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August 19, 2009

Mr. Jeffrey Derouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, Kentucky 40602-0615

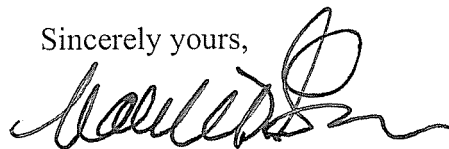
Re: Case No. 2008-495

Dear Mr. Derouen:

Enclosed please find the original and ten (10) copies of Duke Energy Kentucky, Inc.'s Response to the Attorney General's Motion to Modify the Procedural Schedule, Postpone Hearing, and Allow for Additional Discovery in the above-referenced matter. Please return a file stamped copy to me in the enclosed self-addressed, stamped envelope. By copy of this letter, all parties listed on the Certificate of Service have been served.

Please file this document of record.

Sincerely yours,



Mark David Goss

Enclosures

cc: Michael L. Kurtz, Esq.
Dennis G. Howard, II, Esq.
Lawrence W. Cook, Esq.
Paul D. Adams, Esq.
Rocco O. D'Ascenzo, Esq.
Amy B. Spiller, Esq.

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

APPLICATION OF DUKE ENERGY KENTUCKY,)
INC. FOR APPROVAL OF ENERGY EFFICIENCY)
PLAN, INCLUDING AN ENERGY EFFICIENCY) CASE NO. 2008-495
RIDER AND PORTFOLIO OF ENERGY)
EFFICIENCY PROGRAMS)

**DUKE ENERGY KENTUCKY, INC.'S RESPONSE TO THE ATTORNEY
GENERAL'S MOTION TO MODIFY THE PROCEDURAL SCHEDULE,
POSTPONE HEARING, AND ALLOW FOR ADDITIONAL DISCOVERY**

Comes now the Applicant, Duke Energy Kentucky, Inc. ("Duke Energy Kentucky" or the "Company"), by and through counsel, and for its Response to the Motion of the Kentucky Attorney General ("AG") to Modify the Procedural Schedule to Postpone the Scheduled Hearing and to Allow for Discovery on the New Pre-Filed Testimony of Donald L. Storck, states as follows:

NATURE OF THE AG'S MOTION

The AG does not object to the substitution of Donald L. Storck as a witness in place of Paul G. Smith. However, the AG states that he needs additional time to propound data requests concerning Mr. Storck's testimony and that there is insufficient time before the hearing to do so.

In order to accomplish this, the AG requests modification of the procedural schedule and continuance of the hearing because Mr. Storck's testimony ". . . includes modifications and/or corrections to previously filed attachments and a brand new attachment DLS-1, which addresses the allocation concerning the proposed rider with regard to natural gas customers. These modifications, corrections and additions have not been subject to discovery by the Intervenors."

Finally, in his motion, the AG refers to Duke Energy Kentucky's submissions as "eleventh hour" testimony.

The AG's motion is ill-conceived and simply an attempt to create further delay in this proceeding. As explained below, the corrections contained in Mr. Storck's testimony do not result in a substantial change to either the proposed energy efficiency rider or to Mr. Smith's pre-filed testimony. The Commission should overrule the AG's motion and this case should proceed to hearing as scheduled.

THE ATTORNEY GENERAL HAS NOT BEEN UNFAIRLY PREJUDICED BECAUSE THE ADDITIONS MADE BY DUKE ENERGY KENTUCKY ARE CLERICAL IN NATURE AND DO NOT CONSTITUTE SURPRISE.

A. Testimony of Donald L. Storck.

The primary purpose of filing Mr. Storck's testimony is to establish his adoption of the testimony of the prior witness, Paul G. Smith in advance of the hearing of this matter. The pre-filing of this testimony serves two additional purposes, namely providing parties with advance knowledge of Mr. Storck's background and qualifications and to correct errors and typographical errors in advance of the hearing. Procedurally, this Commission has regularly permitted witnesses to make corrections to pre-filed testimony during direct examination. Duke Energy Kentucky's pre-filing of Mr. Storck's testimony is no different. In his pre-filed testimony, Mr. Storck explains the nature of the corrections he supports. Nothing in Mr. Storck's testimony in any way changes Mr. Smith's testimony. The AG had the opportunity to conduct discovery regarding Mr. Smith's pre-filed testimony. *The AG did so and has suffered no prejudice.* The corrections discussed in Mr. Storck's testimony are benign in that they only affect typographical and omission errors in the Company's proposed tariff for Rider SAW included as Mr. Smith's Exhibit 1 (designated as Attachment PGS-1) which is discussed below.

