

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF DUKE ENERGY	)	
KENTUCKY, INC. FOR (1) AN ADJUSTMENT OF	)	
ELECTRIC RATES; (2) APPROVAL OF NEW	)	CASE NO.
TARIFFS; (3) APPROVAL OF ACCOUNTING	)	2022-00372
PRACTICES TO ESTABLISH REGULATORY	)	
ASSETS AND LIABILITIES; AND (4) ALL OTHER	)	
REQUIRED APPROVALS AND RELIEF	)	

ORDER

On November 1, 2023, Duke Energy Kentucky, Inc. (Duke Kentucky) filed a petition, pursuant to KRS 278.400, requesting rehearing of several different issues, more fully described below, contained in the Order entered October 12, 2023. The Attorney General of the Commonwealth of Kentucky, through his Office of Rate Intervention (Attorney General) and Sierra Club, intervenors in the matter, each filed a response on November 8, 2023. Duke Kentucky filed a reply in support of its petition for rehearing on November 13, 2023.

LEGAL STANDARD

KRS 278.400, which establishes the standard of review for motions for rehearing, limits rehearing to new evidence not readily discoverable at the time of the original hearings, to correct any material errors or omissions, or to correct findings that are unreasonable or unlawful. A Commission Order is deemed unreasonable only when “the evidence presented leaves no room for difference of opinion among reasonable minds.”<sup>1</sup>

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<sup>1</sup> *Energy Regulatory Comm’n v. Kentucky Power Co.*, 605 S.W.2d 46 (Ky. App. 1980).

An order can only be unlawful if it violates a state or federal statute or constitutional provision.<sup>2</sup>

By limiting rehearing to correct material errors or omissions, and findings that are unreasonable or unlawful, or to weigh new evidence not readily discoverable at the time of the original hearings, KRS 278.400 is intended to provide closure to Commission proceedings. Rehearing does not present parties with the opportunity to relitigate a matter fully addressed in the original Order.

### DISCUSSION AND FINDINGS

Duke Kentucky requested rehearing on several issues addressed in the Commission's October 12, 2023. Each issue will be discussed separately.

#### 1. **Final Order, Appendix B rates**

Duke Kentucky alleged that the rates set forth in Appendix B were not appropriately calculated and may not reflect the revenues, rates, and adjustments prescribed in the body of the Order. Duke Kentucky requested that the Commission grant rehearing to recalculate the rates, revenues, and adjustments based on the final Order.<sup>3</sup> Duke Kentucky noted that the current revenues may have included an amount from the Environmental Surcharge Mechanism Rider (Rider ESM).<sup>4</sup> The Attorney General stated that, if the rates had been miscalculated, that the rates should be calculated appropriately.<sup>5</sup> The Sierra Club's brief did not respond to this issue.

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<sup>2</sup> *Public Service Comm'n v. Conway*, 324 S.W.3d 373, 377 (Ky. 2010); *Public Service Comm'n v. Jackson County Rural Elec. Coop. Corp.*, 50 S.W.3d 764, 766 (Ky. App. 2000); *National Southwire Aluminum Co. v. Big Rivers Elec. Corp.*, 785 S.W.2d 503, 509 (Ky. App. 1990).

<sup>3</sup> Duke Kentucky's Petition for Rehearing at 2-3.

<sup>4</sup> Duke Kentucky's Petition for Rehearing at 2-3.

<sup>5</sup> Attorney General's Response to Petition for Rehearing at 3.

Having reviewed the relevant record, the rehearing pleadings, and being otherwise sufficiently advised, the Commission finds that Duke Kentucky's request for a rehearing regarding the rates found in Appendix B should be granted. The Commission agrees that the rates should reflect the final Order and any calculation errors should be corrected. The Commission finds that the rates, rate design and charges listed in Appendix B need to be correct and accurate. Rehearing is granted on all rates, rate design, and charges calculated and listed in Appendix B. The Commission also notes that the grant of rehearing on Appendix B includes any numerical discrepancies noted by Duke Kentucky.

## 2. **On-Site Payment Locations**

Duke Kentucky requested rehearing on the Commission's requirement that the utility have a location for in-person, fee-free payment.<sup>6</sup> Duke Kentucky argued that converting the Erlanger location to permit in-person transactions would be impracticable.<sup>7</sup> Duke Kentucky proposed to contract with Kroger to provide fee-free payment locations in the service territory.<sup>8</sup> According to Duke Kentucky, the Kroger locations would typically operate ten hours a day, seven days a week and parties would be able to make payments, communicate regarding account balances, and provide customers with payment amounts needed to avoid disconnection.<sup>9</sup> Duke Kentucky asked the Commission to reconsider its requirement that it establish a local Kentucky office for fee-free payment location, and instead find that the establishment of additional fee-free payment locations at Kroger

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<sup>6</sup> Duke Kentucky's Petition for Rehearing at 4.

