COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF DUKE ENERGY KENTUCKY, INC. FOR A DECLARATORY ORDER REGARDING RECOVERY OF COSTS TO CONVERT CUSTOMERS TO ALTERNATE SOURCE OF FUEL	)))))	CASE NO. 2025-00142

O R D E R

On June 3, 2025, Duke Energy Kentucky, Inc. (Duke Kentucky) filed an application for a declaratory order that certain costs would be recoverable from ratepayers. These costs are payments Duke Kentucky proposes to make to 25 "farm tap" customers who will lose gas service upon abandonment of an interstate transmission line operated by TC Energy for the purpose of converting their properties from natural gas service to an alternative fuel source.[1] Two affected customers, Morning Scott, LLC (Morning Scott) and Tom Mason, requested and were granted intervention.[2] Duke Kentucky responded to requests for information from Commission Staff[3] and the intervenors.[4] The parties

[1] Duke Kentucky's Application for a Declaratory Order (Application) (filed June 3, 2025) at 1.

[2] Order (Ky. PSC Mar. 10, 2026) at 7.

[3] Duke Kentucky's Response to Commission Staff's First Request for Information (Staff's First Request) (filed Jan. 9, 2026); Duke Kentucky's Response to Commission Staff's Second Request for Information (Staff's Second Request) (filed March 16, 2026).

[4] Duke Kentucky's Response to Morning Scott's First Request for Information (Morning Scott's First Request) (filed Mar. 16, 2026); Duke Kentucky's Response to Tom Mason's First Request for Information (Mason's First Request) (filed Mar. 16, 2026).

each filed an initial brief addressing the merits of Duke Kentucky's application,[5] and Duke Kentucky and Mason filed reply briefs.[6]

No party requested a formal hearing, and this matter stands ready for a decision.

LEGAL STANDARD

807 KAR 5:001, Section 19(1) provides that:

> The commission may, upon application by a person substantially affected, issue a declaratory order with respect to the jurisdiction of the commission, the applicability to a person, property, or state of facts of an order or administrative regulation of the commission or provision of KRS Chapter 278, or with respect to the meaning and scope of an order or administrative regulation of the commission or provision of KRS Chapter 278.

An application for a declaratory order shall, among other things, "[c]ontain a complete, accurate, and concise statement of the facts upon which the application is based," "[f]ully disclose the application's interest," "[i]dentify all statutes, administrative regulations, and orders to which the application relates," and "[s]tate the applicant's proposed resolution or conclusion."[7] The issuance of a declaratory order is permissive and at the discretion of the Commission.[8]

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[5] Duke Energy Kentucky, Inc.'s Memorandum Brief (Duke Kentucky's Initial Brief) (filed Mar. 30, 2026); Tom Mason's Memorandum Brief Addressing the Merits of Duke Kentukcy's Application (Mason's Initial Brief) (filed Mar. 30, 2026); and Morning Scott's Memorandum Brief Addressing the Merits of Duke Kentukcy's Application (Morning Scott's Initial Brief) (filed Mar. 30, 2026).

[6] Duke Energy Kentucky's Reply Brief (Duke Kentucky's Reply Brief) (filed Apr. 6, 2026); Tom Mason's Reply Brief to Duke Kentucky's Memorandum Brief Addressing the Merits of its Application(Mason's Reply Brief) (filed Apr. 6, 2026).

[7] 807 KAR 5:001, Section 19(2).

[8] *See* Case No. 2023-00309, *Electronic Petition of Kenergy Corp. for a Declaratory Order*, (Ky. PSC Aug. 6, 2024) at 4; Case No.2021-00370, *Electronic Investigation of the Rates, Services and Facilities of East Kentucky Power Company* (Ky. PSC Oct.8, 2021) at 5.

KRS 278.010(3)(b) defines "utility" in part as any person who owns and operates facilities used to provide gas service "to or for the public, for compensation." Pursuant to KRS 278.030, every utility must "furnish adequate, efficient and reasonable service." "Adequate service" is defined by KRS 278.010(14) in part as having sufficient capacity "to assure . . . customers reasonable continuity of service."

KRS 278.220 provides that the Commission may establish a uniform system of accounts (USoA) for utilities and in Duke Kentucky's case, that the system of accounts shall conform as nearly as practicable to the system adopted or approved by the Federal Energy Regulatory Commission (FERC). The FERC USoA provides for regulatory assets, or the capitalization of costs that would otherwise be expensed but for the actions of a rate regulator. It must be probable that the utility will recover approximately equal revenue through the inclusion of these costs for ratemaking purposes, with the intent to recover the previously incurred cost not a similar future cost.[9] The Commission has approved 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

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[9] ASC 980-340-25-1 provides, in full, as follows:

> 25-1 Rate actions of a regulator can provide reasonable assurance of the existence of an asset. An entity shall capitalize all or part of an incurred cost that would otherwise be charged to expense if both of the following criteria are met:
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> a. It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.
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> b. Based on available evidence; the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost. A cost that does not meet these asset recognition criteria at the date the cost is incurred shall be recognized as a regulatory asset when it does meet those criteria at a later date.

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.[10] Additionally utilities must seek Commission approval before recording regulatory assets, and requirements regarding the timing for applications seeking such approval.[11]

BACKGROUND

Duke Kentucky stated in its Application that it provides the service line and metering equipment to connect 27 customers to an interstate transmission pipeline owned and operated by TC Energy.[12] Duke Kentucky stated that as part of the "NKY Gate Enhancement Project," TC Energy intended to replace the transmission line, and that the customers now attached to and receiving gas from the existing line will not be able to tap onto the new line.[13] Duke Kentucky stated that TC Energy plans to abandon the existing line when the new lines are completed, "most likely in 2028."[14]

Duke Kentucky alleged that "[p]ursuant to KRS 278.010," it has an obligation to serve the 27 customers who will lose access to natural gas when the TC Energy line is abandoned.[15] Duke Kentucky stated it has considered the cost of constructing new pipeline facilities to connect these customers to its gas distribution system. Two of the

[10] Case No. 2008-00436, *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* (Ky. PSC Dec. 23, 2008), Order at 3–4

[11] Case No. 2016-00180, *Application of Kentucky Power Company for an Order Approving Accounting Practices to Establish Regulatory Assets and Liabilities Related to the Extraordinary Expenses Incurred by Kentucky Power Company in Connection with the Two 2015 Major Storm Events* (Ky. PSC Nov. 3, 2016), final Order at 9.

[12] Application at 3.

[13] Application at 1–2.

[14] Application at 2.

