COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF DUKE ENERGY KENTUCKY, INC. FOR AN ORDER APPROVING THE ESTABLISHMENT OF A REGULATORY ASSET FOR THE ENGINEERING COSTS INCURRED ASSOCIATED WITH ITS WITHDRAWN LIMESTONE CONVERSION AND MATS COMPLIANCE STRATEGIES	)))))))	CASE NO. 2025-00281

O R D E R

On August 20, 2025, Duke Energy Kentucky, Inc. (Duke Kentucky) filed an application, pursuant to KRS 278.030(1), KRS 278.040(2), KRS 278.220, requesting approval of the establishment of a regulatory asset for expenses incurred related to engineering and design for its withdrawn Certificate of Public Convenience and Necessity (CPCN) for an environmental compliance project to convert its magnesium enhanced hydrated lime (MEL) handling system at its East Bend Generating Station (East Bend) to a limestone-based reagent handling system (Limestone Conversion Project) and system upgrades for compliance with the 2024 Mercury Air Toxics Standard (2024 MATS) update.[1] Duke Kentucky explained that the deferral request in this proceeding is for the total costs incurred in developing and pursuing its CPCN for the Limestone Conversion Project that would otherwise have been capitalized, including those investments that

[1] Case No. 2024-00152, *Electronic Application of Duke Energy Kentucky, Inc. for a Certificate of Public Convenience and Necessity to Convert its Wet Flue Gas Desulfurization System from a Quicklime Reagent Process to a Limestone Reagent Handling System at its East Bend Generating Station and for Approval to Amend its Environmental Compliance Plan for Recovery by Environmental Surcharge Mechanism* (CPCN Application) (filed July 25, 2024).

would have been required to meet the 2024 MATS update.[2] Duke Kentucky requested the Commission issue an Order on the Application on or before December 31, 2025, so that Duke Kentucky may appropriately reflect the requested regulatory assets on its books prior to the conclusion of the 2025 calendar year.[3] No party requested intervention in this proceeding. Duke Kentucky responded to two requests for information from Commission Staff.[4] Pursuant to a Staff issued Notice, an Informal Conference was held on December 10, 2025,[5] supplemental responses were filed by Duke Kentucky,[6] and a memo was filed summarizing the conference.[7]

This matter now stands submitted for decision by the Commission.

LEGAL STANDARD

KRS 278.220 sets out 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. The Financial Accounting Standards Board's Statement of Financial Accounting Standards No. 71, Accounting for the Effects of Certain Types of Regulation,

[2] Application at 3.

[3] Application at 3.

[4] Duke Kentucky's Response to Staff's First Request for Information (Staff's First Request) (filed Oct. 3, 2025), Duke Kentucky's Response to Staff's Second Request for Information (Staff's Second Request) (filed Dec. 1, 2025).

[5] Notice of Informal Conference (Ky. PSC Dec. 8, 2025).

[6] Duke Kentucky's Supplemental Responses to Staff's Second Request (filed Dec. 12, 2025).

[7] Informal Conference Memorandum (Ky. PSC Dec. 15, 2025).

which was codified as Accounting Standards Codification (ASC) 980, Regulated Operations, provides the criteria for recognition of a regulatory asset.[8] Pursuant to ASC 980, 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.

The Commission has established (1) parameters for expenses which qualify for regulatory asset treatment, (2) a requirement that utilities seek Commission approval before recording regulatory assets, and (3) requirements regarding the timing for applications seeking such approval. The Commission has approved regulatory assets when a utility has incurred: (1) an extraordinary, nonrecurring expense which could not have reasonably been anticipated or included in the utility's planning; (2) an expense resulting from a statutory or administrative directive; (3) an expense in relation to an

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[8] 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.

industry sponsored initiative; or (4) an extraordinary or nonrecurring expense that over time will result in a saving that fully offsets the cost.[9]

BACKGROUND

Duke Kentucky is an investor-owned utility engaged in the business of furnishing natural gas and electric services to various municipalities and unincorporated areas in Boone, Bracken, Campbell, Gallatin, Grant, Kenton, and Pendleton counties, Kentucky.[10]

On July 25, 2024, Duke Kentucky filed its Application in Case No. 2024-00152[11], seeking approval of a CPCN, an amendment to its environmental compliance plan for the Limestone Conversion Project, and for cost recovery (CPCN Application).[12] The need for the CPCN Application was due to: (1) a lack of competitive market for magnesium enhanced lime (MEL); (2) increasing costs of MEL for the last several years that adversely impact the economies of Duke Kentucky's East Bend station; (3) fuel security concerns due to limited MEL supply and a lack of willingness by a supplier to enter into longer-term contracts; and (4) compliance with the 2024 MATS.[13] Duke Kentucky filed a motion to withdraw its CPCN Application without prejudice on December 17, 2024, due to having supplemented the record to reflect changes in facts such as updated analysis regarding

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[9] 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) at 4.

