

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

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

APPLICATION

Comes now Duke Energy Kentucky, Inc. (Duke Energy Kentucky or the Company), by counsel, pursuant to KRS 278.030(1), KRS 278.040(2), KRS 278.220 and other applicable law, and hereby requests that the Kentucky Public Service Commission (Commission) approve the establishment of a regulatory asset for the Company's expenses incurred that arise from or relate to the GreenHat Energy, LLC, (GreenHat) default in PJM Interconnection, LLC (PJM), as well as permission to defer appropriate carrying costs associated with the regulatory asset described herein. In support of this Application, the Company states as follows:

I. Applicant Information and General Filing Requirements

1. Duke Energy Kentucky is an investor-owned utility engaged in the business of furnishing natural gas and electric services to various municipalities and unincorporated areas in Boone, Bracken, Campbell, Gallatin, Grant, Kenton, and Pendleton Counties in the Commonwealth of Kentucky.

2. Pursuant to 807 KAR 5:001, Section 14(2), Duke Energy Kentucky states that it was originally incorporated in the Commonwealth of Kentucky on March 20, 1901, and attests that it is currently in good standing in said Commonwealth.

3. Pursuant to 807 KAR 5:001, Section 14(1), Duke Energy Kentucky's business address is 139 East Fourth Street, Cincinnati, Ohio 45202. Duke Energy Kentucky's local office in Kentucky is 1262 Cox Road, Erlanger, KY 41018, and its electronic mail address is KYfilings@duke-energy.com.

II. Background on the PJM Expenses Related to the GreenHat Default

4. On June 21, 2018, PJM declared GreenHat, a PJM member and Financial Transmission Rights (FTR) market participant, in default for non-payment of its PJM Invoice issued on June 5, 2018. The defaulted invoice was for approximately \$1.2 million. Pursuant to the PJM Operating Agreement sections 15.1.2A(1) and 15.2.2, the positions were liquidated and the net gain or loss was added to the actual unpaid net charges or net credits that accumulated on the positions prior to being liquidated and was included in the total default amount allocated to PJM's members.

5. On January 30, 2019, FERC entered an Order denying PJM's request for a temporary waiver for certain FTR liquidation rules in the PJM Open Access Transmission Tariff and the Amended and Restated Operating Agreement of PJM.¹ In its request for waiver, PJM stated that the waiver was necessary to ensure an orderly and efficient liquidation of the large defaulted FTR portfolio of GreenHat to minimize distortion to the FTR markets.² PJM stated that after providing PJM members with notice of GreenHat's default and posting the details of GreenHat's portfolio, PJM began, but did not conclude,

¹ *PJM Interconnection, L.L.C.*, 166 F.E.R.C. ¶61,072 (2019).

² PJM Request for Waiver at 1.

the July 2018 monthly FTR auction consistent with the then effective liquidation process. PJM closely monitored the auction and, based on the recent offers and bids for the FTR auction, PJM expects the liquidation of GreenHat's entire FTR portfolio in a manner required by the Tariff will result in significant losses to PJM members.³ PJM filed a Motion for Clarification on March 31, 2019, and FERC established paper procedures for the new case along with assigning a settlement judge and ordering the parties to engage in settlement discussions.⁴ The parties filed a Settlement Agreement and Offer of Settlement (Settlement) with the settlement judge on October 9, 2019. The settlement judge certified the Settlement on November 29, 2019.⁵ On December 30, 2019, FERC entered an Order approving the Settlement reached by the parties.⁶

6. Once the effect of the Settlement on the total amount of the GreenHat default is known, that will ultimately determine the amount Duke Energy Kentucky would be allocated for the total GreenHat expense.

III. Request to Establish a Regulatory Asset

7. A regulatory asset is created when a utility is authorized to capitalize an expenditure that under traditional accounting rules would be recorded as a current expense. The reclassification of an expense to a capital item allows the utility the opportunity to request recovery in future rates of the amount capitalized. The authority to establish regulatory assets arises out of the Commission's plenary authority to regulate utilities under

³ *Id.*, at 2.

⁴ *PJM Interconnection, L.L.C.*, 167 F.E.R.C. ¶ 61,209 (2019).

⁵ *PJM Interconnection, L.L.C.*, 169 F.E.R.C. ¶ 63,028 (2019).

⁶ *PJM Interconnection, L.L.C.*, 169 F.E.R.C. ¶ 61,260 (2019).

KRS 278.040 and to “establish a system of accounts to be kept by utilities subject to its jurisdiction... and may prescribe the manner in which such accounts shall be kept.”⁷

8. Duke Energy Kentucky must obtain Commission approval for accounting adjustments before establishing any expense as a new regulatory asset. Specifically, the Commission stated in Case No. 2001-00092, “[t]herefore, the Commission finds that in the future, ULH&P shall formally apply for Commission approval before accruing a cost as a deferred asset, regardless of the rate-making treatment that the Commission has afforded a similar cost in previous rate case proceedings.”⁸

9. The Commission has exercised its discretion to approve 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.⁹ In exercising discretion to allow the creation of a regulatory asset, the Commission’s overarching consideration has been the

⁷ KRS 278.220.

