

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

The Electronic Application of Duke Energy	)	
Kentucky, Inc., for: 1) An Adjustment of the	)	
Electric Rates; 2) Approval of New Tariffs;	)	Case No. 2022-00372
3) Approval of Accounting Practices to	)	
Establish Regulatory Assets and Liabilities;	)	
and 4) All Other Required Approvals and	)	
Relief.	)	

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**CORRECTED**  
**DUKE ENERGY KENTUCKY, INC.’S MOTION FOR RELIEF AND WAIVER AND  
FOR EXPEDITED TREATMENT**

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Comes now Duke Energy Kentucky, Inc. (Duke Energy Kentucky or the Company), by counsel, pursuant to 807 KAR 5:001, §5 and other applicable law, and does hereby request relief from the Kentucky Public Service Commission’s (the Commission) July 1, 2024 Order (Rehearing Order), directing the Company to refund over collections within 45 days of the Rehearing Order, respectfully stating as follows:

**I. INTRODUCTION**

In this base rate case, the Commission issued an October 12, 2023 Order (the Rate Order) on the Company’s application for an adjustment of electric rates, tariff revisions and other appropriate or required approvals. Following a timely request under KRS 278.400, the Commission subsequently issued its Rehearing Order, addressing several issues contained in the Rate Order. Duke Energy Kentucky has carefully studied the Rehearing Order, and hereby seeks narrow, yet important practical relief with respect to the timing of refunds. Specifically, the Rehearing Order corrected the rates in Appendix C to reflect appropriate calculations but went on to order the Company to issue a refund to customers within 45 days pursuant to KRS 278.190.

Then, on July 10, 2024, the Commission issued a subsequent Order Nunc Pro Tunc (Order Nunc Pro Tunc), correcting the Rehearing Order, among other things, with respect to the base fuel rate to be used to calculate said refund, without changing the previously directed 45 day refund timeline. The Company respectfully submits that KRS 278.190 is the Commission’s interim rates statute, and has no applicability to circumstances such as these when the Rate Order had already been issued.<sup>1</sup> And if KRS 278.190 was applicable, the Commission’s Rehearing Order contravenes the statute’s clear terms by mandating the Company issue such refunds with 45 days – not the 60 days allotted by statute. The 45-day truncated period, particularly with reference to the Order Nunc Pro Tunc, serves to unfairly burden the Company’s efforts to comply with the refund process, creates difficulties due to a mid-billing cycle situation, and creates the possibility of customer confusion.

Therefore, the Company requests a waiver from the Commission of the refund timeline set forth in the Rehearing Order, and requests Commission approval to process these refunds within 60 days of the Order Nunc Pro Tunc. Finally, due to the nature of the relief requested in this motion, the Company also respectfully requests expedited treatment of this motion, as set forth below.

## **II. ARGUMENT**

### **A. Inapplicability of the Interim Rates Statute**

In the Rehearing Order, agreeing with the Company’s assertion that the Rate Order miscalculated rates, the Commission corrected its final rates. The Commission stated: “Additionally, pursuant to KRS 278.190, the Commission finds that within 45 days of the date of

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<sup>1</sup> While the Company agrees to make the required refund under the facts of this proceeding, it is important to note the inapplicability of KRS 278.190 to the circumstances here and the potential implications of the filed rate doctrine to the Commission’s requirement of retroactive refunds. By agreeing to refund in this case, the Company is not waiving such considerations for any other matter that may come before the Commission.

service of this Order, Duke Kentucky shall issue a refund to each customer all amounts collected from that customer in excess of the rates approved in this Order.”

While KRS 278.190 contemplates refunds under certain circumstances, those are absent here. KRS 278.190 establishes the procedure for the Commission’s review of a utility’s application to establish new rates. KRS 278.190(1) authorizes the Commission to hold a hearing to determine the new rates. KRS 278.190(2), among other things, sets forth the suspension period for the Commission to review the utility’s application and authorizes the utility, following written notification to the Commission, to place its “proposed change of rate” into effect. Under such circumstance, the Commission then, “may, by order, require the interested utility... to maintain their records in a manner as will enable them, or the Commission... to determine the amounts to be refunded...”<sup>2</sup> KRS 278.190(3) then provides a statutory limit of ten (10) months from the date of acceptance of the utility’s application, for the Commission to issue a decision.<sup>3</sup> And finally, KRS 278.190(4) provides that if the Commission, “by order, directs any utility to make a refund as hereinabove provided... the utility shall make the refund within sixty (60) days after a final determination of the proceeding...”<sup>4</sup>