[15] Application at 3.

affected customers are in close proximity to Duke Kentucky's existing infrastructure and can be connected to and served from Duke Kentucky's distribution mains.[16] Duke Kentucky stated that its initial estimates for potential main extensions for each of the other 25 customers range from $150,000 to $2 million per customer, depending upon the location and geographic topography, with a total estimated capital cost of $16.3 million.[17]

In lieu of extending its distribution system to continue to serve these 25 customers, Duke Kentucky proposed to compensate them for the loss of service by assisting them with the cost to convert their properties to an alternative fuel source.[18] Duke Kentucky stated that conversion could require re-wiring, plumbing work, and the replacement of natural gas appliances.[19] Duke Kentucky stated that if the Commission issues a declaratory order finding that conversion costs are recoverable from rate payers, Duke Kentucky would contact each affected customer and "offer them . . . $25,000 to convert to an alternate fuel source and waive their right to request Duke Kentucky provide them with natural gas service."[20] Duke Kentucky estimated that the total cost of converting the 25 customers to an alternative fuel source would be about $650,000,[21] significantly less than the estimated capital cost of $16.3 million to connect the customers to its existing distribution mains.

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[16] Application at 3.

[17] Application at 2.

[18] Application at 2-3.

[19] Application at 3.

[20] Application at 4.

[21] Application at 3.

Duke Kentucky requested that the Commission "enter a declaratory order that the costs associated with converting these customers to an alternate fuel source are recoverable costs for the removal of existing services as a result of TC Energy's abandonment of its transmission line."[22] Duke Kentucky stated that it plans to file an application for approval to abandon its facilities serving these customers once Duke Kentucky converts the customers to an alternate fuel source.[23] Duke Kentucky asserted that "[a]ccounting guidance supports treating these conversions as retirement costs" together with the costs to remove the customer meters and tap equipment and to cap the service lines.[24]

POSITIONS OF THE PARTIES

Duke Kentucky stated in its Initial Brief that its request for an order declaring that it can recover conversion costs is "based upon its analysis that an alternative fuel conversion was the least cost alternative for all Duke Energy Kentucky customers."[25] Duke Kentucky stated it is willing to extend its distribution system to serve all 27 affected customers if that is what the Commission directs, in which case Duke Kentucky requested that the Commission confirm that extending its mains would be an ordinary extension of its existing system that would not require a Certificate of Public Convenience and Necessity (CPCN).[26]

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[22] Application at 4.

[23] Application at 4.

[24] Application at 3.

[25] Duke Kentucky Initial Brief at 2.

[26] Duke Kentucky Initial Brief at 2.

Duke Kentucky asserted that the cost to extend its mains to serve all but two of the affected customers would greatly exceed the cost to convert these customers' properties to an alternative fuel source, and that it is therefore proposing to compensate these customers for conversion costs rather than extending its system.[27] Duke Kentucky requested the Commission to enter an order that conversion costs would be "recoverable by Duke Kentucky as costs of removal of the existing services."[28]

Morning Scott alleged in its Initial Brief that in communications with affected customers, Duke Kentucky failed to disclose that as part of the NKY Enhancement Project, TC Energy planned to abandon the transmission line that supplies gas to their properties or that they would lose gas service.[29] Morning Scott attached to its Initial Brief a letter to it from Duke Kentucky dated April 21, 2025.[30] In the letter, Duke Kentucky stated it was collaborating with TC Energy on the NKY Gate Enhancement Project and that "it is currently working on a solution for our customers impacted by TC Energy's Northern Kentucky Enhancement Project," but did not disclose that TC Energy planned to abandon the transmission line or that they would lose gas service as a result.[31]

Morning Scott also attached to its Initial Brief a second letter from Duke Kentucky, dated October 20, 2025, regarding the NKY Gate Enhancement.[32] Morning Scott stated that Duke Kentucky again failed to disclose that gas service would be abandoned as part

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[27] Duke Kentucky's Initial Brief at 4.

[28] Duke Kentucky's Initial Brief at 5.

[29] Morning Scott's Initial Brief at 1.

[30] Morning Scott's Initial Brief, Exhibit A.

[31] Morning Scott's Initial Brief at 1.

[32] Morning Scott's Initial Brief, Exhibit B

of the NKY Enhancement Project and did not mention “the plan to convert existing customers to alternative fuel sources.”[33] Duke Kentucky stated in the letter that it “is actively evaluating the best ways to serve and support our valued customers who may be impacted by the proposed NKY Gate Enhancement Project.”[34] Morning Scott stated that Duke Kentucky again failed to mention that the impact could include the loss of gas service upon abandonment of the transmission line.[35]

Morning Scott stated that Duke Kentucky admitted it has been billing the affected customers as distribution customers because it does not have a farm tap tariff.[36] Morning Scott further asserted that Duke Kentucky admitted that pursuant to KRS 278.010 it has an obligation to serve these customers.[37]

Morning Scott asserted that Duke Kentucky failed to justify or provide any rationale why $25,000 was fair compensation for the loss of gas service and admitted that it had not performed site specific analysis of conversion costs.[38] Morning Scott claimed that conversion costs are not the only costs it will incur as a result of the loss of natural gas service, including the diminution of the value of its property, more expensive utility costs, and costs, including attorneys’ fees, expended “to hold Duke accountable to their duties under KRS 278.030.”[39]

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[33] Morning Scott’s Initial Brief at 2.

[34] Morning Scott’s Initial Brief, Exhibit B.

[35] Morning Scott’s Initial Brief at 2.

[36] Morning Scott’s Initial Brief at 2.

[37] Morning Scott’s Initial Brief at 2.

[38] Morning Scott’s Initial Brief at 3.

[39] Morning Scott’s Initial Brief at 4.

Morning Scott stated that Duke Kentucky's proposal would result in disparate treatment of utility customers. Morning Scott explained that the proposal would continue to treat two of the affected customers as utility customers and "jettison the rest."[40]

Morning Scott also addressed TC Energy's application to the FERC for approval to replace and abandon the segment of transmission at issue in this proceeding. Morning Scott argued that TC Energy owes the affected customers a duty to mitigate the harm pursuant to FERC's Policy Statement[41] on new interstate natural gas pipeline facilities.[42]

Morning Scott argued that to the extent TC Energy, not Duke Kentucky, owes the affected customers a duty to mitigate, Duke Kentucky "appears to lack standing in this action under 807 KAR 5:001," citing the requirement under section 19 of the regulation that an applicant for a declaratory order be "substantially affected."[43] Morning Scott argued that Duke Kentucky "appears to be the wrong applicant in the wrong forum."[44] Alternatively, Morning Scott argued that Duke Kentucky and TC Energy are indispensable parties in both this case and the pending FERC proceeding.[45]

Morning Scott concluded "that the Commission should deny the declaration sought by Duke and instead require it conduct substantial and meaningful analysis that will allow

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[40] Morning Scott's Initial Brief at 5.

[41] Certification of New Interstate Natural Gas Pipeline Facilities, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128 (2000), *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

[42] Morning Scott's Initial Brief at 8.

[43] Morning Scott's Initial Brief at 10.

[44] Morning Scott's Initial Brief at 10.