⁸ *In the Matter of Adjustment of Gas Rates of The Union Light, Heat and Power Company*, Final Order, Case No. 2001-00092 (Ky. P.S.C., Jan. 31, 2002).

⁹ See *In the Matter of 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*, Final Order, Case No. 2008-00436 (Ky. P.S.C., Dec. 23, 2008); *In the Matter of the Application of Louisville Gas and Electric Company for an Order Approving the Establishment of a Regulatory Asset*, Final Order, Case No. 2008-00456 (Ky. P.S.C., Dec. 22, 2008); *In the Matter of the Application of Kentucky Utilities Company for an Order Approving the Establishment of a Regulatory Asset*, Final Order, Case No. 2008-00457 (Ky. P.S.C., Dec. 22, 2008); *In the matter of the 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*, Final Order, Case No. 2008-00308 (Ky. P.S.C., Oct. 30, 2008); *In the Matter of the Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for an Order Approving Proposed Deferred Debits and Declaring the Amortization of the Deferred Debits to be Included in Earnings Sharing Mechanism Calculations*, Final Order, Case No. 2001-00169 (Ky. P.S.C., Dec. 3, 2001).

context in which the regulatory asset is sought to be established and not necessarily the specific nature of the costs incurred.¹⁰

10. Duke Energy Kentucky asserts that its request to establish a regulatory asset for the PJM expenses related to the GreenHat default, along with the aforementioned carrying costs, is consistent with the first above-listed example, “an extraordinary, nonrecurring expense which could not have reasonably been anticipated or included in the utility’s planning.” Put simply, the Company would have no way of anticipating the default of a participant in PJM’s FTR market and, thus, no way of pre-emptively mitigating its exposure to GreenHat’s default. Fortunately, such defaults are uncommon and the expenses arising from the GreenHat default are extraordinary and generally nonrecurring. Accordingly, Duke Energy Kentucky asks the Commission for permission to accumulate as a regulatory asset and defer for future recovery in appropriate accounts, its PJM expenses related to the GreenHat default, including appropriate carrying costs. The expenses Duke Energy Kentucky must incur as a result of the GreenHat default are reasonable and prudent and should therefore be recoverable as a necessary cost of providing service to Duke Energy Kentucky’s customers. If approved, Duke Energy Kentucky will hold its deferred costs in Account No. 182.3, Other Regulatory Assets, until such time as the Commission considers the method of recovery in a future rate proceeding.

11. The deferral of these costs for ultimate recovery is reasonable. GreenHat’s prior actions affected the results of the FTR auction and thus likely have already impacted Duke Energy Kentucky’s customers through the FTR auction clearing prices. The FTR

¹⁰ *In the Matter of 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*, Final Order, Case No. 2008-00436 (Ky. P.S.C., Dec. 23, 2008).

portfolio is a hedge against congestion in the day-ahead market for Duke Energy Kentucky's native load customers in PJM. FTRs are included in the Company's FAC on Schedule 2, Schedule 4 and Schedule 6 and are in the line identified as "Net Fuel Related RTO Billing Line Items." FTR costs and revenues included in the FAC are PJM billing line items (PJM BLI) 1500, 2211 and 2510 Financial Transmission Rights Auction. Customers thus receive the benefit of the FTR, but also pay the costs related to FTRs through the Fuel Adjustment Clause (FAC). Because FTRs are recoverable through the FAC, the financial impact from GreenHat's initial participation in the market has already been recovered or credited to customers. The GreenHat settlement exposure is simply an additional cost of that hedge.

12. Since the expense related to the GreenHat default is an FTR and thus fuel related, as are other FTR charges and credits, the Company believed that recovery in the FAC was appropriate and permissible under its existing FAC tariff, similar to other FTR and congestion charges or credits. GreenHat's participation in the PJM forward looking FTR auctions has impacted other PJM billing line items, besides BLI 1999, that have already been charged or credited to the customer. For example, among other charges and credits, the cost to purchase Financial Transmission Rights (FTR's or PJM BLI 1500) and the amount of revenue received from Auction Revenue Rights (ARR's or PJM BLI 2510) in the PJM FTR auctions and the credit or charge from owning the FTR (the FTR payout amount or PJM BLI 2211) were all impacted by GreenHat's participation in these auctions. Said in another way, if GreenHat had not participated in the prior PJM FTR auctions, charges and credits related to FTR's that have already been charged or credited to customers in the FAC would likely have been impacted.

