

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF DUKE	)	
ENERGY KENTUCKY, INC. FOR AN ORDER	)	
DECLARING THE CONSTRUCTION OF	)	CASE NO.
SOLAR FACILITIES IS AN ORDINARY	)	2020-00385
EXTENSION OF EXISTING SYSTEMS IN THE	)	
USUAL COURSE OF BUSINESS	)	

ORDER

On December 11, 2020, Duke Energy Kentucky, Inc. (Duke Kentucky) filed an application for declaratory order, pursuant to 807 KAR 5:001, Section 19, that the construction of a proposed 2 MW solar facility at the Amazon Air Hub Facility (Solar Installation) constitutes an ordinary extension of existing systems in the usual course of business. There are no intervenors in this matter. Duke Kentucky responded to requests for information from Commission Staff on February 15, 2021. This matter is now before the Commission for a decision on the merits.<sup>1</sup>

BACKGROUND

Duke Kentucky provides retail electric service to approximately 143,432 customers in Boone, Campbell, Grant, Kenton, and Pendleton counties, Kentucky.<sup>2</sup> In its most

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<sup>1</sup> Pursuant to 807 KAR 5:001, Section 19, the Commission may, among other things, “issue a declaratory order . . . with respect to the meaning and scope of an order or administrative regulation of the commission or provision of KRS Chapter 278.” The Commission “may dispose of an application for a declaratory order solely on the basis of the written submissions filed” or may allow for other actions, including additional discovery, to ensure that the record is complete. *Id.*

<sup>2</sup> *Annual Report of Duke Energy Kentucky, Inc. to the Public Service Commission of the Commonwealth of Kentucky for the Calendar Year Ended December 31, 2019* at 4–5.

recent annual report, Duke Kentucky reported \$366,167,855 in total revenue from electric sales and net utility plant in service of \$1,742,470,390.<sup>3</sup>

Duke Kentucky is proposing to construct approximately a 2.0 MW photo-voltaic (PV) solar generating array located within its service territory on an approximately 800,000 sq. ft. leased rooftop of the new Amazon Air Hub Facility in Burlington, Kentucky.<sup>4</sup> Duke Kentucky estimated that the total cost to construct the Solar Installation to be approximately \$5 million<sup>5</sup> and that the solar facility would have a useful life of 25 years.<sup>6</sup> Duke Kentucky indicated that the placement of the Solar Installation on this rooftop, which is being built to specifically accommodate the system, may result in reduced operation and maintenance expenses and energy losses as compared to a ground-mounted system.<sup>7</sup>

Duke Kentucky indicated that it would use a request for procurement bidding process to control the cost of purchasing and constructing the Solar Installation.<sup>8</sup> Duke Kentucky will sell the Renewable Energy Credits (RECs) arising from the operation of the Solar Installation in the Ohio PJM market as part of a process that it anticipates will result in “savings” (the value of the RECs less certain expenses) being passed to its customers

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<sup>3</sup> *Id.* at 5.

<sup>4</sup> Application at 3.

<sup>5</sup> *Id.* at 5.

<sup>6</sup> Duke Kentucky's Response to Commission Staff's First Request for Request for Information (filed Feb. 15, 2021) (Response to Staff's First Request), Item 8.

<sup>7</sup> *See Id.*, Item 13.

<sup>8</sup> Application at 6.

through the PSM Rider.<sup>9</sup> Duke Kentucky provided information indicating that the consideration it will provide for its use of the rooftop of the Air Hub Facility is reasonable.<sup>10</sup>

Duke Kentucky indicated that it was proposing a small site, as it has before, due to limitations of available land in terms of size and topography (slope) and distribution circuit limitations.<sup>11</sup> It indicated that the Solar Installation will be directly tied to the Company's distribution system and will not be tied into the Air Hub Facility building for its consumption and net metering. Rather, the energy produced by this array will be used to reduce the amount of Duke Kentucky's load on the circuit.<sup>12</sup>

Duke Kentucky identified a need for renewable resources in its most recent integrated resource plan (IRP) due to customer desire for renewable investments to diversify their generation portfolio. Duke Kentucky noted that its analysis identified a need for approximately 10 MW of solar resources annually beginning in 2019.<sup>13</sup> Duke Kentucky also believes that a need exists to continue the current procurement of solar in order to take advantage of investment tax credits that will be reduced from 22 percent to 10 percent for projects completed after 2021.<sup>14</sup> Duke Kentucky also indicated that the timing of the proposed construction, beginning in March 2021, is intended to align with

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<sup>9</sup> Response to Staff's First Request, Item 2, Item 3, and STAFF-DR-01-003(a) CONF Attachment.xlsx.

<sup>10</sup> See Response to Staff's First Request, Item 13; see also Lease Agreement at 9 (Lease Agreement); Response to Staff's First Request, Item 3 and STAFF-DR-01-003(a) CONF Attachment.xlsx.

