

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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)	CASE NO.
NEW TARIFFS; 4) APPROVAL OF ACCOUNTING)	2017-00321
PRACTICES TO ESTABLISH REGULATORY)	
ASSETS AND LIABILITIES, AND 5) ALL OTHER)	
REQUIRED APPROVALS AND RELIEF)	

ORDER

The matter is before the Commission upon separate petitions for rehearing filed by Duke Energy Kentucky, Inc. (“Duke Kentucky”) and the Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention (“Attorney General”). Both petitions sought a rehearing on certain aspects of the April 13, 2018 Order (“Final Order”) in this matter. Among other things, the Final Order approved an \$8,428,645 increase in Duke Kentucky’s base rate.

The Attorney General filed a response to Duke Kentucky’s rehearing petition. Duke Kentucky filed a response to the Attorney General’s rehearing petition along with a motion to strike certain of the Attorney General’s pre-filed testimony. The Attorney General and Duke Kentucky filed separate reply memorandums in support of their respective rehearing petition. The Attorney General and Northern Kentucky University (“NKU”) filed separate responses to Duke Kentucky’s motion to strike.

DISCUSSION AND FINDINGS

Duke Kentucky's Petition for Rehearing

1. Duke Kentucky argues that the adjustments to the revenue requirement as set forth in the Final Order should have mathematically produced a revenue requirement of \$9,274,170 rather than the \$8,428,645 awarded in the Final Order. Duke Kentucky requests a rehearing on this \$845,525 difference.

The Attorney General agrees with Duke Kentucky that additional explanation is necessary to clarify the Commission's determination of the increase in the overall revenue requirement amount. The Attorney General, however, objects to any attempt by Duke Kentucky in seeking a rehearing "to inflate its allowed revenue requirement or reargue positions the Commission considered and rejected."¹ Should Duke Kentucky be granted a rehearing on any adjustment in its petition that could potentially increase the authorized level of revenue requirement, the Attorney General requests that it be presented the opportunity to litigate corresponding reductions. The Attorney General objects to increases in the revenue requirement associated with the vegetation management expenses, capitalization adjustment for the East Bend Deferral, and the restricted stock units ("RSUs"). The Attorney General points out that his silence on any particular issue raised in Duke Kentucky's petition should not be construed as acquiescence, approval, or agreement on that particular issue.

¹ Attorney General's Response to Duke Energy Kentucky, Inc.'s Petition for Rehearing at 3.

Having reviewed Duke Kentucky's petition, the response, and the reply, and being otherwise sufficiently advised, the Commission finds that a rehearing should be granted to allow the record to be more fully developed regarding the calculation of the adjustments set forth in the Final Order.

2. Duke Kentucky states that the Final Order incorrectly calculated the four-year average of its vegetation management expense in arriving at \$4,035,571 in allowable expense. Duke Kentucky asserts that, in response to Commission Staff's Third Request for Information, Item 14, it provided estimated annual expenses for the twelve months ended March 31, 2020, and March 31, 2021. In the same discovery response, Duke Kentucky also provided estimated annual expenses for the nine months ended December 31, 2021. Duke Kentucky argues that to properly calculate the four-year average, the amount for the nine months ended December 31, 2021, needs to be annualized. Doing so would result in vegetation management expenses of \$4,285,580, or an increase of \$250,009 from the amount set forth in the Final Order. Duke Kentucky requests a rehearing regarding the calculation of the vegetation management expense.

The Attorney General argues that there is substantial evidentiary support for the Commission's determination of the test-year amount related to Duke Kentucky's vegetation management expense and that such a determination is reasonable.

Having reviewed Duke Kentucky's petition, the response, and the reply, and being otherwise sufficiently advised, the Commission finds that a rehearing should be granted to clarify how Duke Kentucky calculated vegetation management expense of \$4,285,580, resulting in a purported increase in the revenue requirement of \$250,009.

3. Duke Kentucky points out that the Final Order reduced its revenue requirement by removing \$36,540,465 from overall capitalization from the regulatory asset related to the deferral of the East Bend operation and maintenance (“O&M”) expense, which resulted in a decrease in the revenue requirement of \$3.231 million. Duke Kentucky argues that applying its long-term debt rate to the East Bend O&M Deferral balance yields a return of \$1,554,681. Duke Kentucky contends that the adjustment to the revenue requirement as set forth in the Final Order improperly reflects a return on East Bend O&M regulatory asset at the weighted-average cost of capital. Duke Kentucky requests a rehearing on the calculation of the capitalization adjustment of the East Bend Deferral.