[45] Morning Scott's Initial Brief at 10.

the Commission to make a proper determination of all parties' duties, rights, and obligations related to the matters raised in the Application."[46]

Mason argued in his Initial Brief that it is undisputed that Duke Kentucky has an obligation to serve the customers who will lose gas service upon abandonment of the transmission line.[47] Mason stated that Duke Kentucky provides the service line and meter to furnish gas service to these customers and has been billing them for retail gas service as "utility customers." Mason argued that pursuant to KRS 278.010 and KRS 278.030, Duke has an obligation to provide these customers with adequate, efficient, and reasonable service."[48] Mason stated:

> Therefore, Duke is undeniably obligated to provide adequate, efficient, and reasonable service to Mason as its utility customer, and Mason is afforded all the protections of a utility customer. When the Pipeline is abandoned, Duke will fail to provide adequate, efficient, and reasonable service to Mason and the other affected customers, and each of them will be denied and refused service because there will be no natural gas service by Duke to the affected properties.[49]

Mason asserted that because Duke Kentucky will terminate gas service to the affected customers when the TC Energy line is abandoned, Duke Kentucky applied for a declaratory order and requested permission to offer each customer $25,000 to convert to an alternative fuel source in exchange for waiving their rights to continued gas service by Duke Kentucky.[50] Mason objected to the proposed settlement amount and claimed that

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[46] Morning Scott's Initial Brief at 10.

[47] Mason's Initial Brief at 2, 5.

[48] Mason's Initial Brief at 2.

[49] Mason's Initial Brief at 3.

[50] Mason's Initial Brief at 3.

the actual cost to convert his property will substantially exceed that amount.[51] Mason asserted that Duke Kentucky's estimate assumed that the only gas appliances on each property will be a furnace, water heater, fireplace, stove, and clothes dryer, and that in addition to these appliances, he has several additional fireplaces, a garage heater, and a pool heater, all of which would need to be replaced or converted to an alternative fuel.[52] Mason further asserted that Duke Kentucky used a generalized approach to come up with the proposed payment of $25,000 and failed to provide sufficient supporting information.[53] Mason asserted that since Duke Kentucky is proposing to abandon its duty to provide gas service to the affected customers, it should be required to cover the actual conversion costs or at provide sufficient information regarding costs for the Commission to make a more informed decision.[54]

In its Reply Brief, Duke Kentucky stressed that the $25,000 figure is merely an estimate of the cost to convert customers.[55] Duke Kentucky referred to its responses to Morning Scott's requests for information, in which it stated that "Duke Energy Kentucky understands that every customer's situation is unique and the cost to convert might be less or more than $25,000 depending on the situation."[56] Duke Kentucky stated that "the costs will vary depending on location of the tank, size, number of appliances, if appliances

[51] Mason's Initial Brief at 3-4.

[52] Mason's Initial Brief at 4.

[53] Mason's Initial Brief at 4.

[54] Mason's Initial Brief at 5.

[55]Duke Kentucky's Reply Brief at 1.

[56] Duke Kentucky's Reply Brief at 1.

can be converted, and installation costs."[57] Duke Kentucky stated it was waiting on a decision in this case to begin negotiations with affected customers but that it is willing to consider the affected customers' estimates, quotes, and other information.[58]

Duke Kentucky acknowledged that it has not performed detailed engineering studies to estimate the costs to extend its distribution system to serve all affected customers.[59] Duke Kentucky stated that nonetheless it is "irrefutable" that extending its mains several miles would be a more costly alternative.[60]

In response to Morning Scott's standing argument, Duke Kentucky stated that TC Energy's plans not only impact its customers but also impact Duke Kentucky and its obligations to ratepayers directly.[61] Duke Kentucky stated that it is willing to work with its customers and the Commission to come up with the best solution for these negative impacts.[62]

In conclusion, Duke Kentucky stated that it requests the Commission to enter an order that conversion costs are recoverable as costs of removal existing services or otherwise direct Duke Kentucky to extend its system to continue servicing all affected customers along with confirmation that a CPCN would not be necessary.[63]

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[57] Duke Kentucky's Reply Brief at 1.

[58] Duke Kentucky's Reply Brief at 1-2.

[59] Duke Kentucky's Reply Brief at 2.

[60] Duke Kentucky's Reply Brief at 2.

[61] Duke Kentucky's Reply Brief at 2-3.

[62] Duke Kentucky's Reply Brief at 3.

[63] Duke Kentucky's Reply Brief at 3. The Commission notes that on May 4, 2026, Duke Kentucky filed an application with the Commission for a CPCN to construct a natural gas distribution project in Campbell, Pendleton, and Bracken Counties, Kentucky, to serve existing customers who will lose natural gas service upon abandonment of the TC Energy transmission line. (Case No. 2026-00114, *Electronic Application of Duke Energy Kentucky, Inc. for a Certificate of Public Convenience and Necessity to*

In his Reply Brief, Mason stated that Duke Kentucky appears to have changed its position and now states that it is not opposed to extending its existing distribution system to continue to serve all its customers to be affected by the abandonment of the TC Energy transmission line.[64] Mason stated he agrees that Duke Kentucky should be required to extend its existing system to each affected customer, and that this would satisfy Duke Kentucky's obligation to provide adequate, efficient, and reasonable service under KRS 278.030.[65]

Mason also stated that Duke Kentucky now admits that it is required to pay to affected customers the actual costs to convert their properties to an alternative fuel source.[66] Mason noted, however, that propane service is not utility service subject to KRS 278.030, and that the payment of conversion costs therefore would not satisfy Duke Kentucky's duty to provide adequate, efficient and reasonable service.[67] Mason argued that Duke Kentucky should be required to extend its infrastructure to serve all affected customers, but that if the Commission determines that the payment of conversion costs satisfies Duke Kentucky's service obligations, Duke Kentucky should be required to pay the actual costs to convert to an alternative fuel source.[68]

Construct Gas Distribution Lines in Campbell, Pendleton, and Bracken Counties, Kentucky, and Other General Relief (filed May 4, 2026)).

64 Mason's Reply Brief at 2.

65 Mason's Reply Brief at 2.

66 Mason's Reply Brief at

67 Mason's Reply Brief at 2.

68 Mason's Reply Brief at 2–3.

DISCUSSION

Duke Kentucky's Standing to Request Declaratory Order

Duke Kentucky's ability to request a declaratory order is governed by 807 KAR 5:001, Section 19(1), which states in relevant part that "[t]he commission may, upon application by a person substantially affected, issue a declaratory order with respect to the applicability to a person, property, or state of facts of an order or administrative regulation of the commission or provision of KRS Chapter 278." As noted above, Morning Scott, citing to 807 KAR 5:001, Section 19(1), argued that to the extent TC Energy, not Duke Kentucky, owes the affected customers a duty pursuant to FERC policies to mitigate the harm caused by the closure of TC Energy's pipeline that Duke Kentucky is the wrong applicant to bring this action and that it is in the wrong forum. Morning Scott also argued that either TC Energy is an absent, indispensable party in this proceeding, or Duke Kentucky is an absent, indispensable party in the separate FERC action addressing the closure of TC Energy's pipeline. Morning Scott's arguments appear to be based on the contention that Duke Kentucky will not be "substantially affected" by the declaration requested in this case and, to the extent TC Energy owes a duty to mitigate harm to the affected customers, that issues raised in this matter—specifically TC Energy's duties pursuant to FERC requirements—fall outside of the subject matter that may be addressed pursuant to 807 KAR 5:001, Section 19(1), and KRS Chapter 278.