<sup>7</sup> Duke Kentucky's Petition for Rehearing at 5-6.

<sup>8</sup> Duke Kentucky's Petition for Rehearing at 4

<sup>9</sup> Duke Kentucky's Petition for Rehearing at 4.

stores satisfactory.<sup>10</sup> In the alternative, Duke Kentucky requested that the Commission convert the requirement in its Order that Duke Kentucky staff a Kentucky location that can accept fee-free walk-in bill payments from customers to a requirement that it study the potential impacts to customers of such a proposal.<sup>11</sup>

The Attorney General and the Sierra Club did not address this issue in their response briefs.

Having reviewed the relevant record, the rehearing pleadings, and being otherwise sufficiently advised, the Commission finds that Duke Kentucky's request for a rehearing on the issue of fee-free payment locations should be granted. The Commission notes that Duke Kentucky has provided new information regarding a possible contract with Kroger, however, before accepting this as a substitute for an office in Kentucky, the Commission will require additional evidence.

3. **Waiver of 807 KAR 5:006, Section 7(1)(a)(3) for Time of Use with Critical Peak Pricing (Rate RS-TOU-CPP)**

Duke Kentucky requested rehearing on the denial of a waiver of 807 KAR 5:006, Section 7(1)(a)(3). According to Duke Kentucky, if the Commission does not grant a waiver of this regulation, Duke Kentucky will not be able to effectuate Rate RS-TOU-CPP in a cost effective manner.<sup>12</sup> Duke Kentucky stated that complying with the administrative regulation would require significant bill reprogramming.<sup>13</sup> Duke Kentucky averred that the

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<sup>10</sup> Duke Kentucky's Petition for Rehearing at 7.

<sup>11</sup> Duke Kentucky's Petition for Rehearing at 7.

<sup>12</sup> Duke Kentucky's Petition for Rehearing at 8.

<sup>13</sup> Duke Kentucky's Petition for Rehearing at 8.

Commission provided no basis for the denial; that the company had followed the Order in Case No. 2019-00271;<sup>14</sup> and as such, the Commission should reconsider the denial.<sup>15</sup>

Duke Kentucky stated that the denial of the waiver of the regulation affected several portions of the final Order, all of which Duke Kentucky noted in its petition. If the Commission denies the request for rehearing, Duke Kentucky asked that the Commission deny its request to implement this rate.<sup>16</sup> Duke Kentucky noted that the final Order did not contain a specific finding related to Duke Kentucky's requested deferral for lost revenue for recovery in its next electric rate case related to this new rate.<sup>17</sup> However, Duke Kentucky stated that if the waiver is denied, the request is moot.<sup>18</sup>

The Attorney General and the Sierra Club did not address the issue of the waiver.

Having reviewed the relevant record, the rehearing pleadings, and being otherwise sufficiently advised, the Commission finds that Duke Kentucky's request for a rehearing on the issue of the waiver of 807 KAR 5:006, Section 7(1)(a)(3) should be granted. Duke Kentucky bears the burden of proof on all proposals and requests in its application. Duke Kentucky did not provide any explanation as to why the waiver would be needed, only that it would be needed for billing purposes.<sup>19</sup> In the petition for rehearing, Duke Kentucky provided additional information and noted that without the waiver, it could not comply with

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<sup>14</sup> Case No. 2019-00271 *Electronic Application of Duke Energy Kentucky, Inc. for 1) An Adjustment of the Electric Rates; 2) Approval of New Tariffs; 3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; and 4) All Other Required Approvals and Relief*, (Ky PSC Apr. 27, 2020), Order at 60–61(a requirement that Duke Kentucky request a waiver individually for each rate class).

<sup>15</sup> Duke Kentucky's Petition for Rehearing at 10.

<sup>16</sup> Duke Kentucky's Petition for Rehearing at 11.

<sup>17</sup> Duke Kentucky's Petition for Rehearing at 23.

<sup>18</sup> Duke Kentucky's Petition for Rehearing at 23.

<sup>19</sup> Direct Testimony of Bruce Sailors (Sailors Direct Testimony) (filed Dec. 1, 2022) at 18.

certain remaining sections of the final Order. The Commission would like to obtain additional information on this issue before rendering a decision.

