COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC ALLEGED FAILURE OF DUKE ENERGY KENTUCKY, INC. TO COMPLY WITH KRS 278.160(2)	)))	CASE NO. 2024-00114

RESPONSE OF DUKE ENERGY KENTUCKY, INC.

On June 24, 2024, the Kentucky Public Service Commission (Commission) issued an Order, on its own motion, initiating this proceeding to investigate the alleged failure of Duke Energy Kentucky, Inc. (Duke Kentucky) to comply with KRS 278.160(2), which states that a "utility may not charge, demand, collect, or receive from any person greater or less compensation than what is filed in that utility's applicable tariff." Specifically, the Commission explained that this proceeding "arises from Case No. 2022-00289, in which Duke Kentucky was found to have incorrectly billed complainant under its gas and electric annual budget billing tariff provisions," and seeks to investigate "to what extent Duke Kentucky has, on other occasions, incorrectly applied gas or electric annual budget billing to other customers' accounts."[1]

The Commission directed Duke Energy Kentucky, Inc. (Duke Energy Kentucky or the Company) to file a written response identifying:

a. All accounts receiving gas annual budget billing that had settle-ups calculated before January 4, 2022, for which billing was subsequently changed prior to the next yearly settle-up without customer request;

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[1] *Electronic Alleged Failure of Duke Energy Kentucky, Inc. to Comply with KRS 278.160(2)*, Order, pp. 1-2 (June 24, 2024).

b. All accounts receiving gas annual budget billing on or after December 1, 2022, for which billing was calculated based on anything other than customer's usage multiplied by the rate in effect at the time of settle-up;

c. All accounts receiving electric annual budget billing on or after December 1, 2022, for which billing was subsequently changed prior to the next yearly settle-up without customer request;

d. All accounts receiving electric annual budget billing on or after April 1, 2022, for which billing was calculated based on anything other than customer's usage multiplied by the rate in effect at the time of settle-up; and

e. All accounts receiving electric annual budget billing on or after December 1, 2021, for which billing was calculated using a divisor of 12.[2]

For its Response to the Commission's Order, Duke Energy Kentucky states as follows:

1. In April 2022, Duke Energy Kentucky implemented a conversion from its former customer information system (Legacy CIS) to its current customer information system (Customer Connect). In conjunction with this transition, the Company had planned to update tariffs for both its Gas Budget Billing Annual Plan and its Electric Budget Billing Annual Plan.

2. The Company updated the tariff for its Gas Budget Billing Annual Plan as part of its natural gas base rate case, effective January 4, 2022.[3] The updated tariff read:

> Budget Billing Plan Description:
>
> Annual Plan:
>
> > - The Annual Plan provides 12 months of equal payments by using 12 months of customer's usage, dividing the usage by 12, and using the result to calculate the bill.

[2] *Id.*, p. 3.
[3] *See* TFS2022-00016.

Month 12 is a settle-up month between the billed amounts and customer bills based on actual usage
- A bill message is sent after 3, 6, and 9 months with a new bill amount if the budget bill amounts compared to the actual bill amounts exceeds a Company set threshold.
- The budget bill amount is also changed as needed after the 12 month review.[4]

3. Inadvertently, Duke Energy Kentucky did not file a concomitant update to the Electric Budget Billing Annual Plan, and did not realize its omission. In the meantime, the Electric Budget Billing Annual Plan began to operate in the same manner as the Gas Budget Billing Annual Plan.

4. In the course of responding to discovery in Case No. 2022-00289,[5] Duke Energy Kentucky realized that it had not updated the tariff for its Electric Budget Billing Annual Plan to mirror the language in the Gas tariff and the Company's actual implementation of both programs. At that time, the Company had an electric distribution base rate case pending.[6] Thus, instead of updating the Electric tariff immediately, the Company believed it would be more prudent to wait until a final order was issued in its rate case.

5. In its order in Case No. 2022-00289, the Commission expressed concern with the below issues in relation to the Company's budget billing calculations vis-à-vis its tariffs:

6. Gas Budget Billing Annual Plan: (1) the calculation was changed from an 11-month divisor to a 12-month divisor, effective January 2022; and (2) Duke Energy Kentucky became able to make quarterly adjustments without customer approval. The Commission stated that such changes should not have been applied to annual budget billing plans which had already

[4] TFS2022-00016, Duke_16_Tariff_Revised.pdf, p. 23 of 91.
[5] *In the Matter of Elizabeth L. Eichelberger v. Duke Energy Kentucky, Inc.,* Case No. 2022-00289, Duke Energy Kentucky Response to STAFF-DR-03-004 (July 28, 2023).
[6] *See generally*, *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; 3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; and 4) All Other Required Approvals and Relief,* Case No. 2022-00372.

been established prior to the January 4, 2022, effective date, only to the next annual budget billing plan cycle after the tariff effective date.[7]

7. Electric Budget Billing Annual Plan: due to the inadvertent omission in not updating the tariff, the Company's tariff continued to specify an 11-month divisor and did not provide for quarterly adjustments without customer approval. However, the Company was using a 12-month divisor and had made some quarterly adjustments without customer approval.

8. Both Electric And Gas Budget Billing Annual Plans: in Case No. 2022-00289, the Commission found that Duke Energy Kentucky had violated its tariff by using rates in effect at the time of usage to calculate the customer's budget bill amounts.[8] This finding was based on the Company's discovery responses in that case.