[10] Application at 2.

[11] Case No. 2024-00152, *Electronic Application of Duke Energy Kentucky, Inc. for a Certificate of Public Convenience and Necessity to Convert its Wet Flue Gas Desulfurization System from a Quicklime Reagent Process to a Limestone Reagent Handling System at its East Bend Generating Station and for Approval to Amend its Environmental Compliance Plan for Recovery by Environmental Surcharge Mechanism* (filed July 25, 2024).

[12] CPCN Application.

[13] CPCN Application at 5–12.

the existing MEL supply pricing and to allow parties to have an opportunity to fully brief issues following an evidentiary hearing before the statutory deadline for the Commission to issue its decision.[14]

Duke Kentucky filed a new and revised Application on January 28, 2025, in Case No. 2025-00002,[15] for a CPCN to complete the Limestone Conversion Project, amend its environmental compliance plan, and adjust its environmental surcharge (Revised CPCN Application). Duke Kentucky noted that the justification for the Revised CPCN Application was nearly identical to that of the prior CPCN Application, but included additional evidence to demonstrate how the Limestone Conversion Project, including upgrades to the wet flue gas desulfurization (WFGD) system, would allow Duke Kentucky to meet the 2024 MATS update.[16] The Commission consolidated the record in Case No. 2024-00152 into the Revised CPCN Application case by Order dated February 4, 2025.[17]

Duke Kentucky stated that, in the Spring of 2025, Duke Kentucky's current MEL supplier unexpectedly approached Duke Kentucky with a new MEL supply offer and showed a willingness to enter into a significantly longer-term contract at more favorable pricing over the contract term than previous offers.[18] Duke Kentucky stated that this was

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[14] Case No. 2024-00152, Motion to Withdraw (filed Dec. 17, 2024).

[15] Case No. 2025-00002, *Electronic Application of Duke Energy Kentucky, Inc. for a Certificate of Public Convenience and Necessity to Convert Its Wet Flue Gas Desulfurization System from a Quicklime Reagent Process to a Limestone Reagent Handling System at its East Bend Generating Station and for Approval to Amend its Environmental Compliance Plan for Recovery by Environmental Surcharge Mechanism* (Revised CPCN Application) (filed Jan. 28, 2025).

[16] Application at 4–5.

[17] Case No. 2025-00002, Feb. 4, 2025 Order.

[18] Application at 5.

a direct result of Duke Kentucky's pursuit of the Revised CPCN Application.[19] Duke Kentucky explained that the offered length of the new contract extended through most of the remaining anticipated life of East Bend with a significantly discounted price per ton than had been previously offered over the last five years; however, the offer was contingent upon Duke Kentucky withdrawing its Revised CPCN Application and agreeing not to pursue a Limestone Conversion Project during the contract term.[20] Duke Kentucky stated that, following weeks of negotiations to appropriately balance risks among the supplier, customer, and Duke Kentucky, Duke Kentucky's analysis showed that accepting a revised MEL long-term supply contract was the least cost, most reasonable solution for customers for the foreseeable contract term.[21]

Duke Kentucky filed a Motion for Leave to Withdraw its Revised CPCN Application without prejudice on May 14, 2025.[22] The Motion for Leave explained that withdrawing the Revised CPCN Application was in the best interests of customers due to two primary reasons: (1) new and unanticipated information that did not exist at the time of the filing of the Revised CPCN Application; specifically a significantly more favorable and secure MEL supply contract opportunity presented itself; and (2) that as a result of unforeseeable and unpredictable potential changes in federal environmental policy, the need for the

[19] Application at 5.

[20] Application at 5.

[21] Application at 5–6.

[22] Case No. 2025-00002, Motion for Leave to Withdraw Application (filed May 14, 2025).

environmental upgrades at East Bend merited further review by Duke Kentucky.[23] The Commission granted Duke Kentucky's motion for leave by Order dated May 29, 2025.[24]

Duke Kentucky noted that on June 11, 2025, after the Commission granted Duke Kentucky's Motion for Leave, the United States Environmental Protection Agency (U.S. EPA) proposed to repeal certain amendments to some environmental regulations that affect coal-fired generation including the 2024 MATS provisions, reverting those standards to pre-2024 requirements.[25] Duke Kentucky stated that, if this repeal is accomplished as anticipated, one of the main compliance drivers for the Limestone Conversion Project will be eliminated.[26]

Duke Kentucky stated that, in developing the Limestone Conversion Project, including the embedded 2024 MATS compliance strategies, Duke Kentucky incurred reasonable and necessary costs to support its CPCN Application and Revised CPCN Application (jointly, CPCN Applications), including engineering, surveying, evaluation and design costs, and labor, which it stated were necessary to comply with environmental regulations to support Duke Kentucky's filing.[27] Duke Kentucky specified that it incurred approximately $6.0 million for the Limestone Conversion Project including project scope costs that were related to meeting the 2024 MATS Update.[28]

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[23] Application at 6.