4. **Planned Outage Operations and Maintenance (O&M) and Forced Outage Purchased Power Deferral Discontinuance**

Duke Kentucky argued that its previously authorized deferral<sup>20</sup> for forced and planned outage expenses above and below base rates is reasonable and appropriate.<sup>21</sup> Duke Kentucky stated that maintaining the deferral will continue to benefit customers and smooth out any volatility in prices from aging fossil fuel generating assets.<sup>22</sup> Duke Kentucky alleged that the Commission's denial of this ongoing deferral is at odds with the Commission's stated desire for Duke Kentucky to operate the unit as long as it is economically viable to do so.<sup>23</sup>

The Sierra Club's brief did not address this issue; however, the Attorney General requested that the Commission deny rehearing on this issue.<sup>24</sup> The Attorney General stated that Duke Kentucky did not provide any new information and was merely attempting to relitigate the issue.<sup>25</sup> In Duke Kentucky's response in support of its petition, Duke Kentucky stated that the company had, in fact, provided new information. The deferral had been fully litigated in two prior rate cases and the Commission had approved

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<sup>20</sup> Case No. 2017-00321 *Electronic Application of Duke Energy Kentucky, Inc., for: 1) an Adjustment of the Electric Rates; 2) Approval of an Environmental Compliance Plan and Surcharge Mechanism; 3) Approval of New Tariffs; 4) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; and 5) All Other Required Approvals and Relief* (Ky PSC Apr. 13, 2018), Order.

<sup>21</sup> Duke Kentucky's Petition for Rehearing at 11.

<sup>22</sup> Duke Kentucky's Petition for Rehearing at 13.

<sup>23</sup> Duke Kentucky's Petition for Rehearing at 13.

<sup>24</sup> Attorney General's Response Brief at 4.

<sup>25</sup> Attorney General's Response Brief at 4.

the deferral. In this case, with the life of East Bend extended, for purposes of calculating depreciation rates, maintenance and ongoing expenses would allegedly increase.<sup>26</sup>

Having reviewed the relevant record, the rehearing pleadings, and being otherwise sufficiently advised, the Commission finds that Duke Kentucky's request for a rehearing on the denial of the deferral is denied. Duke Kentucky did not raise any issue, providing new information or citing to an error, that would warrant rehearing. In fact, Duke Kentucky admitted that the Commission's statements were correct,<sup>27</sup> but it disagreed with the Commission's finding. Disagreement with the Commission's decision, which was supported in the record, is not grounds for rehearing.

5. **East Bend Retirement Date**

Duke Kentucky requested rehearing on the Commission's decision to set depreciation rates in accordance with a 2041 retirement date for East Bend. Duke Kentucky noted that the focus in its post-hearing brief was on the East Bend retirement date being 2035.<sup>28</sup> Duke Kentucky stated that it disagreed with the Commission statement that the IRP was not a reasonable planning document.<sup>29</sup> Duke Kentucky argued that the Commission did not consider the impact of the retirement of Woodsdale and East Bend within 12 months of each other.<sup>30</sup>

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<sup>26</sup> Duke Kentucky's Reply in Support of its Petition for Rehearing at 4.

<sup>27</sup> Duke Kentucky's Petition for Rehearing at 13.

<sup>28</sup> Duke Kentucky's Petition for Rehearing at 15.

<sup>29</sup> Duke Kentucky's Petition for Rehearing at 16.

<sup>30</sup> Duke Kentucky's Petition for Rehearing at 16.

The Attorney General noted that Duke Kentucky did not introduce any new evidence in its motion and was merely attempting to relitigate the issue.<sup>31</sup> Sierra Club argued that rehearing was warranted for two reasons: the final Order did “not address the Commission’s departure from the “used and useful” standard and the concomitant principle of intergenerational equity that has guided its decision-making in other proceedings”<sup>32</sup> nor did “it address the additional information that has become available following the 2021 IRP analysis that indicates that the most likely retirement date for East Bend 2 is earlier than 2041.”<sup>33</sup> Sierra Club stated that the Commission did not utilize the used and useful analysis that it normally engages in to align depreciation rates with expected useful life of a generation unit.<sup>34</sup> Sierra Club reiterated its position that the likely retirement date for East Bend would be earlier than 2041.<sup>35</sup>

According to Duke Kentucky’s reply in support of its petition, the Commission’s position is unreasonable and not supported by the record.<sup>36</sup>

Having reviewed the relevant record, the rehearing pleadings, and being otherwise sufficiently advised, the Commission finds that Duke Kentucky’s request for a rehearing on the depreciation rates related to the retirement of East Bend should be denied. Nothing in the Order prohibits Duke Kentucky from requesting a retirement and depreciation rates at a future proceeding based on new information or environmental

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<sup>31</sup> Attorney General’s Response to Petition for Rehearing at 6.