9. Upon further scrutiny and review of the Company's discovery responses in Case No. 2022-00289, the Company has identified an inadvertent error. The Company's discovery response to STAFF-DR-03-003(a) in that case accurately represented the Budget Billing calculation:

> Initial budget billing amounts are calculated using a 12-month average. When the plan renews, ***the last 12 months are taken into consideration and predicted at the current pricing***. For this customer, the total 12-month consumption for 2022 was $3143.99, which averaged out to $261.99 for the 2022 pricing. When ***predicted at current pricing,*** this comes to a plan amount of $268.00[9]

10. However, the Company's spreadsheet attachment provided supplementally, STAFF-DR-03-003(a) SUPP Attachment did not accurately represent the calculations for how Budget Billing Annual calculations were made.[10] This discovery response showed that the

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[7] *In the Matter of Elizabeth L. Eichelberger v. Duke Energy Kentucky, Inc.,* Case No. 2022-00289, Order, p. 5 (April 19, 2024).
[8] *Id.*, p. 7 (gas), p. 9 (electric).
[9] *Id.*, Duke Energy Kentucky Response to STAFF-DR-03-003.
[10] *Id.*, Duke Energy Kentucky Response to STAFF-DR-03-003 SUPP.

customer's bill was calculated using the last 12 months of actual billed charges including taxes, divided by 12, which were then multiplied by a "new pricing" factor. The human performer who prepared the chart believed that a pricing factor was used to convert the historical charges to a prediction of future charges under the rate in effect at the time of the calculation; however the chart should have provided pricing at the current prices in effect at the time of the calculation for each bill month, excluding sales tax.[11]

11. In the Company's Legacy CIS, the usage from the previous 12 months was actually multiplied against the current rates in effect at the time of the calculation. The system then summed up the "charge" amounts for each month and then divided by either 12 or 11 depending on the BBP plan the account was on. This is in accordance with the Commission's interpretation of the tariffs.

12. Since April 2022, in Customer Connect, the Company has, for all customers commencing a new year of Budget Billing Annual plan, also been calculating budget billing payment amounts using the rates in effect at the time of the calculation for the previous 12 months of the historical usage. This is in accordance with the Commission's interpretation of the tariffs.

13. The Company has reviewed its currently active budget billing customers and prepared the lists of customers requested by the Commission, which are attached as CONF Attachment 1. A single customer may appear on more than one of the three lists. The total number of customers in each category is as follows:

a. 638 customers - all active accounts receiving gas annual budget billing that had settle-ups calculated before January 4, 2022, for which billing was

[11] In the Company's response to STAFF-DR-04-002, the response was prepared on the assumption that the information in STAFF-DR-03-003 SUPP Attachment was correct. In retrospect, this response should have clarified that the rate in effect at the time of calculation was being used.

subsequently changed prior to the next yearly settle-up without customer request;

b. 0 customers - all active accounts receiving gas annual budget billing on or after December 1, 2022, for which billing was calculated based on anything other than customer's usage multiplied by the rate in effect at the time of settle-up;

c. 4,907 customers - all active accounts receiving electric annual budget billing on or after December 1, 2022, for which billing was subsequently changed prior to the next yearly settle-up without customer request;

d. 0 customers - all active accounts receiving electric annual budget billing on or after April 1, 2022, for which billing was calculated based on anything other than customer's usage multiplied by the rate in effect at the time of settle-up; and

e. 7,767 customers – all active accounts receiving electric annual budget billing on or after December 1, 2021, for which billing was calculated using a divisor of 12.

14. The Company's inadvertent oversight in the matter of updating its Electric Annual Budget Billing Plan tariff—which would have provided for a divisor of 12 and for quarterly adjustments without customer approval—does not constitute a willful violation of KRS 278.160(2). The error was an inadvertent one, which the Company will remedy with a tariff update, since its electric base rate case has concluded. Therefore, the Company should not be assessed a penalty pursuant to KRS 278.990.

15. The Company's immediate application of the Gas Annual Budget Billing Plan tariff updates to customers whose annual plans had been established prior to the effective date was not a willful violation of KRS 278.160(2). Rather, the Company's good-faith interpretation was different from the Commission's. Now that the Commission has clarified this matter in Case No. 2022-00289, the Company will approach implementation of future tariff updates accordingly. Therefore, the Company should not be assessed a penalty pursuant to KRS 278.990 for applying its January 2022 tariff updates to customers already in the middle of a budget billing cycle at the time.

16. Regarding the application of rates in effect at the time of service to calculate budget billing amounts, the Company did not commit a violation of KRS 278.160(2). As described above, it was two of the Company's responses in Case No. 2022-00289 which confused the matter; although the Company initially correctly described the calculation, the spreadsheet provided was based on a human performer's misunderstanding. The Company acknowledges those inadvertent errors. However, as a matter of fact, the Company has used current rates in effect at the time of the calculation ***both prior to and since*** the implementation of Customer Connect. The Company should not be assessed a penalty pursuant to KRS 278.990 for using historical charges instead of historical usage at current rates, because the Company did, in fact, use rates in effect at the time of the calculation.

WHEREFORE, on the basis of the foregoing, Duke Energy Kentucky, Inc. respectfully requests the Commission to dismiss the case.

This 15th day of July 2024.

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 being filed in paper medium; that the electronic filing was transmitted to the Commission on July 15th, 2024; and there are currently no parties that the Commission has excused from participation by electronic means in this proceeding.

/s/Larisa M. Vaysman
Counsel for Duke Energy Kentucky, Inc.