern Kentucky University's Responses to Duke Energy Kentucky, Inc.'s Requests
for Information
Dated January 17, 2018

Q-8. Please provide copies of any and all presentations given by Mr. Collins on topics including but not limited to, utility rate-making, cost of service, or rider recovery of costs for utilities.

A-8. Please see the following:

1. DEK-NKU A-8 Attachment 1, which is a presentation given by Mr. Collins at BAI's Spring Seminar in 2005 related to transmission service.
2. DEK-NKU A-8 Attachment 2A, which is a presentation given by Mr. Collins at BAI's Spring Seminar in 2011 related to various issues, including riders.
3. DEK-NKU A-8 Attachment 2B, which is a summary narrative prepared by Mr. Collins accompanying the presentation provided in DEK-NKU A-8 Attachment 2A.
4. DEK-NKU A-8 Attachment 3, which is a presentation given by Mr. Collins at BAI's Spring Seminar in 2015 related to natural gas cost of service.
5. DEK-NKU A-8 Attachment 4, which is a presentation given by Mr. Collins at BAI's Spring Seminar in 2016 related to natural gas cost of service.

Duke Energy Kentucky, Inc.

Case No. 2017-00321

Northern Kentucky University's Responses to Duke Energy Kentucky, Inc.'s Requests
for Information

Dated January 17, 2018

6. DEK-NKU A-8 Attachment 5, which is a presentation given by Mr. Collins at BAI's Spring Seminar in 2017 related to natural gas cost of service.

Respondent: Brian C. Collins

Duke Energy Kentucky, Inc.
Case No. 2017-00321
Northern Kentucky University's Responses to Duke Energy Kentucky, Inc.'s Requests
for Information
Dated January 17, 2018

Q-9. Please admit that the only issues Mr. Collins is offering testimony is the Company's cost of service study and its proposal for the Distribution Capital Investment Rider and Federal Energy Regulatory Commission Transmission Cost Reconciliation Rider.

A-9. The question is admitted insofar as to Mr. Collins' written testimony filed in the record. However, Mr. Collins reserves the right to address issues either directly or indirectly related to his testimony as they might develop in this proceeding.

Respondent: Brian C. Collins

Duke Energy Kentucky, Inc.
Case No. 2017-00321
Northern Kentucky University's Responses to Duke Energy Kentucky, Inc.'s Requests
for Information
Dated January 17, 2018

Q-10. Referring to Page 9, Lines 13 - 17 of Mr. Collins' testimony, please explain the basis of his assertion regarding the three criteria needed for establishment of a rider.

(a) Provide any and all cases, including but not limited to, decisions of the Kentucky Public Service Commission that Mr. Collins relies upon that support his position regarding the three criteria he describes

A-10. Based on his experience, it is Mr. Collins' belief that the criteria discussed in the direct testimony referenced above are typically considered by regulatory commissions when examining utilities' request for rider mechanisms.

(a) Please see DEK-NKU A-10 Attachment 1, which is a Hearing Examiner report from the Virginia State Corporation Commission, and DEK-NKU A-10 Attachment 2, which is the Virginia State Corporation Commission order accepting the Hearing Examiner report provided in Attachment 1. Mr. Collins was a witness in the subject docket discussed in Attachments 1 and 2. His testimony in that docket has been provided for reference as DEK-NKU A-10 Attachment 3.

Duke Energy Kentucky, Inc.
Case No. 2017-00321
Northern Kentucky University's Responses to Duke Energy Kentucky, Inc.'s Requests
for Information
Dated January 17, 2018

Page 51 of Attachment 1 generally discusses the three criteria described in Mr. Collins' direct testimony in this case.

Respondent: Brian C. Collins

Duke Energy Kentucky, Inc.
Case No. 2017-00321
Northern Kentucky University's Responses to Duke Energy Kentucky, Inc.'s Requests
for Information
Dated January 17, 2018

Q-11. Please explain the basis of Mr. Collins' statement that cost elements that do not satisfy all three criteria are best recovered through the normal ratemaking process.

A-11. The three criteria described by Mr. Collins help preserve the balance of customer and shareholder interests that occurs under normal rate-setting mechanisms, where neither the utility nor its customers are disadvantaged.

Cost elements that do not satisfy all three criteria are recovered through the normal ratemaking process, which helps to ensure that ratepayers do not pay excessive charges for utility service. Aspects of the normal ratemaking process that can be utilized by utilities to recover particular cost elements that do not satisfy all three criteria discussed by Mr. Collins include using depreciation expense in existing base rates to fund investment, as well as including projected rate-year investments in base rates.