<sup>11</sup> Application at 3-4; see also Response to Staff's First Request, Item 11 and 13.

<sup>12</sup> *Id.* at 5.

<sup>13</sup> *Id.* at 9; see also Case No. 2018-00195, *Electronic Integrated Resource Plan of Duke Energy Kentucky, Inc.* (Ky. PSC Mar. 15, 2019), Staff Report at 21-22, 28, and 30.

<sup>14</sup> *Id.* at 9; see also Response to Staff's First Request, Item 6 (discussing the need for the material).

the construction of the Air Hub Facility, which is being constructed specifically to accommodate a solar installation.<sup>15</sup>

Duke Kentucky stated that the Solar Installation will also allow it to gain experience operating rooftop-mounted facilities in an urban/suburban region that will shorten the learning curve for future projects that Duke Kentucky anticipates being necessary to meet future carbon requirements.<sup>16</sup> Duke Kentucky explained that the Solar Installation will be the first rooftop-mounted facility for Duke Kentucky, and therefore, the experience it obtains operating it would be different than experience it obtains operating ground mounted facilities.<sup>17</sup> Duke Kentucky also indicated that the lessor has significant experience incorporating solar facilities onto its rooftops and that it has worked with Duke Kentucky to articulate best management practices.<sup>18</sup>

Duke Kentucky asserts that the Solar Installation qualifies as an extension of an existing system in the ordinary course of business pursuant to 807 KAR 5:001, Section 15(3). Among other things, Duke Kentucky asserts that the Solar Facility will not result in wasteful duplication due to its size and because the additional capacity is consistent with Duke Kentucky's most recent IRP; will not conflict with the certificates or service or other utilities; will not involve a sufficient capital outlay that materially effects its financial condition; and will not, on its own, require a rate increase (although Duke Kentucky acknowledges costs will ultimately be included in base rates).<sup>19</sup> Duke Kentucky further

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<sup>15</sup> *Id.* at 3.

<sup>16</sup> *Id.* at 8–9.

<sup>17</sup> Response to Staff's First Request, Item 4.

<sup>18</sup> Response to Staff's First Request, Item 12.

<sup>19</sup> Application at 4–7.

notes that the Commission previously found in Case No. 2017-00155 that three similar solar installations were extensions in the ordinary course of business.<sup>20</sup>

### DISCUSSION

KRS 278.020(1)(a) generally requires a utility to obtain a Certificate of Public Convenience and Necessity (CPCN) before beginning the construction of any plant, equipment, property, or facility. However, a CPCN is not required for “ordinary extensions of existing systems in the usual course of business.”<sup>21</sup> The Commission defined an ordinary extension in the usual course of business in 807 KAR 5:001, Section 15(3),<sup>22</sup> which states:

Extensions in the ordinary course of business. A certificate of public convenience and necessity shall not be required for extensions that do not create wasteful duplication of plant, equipment, property, or facilities, or conflict with the existing certificates or service of other utilities operating in the same area . . . , *and* that do not involve sufficient capital outlay to materially affect the existing financial condition of the utility involved, or will not result in increased charges to its customers.<sup>23</sup> (Emphasis added.)

The Commission has interpreted 807 KAR 5:001, Section 15(3) as stating that no CPCN is required for extensions “that do not result in the wasteful duplication of utility plant, do not compete with the facilities of existing public utilities, and do not involve a sufficient

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<sup>20</sup> *Id.* 3–4 citing Case No. 2017-00155, *Electronic Application of Duke Energy Kentucky, Inc. for an Order Declaring the Construction of Solar Facilities is an Ordinary Extension of Existing Systems in the Usual Course of Business* (Ky. PSC Jul. 10, 2017), Order.

<sup>21</sup> See KRS 278.020(1)(a)2.

<sup>22</sup> Case No. 2000-00481, *The Application of Northern Kentucky Water District (A) for Authority to Issue Parity Revenue Bonds in the Approximate Amount of \$16,545,000; and (B) a Certificate of Convenience and Necessity for the Construction of Water Main Facilities* (Ky. PSC Aug. 30, 2001), Order at 4.

<sup>23</sup> 807 KAR 5:001, Section 15(3).

capital outlay to materially affect the existing financial condition of the utility involved or to require an increase in utility rates.”<sup>24</sup>

As noted by Duke Kentucky, in Case No. 2017-00155,<sup>25</sup> the Commission found that three solar facilities that were 2 to 3 MW each with a total estimated cost of \$14.8 million (approximately \$5 million each on average) were extensions in the ordinary course of business as that term is used in KRS 278.020 and defined in 807 KAR 5:001, Section 15(3). Like those projects, the Commission finds that the size and cost of the Solar Installation at issue in this case—about 2 MW with an estimated construction cost of \$5 million—would not result in a capital outlay that would materially affect Duke Kentucky’s financial condition or a rate increase that justifies denying Duke Kentucky’s application. Further, the Solar Installation will be used to serve Duke Kentucky’s current customer or service territory, so it will not conflict with the existing certificates or service of other utilities. Thus, the Solar Installation should be classified as an ordinary extension of existing systems in the usual course of business if it will not result in wasteful duplication.