The Attorney General contends that it is unreasonable for Duke Kentucky to continue to request a return on the East Bend Deferral in excess of that approved by the Commission. The Attorney General argues that Duke Kentucky’s application included a debt-only rate of return on the regulatory asset and in the revenue requirement while also including the regulatory asset in capitalization. The Attorney General contends that Duke Kentucky’s proposed revenue requirement reflects a gross-up return at the weighted average cost of capital and, thus, allows Duke Kentucky to earn a debt-only rate on a sum of money while also earning a grossed-up weighted average cost of capital on the same sum of money for which it is earning a debt rate. The Attorney

General asserts that Duke Kentucky has provided no support for its position on rehearing on this issue.

Having reviewed Duke Kentucky's petition, the response, and the reply, and being otherwise sufficiently advised, the Commission finds that Duke Kentucky has presented sufficient justification for a rehearing on this issue.

4. Duke Kentucky notes that the Final Order reduces its revenue requirement by \$1.634 million to account for earnings-based compensation, which includes \$541,424 attributable to the company's issuance of restricted stock units ("RSUs"). Duke Kentucky argues that RSUs are not earnings-based and that there is nothing in the record indicating that RSUs are in any way tied to Duke Kentucky's financial performance. Duke Kentucky requests a rehearing on the adjustment related to RSUs.

The Attorney General argues that providing employee compensation in the form of stock units reflects compensation tied to Duke Kentucky's financial performance. The Attorney General contends that no other compensation is more directly tied to shareholder goals than compensation in the form of stock.

Having reviewed Duke Kentucky's petition, the response, and the reply, and being otherwise sufficiently advised, the Commission finds that Duke Kentucky has failed to establish that the findings in the Final Order with respect to the adjustment related to Duke Kentucky's incentive compensation expense, which includes the issuance of RSUs, are not supported by substantial evidence. Upon our review of the

evidence and Commission precedent,² we find RSUs to be ultimately tied to the financial performance of Duke Kentucky, which primarily benefits shareholders and not ratepayers of Duke Kentucky. In the absence of clear and definitive quantitative evidence demonstrating a benefit to the utility's ratepayers, the ratepayers should not be required to bear the program's costs. Accordingly, the Commission finds that Duke Kentucky's request for a rehearing on this issue should be denied.

5. Duke Kentucky contends that although the Final Order states that the company's rate base should be increased by \$4,471,984 to account for the 10-year amortization period (rather than the 20-year period proposed by Duke Kentucky) of the excess unprotected accumulated deferred income taxes ("ADITs") and the ARAM methodology for amortizing the excess protected ADITs, the Commission failed to make a corresponding adjustment to capitalization as outlined in Appendix B to the Final Order. Duke Kentucky notes that applying the pre-tax weighted average cost of capital of 8.446 percent to the \$4,471,984 increase in capitalization attributable to the accelerated amortization of excess ADITs would result in an increase in the revenue requirement of \$377,704. Duke Kentucky requests a rehearing related to the adjustment to capitalization for Excess ADIT.

Having reviewed Duke Kentucky's petition, the response, and the reply, and being otherwise sufficiently advised, the Commission finds that a rehearing should be granted on this issue to further investigate the basis for Duke Kentucky's request.

² See Case No. 2010-00036, *Application of Kentucky-American Water Company for an Adjustment of Rates Supported by a Fully Forecasted Test Year* (Ky. PSC Dec. 14, 2010), Final Order at 33–34 and Case No. 2014-00396, *Application of Kentucky Power Company for: (1) A General Adjustment of Its Rates for Electric Service; (2) An Order Approving Its 2014 Environmental Compliance Plan; (3) An Order Approving Its Tariffs and Riders; and (4) An Order Granting All Other Required Approvals and Relief* (Ky. PSC June 22, 2015), Final Order at 26–28.

6. Duke Kentucky states that the Final Order required the company to utilize the Average Life Group (“ALG”) depreciation method rather than the Equal Life Group (“ELG”) method and that this switch resulted in a \$2,733,299 decrease in the company’s rate base. Duke Kentucky points out that the finding on page 10 of the Final Order, which states that \$2,733,299 is an adjustment to rate base “to reflect an increase in ADIT,” should be changed to state that the adjustment to rate base is “to reflect the overall impact of the change in depreciation rates to reflect the use of ALG.”

