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Dianne B. Kuhnell.
Senior Paralegal

VIA HAND DELIVERY

July 16, 2009

RECEIVED

JUL 16 2009

**PUBLIC SERVICE
COMMISSION**

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

Re: In the Matter of Application of Duke Energy Kentucky, Inc. For An Adjustment
of Gas Rates
Case No. 2009-00202

Dear Mr. Derouen:

Enclosed are an original and twelve copies of *Motion of Duke Energy Kentucky, Inc. for Rehearing of the Kentucky Public Service Commission's July 13, 2009, Notice of Filing Deficiencies, Or, In the Alternative, to Supplement Its July 1, 2009, Application, Notice and Statement and For An Effective Date of Its Tariff Consistent With the Earliest Date Permitted Under KRS 278.180*

Please date stamp and return the extra copies of the Motion and cover letter in the enclosed self-addressed overnight envelope.

Very truly yours,

Dianne B. Kuhnell
Senior Paralegal

cc: Hon. Dennis G. Howard (w/encl.)

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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JUL 16 2009

PUBLIC SERVICE
COMMISSION

In the Matter of:

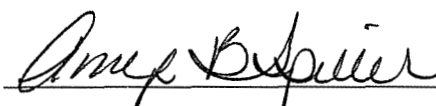
AN ADJUSTMENT OF THE)
GAS RATES OF DUKE ENERGY) Case No. 2009-00202
KENTUCKY, INC.)

MOTION OF DUKE ENERGY KENTUCKY, INC. FOR
REHEARING OF THE KENTUCKY PUBLIC SERVICE
COMMISSION'S JULY 13, 2009, NOTICE OF FILING
DEFICIENCIES, OR, IN THE ALTERNATIVE, TO
SUPPLEMENT ITS JULY 1, 2009, APPLICATION, NOTICE
AND STATEMENT AND FOR AN EFFECTIVE DATE OF ITS TARIFF
CONSISTENT WITH THE EARLIEST DATE PERMITTED UNDER KRS 278.180

Comes now Duke Energy Kentucky, Inc. (Duke Energy Kentucky or the Company), and pursuant to KRS 278.040(3), 278.180, 278.400 and 807 KAR 5:001 Sections 3(5), 10(10) and 10(11), hereby moves the Kentucky Public Service Commission (Commission): (1) for rehearing of the Commission's July 13, 2009, notice of filing deficiencies; or, in the alternative, (2) to amend or supplement its July 1, 2009, Application, Notice and Statement (Application) with the attached documents, for a determination that its Application is compliant, and for an effective date of its tariff consistent with the earliest date permitted under KRS 278.180. This motion is based on the Company's Application and the accompanying memorandum.

Respectfully submitted,

DUKE ENERGY KENTUCKY, INC.

A handwritten signature in cursive script, reading "Amy B. Spiller", is positioned above a solid horizontal line.

Amy B. Spiller (85309)

Associate General Counsel

Rocco D'Ascenzo (92796)

Senior Counsel

Duke Energy Business Services, Inc.

139 E. Fourth Street

P.O. Box 960

Cincinnati, Ohio 45201

(513) 419-1910 (telephone)

(513) 419-1846 (facsimile)

Amy.Spiller@duke-energy.com (e-mail)

MEMORANDUM

I. STATEMENT OF FACTS

Duke Energy Kentucky filed an Application on July 1, 2009, seeking a general adjustment in its retail natural gas rates pursuant to KRS 278.180. The Commission issued a notice of filing deficiency on July 13, 2009. The notice of filing deficiency states that the Company's Application was rejected for noncompliance with 807 KAR 5:011, Sections 10(9)(h)(11) and 10(9)(h)(12). With respect to 807 KAR 5:011, Section 10(9)(h)(11), the Commission stated that the Company's capital structure, including dollar amounts and ratios of equity and debt components, was not identified in its Application.¹ The Commission also found that the Company must provide "the rate base for each year, showing all components that make up the rate case" in order to comply with 807 KAR 5:011.²

As discussed below, Duke Energy Kentucky respectfully submits that the information contained in its Application and offered to satisfy 807 KAR 5:011, Sections 10(9)(h)(11) and 10(9)(h)(12) is in the same form as in Case Nos. 2005-00042 and 2006-00172. The Commission determined in those prior cases that the information satisfied the filing requirements under 807 KAR 5:011, Section 10(9)(h)(11) and 10(9)(h)(12).

