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Dianne B. Kuhnell  
Senior Paralegal

**VIA OVERNIGHT DELIVERY**

May 21, 2009

RECEIVED

MAY 22 2009

PUBLIC SERVICE  
COMMISSION

Mr. Jeff Derouen  
Executive Director  
Kentucky Public Service Commission  
211 Sower Blvd  
Frankfort, KY 40601

Re: Case No. 2008-00495

Dear Mr. Derouen:

Enclosed please find an original and twelve copies each of *First Set of Interrogatories and Data Requests of Duke Energy Kentucky, Inc. to The Kroger Co.* in the above captioned case.

Please date-stamp the extra two copies of the filing and return to me in the enclosed envelope.

Sincerely,

Dianne B. Kuhnell  
Senior Paralegal

RECEIVED

MAY 22 2009

PUBLIC SERVICE  
COMMISSION

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of the Application of Duke Energy )  
Kentucky, Inc. For Approval of Energy )  
Efficiency Plan, Including an Energy Efficiency )  
Rider and Portfolio of Energy Efficiency )  
Programs )

Case No. 2008-00495

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FIRST SET OF INTERROGATORIES AND DATA REQUESTS OF  
DUKE ENERGY KENTUCKY, INC. TO  
THE KROGER CO.

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Duke Energy Kentucky, Inc., (“Duke Energy Kentucky”) by and through its legal counsel, hereby submits this First Set of Interrogatories and Data Requests of Duke Energy Kentucky to The Kroger Co. (“Kroger”). Please forward to the undersigned on or before June 8, 2009, your responses to the following data requests:

DEFINITIONS

The following definitions apply throughout the discovery request and are deemed to be incorporated therein:

A. “Document” means and includes each and every written, recorded, or graphic matter of any kind, type, nature, or description that is or has been in your possession, custody, or control, or of which you have knowledge, including, but not limited to, computer files, computer databases, computer printouts, e-mail messages, correspondence, memoranda, tapes, stenographic or handwritten notes, written forms of any kind, charts, blueprints, drawings, sketches, artwork, graphs, plans, articles, specifications, diaries, letters, telegrams, photographs, labels, cartons, minutes, contracts, agreements, reports, surveys, data compilations of any kind and created or stored or transferred in any medium whatsoever, teletypes, telexes, facsimiles, invoices, order forms, checks, drafts, statements, receipts, credit memos, reports, summaries, books, ledgers, notebooks, schedules, transparencies, recordings, catalogs, advertisements, promotional materials, films, video tapes, audio tapes, brochures, or pamphlets, or any written or recorded materials of any other kind, however stored, recorded, produced, or reproduced, and

also including, but not limited to, drafts or copies of any of the foregoing that contain any notes, comments, or markings of any kind not found on the original documents, or that are stored or produced in a different format or medium from the original documents, or that are otherwise not identical to the original documents.

B. “And” or “or” shall be construed conjunctively or disjunctively as necessary to make the requests inclusive rather than exclusive.

C. The term “you” and “your” refer to Kroger.

D. The term “person” means and includes natural persons, individuals, firms, corporations, partnerships, proprietorships, joint ventures, unincorporated associations, government agencies, and all other organizations or entities of any type.

E. The term “regarding” means consisting of containing mentioning, suggesting, reflecting, concerning, regarding, summarizing, analyzing, discussing, involving, dealing with, emanating from, directed at, pertaining to in any way, or in any way logically or factually connected or associated with the matter discussed.

F. The singular as used herein shall include the plural and the masculine gender shall include the feminine and the neuter.

G. “Identify” or “identifying” or “identification” when used in reference to a natural person means to state: the person’s full name, present or last known (designating which) address and telephone number, and present or last known (designating which) business affiliation, job title, and employment address.

H. “Identify” or “identifying” or “identification” when used in reference to a person other than a natural person means to state: the full name of the person and any names under which it conducts business; the present or last known (designating which) address of the person; and, the present or last known (designating which) telephone number of the person.