<sup>32</sup> Sierra Club’s Response to Petition for Rehearing at 2.

<sup>33</sup> Sierra Club’s Response to Petition for Rehearing at 2.

<sup>34</sup> Sierra Club’s Response to Petition for Rehearing at 4-5.

<sup>35</sup> Sierra Club’s Response to Petition for Rehearing at 5-7.

<sup>36</sup> Duke Kentucky’s reply in support of its petition for rehearing at 5.



regulations in accordance with KRS 278.264. Currently, Duke Kentucky has no plans to replace the generation and no mention was made of such plans in the record or rehearing motion. Additionally, Duke Kentucky did not address the Commission's reliance on KRS 278.264(2) for this decision. Duke Kentucky has not presented any new information warranting a rehearing. As noted above, disagreement with a Commission decision, which is supported by the record, is not grounds for rehearing.

6. **Terminal Net Salvage**

Duke Kentucky alleged that, by failing to align the depreciation rates with the likely 2035 retirement date for East Bend, the Commission's ruling leaves millions in stranded costs.<sup>37</sup> Duke Kentucky argued that removing decommissioning costs from depreciation rates means that at the time of retirement, customers will bear the entire burden of decommissioning the units all at once, rather than over the useful life of the asset, as has been the case for decades of utility ratemaking.<sup>38</sup> Assuming both the Commission's removal of approximately \$6 million of annual net salvage from depreciation expense and the Company's 2035 estimated retirement timeline for East Bend, Duke Kentucky alleged that the Commission's Order pushes approximately \$72 million in costs to future ratepayers.<sup>39</sup> Citing to Case No. 2017-00321, Duke Kentucky noted the Commission has previously approved decommissioning costs in the Company's depreciation rates,

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<sup>37</sup> Duke Kentucky's Petition for Rehearing at 18.

<sup>38</sup> Duke Kentucky's Petition for Rehearing at 18.

<sup>39</sup> Duke Kentucky's Petition for Rehearing at 18-19.

properly finding that decommissioning costs are an inherent component of a generating asset's depreciation.<sup>40</sup>

According to Duke Kentucky, the Commission's use of KRS 278.264 to remove decommissioning costs from all generating asset depreciation rates conflicts with KRS 278.264 on its face, as KRS 278.264 applies to "fossil fuel fired combustion or steam generating sources" only.<sup>41</sup> Duke Kentucky alleged that the Commission removed decommissioning costs from the depreciation rates of all of the Duke Kentucky's generating units.<sup>42</sup> As such, Duke Kentucky requested that the Commission, at a minimum, exclude solar generation assets, resulting in a \$0.141 million increase in the revenue requirement.<sup>43</sup>

Duke Kentucky stated that sound ratemaking principles do not support the Commission's ruling resulting in inconsistent depreciation accounting between its generating assets and its distribution and transmission assets.<sup>44</sup> Since the Commission has previously approved decommissioning costs in Duke Kentucky's depreciation rates and Duke Kentucky accrued it through Accumulated Depreciation, Duke Kentucky stated that there will be a certain balance in Accumulated Depreciation that won't be representative of the total estimated decommissioning costs at the end of the life of the assets.<sup>45</sup> When the actual decommissioning begins, Duke Kentucky noted that it must

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<sup>40</sup> Duke Kentucky's Petition for Rehearing at 19.

<sup>41</sup> Duke Kentucky's Petition for Rehearing at 19-20.

<sup>42</sup> Duke Kentucky's Petition for Rehearing at 20.

<sup>43</sup> Duke Kentucky's Petition for Rehearing at 20.

<sup>44</sup> Duke Kentucky's Petition for Rehearing at 20.