Respondent: Brian C. Collins

Duke Energy Kentucky, Inc.
Case No. 2017-00321
Northern Kentucky University's Responses to Duke Energy Kentucky, Inc.'s Requests
for Information
Dated January 17, 2018

Q-12. Referring to Pages 11 - 12 of Mr. Collins' testimony, explain why risk mitigation by a utility is viewed negatively by the witness.

A-12. Mr. Collins disagrees with the characterization of his testimony with respect to cost recovery risk. Mr. Collins does not view risk mitigation negatively. However, it is Mr. Collins' opinion that risk mitigation should be balanced amongst shareholders and customers, which is the purpose of the established rate-setting process where all costs and revenues of a utility are examined in the context of a base rate case, not just the cost for a single item.

The cost recovery for a single cost element, via a rider surcharge, tilts the risk of cost recovery toward ratepayers, and could result in them paying excessive charges for utility service when a rider is implemented as an adjunct to existing base rates without a complete examination of all costs and revenues of a utility.

Respondent: Brian C. Collins

Duke Energy Kentucky, Inc.
Case No. 2017-00321
Northern Kentucky University's Responses to Duke Energy Kentucky, Inc.'s Requests
for Information
Dated January 17, 2018

Q-13. Please explain what Mr. Collins means on Page 11 when he states "when a utility implements a rider, it has little incentive to seek cost reductions through improvements in its processes because it has no ability to retain benefits of increased profits resulting from such actions."

A-13. A rider allows a utility almost guaranteed full cost recovery of a particular cost item incurred by the utility. When this occurs, a utility has little incentive to continue to effectively and efficiently manage the costs for that particular cost item because the costs, regardless of their magnitude, are passed through to ratepayers for recovery via a rider, and therefore, do not impact a utility's earnings. All else being equal, any future cost reductions resulting from the management of the cost element do not benefit the utility in the form of additional profit because costs are directly recovered from ratepayers via the rider instead of through existing base rates.

Without the incentive for effective and efficient management of the particular cost item provided under base rate recovery, costs recovered from ratepayers for that particular item via a rider could be higher as compared to cost recovery under base rates.

Respondent: Brian C. Collins

Duke Energy Kentucky, Inc.
Case No. 2017-00321
Northern Kentucky University's Responses to Duke Energy Kentucky, Inc.'s Requests
for Information
Dated January 17, 2018

Q-14. Referring to Mr. Collins' statement on Page 11, Lines 8 - 11, does Mr. Collins believe the Kentucky Public Service Commission loses its authority over determining the reasonableness of a utility's rates with respect to approval or rider mechanism?

- (a) Does Mr. Collins agree that even with a rider mechanism, the Commission has authority over the reasonableness of the utility's rates and services it provides?

A-14. No, Mr. Collins does not believe the Kentucky Public Service Commission loses its authority over determining the reasonableness of a utility's rates with respect to approval of a rider mechanism. However, rider mechanisms may prevent the Commission from getting enough information to exercise that authority.

- (a) Mr. Collins agrees that even with a rider mechanism, the Commission has authority over the reasonableness of the utility's rates and services it provides. However, rider mechanisms may prevent the Commission from getting enough information to exercise that authority.

Respondent: Brian C. Collins

Duke Energy Kentucky, Inc.
Case No. 2017-00321
Northern Kentucky University's Responses to Duke Energy Kentucky, Inc.'s Requests
for Information
Dated January 17, 2018

Q-15. Please provide any and all cases, surveys, analysis, regulatory decisions, whitepapers, studies, articles, or other documents that support Mr. Collins' statement that single issue ratemaking potentially skews the relationship among revenues, expense and rate base, possibly leading to excessive utility charges for service.

A-15. Please see link at:

https://www.aarp.org/content/dam/aarp/aarp_foundation/2012-06/increasing-use-of-surcharges-on-consumer-utility-bills-aarp.pdf which is a report prepared by Larkin & Associates, PLLC entitled "Increasing Use of Surcharges on Consumer Utility Bills," May 2012. This report discusses how singling out specific costs, or single-issue ratemaking, can make the traditional ratemaking formula unbalanced, or in other words, askew.

Please also see the responses to DEK-NKU Q-7 and DEK-NKU Q-10.

Respondent: Brian C. Collins

Duke Energy Kentucky, Inc.
Case No. 2017-00321
Northern Kentucky University's Responses to Duke Energy Kentucky, Inc.'s Requests
for Information
Dated January 17, 2018

Q-16. Does Mr. Collins believe that utilities should not have a fuel adjustment clause?

A-16. Depending upon a particular utility's circumstances, a utility's fuel expenses usually meet the three criteria for a rider described in his direct testimony. Therefore, Mr. Collins, in general, believes that utilities' fuel adjustment clauses approved by regulatory commissions are appropriate.

Respondent: Brian C. Collins

Duke Energy Kentucky, Inc.

