

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF DUKE ENERGY)	
KENTUCKY, INC. FOR AN ORDER APPROVING)	
THE ESTABLISHMENT OF A REGULATORY)	CASE NO.
ASSET FOR THE LIABILITIES ASSOCIATED)	2020-00031
WITH THE PJM EXPENSES RELATED TO THE)	
GREENHAT ENERGY, LLC DEFAULT)	

ORDER

The matter is before the Commission upon a motion for rehearing filed by Duke Energy Kentucky, Inc. (Duke Kentucky), filed on October 20, 2020. The motion sought rehearing of the September 30, 2020 Order (Final Order) in this matter. The Final Order denied Duke Kentucky’s request to establish a regulatory asset for expenses resulting from the default of GreenHat Energy, LLC (GreenHat) in PJM Interconnection, LLC (PJM). Duke Kentucky raised four issues in its motion for rehearing. Each of the issues will be discussed along with the findings as follows.

1. Timeliness of Request to Establish the Regulatory Asset

Duke Kentucky notes that the Final Order states that the Commission has “historically not allowed a utility to establish a regulatory asset after a cost has been recorded as an expense and the utility has closed its books for the relevant fiscal year.”¹ Duke Kentucky argues that the Final Order is in error to the extent that it categorizes the GreenHat default charges as not being incurred in 2020, because Duke Kentucky issued

¹ Duke Kentucky’s Motion for Rehearing (filed Oct. 20, 2020) at 5.

refunds to customers through its Fuel Adjustment Clause (FAC) in 2020.² Duke Kentucky also argues that precedent supports the timing of its request, given the date of the Commission's order in Case No. 2019-00006.³

Duke Kentucky's assertion that the GreenHat default charges are a current expense because it issued refunds to customers for amounts erroneously recovered through the FAC in 2020 is not supported by the accounting treatment explained in its application and discovery responses. Duke Kentucky further explained that the GreenHat default was initially recorded as an offset to a revenue account, then recorded as a deferred liability for the portion recovered through the FAC, which would be reversed as a decrease to fuel expense but for the deferral to a regulatory asset.⁴

Regarding the timing of its application, Duke Kentucky cites to the Commission's order in 2016-00180.⁵ However, Duke Kentucky did not record a regulatory asset for the GreenHat default charges prior to filing this application.⁶ Duke Kentucky argues that Commission precedent allows a regulatory asset to be established in the year after the

² *Id.*

³ *Id.*, Case No. 2019-00006, *Electronic Examination of the Application of the Fuel Adjustment Clause of Duke Energy Kentucky, Inc. from November 1, 2016 through October 31, 2018* (Ky. PSC Dec. 26, 2019).

⁴ Application at 8, Duke Kentucky's Response to Commission Staff's First Request for Information (filed Apr. 3, 2020), Item 2, and Response to Commission Staff's Second Request for Information (filed Apr. 27, 2020), Item 3(b).

⁵ Case No. 2016-00180, *Application of Kentucky Power Company for an Order Approving Accounting Practices to Establish Regulatory Assets and Liabilities Related to the Extraordinary Expenses Incurred by Kentucky Power Company in Connection with the Two 2015 Major Storm Events* (Ky. PSC Dec. 12, 2016). "The Commission will . . . allow jurisdictional utilities to record expenses for Major Event storms occurring in the fourth quarter of the fiscal year as a deferred asset for accounting purposes only, subject to the utility's providing the Commission with immediate notice of the establishment of such deferred asset, and also subject to the utility's filing of an application within 90 days of the occurrence of the Major Event storm seeking Commission approval for such authority."

⁶ Application at 8.

expenses are incurred; however, in the case to which it cites, East Kentucky Power Cooperative, Inc. had not yet closed its books for the prior year.⁷

Duke Kentucky has not offered any new evidence that could not have been reasonably available in the former hearing. Having reviewed the relevant record and being otherwise sufficiently advised, the Commission finds that Duke Kentucky's request for rehearing should be denied.

2. Materiality

Duke Kentucky argues that the materiality of the default charges should not impact the request for regulatory asset treatment, is not an appropriate interpretation of precedent, and, because the GreenHat default is "fuel related," that materiality is not an appropriate concern.⁸ Duke Kentucky also argues that the GreenHat default charges are only immaterial because it negotiated a lower amount through a settlement, approved by the Federal Energy Regulatory Commission (FERC).⁹ Duke Kentucky cites the approval of two regulatory assets for smaller amounts than the GreenHat default.¹⁰ Duke Kentucky further argues that nothing in the FAC order indicated that the magnitude of the costs was an issue affecting recovery.¹¹

⁷ Case No. 2018-00027, *Application of East Kentucky Power Cooperative, Inc. for an Order Approving the Establishment of a Regulatory Asset for the Depreciation and Accretion Expenses Associated with the Smith Station Landfill Asset Retirement Obligations* (Ky. PSC Mar. 8, 2018), Application at 7.

⁸ Duke Kentucky's Motion for Rehearing (filed Oct. 20, 2020) at 9–10.

⁹ *Id.*

¹⁰ *Id.* at 11.

¹¹ *Id.* at 3.

