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 ASSET FOR THE LIABILITIES ASSOCIATED WITH THE RETIREMENT OF CERTAIN PROPANE-AIR FACILITIES	))))))	CASE NO. 2021-00405

O R D E R

On November 4, 2021, Duke Energy Kentucky, Inc. (Duke Kentucky) filed an application, pursuant to KRS 278.030(1), KRS 278.040(2), and KRS 278.220, seeking authorization to establish a regulatory asset to defer expenses that arise from or relate to the retirement of the manmade cavern in Erlanger, Kentucky, along with related propane-air facilities (Erlanger Cavern).

By Order dated November 12, 2021, the Commission established a procedural schedule for the processing of this matter, which provided for a deadline for intervention requests and two rounds of discovery upon Duke Kentucky. There were no parties requesting intervenor status to this proceeding. Duke Kentucky responded to two requests for information from Commission Staff. This matter now stands submitted to the Commission for a decision.

BACKGROUND

The Erlanger Cavern, an underground propane storage facility, which has been in use since 1961,[1] is fully owned by Duke Kentucky and Duke Kentucky allocates plant and expenses to Duke Energy Ohio, Inc. (Duke Ohio).[2] Duke Kentucky uses the Erlanger Cavern to supplement natural gas on its system during peak usage periods and as otherwise needed.[3] Duke Kentucky and Duke Ohio began evaluating the useful life of the Erlanger Cavern in 2012 after the failure of a similar propane storage facility that released propane into groundwater and the surrounding area.[4] Because the Erlanger Cavern is hundreds of feet underground, it is inaccessible for inspection or repair.[5] On February 24, 2015, Duke Kentucky and Duke Ohio received a report recommending the retirement of the Erlanger Cavern.[6]

Primarily to replace the capacity from its propane storage facilities, on September 13, 2016, Duke Ohio requested a certificate of environmental compatibility and public need from the Ohio Power Siting Board (OPSB) to construct a pipeline (Central Corridor Pipeline).[7] Duke Ohio's request was granted on November 21, 2019, and upheld on

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[1] Application at 2.

[2] Duke Kentucky's Response to Commission Staff's First Request for Information (Duke Kentucky's Response to Staff's First Requests) (filed Dec. 1, 2021), Item 2(c). Duke Kentucky is a wholly owned subsidiary of Duke Ohio.

[3] Application at 2.

[4] Duke Kentucky's Response to Staff's First Request, Items 1(g) and 2(a).

[5] *Id.*, Item 1(b).

[6] *Id.*, Item 1(d).

[7] Case No. 16-253-GA-BTX, *In the Matter of the Application of Duke Energy Ohio, Inc. for a Certificate of Environmental Compatibility and Public Need for the C314V Central Corridor Pipeline Extension Project* (OPSB Nov. 21, 2019).

appeal on September 22, 2021.[8] Duke Ohio began preconstruction activities for the Central Corridor Pipeline in 2020, then construction began on March 1, 2021, and is expected to be completed in 2022.[9] Once the Central Corridor Pipeline is complete, Duke Kentucky will have access to capacity on the KO Transmission Company's (KOT) pipeline that is currently used by Duke Ohio.[10] The additional capacity from the KOT pipeline will replace the capacity provided by the Erlanger Cavern, allowing for its retirement while maintaining reliability.[11] The Erlanger Cavern decommissioning planning process commenced as planned following the winter of 2020-2021; physical decommissioning is scheduled to commence as planned following the winter 2021-2022, with retirement of the facility expected on March 31, 2022.[12]

To retire the Erlanger Cavern, Duke Kentucky must remove the propane stored there. Duke Kentucky stated that removal and resale of the propane would not be cost effective, due to infrastructure costs to allow for removal and trucking.[13] Duke proposed to flow any removable propane through its system beginning in January 2022 and expected to remove all usable volumes by March 2022.[14] Duke Kentucky estimated that

[8] Duke Kentucky's Responses to Commission Staff's Second Request for Information (Duke Kentucky's Response to Staff's Second Request) (filed Dec. 13, 2021), Item 1.

[9] Duke Kentucky's Response to Staff's First Request, Items 2(a) and 4(a).

[10] Application at 4.

[11] Duke Kentucky's Response to Staff's First Request, Items 3(a) and 3(b). Duke Kentucky will be able to receive approximately 26,000 dekatherms of additional, existing capacity compared to the 25,060 dekatherms of peaking capacity provided by the Erlanger Cavern.

[12] Duke Kentucky's Response to Staff's Second Request, Item 2.

[13] Duke Kentucky's Response to Staff's First Request, Item 7(e).