I. “Identify” or “identifying” or “identification” when used in reference to a document means to provide with respect to each document requested to be identified by these discovery requests a description of the document that is sufficient for purposes of a request to produce or a subpoena duces tecum, including the following:

- 1) the type of document (e.g., letter, memorandum, etc.);
- 2) the date of the document; the title or label of the document;
- 3) the Bates number or other identifier used to number the document for use in litigation; the identity of the originator;
- 4) the identity of each person to whom it was sent;
- 5) the identity of each person to whom a copy or copies were sent;
- 6) a summary of the contents of the document;
- 7) the name and last known address of each person who presently has possession, custody or control of the document;

- 8) if any such document was, but is no longer, in your possession, custody or control or is no longer in existence, state whether it: (1) is missing or lost; (2) has been destroyed; or (3) has been transferred voluntarily or involuntarily, and if so, state the circumstances surrounding the authorization for each such disposition and the date of such disposition.

J. “Identify”, “identifying” or identity” when used in reference to a communications means to state the date of communications, whether the communication was written or oral, the identity of all parties and witnesses to the communication, the substance of what was said and/or transpired and, if written, the identity of the document(s) containing or referring to the communication.

K. “Current” when used in reference to time means in the present time of this data request.

### **INSTRUCTIONS**

A. If you contend that any response to any data request may be withheld under the attorney-client privilege, the attorney work product doctrine or any other privilege or basis, please state the following with respect to each such response in order to explain the basis for the claim of privilege and to permit adjudication of the propriety of that claim:

- 1) The privilege asserted and its basis.
- 2) The nature of the information withheld;
- 3) The subject matter of the document, except to the extent that you claim it is privileged.

B. These data requests are to be answered with reference to all information in your possession, custody or control or reasonably available to you. These discovery requests are intended to include requests for information, which is physically within your possession, custody or control as well as in the possession, custody or control of your agents, attorneys, or other third parties from which such documents may be obtained.

C. If any data request cannot be responded to or answered in full, answer to the extent possible and specify the reasons for your inability to answer fully.

D. These data requests are continuing in nature and require supplemental responses should information unknown to you at the time you serve your responses to these interrogatories subsequently become known.

E. For each data request, provide the name of the company witness(es) or employee(s) responsible for compiling and providing the information contained in each answer.

**INTERROGATORIES:**

1. Identify each person who answered or furnished information or documents, or assisted in answering or in furnishing any information or documents, used in answering any of these Interrogatories and/or Data Requests and identify each Interrogatory and/or Data Request for which such person participated in the response

**RESPONSE:**

2. Please identify each person you expect to call as an expert witness at the hearing of this matter, and for each person so identified, please state the subject matter on which he or she is expected to testify, the substance of the facts and opinions to which he or she is expected to testify, and a summary of the grounds for each opinion.

**RESPONSE:**

3. Please identify all consultants that are expected to perform work for Kroger regarding or relating to Case No. 2008-00495.

**RESPONSE:**

4. Please state whether or not Kroger has advocated the adoption of an energy efficiency plan or program in any jurisdiction. If so, please describe the plan(s) in detail, provide a list of all forum(s) in which such advocacy took place, including all of the case styles and numbers, a description of the final disposition of these cases, and provide copies of any and all documents in your possession related to all such plans or programs.

**RESPONSE:**

5. As it relates to the pre-filed direct testimony of Kroger witness Kevin Higgins, please provide the following information:

- a) Page 1, line 13: please list and provide addresses for each of the 26 stores and other facilities referenced.
- b) Page 1, line 19: please state when Mr. Higgins completed the coursework for his Ph.D.

- c) Page 2, lines 15 to 21: please provide copies of all of Mr. Higgins' prior testimony given on the subject of energy efficiency.
- d) Exhibit KCH-2: please provide a copy of the spreadsheet that supports Exhibit KCH-2, with all equations in the appropriate cells.
- e) Exhibit KCH-2: please provide the derivation of the kWh and kW values employed on lines 1 and 2.
- f) Exhibit KCH-2: please provide the derivation of the avoided cost per kWh on line 3.
- g) Exhibit KCH-2: please provide the derivation of the program costs on line 5 and the incentive on line 6.
- h) Exhibit KCH-2: please provide the derivation of the lost margin per kWh on line 10.
- i) Exhibit KCH-2: please provide the derivation of the program costs on line 5 and the incentive on line 6.
- j) Page 8, lines 12 to 14: please provide the derivation of the 24% after tax return on equity.
- k) Page 10, lines 9-14: Mr. Higgins states that Kroger is "very active in pursuing DSM activities;" please provide a list of all DSM and energy efficiency measures being implemented by Kroger, including the cost of each measure and the projected kWh savings of each measure, for each of the 26 stores and other facilities listed in response to question 5.a. above.