As an initial matter, this case raises issues other than the respective duties of Duke Kentucky and TC Energy to the affected customers. Duke Kentucky stated in its application that it was seeking a declaration that "the costs associated with converting [the affected customers] to an alternate fuel source are recoverable costs for the removal of existing services as a result of TC Energy's abandonment of its transmission line,"[69] and Duke Kentucky clarified in response to requests for information that it was more specifically seeking:

1. A declaration that the conversion costs "are necessary, and fair, just and reasonable to provide service, consistent with KRS 278.030;"[70] and
2. A declaration that the conversion costs are properly classified as removal costs "for the removal of existing services" pursuant to FERC's Code of Federal Regulation, Title 18, Chapter I, Subchapter C, Part 101, No. 10,[71] or in the alternative, authority for a regulatory asset to defer the conversion costs for later rate recovery.[72]

Thus, Duke Kentucky's primary requests pertain to the recoverability of costs through retail rates and the accounting treatment for such costs, both of which are within the Commission's rates and services jurisdiction pursuant to KRS Chapter 278.[73]

Duke Kentucky's requests do implicitly raise threshold questions, discussed in more detail below, regarding whether Duke Kentucky is providing jurisdictional gas

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[69] Application at 4.

[70] Duke Kentucky's Response to Staff's First Request, Item 1.

[71] Duke Kentucky's Response to Staff's First Request, Item 1; Duke Kentucky's Response to Staff's Second Request, Item 1.

[72] Duke Kentucky's Response to Staff's Second Request, Item 2.

[73] *See* KRS 278.040 (8) ("The commission shall have exclusive jurisdiction over the regulation of rates and service of utilities, but with that exception nothing in this chapter is intended to limit or restrict the police jurisdiction, contract rights or powers of cities or political subdivisions."); KRS 278.220 (The commission may establish a system of accounts to be kept by utilities subject to its jurisdiction, or may classify utilities and establish a system of accounts for each class, and may prescribe the manner in which such accounts shall be kept. The system established shall conform as nearly as practicable to the uniform system of accounts prescribed by the National Association of Regulatory Utility Commissioners, except . . . the system established for gas and electric companies shall conform as nearly as practicable to the system adopted or approved by the Federal Energy Regulatory Commission.").

service to the affected customers and the extent of any resulting duty to provide service pursuant to KRS Chapter 278, because those issues could affect whether the payments should be recovered from other retail customers. However, like the rate and accounting issues discussed above, those issues relate to Duke Kentucky and are squarely within the Commission's exclusive rates and services jurisdiction pursuant to KRS Chapter 278.[74]

The extent of the obligation owed by TC Energy to mitigate the harm caused by the closure of its pipeline pursuant to FERC statutes, regulations, or policies is not directly at issue in this case. Rather, the likelihood that FERC might find that TC Energy owes a duty is only relevant as a fact that might affect the reasonableness of Duke Kentucky's payment of the conversion costs,[75] and therefore, Duke Kentucky's ability to recover the conversion costs in rates from its other retail customers. The rates of Duke Kentucky's retail gas customers is an issue within the exclusive jurisdiction of the Commission pursuant to KRS Chapter 278,[76] and any determination as to Duke Kentucky's ability to recover costs by the Commission would not have any binding effect on TC Energy's duty

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[74] *See City of Greenup v. Kentucky Public Service Commission*, 182 S.W.3d 535 (Ky. App. 2005) (finding "that a quasi-judicial agency such as the PSC, like a Court, has authority, by implication, to determine its own jurisdiction"); *see also* KRS 278.040 (7) ("The commission shall regulate utilities, enforce the provisions of [KRS Chapter 278] and the rules and administrative regulations promulgated hereunder, and exercise all powers necessary and incidental thereto.").

[75] To the extent that TC Energy has a duty to mitigate the harm, they or their customers should arguably bear a portion of the costs, which should arguably reduce Duke Kentucky's share of the costs.

[76] *See Kentucky Public Service Commission v. Conway*, 324 S.W.3d 373, 382-3 (Ky. 2010) (finding that the Commission had plenary authority to allow a mechanism for the expediated recovery of costs where not expressly prohibited by statute); *see also* KRS 278.040 (8) ("The commission shall have exclusive jurisdiction over the regulation of rates and service of utilities, but with that exception nothing in this chapter is intended to limit or restrict the police jurisdiction, contract rights or powers of cities or political subdivisions."); KRS 278.220 (The commission may establish a system of accounts to be kept by utilities subject to its jurisdiction, or may classify utilities and establish a system of accounts for each class, and may prescribe the manner in which such accounts shall be kept.")

pursuant to federal law, if any, that will potentially be determined in the FERC proceeding. Thus, the issues presented in this case are properly within the Commission's jurisdiction, and TC Energy is not a necessary party to this proceeding.

Although the exercise of jurisdiction and the utility before the Commission are appropriate, there are legitimate questions regarding whether Duke Kentucky's application is procedurally proper. For instance, the only risk to Duke Kentucky of paying the conversion costs without the requested declaratory order is that the costs may later be excluded from rates and, given the size of the payments as compared to Duke Kentucky's annual revenue, that result would arguably not have a substantial effect on Duke Kentucky. Further, the recoverability of specific costs are generally properly addressed in applications for rate adjustments,[77] and the request for a regulatory asset should have been specifically included in the application pursuant 807 KAR 5:001, Section 14, as either the requested relief or alternative relief.[78] Finally, Duke Kentucky's initial application, which was only four pages in length, also arguably failed to comply with 807 KAR 5:001, Section 19(2), in that it provided very limited facts and very limited to no reference to the applicable statutes, regulations, and orders to which the application relates.

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[77] The recoverability of a particular cost is generally determined through a determination of whether rates are fair, just and reasonable, pursuant to KRS 278.030. Rates are generally amended pursuant to a proposed rate change by a utility, a complaint, and an investigation by the Commission. *See* KRS 278.180; KRS 278.260. Even if 807 KAR 5:001, Section 19(1), could be interpreted as being broad enough to encompass a request for a finding that a specific cost is reasonable, and therefore, could be included in rates in the future, it would be impractical and inefficient to address the reasonableness of individual costs through a declaratory order process separate from rate proceedings in which parties representing ratepayers are likely to be involved.

[78] *See* 807 KAR 5:001, Section 14(1) ("Each application shall state the full name, mailing address, and electronic mail address of the applicant, and shall contain fully the facts on which the application is based, with a request for the order, authorization, permission, or certificate desired and a reference to the particular law requiring or providing for the information.").