Here, although Duke Energy Kentucky did file a new rate schedule with its application as contemplated within KRS 278.190(1), the Company never exercised its statutory right under KRS 278.190(2) to implement its “proposed change of rate” into effect following the completion of the suspension period. Rather, the Company implemented the final rates as set forth in the Commission’s Rate Order, which was issued after the suspension period, and just days before the expiration of the Commission’s statutory period contained in KRS 278.190(3). Likewise, the

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<sup>2</sup> KRS 278.190(2)

<sup>3</sup> KRS 278.190(3)

<sup>4</sup> KRS 278.190(4)

Commission did not order the Company to maintain records for a potential refund as is required pursuant to KRS 278.190(2) as a precursor to the refund authorized under KRS 278.190. Therefore, the Commission did not give the Company the statutory notice a refund might be required. The first time the Company became aware of the Commission's intention that its previously ordered rates should be refunded was in the Commission's Rehearing Order, issued nearly nine months following the statutory period contained in KRS 278.190(3).

The Commission's reliance on KRS 278.190 further creates inequities with respect to the ordered timing of refunds. Even if KRS 278.190 was applicable, it requires the Commission to order the utility to make the refund within 60 days of a final determination of the proceeding...<sup>5</sup>. Though not directly applicable, the Company is concerned that the Commission arguably contravened this statute by relying upon it and then ordering a different time period. Further, the 60-day requirement in KRS 278.190 reflects a statutory recognition that refunds are not readily or easily processed, especially where there is not advance notice that refunds may be required.

Notwithstanding the foregoing, the Company is not disputing that such a refund is the appropriate remedy for customers in these circumstances. The Company's Petition for Rehearing identified, in good faith, that the Commission may have miscalculated rates in the Rate Order, but was not certain because it did not have access to the Commission's calculations. As Commission orders are effective until changed, the Company had no choice but to implement the as-ordered rates until the Commission addressed the question on rehearing. And in its Rehearing Order, the Company was directed to refund rates under the authority of KRS 278.190 even though the Company had not implemented interim rates and the process set forth under KRS 278.190 was not

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<sup>5</sup> KRS 278.190(4)

followed. The Company respectfully requests that additional grace be given in these circumstances.

The Commission's July 10, 2024 Order Nunc Pro Tunc correcting the base energy rates set forth in the July 1, 2024 Rehearing Order, further complicates the calculation and issuance of refunds. The Company appreciates this correction but could not have initiated the processing of refunds based on the corrected rates until after receipt of the Order Nunc Pro Tunc. Moreover, as noted in the Order Nunc Pro Tunc, the Commission had previously authorized an increase in the Company's base fuel rate in its May 6, 2024 Order in Case No. 2023-00012 (Base Fuel Order) which was not reflected in the Rehearing Order. The result is that during the refund period, there are two base fuel rates that must be accounted for to properly calculate such a refund: 1) that which existed prior to May 6, 2024; and 2) that which was ordered pursuant to the Commission's Base Fuel Order issued on May 6.

Thus, as a practical matter, the Company requires additional time to ensure the refunds are processed correctly and accurately. In addition to the concerns noted above, the 45-day time period places the Company in the position of having to process refunds mid-cycle, which adds a layer of complexity and could confuse customers, and the Rehearing Order's issuance on the eve of a long holiday weekend only further enhances the ill-effects of the truncated refund period. Because of these realities, the Company will need additional time to prepare communication messaging for customers who inquire about the billing change. Therefore, the Company requests Commission approval to process these refunds within 60 days of the Order Nunc Pro Tunc, Commission's final determination of the proceeding, which is analogous to what is contemplated under KRS 278.190(4).

## **B. Expedited Relief**

The Company requests expedited consideration of this motion to address the timeline of the refunds and further corrective action the Commission may wish to take with respect to its Rehearing Order. In furtherance thereof, the Company would request any response be due within five days of filing of this motion. The Company waives its opportunity for a reply.

## **III. CONCLUSION**

WHEREFORE, on the basis of the foregoing, Duke Energy Kentucky respectfully requests that the Commission grant the relief prayed for herein.

This 17th day of July, 2024.

Respectfully submitted,

DUKE ENERGY KENTUCKY, INC.

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## CERTIFICATE OF SERVICE

This is to certify that the foregoing electronic filing is a true and accurate copy of the document in paper medium; that the electronic filing was transmitted to the Commission on July 17, 2024; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that submitting the original filing to the Commission in paper medium is no longer required as it has been granted a permanent deviation.<sup>6</sup>

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<sup>6</sup> In the Matter of Electronic Emergency Docket Related to the Novel Coronavirus COVID-19, Case No. 2020-00085, Order (July 22, 2021).