B. Attachment DLS-1 Merely Corrects Typographical Errors.

In Mr. Storck's testimony, he offers Attachment DLS-1 (which is merely a revision of PGS-1) to correct typographical errors. Upon reviewing Mr. Smith's testimony, Mr. Storck discovered that attachment PGS-1 was a draft version of the Company's proposed Rider SAW based upon the Ohio tariff. This was clearly an error, but one capable of easy correction. The Company's inadvertence in including references to the Ohio tariff is corrected in DLS-1 by referring to a Kentucky tariff. DLS-1 is merely a "red-lined" version of PGS-1 showing Mr. Storck's corrections which have removed the references to Ohio and market prices. The changes are typographical in nature. The proposed rate is unchanged. The formula to calculate the rate is unchanged. The testimony supporting the rate calculation is unchanged. If the AG wishes to cross-examine Mr. Storck regarding the nature of the corrections contained in DLS-1, *i.e.* deleting the incorrect references to "Ohio", "Market Rates," and a 25 Megawatt opt out, he is free to do so. None of those issues are material to the Company's proposed rate or its calculation.

C. Attachment DLS-2 is a "Clean" Version of the Kentucky Tariff.

Attachment DLS-2 is merely a "clean" version of the proposed Rider SAW for Duke Energy Kentucky. It is inconceivable how the AG or any other party could be unfairly prejudiced by this change.

D. Attachment DLS-3 is the Proposed Gas Tariff.

Attachment DLS-3 is simply a copy of the proposed Gas Tariff Sheet for Duke Energy Kentucky. In his direct testimony, Mr. Smith described how gas customers would be allocated a portion of cost for energy efficiency programs that provide gas benefits.¹ He explained that the Company would allocate revenues between gas and electric programs based upon a percentage

¹ Testimony of Paul G. Smith, at 10, 15 and 16.

of total customers in the respective groups.² Mr. Smith's attachment PGS-2 includes the calculation of the gas revenue requirement and the rate.³ Mr. Storck adopts this information in total.

Although this allocation was supported in Mr. Smith's testimony, the Company inadvertently omitted a copy of the proposed gas tariff. Attachment DLS-3 is simply a copy of the Rider SAW tariff calculation as it pertains to natural gas customer allocations as described and supported in Mr. Smith's pre-filed testimony as adopted by Mr. Storck. None of this should come as any surprise whatsoever to the AG since it has always known that the gas portion of the Company was included in this filing.⁴ Moreover, the AG is well aware that Duke Energy Kentucky provides both electric and natural gas services to its customers. The AG is also well aware that Duke Energy Kentucky currently has separate electric and natural gas Demand Side Management (DSM) tariffed rates. Indeed, since the initial filing, the AG has always had the opportunity to propound data requests about the effect of Rider SAW on the Company's gas customers, but has chosen not to do so. The Commission should not allow the proceeding to be delayed simply to permit the AG to engage in new discovery. The AG will have the opportunity to cross examine Mr. Storck on the proposed natural gas tariff if he so chooses.

E. Attachment DLS-4 is a Copy of Paul G. Smith's Testimony.

Attachment DLS-4 is simply a copy of the pre-filed testimony of Paul G. Smith which Mr. Storck is adopting. This attachment should be of no surprise to the AG.

² *Id.*

³ *Id.* at PGS-2

⁴ See, Duke Energy Kentucky's Application of December 1, 2008, paragraphs 6.E., 6.F. and 6.U.

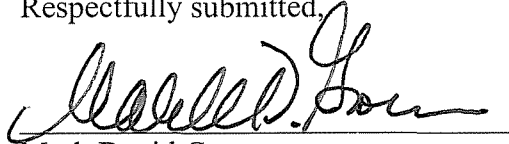
CONCLUSION

Simply stated, the AG has in no way been unfairly prejudiced as a result of Duke Energy Kentucky's motion to substitute the testimony of Mr. Storck for that of Mr. Smith. The changes made in Mr. Storck's testimony and exhibits are simple, reasonable and do not provide a substantive departure from the information contained in the original testimony of Mr. Smith. None of these changes should come as any surprise to the AG, or any other party to this case, and should not provide the basis for amending the procedural schedule to allow for additional discovery and a continuance of the hearing which is currently scheduled for August 27, 2009.

The Commission should take special note of the fact that the changes to Mr. Smith's exhibits by Mr. Storck's testimony were furnished to the AG and all other parties as soon as practicable after the errors were discovered and are of such a kind and nature as would typically be addressed on the witness stand at hearing either verbally or by the submission of an errata sheet. By providing the referenced changes now, and not waiting to do so at the hearing, the Company has endeavored to be as fair to the parties as it could and provide as much advance notice as possible. It should not now be penalized for its laudable conduct.

WHEREFORE, Duke Energy Kentucky respectfully requests that the Commission overrule the Attorney General's motion to amend the procedural schedule and postpone the hearing, and accept Mr. Storck's testimony and attachments as filed and proceed with the hearing scheduled for August 27, 2009.

Respectfully submitted,



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and

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Counsel for Duke Energy Kentucky, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served by U.S. Mail, postage prepaid, on August 19, 2009 to the following:

Hon. Michael L. Kurtz
Attorney at Law
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Cincinnati, Ohio 45202

Hon. Dennis G. Howard, II
Hon. Lawrence W. Cook
Hon. Paul D. Adams
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