Wasteful duplication is defined as “an excess of capacity over need” and “an excessive investment in relation to productivity or efficiency, and an unnecessary multiplicity of physical properties.”<sup>26</sup> As implied by that definition, there must be an actual

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<sup>24</sup> Case No. 2000-00481, *Northern Kentucky Water District* (Ky. PSC Aug. 30, 2001), Order at 4.

<sup>25</sup> Case No. 2017-00155, *Electronic Application of Duke Energy Kentucky, Inc. for an Order Declaring the Construction of Solar Facilities is an Ordinary Extension of Existing Systems in the Usual Course of Business* (Ky. PSC July 10, 2017), Order.

<sup>26</sup> *Kentucky Utilities Co. v. Pub. Serv. Comm’n*, 252 S.W.2d 885, 890 (Ky. 1952).

need for a project for the Commission to find that it will not result in wasteful duplication.<sup>27</sup> Further, the Commission must look at the manner in which a utility proposes to satisfy that need to determine whether it will result in “excessive investment in relation to productivity or efficiency, and an unnecessary multiplicity of physical properties.” Selection of a proposal that ultimately costs more than an alternative does not necessarily result in wasteful duplication.<sup>28</sup> All relevant factors must be balanced.<sup>29</sup> The statutory touchstone for ratemaking in Kentucky is the requirement that rates set by the Commission must be fair, just and reasonable.<sup>30</sup>

Here, the Commission finds the evidence supports a finding that the Solar Installation will not result in wasteful duplication. As asserted by Duke Kentucky, its most recent IRP indicated a need for an additional 10 MW solar generation capacity annually beginning in 2019 (Duke Kentucky currently only has 7 MW of solar capacity), and Commission Staff’s report regarding that IRP recommended that Duke Kentucky provide information regarding how it will meet sustainability goals of commercial and industrial customers in its service area.<sup>31</sup> Further, while the size of the facility raises questions about its economics, which the Commission may explore further in the future when more

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<sup>27</sup> See *id.* (indicating the similarity between the requirement that there be a need a project in the context of a CPCN and that a project not result in an excess of capacity over need).

<sup>28</sup> See *Kentucky Utilities Co. v. Pub. Serv. Comm’n*, 390 S.W.2d 168, 175 (Ky. 1965). See also Case No. 2005-00089, *The Application of East Kentucky Power Cooperative, Inc. for a Certificate of Public Convenience and Necessity to Construct a 138 kV Electric Transmission Line in Rowan County, Kentucky* (Ky. PSC Aug. 19, 2005).

<sup>29</sup> Case No. 2005-00089, *East Kentucky Power Cooperative, Inc.* (Ky. PSC Aug. 19, 2005), final Order at 6.

<sup>30</sup> KRS 278.190(3).

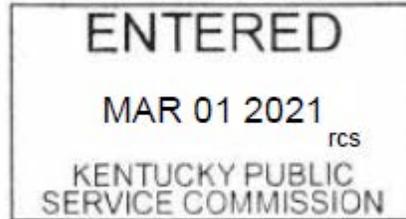
<sup>31</sup> Case No. 2018-00195, *Electronic Integrated Resource Plan of Duke Energy Kentucky, Inc.* (Ky. PSC Mar. 15, 2019), Staff Report at 21–22, 28, and 30.

actual information is available, Duke Kentucky has noted difficulties finding suitable locations in its service area. Furthermore, the placement of the Solar Installation at the Amazon Air Hub will give them the opportunity to work with a company with significant experience with such systems. There are also higher tax credits for projects like the Solar Installation that can be completed and placed in service before 2022. Thus, having reviewed record and being otherwise sufficiently advised, the Commission finds that the Solar Installation will not result in wasteful duplication and that Duke Kentucky's Application for a declaratory order should be granted.

IT IS HEREBY ORDERED that:

1. Duke Kentucky's application for a declaratory order is granted.
2. The Solar Installation as proposed and discussed herein is properly classified as an ordinary extension of existing systems in the usual course of business, and a CPCN, pursuant to KRS 278.020(1), is not required for its construction.
3. Duke Kentucky shall file a notice with the Commission when the Solar Installation has been constructed.
4. Any documents filed in the future pursuant to ordering paragraph 3 herein shall reference this case number and shall be retained in the post-case correspondence file.
5. The Executive Director is delegated authority to grant reasonable extension of time for the filing of any documents required by ordering paragraph 3 of this Order upon Duke Kentucky's showing of good cause.
6. This matter is closed and removed from the Commission's docket.

By the Commission



ATTEST:

  
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