[24] Application at 6.

[25] Application at 6.

[26] Application at 6.

[27] Application at 7.

[28] Application at 7.

REQUEST FOR A REGULATORY ASSET

Duke Kentucky explained that, had it continued to pursue its Revised CPCN Application, if approved by the Commission, the Application costs would be eligible for recovery through its Environmental Surcharge Mechanism (ESM), as part of Duke Kentucky's Environmental Compliance Plan, and argued that, by withdrawing the Revised CPCN Application, its only available path for recovery of these costs is through the creation of a regulatory asset.[29] Duke Kentucky argued that in accordance with Generally Accepted Accounting Principles (GAAP), absent a probability of recovery, it would have to write off the Application costs, which it argued would unfairly penalize Duke Kentucky and its shareholders for re-evaluating its environmental compliance strategies and changing course to do what is best for customers.[30] The costs included in this application are estimates, and Duke Kentucky will only defer the actual costs incurred for the expenditures discussed below.[31]

Duke Kentucky stated that, if it is still required to perform the MATS project as a result of the final decision regarding the U.S. EPA's proposal to repeal the 2024 MATS standard, then only the portion of the $6 million in Application costs associated with the Limestone Conversion Project, not associated with the work needed to comply with MATS, would be recorded to the regulatory asset.[32] In this event, Duke Kentucky would continue recording the portion of the $6 million in Application costs associated with MATS

[29] Application at 7.

[30] Application at 7-8.

[31] Application at 13.

[32] Application at 13.

compliance to the capital project associated with MATS compliance.[33] However, if, as Duke Kentucky anticipates it is no longer required to perform the MATS project as a result of the final decision, the entire estimated $6 million in Application costs would be recorded as a regulatory asset.[34]

Duke Kentucky asserted that its request to establish a regulatory asset for the expenses incurred in pursuit of its Limestone Conversion Project, including those incurred for meeting the 2024 MATS Update, satisfies the Commission's criteria for such accounting treatment, for the reasons discussed below.

Duke Kentucky argued that, had it continued to pursue the CPCN, and the Commission approved the project, it would have incurred and been eligible to recover the approximate $125 million in capital expense to construct the Limestone Conversion Project, as well as its ongoing costs of operation. However, by withdrawing the CPCN, Duke Kentucky only incurred approximately $6 million in costs, avoiding $125 million in capital expense, which if approved, would have been recovered in rates for many years.[35] Additionally, Duke Kentucky noted that by withdrawing the Revised CPCN Application, it was able to enter into a longer-term, reasonably priced MEL supply contract that produced immediate cost reductions for customers that will continue for several years.[36]

Duke Kentucky argued that the $6 million in Application costs are extraordinary, especially in comparison to its annual total net income.[37] For example, Duke Kentucky's

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[33] Application at 13-14.

[34] Application at 14.

[35] Application at 12.

[36] Application at 12-13.

[37] Application at 10.

2024 net income was approximately $101 million, and its 2023 net income was approximately $65 million, making the $6 million in costs approximately 6 to 9 percent of Duke Kentucky's total net income.[38] As such, Duke Kentucky argued that the $6 million in costs, if not deferred for future recovery, would have a material negative impact on Duke Kentucky's financial condition.[39]

Duke Kentucky argued that the Application costs were nonrecurring in that they were specific to developing and supporting the CPCN Applications, including design, engineering, and scope identification for the Limestone Conversion Project, and are not related to ongoing operations for the project or for existing environmental compliance equipment.[40] Further, Duke Kentucky argued that the withdrawal of the Revised CPCN Application was a result of changes in federal environmental policy and the unexpected willingness of its MEL Supplier to change its mind so to negotiate a longer-term contract at a significantly reduced price.[41]

Finally, Duke Kentucky argued that the Application costs it incurred could not have been anticipated or included in its planning.[42] At the time the costs were incurred, Duke Kentucky had every intention of pursuing the Limestone Conversion Project and stated it could not have foreseen the events that later unfolded leading to the withdrawal of the project, which was in the customers' best interest.[43] Duke Kentucky explained that the

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[38] Application at 10.

[39] Application at 10.

[40] Application at 10.

[41] Application at 10.

[42] Application at 10.

[43] Application at 10.