However, some of the issues raised in Duke Kentucky's application—such as the status of the affected customers under Kentucky law and whether the conversion costs are properly classified as removal costs pursuant to the FERC system of accounts[79]—do fall within the subject matter that can be addressed under 807 KAR 5:001, Section 19.[80] Duke Kentucky will also be substantially affected by the resolution offered by this order given the complex mix of interconnected issues discussed in more detail below. Additionally, Duke Kentucky clarified the nature of the relief it was seeking or requested alternative relief during the pendency of the case. While this matter may have been processed more efficiently if those issues were fully developed in the application, all relevant parties had notice of the issues addressed in this order and the Commission is within its authority to address those issues in this case.[81] Thus, while the Commission

[79] The Commission is required, pursuant to KRS 278.220, to adopt a system of accounts as near as practical to the FERC system of accounts for jurisdictional gas utilities, but the Commission has authority to make changes to that system of accounts where appropriate. Thus, while reviewing the reviewing whether the conversion costs are removal costs pursuant to the FERC system of accounts, the Commission is making a determination regarding how they should be treated under KRS Chapter 278 and is not making a decision that would be binding on how FERC applies its system of accounts.

[80] Section 19(1) of 807 KAR 5:001 specifically allows for declaratory orders with respect to the jurisdiction of the Commission. It also allows for a declaratory order with respect to the applicability to a "state of facts of an order or administrative regulation of the commission or provision of KRS Chapter 278," and 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." Both the status of the affected customers and the applicability of an accounting standard or treatment, as distinguished from the reasonableness of a particular rate, would fall within that subject matter.

[81] *See Iola Capital v. Public Service Commission of Kentucky*, 659 S.W.3d 563 (Ky. App. 2022) (in which the Court of Appeals affirmed the circuit court's dismissal of an appeal alleging, among other things, that the Commission acted improperly in granting a CPCN for a gas pipeline as part of a rate case where the utility had initially alleged that the CPCN was not needed but requested a CPCN for the pipeline in the alternative when concerns about its position were raised during the case); *see also* 807 KAR 5:001, Section 19(8) (which allows the Commission addressing an application for a declaratory order to take "any action necessary to ensure a complete record, to include holding oral arguments on the application and requiring the production of additional documents and materials, and may extend the time for the filing of a reply or response under this section").

could decline to address Duke Kentucky's requests,[82] the Commission may, in its discretion, address the issues raised by Duke Kentucky pursuant to KRS Chapter 278 and 807 KAR Chapter 5.

If Duke Kentucky were the only party that would be affected, the Commission potentially would have denied this application for the reasons discussed above and for some of the reasons raised in the dissent.[83] However, the Commission finds that addressing Duke Kenutucky's requests, subject to the limitations discussed herein below, is in the public interest and in the interest of the affected customers. The substantive findings of this order, as discussed below, simply provide Duke Kentucky some certainty as to the reasonableness and accounting treatment for the conversion costs. Those findings allow Duke Kentucky the opportunity to negotiate payments with the affected customers before the closure of TC Energy's pipeline without making a specific finding as to what those payments should be or making an ultimate determination as to the jurisdictional status of the affected customers or any obligation owed by TC Energy. Thus, the Commission finds that Duke Kentucky's requests should not be denied based on a lack of standing or on procedural grounds.

[82] *See* Case No. 2020-00095, *Electronic Application of Kenergy Corp. for a Declaratory Order* (Ky. PSC Mar. 11, 2020), Order ("The Commission notes that 807 KAR 5:001, Section 19, gives the Commission discretion regarding whether to accept an application for a declaratory order even where a declaratory order may be otherwise appropriate.").

[83] The Commission also notes that Duke Kentucky had requested an expedited order when this case was filed. However, Duke Kentucky's application could have been addressed more quickly if the issues and support for the application had been more fully developed therein. In future applications, the Commission would encourage Duke Kentucky to be more explicit about what it is requesting; provide a more complete factual record supporting its request; identify the relevant statutes, regulations, or orders; and request and support any relief sought in the alternative in the event its declaratory order is denied.

Jurisdictional Status and Obligation to Provide Service

As discussed above, Duke Kentucky clarified that it was seeking a determination that the conversion costs "are necessary, and fair, just and reasonable to provide service, consistent with KRS 278.030."[84] A duty to furnish "adequate, efficient and reasonable service" is owed by "[e]very utility" pursuant to KRS 267.030(2).[85] "Adequate service" is defined, in part, as "having sufficient capacity . . . to assure . . . customers reasonable continuity of service."[86] Thus, a threshold question in this matter is whether Duke Kentucky is providing jurisdictional gas service to the affected customers such that it owes them a duty pursuant to KRS 278.030(2) to provide a reasonable continuity of service, and if so, the extent of that duty.[87]

KRS 278.010(3)(b) defines a "utility," in part, as any person who owns and operates facilities used to provide gas service "to or for the public, for compensation."[88] Duke Kentucky does own and operate facilities used to furnish gas service to the affected customers, for compensation. The service at issue here, however, is provided through direct taps on the interstate transmission line of an unaffiliated third-party and was provided to some customers, at least initially, on a conditional and limited basis in

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[84] Duke Kentucky's Response to Staff's First Request, Item 1.a.

[85] KRS 278.030(2).

[86] KRS 278.010(14).

[87] If the customers are not "utility" customers, then there would be no statutory duty to provide service. If the Commission finds that Duke Kentucky's service to the affected customers is jurisdictional gas service and that, therefore, Duke Kentucky has an obligation to provide a "reasonable" continuity of service, then there would also be a question as to the extent of that obligation.

[88] KRS 278.010(3)(b) defines "utility" in part as any person "who owns, controls, operates or manages any facility used . . . for or in connection with . . . [t]he . . . furnishing of natural or manufactured gas . . . to or for the public, for compensation . . . ."

connection with the construction of pipeline. Thus, whether the service to the affected customers is jurisdictional service subject to the plenary authority of the Commission turns on whether Duke Kentucky operates these facilities to provide gas service "to or for the public" within the meaning of KRS 278.010(3)(b).[89]

The Commission has held that the defining characteristic of a public utility is service to, or readiness and intent to serve, an indefinite public, which has a legal right to demand the utility's service.[90] A public utility expressly holds itself out to the general public and may not refuse any legitimate demand for service.[91] An entity demonstrates its intent to offer service to the public when it "holds [itself] out as willing to serve all who apply up to the capacity of [the] facilities. It is immaterial . . . that [the] service is limited to a specified area, and [the] facilities are limited in capacity."[92]

Providing what is traditionally characterized as utility service does not create the presumption that an entity is a public utility; there must also be an intent to provide the service to or for the public.[93] The characterization of a service as to or for the public is

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[89] KRS 278.010(3)(b) defines "utility" in part as any person "who owns, controls, operates or manages any facility used . . . for or in connection with . . . [t]he . . . furnishing of natural or manufactured gas . . . to or for the public, for compensation . . . ."

[90] Case No. 2018-00372, *Electronic Investigation of Commission Jurisdiction Over Electric Vehicle Charging Stations* (Ky. PSC June 14, 2019).

[91] Case No. 1999-00205, *Chris Warner and Charles Norton v. Verna Hills Neighborhood Association, Inc.* (Ky. PSC May 8, 2000); 64 Am. Jur. 2d Public Utilities § 2.