Duke Kentucky argued that the GreenHat default charges are extraordinary, nonrecurring expenses, which could not have reasonably been anticipated or included in the utility's planning.¹² The Commission is unpersuaded by this argument and finds that materiality is synonymous with the term "extraordinary" for this category of expenses appropriate for deferral. Expenses that are not material cannot be considered "extraordinary." The "fuel related" nature of the expenses does not necessitate approval regardless of materiality. Further, FERC entered an Order approving the settlement on December 30, 2019; however, Duke Kentucky did not claim that its GreenHat default charges were minimized by the settlement in its application. Regarding the smaller expenses granted deferral, the first was an industry sponsored initiative¹³ and the second was part of an approved settlement and has no precedential value, but nevertheless, the expenses in that case and those associated with deferral accounting were anticipated to be offset by net savings.¹⁴

Duke Kentucky has not offered any new evidence that could not have been reasonably available in the former hearing. Having reviewed the relevant record and being otherwise sufficiently advised, the Commission finds that Duke Kentucky's request for a rehearing should be denied.

¹² Application at 5.

¹³ Case No. 2008-00308, *Joint Application of Duke Energy Kentucky, Inc., Kentucky Power Company, Kentucky Utilities Company and Louisville Gas and Electric Company for an Order Approving Accounting Practices to Establish Regulatory Assets and Liabilities Related to Certain Payments Made to the Carbon Management Research Group and the Kentucky Consortium for Carbon Storage* (Ky. PSC Oct. 30, 2008).

¹⁴ Case No. 2016-00152, *Application of Duke Energy Kentucky, Inc. for (1) a Certificate of Public Convenience and Necessity Authorizing the Construction of an Advanced Metering Infrastructure; (2) Request for Accounting Treatment; and (3) All Other Necessary Waivers, Approvals, and Relief* (Ky. PSC May 25, 2017).

3. PJM Participation and Due Process Concerns

Duke Kentucky argues that if the role of stakeholders in the GreenHat default is a critical element of the Commission's analysis as to whether to grant or deny the request for a regulatory asset, then Duke Kentucky must be afforded the opportunity to present witnesses with knowledge that would tend to support or disclaim the conclusions of the PJM's Independent Consultant's Report.¹⁵ Duke Kentucky also argues that PJM's Independent Consultant's Report was not part of its case record and reliance on this document violates its due process rights.¹⁶ Duke Kentucky also argues that any failure on its part is a joint failure of the Commission and the Attorney General, through our participation in the Organization of PJM States, Inc. (OPSI) and Consumer Advocates of the PJM States, Inc. (CAPS), respectively.¹⁷

As an initial matter, OPSI and CAPS are not voting members of PJM. Duke Kentucky is not absolved of its duties simply because other parties are involved in an advisory capacity. Because the amounts were not "extraordinary," the qualifying clause of "which could not have reasonably been anticipated or included in the utilities' planning" was not a basis for denial; therefore, Duke Kentucky's due process claim is without merit. The language in the Final Order was only a reminder to Duke Kentucky that the Commission expects Duke Kentucky to vigorously work through the PJM stakeholder process to protect its customers' interests.

¹⁵ Duke Kentucky's Motion for Rehearing (filed Oct. 20, 2020) at 13.

¹⁶ *Id.* at 12.

¹⁷ *Id.* at 14.

Having reviewed the relevant record and being otherwise sufficiently advised, the Commission finds that Duke Kentucky's request for a rehearing should be denied.

4. PJM Risk Sharing

Duke Kentucky argues that it is unfair, unjust, and unreasonable for the Commission to allow Duke Kentucky's customers to only share in the benefits of participation in PJM without also facing exposure for the rare instance where a third-party's default causes Duke Kentucky to incur incremental expenses.¹⁸ Duke Kentucky argues that its ratepayers have enjoyed substantial benefit from PJM participation and are currently receiving 90 percent of such benefits from off-system sales through Duke Kentucky's Profit Sharing Mechanism (PSM).¹⁹ Duke Kentucky further states that if the Commission will not allow Duke Kentucky to rely upon PJM's management and Independent Market Monitor to provide adequate surveillance of PJM's markets in the future, rehearing should be granted so that Duke Kentucky's obligation to do so should be clearly articulated and defined.²⁰

The Commission has made no finding related to the appropriateness or recoverability of the proposed regulatory asset as a basis for denial, because the expenses at issue are not "extraordinary" and therefore do not fall within a category of expenses that are appropriate for deferral. As explained above, the language in the Final Order was only a reminder to Duke Kentucky that the Commission expects Duke

¹⁸ *Id.* at 16.

¹⁹ *Id.* at 16.

²⁰ *Id.* at 17.

Kentucky to vigorously work through the PJM stakeholder process to protect its customers' interests.

Having reviewed the relevant record and being otherwise sufficiently advised, the Commission finds that Duke Kentucky's request for a rehearing should be denied.

IT IS THEREFORE ORDERED that:

1. Duke Kentucky's motion for rehearing is denied.
2. This case is closed and removed from the Commission's docket.

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By the Commission

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KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Deputy Executive Director

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