

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF DUKE ENERGY KENTUCKY, INC.)	
FOR A CERTIFICATE OF PUBLIC CONVENIENCE)	CASE NO.
AND NECESSITY AUTHORIZING THE PHASE TWO)	2023-00210
REPLACEMENT OF THE AM07 PIPELINE)	

DUKE ENERGY KENTUCKY, INC.’S
MOTION FOR LEAVE TO DEVIATE FROM AND WAIVER OF FILING
REQUIREMENTS IN 807 KAR 5:001, SECTION 15(2)(b) AND REQUEST FOR
EXPEDITED TREATMENT

Comes now Duke Energy Kentucky, Inc. (Duke Energy Kentucky or the Company) and respectfully moves the Kentucky Public Service Commission (Commission) pursuant to 807 KAR 5:001, Section 22, for leave to deviate from and a waiver of the requirements of 807 KAR 5:001, Section 15(2)(b). Pursuant to 807 KAR 5:001, Section 15(2)(b), a utility is required to attach permits from the proper public authority for the proposed construction with its application for a Certificate of Public Convenience and Necessity (CPCN). Duke Energy Kentucky has filed all necessary pre-construction permit applications with the relevant regulatory agencies, but has not yet received the final approvals.

Duke Energy Kentucky respectfully requests that it be permitted to file the applications for those permits in lieu of the actual issued permits as part of its CPCN Application, and to supplement its filing as permit approvals are received so as to allow its CPCN Application to proceed with Commission review in a timely manner. The Commission has previously permitted CPCN Applications to proceed with review

without having all necessary permits contained therein. Good cause exists to allow the Company's CPCN Application to proceed with Commission review in order to construct the project in a timely manner and in advance of a reliability issue occurring. In support of this Petition, Duke Energy Kentucky respectfully states:

1. Duke Energy Kentucky has subsequently filed an Application on June 28, 2023, seeking a CPCN for approval of the construction of the second phase of its AM07 Pipeline Replacement Project (Phase Two) pursuant to 807 KAR 5:001, Section 15(2).

2. As explained in the Company's Application, Phase Two is necessary to support future load growth in the area and maintain sufficient natural gas system pressures. In order to complete construction on time, the Company submitted its CPCN Application now in order to allow the Commission sufficient time for regulatory review and afford the Company the ability to procure materials and construct Phase Two without having to incur additional costs for expedited procurement and overtime. In its Application, the Company committed to supplement the record as the outstanding permit approvals are received.

3. Duke Energy Kentucky has applied for the permits necessary to construct Phase Two, but has not yet received the final permits from the applicable regulatory agencies. Indeed, the timing of the receipt of these permits is outside the control of Duke Energy Kentucky. Nonetheless, the Company is hopeful that it will have all necessary permits within the next three to six months, and while this CPCN is pending before the Commission. There has been no indication that the permit applications will not be approved. Delaying review of the Company's CPCN Application until all such permits are received will likely jeopardize the Company's ability to timely construct Phase Two.

4. Consistent with prior practice that has been accepted by this Commission, Duke Energy Kentucky included copies of the submitted permit applications with its CPCN Application in substantial compliance with 807 KAR 5:001, Section 15(2)(b). The Company's Application and testimony further explained that it had not yet received the actual permits and committed to supplement the record once they are obtained.

5. Duke Energy Kentucky respectfully submits that prior practice demonstrates that permit applications or an affirmation that permits were in the process of being obtained provided sufficient information necessary to allow the Commission to effectively and efficiently review CPCN Applications.¹ And the Commission has previously demonstrated that it can use the information provided in permit applications to effectively and efficiently review CPCN applications, or at a minimum, initiate such review.²

6. By proceeding with review in those prior instances, the Commission has implicitly found the information contained in permit applications and utility affirmations

¹ See e.g., Case No. 2016-00026, *The Application of Kentucky Utilities Company for Certificates of Public Convenience and Necessity and Approval of Its 2016 Compliance Plan for Recovery by Environmental Surcharge*, Letter (Ky. P.S.C. February 16, 2016); Case No. 2015-00213, *Application of Owen Electric Cooperative, Inc. for a Certificate of Public Convenience and Necessity for the Construction of a Two Megawatt Distributed Generation Facility in Owen County, Kentucky*, Letter (Ky. P.S.C. July 1, 2015); Case No. 2015-00152, *The Application of Kentucky Power Company for: (1) A Certificate of Public Convenience and Necessity Authorizing the Company to Close Big Sandy Plant Coal Ash Impoundment; and (2) For All Other Required Approvals and Relief*, Order, (Ky. P.S.C. June 30, 2015); Case No. 2014-00355, *An Application of South Kentucky Rural Electric Cooperative for a Certificate of Public Convenience and Necessity to Construct a New Headquarters Facility and for Approval to Transfer Ownership of Certain Assets or, in the Alternative, a Determination That Such Approval is Unnecessary*, Letter (Ky. P.S.C. October 21, 2014); Case No. 2014-00252, *Application of East Kentucky Power Cooperative, Inc. for a Certificate of Public Convenience and Necessity for Construction of an Ash Landfill at J.K. Smith Station, the Removal of Impounded Ash from William C. Dale Station for Transport to J.K. Smith, and Approval of a Compliance Plan Amendment for Environmental Surcharge Recovery*, Letter (Ky. P.S.C. September 17, 2014); and, Case No. 2014-00002, *Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for Certificates of Public Convenience and Necessity for the Construction of a Combined Cycle Combustion Turbine at the Green River Generating Station and a Solar Photovoltaic Facility at the E.W. Brown Generating Station*, Letter (Ky. P.S.C. January 28, 2014).

² *Id.*

of applying for such permits are sufficient to meet the Commission's filing requirements under 807 KAR 5:001, Section 15(2)(b) and avoid a filing deficiency. The Company thus submits that the information submitted in its Application here substantially complies with Commission's regulations.

7. Because the risk of delay could hinder the Company's ability to complete Phase Two on time and on budget, the Company requests that the Commission consider the Company's Motion for Waiver in an expedited manner. The Company respectfully requests that the Commission (i) expeditiously grant the Company's motion for waiver; and (ii) find that the permit applications attached to its Application substantially comply with 807 KAR 5:001, Section 15(2)(b).

8. Based on the foregoing, Duke Energy Kentucky respectfully submits that these circumstances demonstrate good cause to allow the Company's CPCN Application to proceed with Commission review and that a waiver or deviation of 807 KAR 5:001, Section 15(2)(b) is appropriate. Duke Energy Kentucky has made a good faith attempt to obtain the necessary permits as required by the rule and reaffirms its commitment to file necessary permits in this docket once they are received.

WHEREFORE, Duke Energy Kentucky respectfully requests that the Commission enter an Order granting Duke Energy Kentucky a deviation or waiver from the requirements set forth in 807 KAR 5:001, Section 15(2)(b).

Respectfully submitted,

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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 June 28, 2023; 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.³

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/s/Rocco O. D'Ascenzo

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³*In the Matter of Electronic Emergency Docket Related to the Novel Coronavirus COVID-19, Order, Case No. 2020-00085 (Ky. P.S.C. July 22, 2021).*