**RESPONSE:**

6. Please identify all documents or other evidence that Kroger may seek to introduce as exhibits in any proceeding in this matter.

**RESPONSE:**

7. Please explain whether Mr. Higgins believes the Kentucky Public Service Commission can “extend the opt-out provision applicable to the Company’s Demand-Side management (“DSM”) programs to include customers with aggregate loads over 25 million kilowatt hours per year.

**RESPONSE:**

**DATA REQUESTS**

Duke Energy Kentucky requests that Kroger produce the following documents:

1. Any and all documents identified or referenced in response to any of the foregoing Interrogatories.

**RESPONSE:**

2. Any and all documents that contain any information used, reviewed, or referenced in preparing Kroger’s responses to any of the foregoing Interrogatories.

**RESPONSE:**



3. Any and all documents that Kroger may introduce as exhibits at any hearing in this matter.

**RESPONSE:**

4. Copies of all work papers and calculations Mr. Higgins has performed in developing his testimony in Case No 2008-00495.

**RESPONSE:**

5. Please provide in electronic form, with active formulas, Attachment KCH-2, Page 1 of 1.

**RESPONSE:**

6. For each person identified in response to Questions 2 and 3, above, please

- (a) Produce his or her CV;
- (b) Provide a list of all cases related to energy efficiency in which he or she has testified;
- (c) Produce transcripts of all such testimony; and
- (d) Produce all documents sent to or received from such person by Kroger.

**RESPONSE:**

7. Copies of all correspondence, reports, memoranda, documents, analysis or communications (in electronic, paper or any other format) prepared by or on behalf of Kroger regarding or relating to Case No. 2008-00495.

**RESPONSE:**

8. Copies of all correspondence, reports, memoranda, documents, analysis or communications (in electronic, paper or any other format) prepared by any witness testifying on Kroger's behalf regarding or relating to Case No. 2008-00495.

**RESPONSE:**

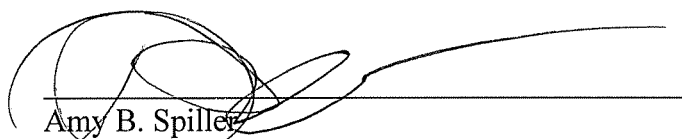
9. Copies of all correspondence, reports, memoranda, documents, analysis or communications (in electronic, paper or any other format) prepared by any person identified as a consultant in Question 3 regarding matter relating to Case No. 2008-00495.

**RESPONSE:**

10. Please provide any and all workpapers or other documents that will quantify, support or were relied upon in any way in connection with the formation of Kroger's testimony regarding or relating to Case No. 2008-00495.

**RESPONSE:**

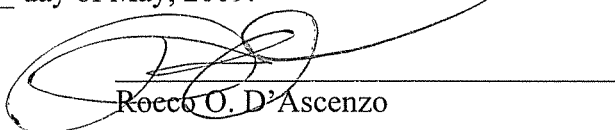
Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Amy B. Spiller", is written over a horizontal line. The signature is stylized with loops and a long tail that extends to the right.

Amy B. Spiller  
~~Associate General Counsel~~  
Catherine E. Heigel  
Associate General Counsel  
Rocco O. D'Ascenzo  
Senior Counsel  
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**CERTIFICATE OF SERVICE**

Copies of Duke Energy Kentucky's First Set of Interrogatories and Data Requests have been served upon the follow parties on this 21<sup>st</sup> day of May, 2009.

  
Rocco O. D'Ascenzo

Paul D. Adams  
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1024 Capital Center Drive  
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Honorable Michael Kurtz  
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