[92] Case No. 2018-00372, *Electronic Investigation of Commission Jurisdiction Over Electric Vehicle Charging Stations* (Ky. PSC June 14, 2019), at 14-15; Case No. 2011-00302, *Application of Citizens National Bank of Somerset, Kentucky for an Order Approving a Transfer of Ownership and Control*, Order at 5 (Ky. PSC Jan. 20, 2012);

[93] Case No. 2000-00075, *Petition of Kentucky Pioneer Energy, L.L. C. for Declaratory Order* (Ky. PSC July 13, 2000).

not determined by the number of customers served by the utility, and the Commission has held that "the public" might be one or more end-users.[94]

The Commission has found that utility service that is limited to a defined, privileged class of persons is not service to or for the public. The Commission specifically has found that the provision of service limited to classes such as tenants of a mobile home park,[95] members of a neighborhood association,[96] and the tenants of an apartment complex is non-jurisdictional service.[97] The Commission has also found gas service limited to property owners located within one half mile of a gathering line and thus entitled to service pursuant to KRS 278.485 is not considered to or for the public even though the service was not provided by the owner/operator of the gathering line because service was limited to a privileged class of property owners.[98] The Commission's cases on this subject, however, are fact specific with respect to where the line is between serving the public and serving a limited, privileged class of persons.

For instance, in Case No. 1999-00130, the Commission found that the owner of a gas line previously used as a gathering line that provided service only to those entitled to gas service pursuant to KRS 278.485 became a "utility," as defined by

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[94] Case No. 297, *An Investigation of the Impact of Federal Policy on Natural Gas to Kentucky Consumers and Suppliers* (Ky. PSC May 19, 1987).

[95] Case No. 90-169, *Application of Metropolitan Sew District for Approval to Acquire and Operate the Fairhaven Mobile Home Village Sewage Treatment Plant* (Ky. PSC June 22, 1990).

[96] Case No. 93-315, *Application of Verna Hills Neighborhood Association, Inc. for an Order Authorizing Verna Hills Ltd. to Transfer Its Assets to Applicant and for determination of Jurisdictional Status* (Ky. PSC Sept. 16, 1993).

[97] Case No. 96-448, *An Investigation of the Rates, Charges, Billing Practices and Provision of Utility Service by Envirotech Utility Management Services* (Ky. PSC Apr. 29, 1997) (water service limited to tenants in an apartment complex was not to or for the public).

[98] Case No. 2018-00263, *Georgia Johnson V. Peoples Gas KY, LLC* (Ky. PSC Mar. 27, 2020), Order at 14-15.

KRS 278.010(3)(b), when the line it owned stopped being used as a gathering line and the owner continued to provide service to the customers' it was previously required to serve pursuant to KRS 278.485.[99] The Commission obtained injunctive relief from the Franklin Circuit Court based on that finding and it was affirmed in an unpublished decision by the Court of Appeals, which held that the owner of the former gathering line was a utility as defined by KRS 278.010(3)(b).[100]

Conversely, in Case No. 2018-00263, Peoples Gas KY, LLC (Peoples Gas) owned the gas meters, service taps, and other facilities used to make the service taps onto a gathering line, but Peoples Gas did not own the gathering line. The Commission found that the evidence supported a finding that Peoples Gas only served those entitled to service pursuant to KRS 278.485.[101] Thus, despite the fact that it did not own the gathering line to which the taps were made, the Commission held that Peoples Gas "does not furnish retail gas service 'to or for the public,' but rather provides service to a limited class of persons who, based on proximity to the production facilities, are entitled to gas service pursuant to KRS 278.485," and therefore, found that Peoples Gas was not a utility.[102] Notably, KRS 278.485 requires that the owners of a gathering pipeline provide non-firm service to certain property owners within 1/2 mile of the gathering line under

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[99] Case No. 1999-00130, *In the Matter of the Gas Group Alleged Violations of KRS 278.020, KRS 278.160; 807 KAR 5:022, Sections 14(5)(a); 14(5)(c)(2); 13(9), and 807 KAR 5:023, and 49 CRF 192.707(a); 192.707(d)(2); 192.615, and 49 CFR 199* (Ky. PSC Spt. 2, 1999).

[100] *See Basil C. Pollitt and The Gas Group, Inc. v. Commonwealth of Kentucky, Public Service Commission*, No. 2004-CA-001516-MR , 2005 WL 2573987 (Ky. Ct. App. 2005).

[101] Case No. 2018-00263, *Georgia Johnson V. Peoples Gas KY, LLC* (Ky. PSC Mar. 27, 2020), Order at 14.

[102] Case No. 2018-00263, *Georgia Johnson V. Peoples Gas KY, LLC* (Ky. PSC Mar. 27, 2020), Order at 14.

rules that differ from those applicable to jurisdictional utilities, and it was the requirement to provide this alternative service that formed the primary basis for the Commission's decisions that such service is not utility service to and for the public.

While Duke Kentucky refers to the affected customers at issue here as farm tap customers, which is commonly used to refer to customers entitled that receive service pursuant to KRS 278.485, the evidence presented in this case is that the TC Energy pipeline at issue is a transmission line, not a gathering line and that the affected customers therefore are not receiving service pursuant to KRS 278.485. The term "farm tap" customer, however, is also often applied to rural property owners, like the 27 affected customers, who are located along a transmission pipeline and who receive service by direct tap on the pipeline.

"Farm taps" on interstate transmission lines were often created in connection with the construction of a transmission line, with a landowner receiving limited, non-firm gas service in exchange for granting an easement to the transmission line company. In fact, there is evidence that at least some of the affected customers or their predecessors in interest obtained direct-tap service in connection with the construction of the transmission line at issue and subject to an Agreement for Conditional Limited Time Gas Service (Farm Tap Agreement) between the applicant (i.e., the customer), the owner of the transmission line, and a distribution company. Duke Kentucky produced two such agreements.[103] The transmission company in both agreements was Columbia Gas Transmission Corporation, which is the corporate predecessor of the current transmission line owner and operator.[104]

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[103] Duke Kentucky's Response to Staff's First Request, Item 8, Attachments 5 and 6.

[104] Duke Kentucky's Response to Staff's First Request, Item 8, Attachments 5 and 6.

The Farm Tap Agreements provided that gas service by direct tap on the transmission line was made available at the sole discretion of the transmission company.[105] The Farm Tap Agreements further provided service is made available to the applicant only because the transmission company makes gas available to the distribution company for resale to the applicant, and that the distribution company has the absolute right to terminate service upon 30 days' notice if, among other reasons, it becomes necessary to relocate or abandon the transmission line.[106] In the event service was terminated because of the replacement or abandonment of the transmission line, the transmission company agreed to pay to the applicant, in full satisfaction of any claims against the transmission company or distribution company, alternative fuel costs for a period of time determined by how long the applicant has had service under the agreement.[107] Additionally, the two Farm Tap Agreements provided have Book and Page numbers indicating recordation in a county clerk's land records.[108] The agreements recite they were entered into by the parties "for themselves and their heirs, successors and assigns."[109]

Also, in response to a request for information, Duke Kentucky filed a tap release template that was emailed to it by a representative of Columbia Gas Transmission/TC Energy. The tap release is styled "Release of Gas Rights and Natural Gas Tap Rights" and provides that the Landowner "does hereby release Columbia, its parent, affiliate(s),

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[105] Duke Kentucky's Response to Staff's First Request, Item 8, Attachments 5 and 6.