[14] Duke Kentucky's Responses to Staff's Second Request, Item 7(a).

approximately 500,000 gallons of residual propane will be flared off.[15] Duke Kentucky ceased procuring propane for the Erlanger Cavern on October 17, 2019, and last used the facility for system reliability on February 20, 2020.[16]

Duke Kentucky currently recovers the cost of propane in its Gas Cost Adjustment (GCA) through both the Expected Gas Cost (EGC) component, which forecasts quarterly gas costs, and the Actual Adjustment (AA), which amortizes any over- or under-recoveries over 12 months.[17] Duke Kentucky did not include a substantial amount of propane in its EGC for January–March 2022.[18]

Duke Kentucky's recent rate case, Case No. 2021-00190, was filed June 6, 2021, and received a final Order on December 28, 2021.[19] Duke Kentucky did not disclose the retirement of the Erlanger Cavern in its rate case and agreed to not file a base rate general rate adjustment until a base rate general rate adjustment can be filed with an effective date of January 1, 2026.[20] Duke Kentucky's current base rates include $1,370,255 associated with the Erlanger Cavern, including a return on net plant and propane inventory of $312,631, operating and maintenance (O&M) expenses of $708,942,

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[15] Application at 8 and Duke Kentucky's Response to Staff's First Request, Item 6.

[16] Duke Kentucky's Response to Staff's First Request, Item 7(d) and Duke Kentucky's Response to Staff's Second Request, Item 5.

[17] Duke Kentucky's Response to Staff's First Request, Item 7(a).

[18] Case No. 2021-00395, *Electronic Purchased Gas Adjustment Filing of Duke Energy Kentucky, Inc*. (Ky. PSC Nov. 23, 2021), Quarterly Report (filed Oct. 29, 2021), Form I at 4. Case No. 2022-00023, *Electronic Purchased Gas Adjustment Filing of Duke Energy Kentucky, Inc*. (filed Jan. 28, 2022), Quarterly Report, Form I at 4.

[19] Case No. 2021-00190, *Electronic Application of Duke Energy Kentucky, Inc. for: 1) An Adjustment of the Natural Gas Rates; 2) Approval of New Tariffs, and 3) All Other Required Approvals, Waivers, and Relief* (Ky. PSC Dec. 28, 2021).

[20] *Id.* at 7.

depreciation expense of $333,766, and property taxes expense of $14,916.[21] Duke Kentucky will recover approximately $5.1 million[22] in revenues related to the Erlanger Cavern from April 1, 2022, through December 31, 2025.

DUKE KENTUCKY'S REQUEST

Duke Kentucky requested regulatory asset treatment for amounts totaling $3.6 million.[23] Duke Kentucky estimated that (1) its portion of the Erlanger Cavern remaining net book value will be $1.9 million, (2) the decommissioning costs will be $0.7 million, and (3) the remaining propane that must be flared will be $0.2 million.[24] Duke Kentucky proposed to include the propane in its GCA at the lower of the average cost of the propane or the weighted average cost of gas delivered that month.[25] Duke Kentucky argued that its proposal will insulate customers from price volatility in the months the propane is actually consumed and spread the impact over an appropriate period in the future. Duke Kentucky estimated that the difference between the amount recovered through the GCA and its actual propane costs will be $0.9 million.[26] Duke Kentucky contended that annual operating and maintenance (O&M) expense savings of $0.7 million are expected after the retirement.[27]

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[21] Duke Kentucky's Response to Staff's First Request, Item 5, Attachment.

[22] $1,370,255 x 3.75 = $5,138,456.

[23] Application at 7.

[24] *Id.* at 8–9.

[25] *Id.* at 8.

[26] *Id.*at 9.

[27] *Id.*at 7 and Duke Kentucky's Response to Staff's First Request, Item 5.

Duke Kentucky argued that these expenses qualify for regulatory asset treatment because they are extraordinary expenses that could not be included in the utility's planning and they will provide savings that fully offset the costs.[28] Duke Kentucky proposed to amortize the regulatory asset for the remaining net book value of retired plant based on the amount included in its current rates for depreciation of the Erlanger Cavern[29] and to carry the balance of the regulatory assets for decommissioning costs and all unrecovered propane amounts to its next rate case.[30]

DISCUSSION AND FINDINGS

The Financial Accounting Standards Board's Statement of Financial Accounting Standards No. 71, Accounting for the Effects of Certain Types of Regulation, which was codified as Accounting Standards Codification (ASC) 980, Regulated Operations, provides the criteria for recognition of a regulatory asset.[31] Supplemental to the

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[28] Application at 6–7.