¹ See July 13, 2009, correspondence from the Commonwealth of Kentucky, Public Service Commission.

² Id.

Accordingly, Duke Energy Kentucky requests that the Commission reconsider the deficiencies identified on July 13, 2009.

Additionally, the Company hereby provides an original and ten copies of its capital structure requirements, including the dollar amounts and ratios of the equity and debt components, and its rate base for each the three years in the forecast period. Duke Energy Kentucky requests that the Commission accept these documents as a supplement to its Application in the event that the Commission denies the Company's request for rehearing.

II. DISCUSSION

A. Request for Rehearing of the Commission's July 13, 2009, Notice of Filing Deficiency

Duke Energy Kentucky seeks rehearing of the Commission's July 13, 2009, Notice of Filing Deficiency on the grounds that the July 1, 2009, filing substantially complied with 807 KAR 5:011, Sections 10(9)(h)(11) and 10(9)(h)(12).

The Commission's past decisions recognize the doctrine of substantial compliance in the context of the Commission's regulations for the form and content of applications and for the customer notice requirements for applications.³ The

³ *In the Matter of the Application of East Kentucky Network Limited Liability Company for the Issuance of a Certificate of Public Convenience and Necessity to Construct a Tower in Elliott County, Kentucky*, Case No. 2004-00249 (Opinion and Order) (November 29, 2004); *In the Matter of An Adjustment to the Electric Rates, Terms and Conditions of Kentucky Utilities Company*, Case No. 2003-00434 (Opinion and Order) (March 31, 2004).

Commission has also recognized the principle that prior Commission decisions can establish precedent for future proceedings.⁴

Here, the Company provided information in a form identical to that used in prior requests for adjustments in rates.⁵ In those prior instances, the Commission found the information sufficient to meet the statutory filing requirements. The Company thus submits that the information submitted in its Application here substantially complies with the rule. It thus respectfully requests that the Commission grant the Company's request for rehearing and: (1) find that information referring to balance sheets and statements of cash flow and to net rate base amounts for each of the three years in the forecast period substantially complies with 807 KAR 5:011, Sections 10(9)(h)(11) and 10(9)(h)(12), respectively; (2) withdraw the notice of filing deficiency; and (3) accept the Company's Application for filing as of July 1, 2009.

B. Amendment/Supplementation of Application

807 KAR 5:001, Section 3(5) allows the Commission to permit any filing to be amended, at the Commission's discretion. If the Commission denies the Company's request for rehearing, Duke Energy Kentucky respectfully requests that the Commission: (1) accept the information pertaining to capital structure requirements under 807 KAR 5:011, Section 10(9)(h)(11) and the information pertaining to rate base

⁴ See, e.g., *In the Matter of Application of Louisville Gas and Electric Company for an Order Approving the Accounting Treatment Relating to Income Tax Expense for 2005 and Subsequent Years*, Case No. 2005-00180 (Opinion and Order) (June 30, 2005).

⁵ See Case Nos. 2005-00042 and 2006-00172.

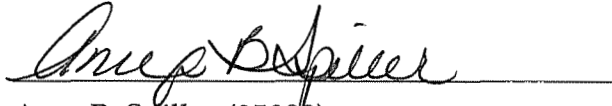
for each year of the forecast period under 807 KAR 5:011, Section 10(9)(h)(12) filed herewith as an amendment to the Application; (2) find that said supplemental filing cures the filing deficiency; and (3) accept the filing as of today's date – July 16, 2009. Duke Energy Kentucky respectfully requests that the effective date of its proposed tariff be consistent with the shortest period permitted under KRS 278.180.