[106] Duke Kentucky's Response to Staff's First Request, Item 8, Attachments 5 and 6.

[107] Duke Kentucky's Response to Staff's First Request, Item 8, Attachments 5 and 6.

[108] Duke Kentucky's Response to Staff's First Request, Item 8, Attachments 5 and 6.

[109] Duke Kentucky's Response to Staff's First Request, Item 8, Attachments 5 and 6.

successors and assigns, from any and all obligation to provide or supply free and/or paid natural gas to the Landowner and Landowner's respective heirs, successors and assigns."[110] This template and two of the contracts produced by Duke Kentucky support the possibility that at least some of the customers were receiving service offered to landowners on which the pipeline was constructed in connection with the construction of the pipeline.

The Commission has not explicitly addressed whether service offered by a direct-tap on a transmission pipeline pursuant to a limited use contract such as the Farm Tap Agreements would be considered "utility" service as that term is used in KRS 278.010(3). There are arguments both in favor of and against the interpretation that service from such taps on an interstate transmission line provided in exchange for an easement would not be service to or for the public, but neither Duke Kentucky nor intervenors addressed those arguments.[111] The nature of the service provided to each of the affected customers is also not clear, in part because Duke Kentucky does not have or was unable to provide information regarding how all of the direct taps were established. The Commission is mindful, however, that a decision on those issues could affect other cases and entities not currently before the Commission. Thus, the Commission is reluctant to address those issues in this case.

The Commission finds, however, that this specific matter may be addressed without resolving whether and when customers receiving service through direct-taps on

[110] Duke Kentucky's Response to Staff's Second Request, Item 9, Attachment.

[111] This appears to be because they support a finding that the customers are jurisdictional utility customers, since such a finding would support Duke Kentucky's request to recover the costs and intervenors interests in having Duke Kentucky mitigate any harm caused by the pipeline closure.

an interstate transmission line are customers of a "utility" as defined by KRS 278.010(3). While some of the evidence is incomplete, Duke Kentucky did present evidence that could support a finding that the affected customers were receiving "utility" service, including that Duke Kentucky has treated them like utility customers and served them at rates consistent with those charged to utility customers.[112] For that reason, there is a colorable argument that Duke Kentucky has some obligation to the affected customers. Given that potential argument and the alleged difference between the conversion costs and the alternatives, it would be reasonable to attempt to resolve this matter through the payment of such conversion costs. The Commission, therefore, finds that conversion costs paid by Duke Kentucky to compensate the affected customers for the loss of gas service upon the abandonment of the TC Energy transmission line are recoverable costs, subject to a future prudency review as discussed in more detail below. In making this finding, however, the Commission makes no determination regarding whether the affected customers are "utility" customers or if Duke Kentucky has an obligation to serve them pursuant to KRS 278.030.

Reasonableness of Individual Payments

As noted above, the Commission finds that payment of conversion costs in exchange for a release of any potential duty to serve would be a more reasonable resolution of this situation than extending mains to the affected areas based on cost estimates provided by Duke Kentucky that show the cost of extending the mains would

[112] *See* Duke Kentucky's Response to Staff's First Request, Item 3(a) and (f) (indicating that the customers are served at the tariffed rate for residential customers); Duke Kentucky's Response to Staff's First Request, Item 8, Confidential Attachments 1 through 6 (which includes more recent service agreements for 6 customers indicating that they are being served at tariffed rates and under terms and conditions that are consistent with those in the tariff).

be materially higher than the estimated costs of conversion. The Commission, however, does not approve any specific cost or amount as reasonable.

Duke Kentucky stated in its Application that it had "determined that a fair amount to compensate these customers for the costs of conversion to an alternate fuel is $25,000."[113] Duke Kentucky subsequently clarified that this is only a rough estimate used for the purpose of comparing the total estimated costs of paying customers to convert fuel sources versus extending its distribution system to the customers.[114] Thus, the Commission will review the payments for reasonableness when finalized to determine whether they are reasonable on an individual basis and may be included in the cost of service. The Commission finds that Duke Kentucky should provide documentation of the payments and testimony regarding their reasonableness in the rate case in which it requests to recover the amounts in rates.

Accounting Treatment

As noted above, Duke Kentucky's Application sought a declaration that "the costs associated with converting [the affected] customers to an alternate fuel source are recoverable costs for the removal of existing services as a result of TC Energy's abandonment of its transmission line."[115] Duke Kentucky clarified in response to requests for information that it was seeking a declaration that the costs are properly classified as removal costs "for the removal of existing services" pursuant to FERC's system of accounts, specifically, FERC's Code of Federal Regulation, Title 18, Chapter I,

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[113] *See e.g.* Application at 3.

[114] Duke Kentucky's Response to Morning Scott's First Request to Duke Kentucky, Item 9.

[115] Application at 4.

Subchapter C, Part 101, No. 10.[116] If Duke Kentucky is permitted to record the costs as "costs of removal" pursuant to the FERC system of accounts, it would reduce accumulated depreciation by the amount of the payments, which would effectively allow it to defer those payments for future recovery.

Duke Kentucky's Application, however, does not seek approval of the cost to remove the meters and other equipment Duke Kentucky owns and operates to provide farm tap service to the affected customers. Rather, it seeks a declaration that it can recover from ratepayers the cost to compensate the affected customers for the loss of service by paying to convert their properties to an alternative fuel source.

The relevant section of the FERC system of accounts defines "costs of removal" as "the cost of demolishing, dismantling, tearing down or otherwise removing gas plant, including the cost of transportation and handling incidental thereto."[117] The cost to convert the properties of the affected customers to an alternative fuel source would not be related to the physical removal of the equipment nor to the restoration of properties after the equipment is removed. Duke Kentucky has not cited any support for treating the payment of conversion costs as removal costs, and based upon the record before it, the Commission finds that the payment of such costs would not qualify as costs of removal of existing gas facilities.

Duke Kentucky requested, in the alternative, that if the Commission finds the conversion costs would not be costs of removal, that it be authorized to record a

[116] Duke Kentucky's Response to Staff's Second Request, Item 1.

[117] FERC's Code of Federal Regulation, Title 18, Chapter I, Subchapter C, Part 101, No. 10.

regulatory asset for the amounts to defer for later rate recovery.[118] The Commission has established parameters for expenses that qualify for regulatory asset treatment. Approval of a regulatory asset is not approval of recovery. The recovery of a regulatory asset is determined in a subsequent rate case. Regulatory asset treatment simply allows the utility the possibility to recover expenses outside of its test period.