Having reviewed Duke Kentucky’s petition, the response, and the reply, and being otherwise sufficiently advised, the Commission finds that the intent of the language set forth on page 10 of the Final Order is consistent with Duke Kentucky’s suggested change. The Commission further finds that the following paragraph, which is set forth as the last full paragraph on page 11 of the Final Order, should be deleted: “Based on the Commission’s finding herein where it denied Duke Kentucky’s proposal to use ELG procedure rather than the ALG procedure for computing depreciation rates, the Commission finds that Duke Kentucky’s accumulated depreciation rate in its rate base should be increased by \$6,919,475.”

7. Duke Kentucky states that the Final Order did not take into account the most recent rate case expense provided by the company. Duke Kentucky states that its rate case expense, as provided in a supplemental discovery response filed on April 2, 2018, is \$657,433.68. Amortized over five years, the amount would be \$131,487. The Final Order, however, includes an annual amount of \$120,530 in Duke Kentucky’s revenue requirement to account for the five-year amortization of its rate case expense.

Duke Kentucky requests a rehearing to account for its entire rate case expense and increase the revenue requirement by \$10,949.

Having reviewed Duke Kentucky's petition, the response, and the reply, and being otherwise sufficiently advised, the Commission finds that a rehearing should be granted on this issue.

8. Duke Kentucky argues that the Final Order incorrectly modified the proposed capacity pricing formula set forth in its revised Cogeneration Tariffs because it fails to include the company's updated cost of debt approved for the rate of return component and the Commission adjusted capital structure. Duke Kentucky states that that capacity price as set forth in the Final Order is overstated and that the correct calculation would result in a capacity price of \$3.47 per kW-month. Duke Kentucky also requests a rehearing to confirm that Duke Kentucky's mandatory capacity purchase obligation only applies when a qualifying facility is able to meet PJM's Capacity Performance requirements. Duke Kentucky reasons that if the qualifying facility is unable to meet PJM's Capacity Performance requirements it would have no value in PJM and cannot otherwise be relied upon by Duke Kentucky.

Regarding Duke Kentucky's request for confirmation that its mandatory capacity purchase obligation applies only when a qualifying facility has satisfied PJM's Capacity Performance requirements, the Attorney General argues that this matter is not properly before the Commission because this is the first instance in which Duke Kentucky has requested such relief.

Having reviewed Duke Kentucky's petition, the response, and the reply, and being otherwise sufficiently advised, the Commission finds that a rehearing should be

granted as to the issue relating to the calculation of the capacity price to further explore whether any rate schedule that has long-term debt and short-term debt components should also need to be recalculated. The Commission, however, finds that a rehearing should be denied on the grounds that the issue was never presented by Duke Kentucky in its case-in-chief.

9. Duke Kentucky argues that the Final Order requires the company to provide its electric and gas customers the complete billing information. Duke Kentucky contends that the Final Order does not provide any explanation as to why the Commission's prior order in Case No. 2000-00520,³ which approved Duke Kentucky's request to issue a condensed bill to its customers, was unreasonable nor does the Final Order account for the \$45,540 annual cost increase to provide the complete bill to its customers. Duke Kentucky requests a rehearing to either rescind the full bill requirement or to make a finding of fact as to the unreasonableness of Duke Kentucky's practice of providing a condensed bill and increasing the revenue requirement to account for the increased expenses. Duke Kentucky alternatively requests that it be permitted to continue to offer its customers the option to elect to receive the condensed bill.

Having reviewed Duke Kentucky's petition, the response, and the reply, and being otherwise sufficiently advised, the Commission finds that a rehearing should be granted on this issue to determine, among other things, how much of Duke Kentucky's purported increase in costs is related to mailings to electric and combination customers.

³ Case No. 2000-00520, *Application of the Union Heat, Light and Power Company for Approval to Revise its Service Regulations in its Gas and Electric Tariffs* (Ky. PSC Feb. 2, 2001).

10. Duke Kentucky requests a rehearing to address the company's request to recover regulatory assets associated with storm restoration efforts in connection with Hurricane Ike, incremental depreciation expense related to the acquisition of the entirety of the East Bend Station, and advanced metering infrastructure deployment costs. Duke Kentucky states that it requested recovery of these regulatory assets but the Final Order did not address the request.