III. CONCLUSION

Duke Energy Kentucky's Application consists of an estimated 4,150 pages. The filing deficiency noted by the Commission concerns the Company's presentation of its capital structure and the components of its rate base for each of the three forecasted years of its construction budget. The Company provided the required information in the same format that this Commission previously deemed statutorily compliant. Thus, the Company respectfully submits that the information enables the Commission to effectively and efficiently review the Application. In a complex filing of this nature and where precedent exists for using this format, Duke Energy Kentucky respectfully submits that the information provided pursuant to 807 KAR 5:011, Sections 10(9)(h)(11) and 10(9)(h)(12) should not merit a filing deficiency. In the alternative, Duke Energy Kentucky respectfully requests a finding that the filing deficiency is now cured and that its proposed tariff have an effective date consistent with the earliest date permitted by law.

Respectfully submitted,

DUKE ENERGY KENTUCKY, INC.



Amy B. Spiller (85309)

Associate General Counsel

Rocco D'Ascenzo (92796)

Senior Counsel

Duke Energy Business Services, Inc.

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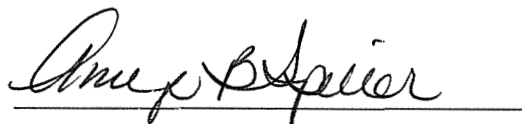
Amy.Spiller@duke-energy.com (e-mail)

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing motion has been served on this the 14th day of July 2009, by regular mail delivery, postage prepaid, and/or hand delivery

to the following:

Hon. Dennis Howard
Office of Attorney General
Utility Intervention and Rate Division
1024 Capital Center Drive
Frankfort, KY 40601



Amy B. Spiller

Duke Energy Kentucky
Case No. 2009-00202
Capital Structure Requirements 2009-2011

Line No.	Description	2009		2010		2011	
		\$	%	\$	%	\$	%
1	Common Equity	389,787,021	48.61%	423,283,161	50.02%	429,498,974	48.09%
2	Long-term Debt	356,173,108	44.43%	379,545,181	44.86%	378,080,454	42.34%
3	Short-term Debt	<u>55,779,289</u>	<u>6.96%</u>	<u>43,287,261</u>	<u>5.12%</u>	<u>85,429,278</u>	<u>9.57%</u>
4	Total Capital	<u>801,739,418</u>	<u>100.00%</u>	<u>846,115,603</u>	<u>100.00%</u>	<u>893,008,706</u>	<u>100.00%</u>

Duke Energy Kentucky
Case No. 2009-00202
Rate Base 2009-2011

Line No.	Description	2009	2010	2011
1	Adjusted Jurisdictional Plant in Service	\$391,213,122	\$414,770,628	\$424,393,257
2	Accumulated Depreciation and Amortization	<u>(108,554,292)</u>	<u>(115,192,438)</u>	<u>(122,383,238)</u>
3	Net Plant in Service (Line 1 + Line 2)	282,658,830	299,578,190	302,010,019
4	Construction Work in Progress	40,249	2,213	2,213
5	Cash Working Capital Allowance	3,077,897	2,739,041	2,844,705
6	Other Working Capital Allowances	260,110	260,110	260,110
7	Other Items:			
8	Customers' Advances for Construction	(1,638,646)	(1,638,646)	(1,638,646)
9	Investment Tax Credits	(10,335)	(6,804)	(3,992)
10	Deferred Income Taxes	(35,182,432)	(35,073,571)	(37,815,897)
11	Other Rate Base Adjustments	<u>0</u>	<u>0</u>	<u>0</u>
12	Jurisdictional Rate Base (Line 3 through Line 11)	<u>\$249,205,673</u>	<u>\$265,860,533</u>	<u>\$265,658,512</u>