[29] *Id.* at 7, Duke Kentucky's Response to Staff's First Request, Item 8, and Duke Kentucky's Response to Staff's Second Request, Item 3.

[30] Duke Kentucky's Response to Staff's First Request, Item 8.

[31] ASC 980-340-25-1 provides, in full, as follows:

> 25-1 Rate actions of a regulator can provide reasonable assurance of the existence of an asset. An entity shall capitalize all or part of an incurred cost that would otherwise be charged to expense if both of the following criteria are met:
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> > a. It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.
> >
> > b. Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.

requirements of ASC 980, Commission precedent obligates Duke Kentucky to obtain approval prior to establishing a regulatory asset.[32] The Commission has historically approved regulatory assets where a utility has incurred: (1) an extraordinary, nonrecurring expense, which could not have reasonably been anticipated or included in the utility's planning; (2) an expense resulting from a statutory or administrative directive; (3) an expense in relation to an industry sponsored initiative; or (4) an extraordinary or nonrecurring expense that over time will result in a saving that fully offsets the cost.[33]

The Commission finds that Duke Kentucky has not established that the expenses at issue fit within a category of expense for which regulatory asset treatment is appropriate. The Commission finds that Duke Kentucky has failed to establish that the expenses at issue are extraordinary, nonrecurring expenses, which could not have reasonably been anticipated or included in the utility's planning and therefore warrant deferral accounting. Regarding Duke Kentucky’s contention that the timing of Erlanger Cavern retirement could not have been anticipated, the Commission notes that Duke Kentucky stated that the retirement has commenced as planned in 2020 and is scheduled to be completed as planned in 2022. Additionally, while Duke Kentucky contended that the retirement will result in O&M savings that fully offset the costs, it did not propose to use the bulk of these savings to offset the regulatory asset. The underlying assets and

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> A cost that does not meet these asset recognition criteria at the date the cost is incurred shall be recognized as a regulatory asset when it does meet those criteria at a later date.

[32] Case No. 2001-00092, *Adjustment of Gas Rates of the Union Light, Heat and Power Company* (Ky. PSC Jan. 31, 2002), Order at 14.

[33] Case No. 2008-00436, *The Application of East Kentucky Power Cooperative, Inc. for an Order Approving Accounting Practices to Establish a Regulatory Asset Related to Certain Replacement Power Costs Resulting from Generation Forced Outages* (Ky. PSC Dec. 23, 2008), Order at 4.

O&M expenses are currently included in base rates and Duke Kentucky did not propose to fully account for those current revenues in the proposed amortization amount. Duke Kentucky's proposal would reduce the proposed $1.9 million regulatory asset for the remaining net book value of the Erlanger Cavern by approximately $1.3 million[34] through December 31, 2025, despite Duke Kentucky reducing O&M expenses by $2.7 million[35] and recovering a total of $5.1 million in rates associated with the Erlanger Cavern for the same period. Although the retirement appears reasonable, given the risks of continued operation and availability of sufficient capacity from other sources, Duke Kentucky has not met its burden of proof that these expenses qualify for regulatory asset treatment. For these reasons, the Commission finds that Duke Kentucky's request to establish a regulatory asset for (1) the Erlanger Cavern remaining net book value, (2) the decommissioning costs, and (3) the remaining propane that must be flared should be denied.

The Commission also finds that Duke Kentucky's request for regulatory asset treatment of the difference between the amounts collected through the GCA and the actual propane costs should be denied. Duke Kentucky's proposal to include the propane in its GCA at the lower of the average cost of the propane or the weighted average cost of gas delivered that month is unnecessary due to the operation of the GCA. The Commission further finds that Duke Kentucky should include the propane costs in its ACA for the appropriate periods. This will amortize the increased propane costs over a 12-

[34] $333,766 x 3.75 = $1,251,623.

[35] $708,942 x 3.75 = $2,658,533.

month period and alleviate Duke Kentucky's concerns regarding volatility in gas costs for its customers.

IT IS THEREFORE ORDERED that:

1. Duke Kentucky's request for authorization to establish a regulatory asset for the deferral of expenses that arise from or relate to the retirement of the Erlanger Cavern is denied.

2. Duke Kentucky shall include the propane costs in its GCA through the ACA for the appropriate periods.

3. This case is closed and removed from the Commission's docket.

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By the Commission

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JAN 31 2022 rcs

KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:

Linda C. Bridwell

Executive Director

*Debbie Gates
Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45201

*Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45202

*Larisa Vaysman
Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45201

*Minna Sunderman
Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45201