Having reviewed Duke Kentucky's petition, the response, and the reply, and being otherwise sufficiently advised, the Commission finds that a rehearing should be granted on this issue.

11. Duke Kentucky states that the Final Order makes several adjustments to its rate base in the context of a discussion of regulatory assets for the East Bend Ash Pond asset retirement obligation, the East Bend O&M Expense, and the Carbon Management Research Group. Duke Kentucky argues that its test-year rate base does not include any regulatory assets. Duke Kentucky contends that it was inappropriate to adjust its rate base downward for non-existent components of the rate base and, therefore, seeks a rehearing on the rate base adjustments for these regulatory assets.

Having reviewed Duke Kentucky's petition, the response, and the reply, and being otherwise sufficiently advised, the Commission finds that a rehearing should be granted on this issue.

12. Duke Kentucky states that the Final Order fails to address its request for approval of the proposed Decommissioning Study. Duke Kentucky points out that no party opposed this request and the Final Order expressly affirms that the company was

entitled to recover its net salvage expense and interim net salvage expense in base rates. Duke Kentucky requests a rehearing to address this request.

The Attorney General argues that it is imprudent to prematurely recover from customers costs associated with the most expensive and intensive option after generation is retired before any such decision is reached. The Attorney General contends that by allowing recovery of net salvage and approving the Decommissioning Study, Duke Kentucky would be ensured recovery of cost recovery regardless of the prudence of its action.

Having reviewed Duke Kentucky's petition, the response, and the reply, and being otherwise sufficiently advised, the Commission finds that a rehearing should be granted on this issue.

13. Duke Kentucky states that the Final Order directs it to base the jurisdictional allocation ratio for its monthly environmental surcharge report by using total jurisdictional retail revenues excluding Rider ESM revenues, divided by total company revenues excluding Rider ESM revenues. Duke Kentucky requests confirmation that it would be appropriate to add a line to Rider PSM to deduct any environmental costs attributed to non-retail load from the off-system sales revenue figure in order to assure that any portion of its environmental expense that is attributable to non-retail sales is still recovered.

Having reviewed Duke Kentucky's petition, the response, and the reply, and being otherwise sufficiently advised, the Commission finds that a rehearing should be granted on this issue.

Attorney General's Petition for Rehearing and Duke Kentucky's Motion to Strike

1. The Attorney General asserts that the Final Order incorrectly and inconsistently represents that the testimonies of witnesses Lane Kollen and Richard Baudino are the Attorney General's position. The Attorney General asserts that his position is reflected in the post-hearing brief and his retained experts' pre-filed testimony reflects the recommendation of that particular witness proffered by the Attorney General but does not reflect the position of the Attorney General. The Attorney General lastly contends that certain findings made in the Final Order were based mainly on the Attorney General's proffered witness testimonies and did not properly take into consideration the Attorney General's post-hearing brief.

Duke Kentucky argues that the Attorney General incorrectly comprehends the function and purpose of the testimony offered by his witnesses. Duke Kentucky characterizes the Attorney General's statements provided in his response as a disavowal of the testimony and evidence presented by the witnesses he has sponsored in this proceeding. Duke Kentucky argues that it is reasonable to assume that when any party voluntarily proffers expert opinion testimony, the proffering party adopts, or at least acquiesces in, the substance of the opinion rendered. Duke Kentucky contends that a contrary presumption would lead to absurd results and render the administrative process meaningless and inefficient. Duke Kentucky contends that when a party causes an expert opinion to be tendered in a proceeding, that party is equitably estopped from later denying the substance of the opinion. Duke Kentucky further contends that any claimed right to selectively adopt discrete portions of a party's evidence introduced into the record violates sensible notions of fair play and due

process. Accordingly, Duke Kentucky moves the Commission to strike all of the testimony of the Attorney General's witnesses that was not expressly adopted by the Attorney General in his post-hearing brief.

The Attorney General states that Duke Kentucky's motion to strike is misguided and should be summarily denied. The Attorney General asserts that he did consider all of the evidence and did not disavow his expert witnesses' testimony in making his recommendation to the Commission. The Attorney General contends it contrary to due process to require parties to put forward their final position prior to the conclusion of the evidence. The Attorney General asserts that Duke Kentucky's motion is an attempt to inflate the revenue requirement in this case and requests the Commission deny Duke Kentucky's motion.