<sup>45</sup> Duke Kentucky's Petition for Rehearing at 20.

continue recording the actual decommissioning costs to Accumulated Depreciation as required by the Federal Energy Regulatory Commission.<sup>46</sup> According to the utility, because the Accumulated Depreciation balance won't be sufficient to cover total actual decommissioning costs, the accumulated depreciation balance will ultimately become a debit balance that needs to be recovered from customers at that time.<sup>47</sup>

The Sierra Club did not take a position on the terminal net salvage adjustment in its response brief. The Attorney General stated that it objected to decommissioning expense being included in the depreciation rates because it overstates the expense.<sup>48</sup> The Attorney General stated that Duke Kentucky has not introduced any new evidence that would warrant rehearing.<sup>49</sup> In response, Duke Kentucky stated that the Commission's decision was unreasonable, unlawful, and unsupported by Commission precedent.<sup>50</sup>

Having reviewed the relevant record, the rehearing pleadings, and being otherwise sufficiently advised, the Commission finds that Duke Kentucky's request for a rehearing on the removal of decommissioning costs be granted, in part, and denied, in part. The Commission finds that Duke Kentucky has not provided any new evidence or addressed the presumption set out in KRS 278.264(2). Thus, the Commission finds that Duke Kentucky's request for rehearing on the removal of decommissioning costs from depreciation expense for fossil fuel-fired electric generating units is denied. However, the

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<sup>46</sup> Duke Kentucky's Petition for Rehearing at 20.

<sup>47</sup> Duke Kentucky's Petition for Rehearing at 20.

<sup>48</sup> Attorney General's Response to Petition for Rehearing at 6.

<sup>49</sup> Attorney General's Response to Petition for Rehearing at 8.

<sup>50</sup> Duke Kentucky's Reply in Support of its Petition for Rehearing at 8.

Commission agrees with Duke Kentucky that KRS 278.264 does not apply to solar generation assets. The Commission grants Duke Kentucky's request for rehearing on the removal of decommissioning costs from depreciation rates for solar generation assets in order to obtain additional information.

7. **Rate Case Expense**

Duke Kentucky requested rehearing on the removal of estimated rate case expense.<sup>51</sup> Duke argued that due to the timing of its expense updates and briefing schedule, estimated expenses were the only way to include the costs incurred after the hearing.<sup>52</sup> Duke requested rehearing for the \$160,000 of estimated expenses for outside counsel fees.<sup>53</sup> According to Duke Kentucky, the justification of the costs were outside counsel to assist with the production of post-hearing data requests, preparation and filing of post-hearing briefs, and review of intervenor briefs.<sup>54</sup> Duke Kentucky alleged it did its best to attempt to provide the Commission accurate timely expense reports. Duke Kentucky noted that this would result in a \$32,000.00 increase to the revenue requirement, and it requested further direction on how to handle estimated rate case expense in the future.<sup>55</sup>

The Sierra Club did not address this issue in its response. The Attorney General did not address this issue in its response brief.

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<sup>51</sup> Duke Kentucky's Petition for Rehearing at 21.

<sup>52</sup> Duke Kentucky's Petition for Rehearing at 22.

<sup>53</sup> Duke Kentucky's Petition for Rehearing at 22.

<sup>54</sup> Duke Kentucky's Petition for Rehearing at 22.

<sup>55</sup> Duke Kentucky's Petition for Rehearing at 22.

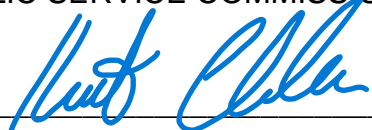
Having reviewed the relevant record, the rehearing pleadings, and being otherwise sufficiently advised, the Commission finds that Duke Kentucky's request for a rehearing on the removal of estimated rate case expenses is granted. The Commission notes that the estimated expenses were removed because the expense represented 25 percent of the total rate case expense for a small portion of the total rate case.

Duke Kentucky should respond to any additional data requests issued in this matter. The Commission will also address the issues raised in Attachment A of Duke Kentucky's Petition for Rehearing in a subsequent Order.


IT IS THEREFORE ORDERED that:

1. Duke Kentucky's motion for rehearing is granted in part and denied in part.
2. Duke Kentucky's request for rehearing on the removal of decommissioning costs from depreciation rates related to fossil fuel related generation is denied.
3. Duke Kentucky's request for rehearing on depreciation rates related to the retirement of East Bend is denied.
4. Duke Kentucky's request for rehearing on the removal of forced outage expense is denied.
5. Duke Kentucky's request for rehearing related to rates, rate design, the waiver of 807 KAR 5:006 Section 7(1)(a)(3), decommissioning expense related to solar generation assets, errors alleged in Attachment A and rate case expense is granted.
6. A procedural schedule Order to be issued at a later date shall be followed for the processing of this matter on rehearing.
7. The remainder of the October 12, 2023 Order not in conflict with this Order remains in effect.

PUBLIC SERVICE COMMISSION

  
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Chairman

  
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Vice Chairman

  
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Commissioner

ENTERED  
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SERVICE COMMISSION

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