Case No. 2017-00321

Northern Kentucky University's Responses to Duke Energy Kentucky, Inc.'s Requests
for Information

Dated January 17, 2018

Q-17. Does Mr. Collins agree that Duke Energy Kentucky's Profit Sharing Mechanism is a rider?

A-17. Mr. Collins agrees that Duke Energy Kentucky's Profit Sharing Mechanism is a rider. However, utility profit sharing mechanisms generally differ from riders such as the Rider DCI proposed by the Company because profit sharing mechanisms typically do not involve cost recovery for a single element of the utility's cost structure.

Respondent: Brian C. Collins

Duke Energy Kentucky, Inc.
Case No. 2017-00321
Northern Kentucky University's Responses to Duke Energy Kentucky, Inc.'s Requests
for Information
Dated January 17, 2018

Q-18. Referring to Page 12 of Mr. Collins' testimony, does Mr. Collins agree that utilities are entitled to recover the reasonable costs incurred to provide service to customers?

- (a) Why is it bad to shift the risk of cost recovery for actually incurred expenses to ratepayers?

A-18. Mr. Collins agrees that utilities are entitled to recover the reasonable costs incurred to provide service to customers.

- (a) Customers cannot manage the utilities' costs that are incurred to provide customers with service. Only utilities have that ability. Hence, the risk of managing costs should not be shifted to customers because customers cannot manage the risk.

Please also see the response to DEK-NKU Q-12.

Respondent: Brian C. Collins

Duke Energy Kentucky, Inc.
Case No. 2017-00321
Northern Kentucky University's Responses to Duke Energy Kentucky, Inc.'s Requests
for Information
Dated January 17, 2018

Q-19. Would Mr. Collins support the DCI if obtaining a Commission CPCN and having an annual true-up process was included?

A-19. Without having specific details of any Company proposal for modifying its Rider DCI as filed, Mr. Collins is unable to answer this question. However, Mr. Collins is willing to review the details of any specific proposal put forth by the Company that includes safeguards for ratepayers that improve the balance of cost recovery risk associated with its Rider DCI as filed.

Respondent: Brian C. Collins

Duke Energy Kentucky, Inc.
Case No. 2017-00321
Northern Kentucky University's Responses to Duke Energy Kentucky, Inc.'s Requests
for Information
Dated January 17, 2018

Q-20. Does Mr. Collins believe that Duke Energy Kentucky should eliminate its Profit Sharing Mechanism?

A-20. Mr. Collins recognizes that DEK's Profit Sharing Mechanism is an established Rider approved by the Kentucky Public Service Commission and he has not evaluated Duke's Profit Sharing Mechanism as part of his direct testimony.

Respondent: Brian C. Collins

Duke Energy Kentucky, Inc.
Case No. 2017-00321
Northern Kentucky University's Responses to Duke Energy Kentucky, Inc.'s Requests
for Information
Dated January 17, 2018

Q-21. Referring to Page 14 of Mr. Collins' testimony, is Mr. Collins opposed to the Company implementing the targeted underground program itself?

A-21. Mr. Collins is not opposed to the Company implementing a targeted underground program as long as costs recovered under the program are prudently incurred, capital planning under the program is prudent, and the Company has an economic incentive to manage the process and costs of the program.

Respondent: Brian C. Collins

Duke Energy Kentucky, Inc.
Case No. 2017-00321
Northern Kentucky University's Responses to Duke Energy Kentucky, Inc.'s Requests
for Information
Dated January 17, 2018

Q-22. Assuming Mr. Collins is not testifying against the targeted underground program itself, is it Mr. Collins' position that because Duke Energy Kentucky did not include its targeted underground program in its base rate case test year, that it should not implement the program?

A-22. Please see the response to the DEK-NKU Q-21.

It is Mr. Collins' opinion that Duke Energy Kentucky has the responsibility to prudently invest in its system to provide ratepayers with reliable service at a reasonable cost, and that the utility has the discretion as to how and when it seeks recovery for such prudent investment cost before the Kentucky Public Service Commission.

Respondent: Brian C. Collins

Duke Energy Kentucky, Inc.
Case No. 2017-00321
Northern Kentucky University's Responses to Duke Energy Kentucky, Inc.'s Requests
for Information
Dated January 17, 2018

Q-23. If the Company adjusted its test year revenue requirement to include the estimated costs of the targeted underground program, would this alleviate Mr. Collins' concern?

A-23. To the extent the Company's future test year costs that are approved and found reasonable by the Commission associated with the Company's targeted underground program are recovered in base rates, Mr. Collins would likely have no concern.

As indicated in the response to DEK-NKU Q-11, one aspect of the normal ratemaking process that can be utilized by utilities to recover particular cost elements involves including projected rate-year investments in base rates.

Respondent: Brian C. Collins