

**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 NEW )  
TARIFFS; 3) APPROVAL OF ACCOUNTING )      **CASE NO. 2019-00271**  
PRACTICES TO ESTABLISH REGULATORY )  
ASSETS AND LIABILITIES; AND 4) ALL OTHER )  
REQUIRED APPROVALS AND RELIEF            )**

**NORTHERN KENTUCKY UNIVERSITY'S RESPONSES TO DUKE ENERGY  
KENTUCKY, INC.'S FIRST SET OF INTERROGATORIES  
AND REQUESTS FOR PRODUCTION OF DOCUMENTS  
DATED JANUARY 3, 2020**

**FILED: JANUARY 17, 2020**

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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, employee of NKU, has assisted in providing and evaluating information relative to NKU's energy consumption and tariffs; and, hence, she has 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 reports<sup>1</sup> 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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<sup>1</sup> 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).

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

Respondent: Counsel

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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. 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) The individual does not have any written opinion related to the Application.

(3) Because the individual does not have any written opinion regarding the Application, the question is inapplicable.

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(4) Rebecca Lanter previously served NKU as Director of Sustainability and Energy Management, and now serves NKU as the Director of Operations & Maintenance, for a total of five years of service. She has previous energy management experience in both public institutions and private business. Academic qualifications include a Bachelor of Science in Mechanical Engineering.

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 reports<sup>2</sup> 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 theories of counsel in contemplation of litigation; and, similarly, the information is privileged under CR 26.02.

Respondents: Counsel and Rebecca Lanter

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<sup>2</sup> 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).

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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.  
(b) None.  
(c) None.  
(d) None.  
(e) None.

Respondents: Counsel and Rebecca Lanter

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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

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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.



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- (b) Please see the response to part a. above.
- (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

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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. Other than his direct testimony, no additional documents were created as part of his evaluation of the Company's Application.

Respondent: Brian C. Collins

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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. Other than the Company's testimonies, exhibits and responses to interrogatories, no other documents were relied upon, referred to, or used in the development of his testimony.

Respondent: Brian C. Collins

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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.

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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.
7. DEK-NKU A-8 Attachments 6 and 7, which are presentations given by Mr. Collins at BAI's Spring Seminar in 2018 related to natural gas cost of service and water cost of service, respectively.
8. DEK-NKU A-8 Attachment 8, which is a presentation given by Mr. Collins at BAI's Spring Seminar in 2019 related to natural gas cost of service.

Respondent: Brian C. Collins

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Q-9. Refer to Mr. Collins' testimony, page 9.

- (a) Please explain what criteria needs to be met in order for Mr. Collins to consider a cost to be eligible for recovery via a tracking mechanism.
- (b) Please explain what types of costs that Mr. Collins thinks are appropriate for recovery via a tracking mechanism.
- (c) Please explain why Duke Energy Kentucky's proposed major storm deferral mechanism does not meet the criteria described in response to item (a).

A-9. (a) In DEK Case No. 2017-00321 Mr. Collins listed three criteria for adopting a rider. Those criteria listed by Mr. Collins in his testimony in that case are still applicable for purposes of this DEK rate case. Those criteria are :

1. Must be outside the utility's control.
2. Must be volatile and unpredictable.
3. Must be large enough to significantly affect the utility's ability to earn its authorized return.

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- (b) Trackers should be used sparingly. There are no set costs that should automatically qualify for a tracker. If the three criteria mentioned in (a) above are met, then that expense could be considered for a tracker. However, one should also make sure that other accounting mechanisms are not applicable (Accounting Authority Orders) and are not better regulatory tools for establishing just and reasonable rates.
- (c) DEK has failed to demonstrate that all major storm repair costs will significantly affect the utility's ability to earn its authorized return. In addition, DEK has failed to demonstrate why the current major storm cost recovery process and the special regulatory tools available to DEK (AAOs) are not sufficient to recover costs incurred for major storms.

Respondent: Brian C. Collins

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Q-10. Given that storm costs are inherently unpredictable, volatile, potentially substantial and are often outside the utilities' control, please explain why customers should not benefit from having any prior overcollections applied to a current shortfall. Explain why episodic deferrals, such as the one recorded at the end of 2018 (Case No. 2018-00416) is a preferable approach.

A-10. Mr. Collins would generally agree that major storms are volatile and often outside the utilities' control. Given the radar systems in place today, major storms are frequently predicted hours before their actual occurrence. Mr. Collins is unaware of any study performed by DEK which states that all major storms result in substantial costs.

Mr. Collins believes the use of deferral accounting currently has resulted in the timely collection of significant storm costs from customers. DEK has failed to discuss why the use of deferred accounting for major storm recovery has resulted in economic hardship to DEK.



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Under Mr. Collins' proposal for a storm reserve to be established, customers would benefit from prior over collections by applying any over collection to a short-fall.

Respondent: Brian C. Collins

VERIFICATION

STATE OF MISSOURI )  
 )  
COUNTY OF SAINT LOUIS )

The undersigned, Brian C. Collins, being duly sworn, deposes and states that he is a Principal with Brubaker & Associates, Inc., and that he has personal knowledge of the matters set forth in the responses for which he has been identified as the witness, and the responses contained therein are true and correct to the best of his knowledge, information and belief.



Brian C. Collins

Subscribed and sworn to before me, a Notary Public in and before said County and State, this 16th day of January, 2020.



(SEAL)  
Notary Public

My Commission Expires: May 5, 2021