Duke Kentucky's payment of conversion costs to customers does not squarely fit into any of the categories for which the Commission has traditionally granted regulatory asset treatment. The proposed conversion costs, however, would be non-recurring and unusual expenses such that they could be considered to be extraordinary and not reasonably anticipated, at least when generally setting rates. Thus, under the circumstances of this case, the Commission finds that Duke Kentucky should be permitted to record a regulatory asset for the payment the conversion costs for consideration in its next base rate case.

The Commission further finds that Duke Kentucky should file with this Commission, within 30 days from the date final actual cost amounts are known, a statement setting forth the total costs incurred and amounts deferred to a regulatory asset. Further, as noted above, Duke Kentucky should provide documentation of the payments and testimony regarding their reasonableness in the rate case in which it requests to recover the amounts in rates.

Ordinary Course of Business

In light of the foregoing, the Commission finds that Duke Kentucky's alternative request for approval to extend its pipeline infrastructure to connect all affected customers

[118] Duke Kentucky's Response to Staff's Second Request, Item 2.

to its distribution system in the ordinary course of business, which was not raised in the application, is denied without prejudice as moot and because it was not sufficiently supported by the record in this case.

IT IS THEREFORE ORDERED that:

1. Duke Kentucky's Application for Declaratory Order is approved, in part, and denied, in part.

2. Amounts paid by Duke Kentucky to the 25 customers who will lose gas service upon abandonment of the TC Energy Line and who cannot be readily connected to Duke Kentucky's distribution system for the purpose of converting the properties of said customers to an alternative fuel source are, subject to a prudency review by the Commission as discussed herein above, recoverable expenses.

3. Duke Kentucky's alternative request for approval to extend its pipeline infrastructure to connect all affected customers to its distribution system in the ordinary course of business and without obtaining a CPCN is denied without prejudice.

4. Duke Kentucky's request for a declaration that the conversion costs are properly classified as removal costs "for the removal of existing services" pursuant to FERC's Code of Federal Regulation, Title 18, Chapter I, Subchapter C, Part 101, No. 10 is denied.

5. Duke Kentucky is authorized to establish a regulatory asset for the costs to convert existing customers to alternative fuel sources in relation to the abandonment of a transmission line by TC Energy.

6. Duke Kentucky shall provide documentation of the payments and testimony regarding the reasonableness of the payments in the rate case in which it requests recovery of the regulatory asset in rates.

7. Duke Kentucky shall file with the Commission, within 30 days from the date final actual cost amounts are known, a statement setting forth the total costs incurred and amounts deferred to a regulatory asset.

8. Any documents filed in the future pursuant to ordering paragraph 7 herein shall reference this case number and shall be retained in the post-case correspondence file.

9. This case is closed and removed from the Commission's docket.

Entered on this 31st day of July, 2026.

PUBLIC SERVICE COMMISSION

Angie Hatton
Chair

Mary Pat Regan
Vice Chair

Andrew W. Wood
Commissioner

Barry L. Mayfield
Commissioner

Vice Chair, Mary Pat Regan
Dissenting

ATTEST:

Linda C. Bridwell, PE
Executive Director

Dissenting Opinion of Vice Chair Mary Pat Regan in Case No. 2025-00142

I respectfully dissent.

The majority permits this matter to proceed before the Kentucky Public Service Commission despite the fact that the central dispute presented is not, in substance, a ratemaking controversy or a question of utility service regulation properly committed to the Commission's specialized jurisdiction. Rather, the controversy concerns responsibility for conversion and abandonment-related costs arising from actions initiated by a non-jurisdictional interstate pipeline operator.

The Commission is a creature of statute and possesses only those powers expressly conferred by the General Assembly or necessarily implied therefrom. While the Commission unquestionably retains authority over rates and utility services within the Commonwealth, that authority is dictated by the Commission's limited administrative jurisdiction through statute and regulation.

Here, Duke Kentucky seeks advance approval for the recovery of costs associated with the conversion of customers to alternate fuel sources due to the anticipated abandonment of interstate transmission facilities. However, the reasonableness, and therefore, Duke Kentucky's ability to recover the conversion costs from other customers is dependent, at least in part, on whether the owner of the interstate transmission pipeline, TC Energy, owes an obligation to the affected customers due to its abandonment of its interstate pipeline.

The threshold issue of TC Energy's obligation does not involve either prospective retail rates or tariff administration. Rather, the issue concerns responsibility for the consequences of pipeline abandonment by a non-jurisdictional interstate pipeline and the equitable allocation of resulting conversion expenses among the affected entities and customers. That issue implicates federal pipeline laws and policies, contractual relationships, and potential civil liability questions that are outside of the Commission's delegated authority.

The procedural posture also demonstrates why this is the wrong forum to resolve the threshold question of TC Energy's obligation. The intervenors sought participation because they face direct economic and operational consequences arising from the abandonment decision itself. Their interests are not merely incidental to utility ratemaking—they potentially concern substantive rights under federal law and policies beyond the Commission's regulatory reach. The Commission cannot adequately adjudicate those interests within the constrained framework of an administrative declaratory proceeding.

While the majority did not explicitly resolve TC Energy's obligation to the affected customers, the approach in the majority's order creates substantial procedural confusion. If every downstream economic consequence of interstate infrastructure abandonment may be reframed as an issue of recoverability of a utility expense for Commission review before the obligation of the transmission owner is determined, the Commission will be placed in a position of either deciding threshold questions outside its jurisdiction or making a determination on the reasonableness and recoverability of expenses before the threshold questions are resolved. Such an outcome is incompatible with Kentucky administrative law principles requiring strict construction of agency authority and may place Kentucky utility customers on the hook for costs that should be borne by transmission owners.

While there are issues raised by the application that are within the Commission's jurisdiction, it is premature to address them before a decision is made in another forum on the threshold issue of TC Energy's obligation to the affected customers. By entertaining this proceeding in the current format and at the current time, before the appropriate authority has made a determination as to TC Energy's obligation to the affected customers, the Commission sets a precedent of preapproval that is improper.

Additionally, even assuming the threshold question of TC Energy's obligation had been resolved, there were a number of other procedural flaws in Duke Kentucky's application. For instance, the recoverability of the costs should generally be addressed as part of a request for a rate adjustment, and Duke Kentucky's request for a regulatory asset should have been made as part of an application instead of in response to a request for information. Duke Kentucky's initial application also did not adequately identify or explain the issues. Those flaws would justify the Commission, in its discretion, denying Duke Kenutucky's application.

The prudent course would be dismissal without prejudice, allowing the parties to pursue resolution of the threshold question of TC Energy's obligation in the appropriate judicial or federal regulatory forum before any cost-recovery request is considered by this Commission. Only after TC Energy's obligations are resolved elsewhere should the Commission determine whether any resulting costs may lawfully and reasonably be included in rates.

Because I believe this proceeding is premature and exceeds the proper procedural role of the Commission, I respectfully dissent.

Mary Pat Regan
Vice Chair, Dissenting

ATTEST:

Linda C. Bridwell, PE
Executive Director

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