NKU opposes Duke Kentucky's motion, arguing that discovery of evidence did not conclude until after the filing of responses to post-hearing data requests. NKU asserts that a party to a Commission proceeding can only fully present its position through the filing of its brief after the submission of all evidence. NKU states that Duke Kentucky's bewilderment about the Attorney General's decision to consider all the evidence in arriving at his final position, does not justify striking any of the Attorney General's testimony. NKU requests that the Commission deny Duke Kentucky's motion.

In its reply, Duke Kentucky argues that it is a waste of time and resources for the Attorney General to have expert witnesses offer opinion testimony and then claim that the testimony does not reflect the Attorney General's position. Duke Kentucky contends that providing useless opinion testimony needlessly adds expense and wastes valuable

time. Duke Kentucky asserts that when simultaneous briefing occurs, the utility has no opportunity to respond to a position that is being stated for the first time in the final brief. Duke Kentucky requests that the Commission grant its motion.

Having reviewed the relevant pleadings, the responses and replies thereto, and being otherwise sufficiently advised, the Commission finds that the Final Order reflects the Commission's consideration and evaluation of the entire evidentiary record. The Commission further finds that a party's position is based upon the evidence sponsored and introduced into the record by that party, including, but not limited to, expert opinion testimony and discovery responses. To the extent the Attorney General's recommendation, or position, on a certain adjustment or issue evolved or changed over the course of this proceeding and was not accurately set forth in the Final Order, the Commission finds that the Final Order should be amended to accurately set forth the Attorney General's revised recommendation or position. In particular, the Final Order should be amended to reflect that the Attorney General ultimately accepted Duke Kentucky's vegetation management expense adjustment because the company's forecasted vegetation management expense was based on actual costs. The Commission further finds that the Attorney General has not expressly disavowed the testimony of his witnesses and, therefore, will deny Duke Kentucky's motion to strike.

2. The Attorney General argues that the Final Order fails to address his recommendation as to the treatment of income tax savings for the first three months of 2018. The Attorney General points out that Duke Kentucky, in rebuttal testimony, provided an adjustment to its test-year revenue requirement to reflect \$110,762 in tax benefits that the company accrued from January 1, 2018, to when new base rates

become effective. The Attorney General recommends a reduction of \$795,759 to Duke Kentucky's revenue requirement related to income tax savings for the first three months of 2018.

Duke Kentucky argues that the Attorney General improperly raised this issue for the first time in his post-hearing brief as there was no instance prior to the hearing in which the Attorney General either agreed with or challenged Duke Kentucky's proposal on this issue. Duke Kentucky also contends that the Attorney General's calculations are incorrect because the Attorney General's formula uses a pre-tax rate of return for the old rate case that is based on a higher tax rate, higher debt rates, and a higher equity ratio. Duke Kentucky further points out that the Attorney General's calculations incorrectly uses a new pre-tax rate of return that is based on a lower tax rate, the 2010 debt rates, and the 2010 capital structure.

Having reviewed the Attorney General's petition, the response, and the reply, and being otherwise sufficiently advised, the Commission finds that a rehearing should be granted on this issue. The Commission notes that \$110,762 in tax benefits for the first three months of 2018, as proposed by Duke Kentucky, were included in the calculation of the \$8,428,645 revenue requirement awarded in the Final Order.

3. The Attorney General requests a rehearing to ascertain the specific adjustments the Commission made, both to rate base and operating expenses, in order to conclude that an \$8,428,645 million increase is reasonable. Duke Kentucky raises the similar issue in its petition for rehearing. The Commission finds that a rehearing should be granted for this issue as discussed above.

IT IS THEREFORE ORDERED that:

1. Duke Kentucky's petition for rehearing is granted in part and denied in part as discussed in the findings herein.
2. The Attorney General's petition for rehearing is granted in part and denied in part as discussed in the findings herein.
3. Duke Kentucky's motion to strike is denied.
4. The Final Order shall be amended to the limited extent as set forth in the findings herein.
5. All other provisions of the Final Order shall remain in full force and effect.
6. A procedural schedule shall be established by a separate Order for the processing of this matter on rehearing.

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By the Commission



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