13. On December 26, 2019, the Commission entered an Order in Duke Energy Kentucky's FAC Case No. 2019-00006, finding that Duke Energy Kentucky could not pass the GreenHat expenses charged to the Company in PJM BLI 1999 through the Company's FAC and ordered Duke Energy Kentucky to refund the amount that had been passed through during that two-year review period.¹¹ More recently, in Case No. 2019-00230, the Commission similarly denied the recovery of the GreenHat expenses charged to the Company in PJM BLI 1999 through the Company's FAC for the six-month review period ending May 31, 2019. Although the Commission's Orders acknowledged that these GreenHat settlement costs are fuel-related, it nonetheless denied their recovery through the Company's FAC. However, the Commission acknowledged that such costs could be recoverable through other means including, but not limited to, a base rate case.¹²

14. Duke Energy Kentucky's current electric base rate case, Case No. 2019-0271 was filed before the Commission issued its decision in Case No 2019-0006, and thus, the Company could not incorporate or anticipate the Commission's decision regarding recovery of GreenHat expense as it believed recovery was permissible through the FAC. As the Company's pending electric base rate case is nearing the hearing stage, amending its application to seek actual cost recovery of the GreenHat expense in that case is not practicable at this late stage. Accordingly, seeking and gaining approval to establish a regulatory asset to account for these fuel-related costs is the most appropriate method for addressing recovery at this time.

¹¹ See *In the Matter of the Electronic Examination of the Application of the Fuel Adjustment Clause of Duke Energy Kentucky, Inc. from November 1, 2016 through October 31, 2018*, Order, Case No. 2019-00006 (Ky. P.S.C. Dec. 26, 2019).

¹² *Id.*

15. Accordingly, the Company seeks approval for a deferral of these fuel-related costs, as ordered be passed on by FERC, and acknowledged as recoverable through other means by the Commission, so that the Company may seek recovery in a future base rate proceeding. Duke Energy Kentucky requests the total amount of the GreenHat expense be included in the regulatory asset, including carrying cost. The current estimate is approximately \$462,204.54, before carrying costs. Duke Energy Kentucky will supplement this filing to reflect the final amount if it changes once the final amount of the GreenHat default is known.

16. If the Commission approves Duke Energy Kentucky's requested regulatory asset treatment, Duke Energy Kentucky expects to make the following journal entry based on estimates available as of December 31, 2019.

a. Dr. 182.3 GreenHat Regulatory Asset	\$462,204.54
Cr. 242890 Deferred Rev Pay - Fuel	\$270,497.48
Cr. 456111 Other Transmission Revenues	\$191,707.06

17. Duke Energy Kentucky proposes that the balance of the regulatory asset will accrue carrying charges at the Company's long-term debt rate that is ultimately approved in Case No. 2019-00271.

18. WHEREFORE, on the basis of the foregoing, Duke Energy Kentucky respectfully requests that the Commission enter an Order:

1. Approving the establishment of a regulatory asset to defer the actual incremental PJM expenses related to the GreenHat default;

2. Permitting the deferral of appropriate carrying costs as part of the regulatory assets described herein; and
3. Granting Duke Energy Kentucky all other additional relief to which it may appear entitled.

This 14th day of February 2020.

VERIFICATION

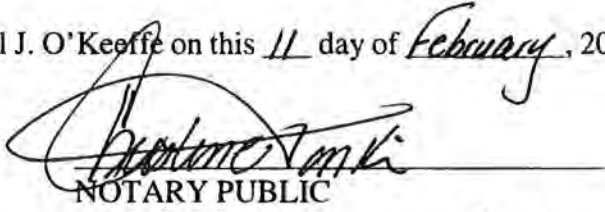
STATE OF NORTH CAROLINA)
)
COUNTY OF MECKLENBURG) SS:

The undersigned, Michael J. O’Keeffe, being duly sworn, deposes and says that he is the Director of Electric Utility and Infrastructure and that the matters set forth in the foregoing Application are true and correct to the best of his information, knowledge, and belief.


Michael J. O’Keeffe, Affiant

Subscribed and sworn to me by Michael J. O’Keeffe on this 11 day of February, 2020.

CHRISTINE TONKIN
NOTARY PUBLIC
Mecklenburg County
North Carolina
My Commission Expires November 13, 2024


NOTARY PUBLIC

My Commission expires: 11/13/2024

Respectfully submitted,



Rocco O. D'Ascenzo
Deputy General Counsel
Duke Energy Business Services, LLC
139 East Fourth Street/1303-Main
P.O. Box 960 Cincinnati, OH 45202
(513) 287-4320
Rocco.D'Ascenzo@duke-energy.com

and

David S. Samford
L. Allyson Honaker
Goss Samford, PLLC
2365 Harrodsburg Road
Suite B-325
Lexington, Kentucky 40504
(859) 368-7740
David@gosssamfordlaw.com
allyson@gosssamfordlaw.com

Counsel for Duke Energy Kentucky, Inc.