

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF DUKE)	
ENERGY KENTUCKY, INC. FOR AN ORDER)	CASE NO.
TO ENTER INTO UP TO \$25,000,000)	2022-00335
PRINCIPAL AMOUNT OF CAPITAL LEASE)	
OBLIGATIONS)	

ORDER

On October 3, 2022, Duke Energy Kentucky, Inc. (Duke Kentucky) submitted an application for authority to enter into Capital Lease Obligations (Capital Leases) of up to a \$25 million principal amount over a period ending December 31, 2024. Duke Kentucky proposes to utilize the Capital Leases as another form of financing for capital requirements.

There are no intervenors in this proceeding. Duke Kentucky responded to one round of discovery. On November 30, 2022, the Commission entered an Order continuing this proceeding beyond the 60-day period specified in KRS 278.300(2).

The matter now stands submitted to the Commission for a decision.

LEGAL STANDARD

The Commission reviews requests for financing under the criteria found in KRS 278.300. Three elements must be met for the Commission to approve financing: (1) the financing is for some lawful object within the corporate purposes of the utility; (2) the financing is necessary or appropriate for or consistent with the proper performance by the

utility of its service to the public and will not impair the utility's ability to perform that service; and (3) the financing is reasonably necessary and appropriate for such purpose.

PROPOSED CAPITAL LEASES

Duke Kentucky proposed to enter into agreements “from time to time over a period ending December 31, 2024” for up to \$25 million Capital Leases.¹ Duke Kentucky maintained that the Capital Leases will have structures and terms similar to other forms of debt financing, but with the potential to lower the overall cost associated with financing property acquisitions.² According to Duke Kentucky, lessors with credit ratings higher than Duke Kentucky's can often secure capital at a lower cost and may be able to better utilize tax depreciation benefits than Duke Kentucky could secure and use as lessee, which may result in lower financing costs.³

Duke Kentucky stated that the Capital Leases could be used to lease a variety of assets including operating equipment, such as meters, computers, and office equipment; intangible property, including software and site licenses; office buildings; land; plant or equipment in service; plant under construction; or land, plant, or equipment to be acquired or constructed.⁴ Duke Kentucky explained that it does not have immediate plans to enter into a Capital Lease and is requesting authority to do so for “flexibility” in evaluating financing alternatives.⁵ Duke Kentucky further explained that the identity of the lessor,

¹ Application at 2.

² Application at 2. Also see Duke Kentucky's Response to Commission Staff's First Request for Information (Staff's First Request) (filed Nov. 9, 2022), Item 2. Duke Kentucky provided examples of journal entries for capital leases arrangements and explanations of how such arrangements are beneficial.

³ Application at 2.

⁴ Application at 3.

⁵ Duke Kentucky's Response to Staff's First Request, Item 6.

the lease terms, and lease cost would be determined if a Capital Lease was executed.⁶ Duke Kentucky asserted that the proceeds from the Capital Leases could be used for the following purposes: (1) necessary acquisitions of property and estimated capital expenditures of approximately \$156 million in 2022, \$272 million in 2023, and \$199 million in 2024; (2) re-financing existing property; and (3) additional expenditures contemplated by KRS 278.300.⁷

Duke Kentucky stated that it may enter into one or more participation agreements with its affiliates and a lessor in connection with the Capital Leases for the sole purpose of providing administrative efficiencies and for the convenience of the parties involved.⁸ At the end of each initial or renewal lease term, Duke Kentucky anticipates that it will have the following options: (1) renew the lease, (2) purchase the property, or (3) terminate the capital lease.⁹ Duke Kentucky asserted that it retain the obligation to pursue the best terms available for the structure selected.

DISCUSSION AND FINDINGS

Having reviewed the case record and being otherwise sufficiently advised, the Commission finds that Duke Kentucky failed to provide sufficient evidence to satisfy its burden of proof under KRS 278.300, and thus its application for authorization to enter into Capital Leases should be denied for the following reasons.

⁶ Application, Exhibit A at 1.

⁷ Application at 5.

⁸ Application at 4.

⁹ Application at 4 and 5.

Duke Kentucky failed to demonstrate that the Capital Leases are for a lawful object within Duke Kentucky's corporate purpose. Duke Kentucky's lawful corporate purpose, pursuant to KRS 278.030, is to provide adequate, efficient and reasonable service to the public with fair, just and reasonable rates for the service rendered. Duke Kentucky asserted that the expected use of the proceeds for the Capital Leases was for a corporate purpose, but the expected use contained an open-ended, broad list of possible uses for the hypothetical proceeds. Duke Kentucky failed to identify the specific use, costs, or terms for the Capital Leases; Duke Kentucky does not have specific plans to enter into Capital Leases; and Duke Kentucky provided expected, but ultimately speculative, uses for the estimated proceeds of the Capital Leases. Because Duke Kentucky cannot provide specific evidence upon which the Commission can render a decision, the Commission cannot determine that the Capital Leases are for a proper purpose.

Duke Kentucky similarly failed to provide substantial evidence that demonstrated that the Capital Leases would not impair Duke Kentucky's ability to provide service and is necessary to provide service. There is no evidence in the record that Duke Kentucky intends to enter into Capital Leases, nor is there definitive information regarding the costs, terms, or projected proceeds of Capital Leases. Duke Kentucky provides only theoretical, conclusory statements to support its request. Because Duke Kentucky cannot provide specific evidence upon which the Commission can render a decision, the Commission cannot determine that the Capital Leases would not impair Duke Kentucky's ability to provide service or that the Capital Leases are necessary to provide service.

For the same reasons set forth above, Duke Kentucky failed to provide substantial evidence that the Capital Leases are reasonably necessary and appropriate for Duke

Kentucky's lawful corporate purpose. Because Duke Kentucky cannot provide specific evidence upon which the Commission can render a decision, the Commission cannot determine that the Capital Leases are reasonably necessary and appropriate for Duke Kentucky's lawful corporate purpose.

Duke Kentucky noted that, in the past, the Commission approved similar requests regarding Capital Leases. The Commission notes that past approval of certain types of financing is not a guarantee that all future applications for the same type of financing will be approved because each application stands on its own facts and circumstances. The Commission further notes that previous Orders approving similar financing did not include findings of fact to support a legal finding.¹⁰ Here, the Commission enters a finding of fact that Duke Kentucky failed to provide sufficient evidence to support its request and that the failure to provide specific information precludes the Commission from rendering a decision in this matter. The evidence of record is speculative, broad, and overly vague; Duke Kentucky does not have specific plans to enter into a Capital Lease and cannot provide the specific or example information on the financing terms, costs, or proceeds that the Commission requires to make an informed decision based upon the evidence of record. If Duke Kentucky files a similar application in the future, the Commission encourages Duke Kentucky to provide specific or example information regarding potential Capital Leases, including the property being leased, the lessor, the lease amount and terms, and the use of the proceeds.


¹⁰ See Case No. 2020-00322, *Electronic Application of Duke Energy Kentucky, Inc. for an Order to Enter Into Up to \$25,000,000 Principal Amount of Capital Lease Obligations* (Ky. PSC Nov. 30, 2020).

IT IS THEREFORE ORDERED that:

1. Duke Kentucky's application for authorization to enter into Capital Leases is denied.
2. This case is closed and removed from the Commission's docket.

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PUBLIC SERVICE COMMISSION

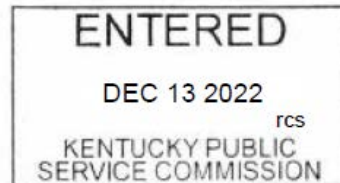


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ATTEST:



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