MEL supplier had previously rejected its numerous attempts to negotiate a lower priced and longer-term contract and was only willing to enter into short term contracts of one to two years in length, and that it lacked bargaining power to negotiate better deals due to a lack of competition for the reagent product.[44] Further, Duke Kentucky explained that it was only after it had pursued its Limestone Conversion Project CPCN that the supplier approached Duke Kentucky with new, longer-term, and lower-priced supply offers. When Duke Kentucky rejected the supplier's initial attempt at entering into a medium-term contract in the fall of 2024, the supplier was willing to offer a much longer-term contract at such a reduced price.[45]

DISCUSSION AND FINDINGS

The Commission has historically approved the establishment of regulatory assets where a utility has incurred (1) an extraordinary, nonrecurring expense which could not have reasonably been anticipated or included in the utility's planning; (2) an expense resulting from a statutory or administrative directive; (3) an expense in relation to an industry-sponsored initiative; or (4) an extraordinary or nonrecurring expense that over time will result in a saving that fully offsets the cost. Having considered the record and being otherwise sufficiently advised, the Commission finds that Duke Kentucky's request to establish a regulatory asset for expenses incurred related to engineering and design for its withdrawn CPCN Applications is granted.

The events which constituted this request were extraordinary in that the least-cost option to comply with environmental regulations was not available to Duke Kentucky at

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[44] Application at 11.

[45] Application at 11.

the time of fling its CPCN Applications. As the MEL supplier had previously rejected Duke Kentucky's numerous attempts to negotiate a lower priced and longer-term contract and was only willing to enter into short term contracts of one to two years in length.[46] Duke Kentucky could not have reasonably anticipated or included this in its planning. Duke Kentucky also demonstrated that once the MEL supplier was willing to offer a lower contract price, if Duke Kentucky had chosen to continue with the Limestone Conversion Project, it would have resulted in an approximate $15.6 million cost to customers.[47] Additionally, Duke Kentucky has demonstrated that these costs are non-recurring as they were specific to the development of the CPCN Applications. Therefore, the Commission finds that Duke Kentucky has met its burden of proof that the costs associated with the CPCN Applications were extraordinary, nonrecurring expenses which could not have reasonably been anticipated or included in the utility's planning

While Duke Kentucky has met its burden in establishing a regulatory asset, the Commission is not persuaded that all the costs included in Duke Kentucky's proposal were necessary in the material planning of its CPCN Applications. Therefore, the Commission finds that, in a base rate case in which Duke Kentucky requests recovery for the regulatory asset approved in this proceeding, Duke Kentucky should provide substantial evidence to the prudency of the costs included in the regulatory asset, specifically costs related to employee benefits and incentives. While the Commission understands that both contracted and in-house labor were necessary in the development of the CPCN Applications, the Commission will thoroughly investigate the included related

[46] Application at 11.

[47] Duke Kentucky's Response to Commission Staff's Second Request for Information, Item 3.

expenses and the necessity of those expenses in the material development of the CPCN Applications in the event that recovery of those expenses is requested in a subsequent proceeding.

Additionally, the Commission cautions Duke Kentucky that the approval of this regulatory asset request is completely fact-specific and should not be construed as an endorsement by the Commission that denied, or withdrawn applications are eligible for regulatory asset treatment in the future. The Commission's decisions in this case should not be considered as precedent in subsequent proceedings. In finding Duke Kentucky may establish regulatory asset, the Commission is also recognizing the unique, current environmental planning challenges that exist. The Commission notes that this contract does appear to be the least cost, most reasonable option for the customers of Duke Kentucky.

Finally, the Commission reiterates that approval of deferral accounting treatment does not constitute approval for recovery of the deferred expenses in a future rate proceeding. The Commission requires more information regarding the prudency of the costs associated with the CPCN Applications to determine the reasonableness of these costs being appropriate for rate recovery.

IT IS THEREFORE ORDERED that:

1. Duke Kentucky's request for authorization to establish a regulatory asset for the expenses incurred related to engineering and design for its withdrawn CPCN Applications is granted.

2. In the event that Duke Kentucky is still required to perform the MATS project as a result of the final decision regarding the U.S. EPA's proposal to repeal the 2024

MATS standard, then Duke Kentucky shall record only the approved portion of the actual Application costs associated only with the Limestone Conversion Project, not associated with the work needed to comply with MATS, to the regulatory asset.

3. The regulatory asset accounts established in this case are for accounting purposes only.

4. Duke Kentucky shall, within 14 days of service of this Order, file with the Commission the accounting entries made on its books to effectuate the creation of the regulatory assets.

5. Any documents filed in the future pursuant to ordering paragraph 4 herein shall reference this case number and shall be retained in the post-case correspondence file.

6. The amount, if any, of the regulatory assets authorized herein that is to be amortized and included in rates shall be determined in Duke Kentucky's next base rate case.

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

PUBLIC SERVICE COMMISSION

Chairman

Commissioner

Commissioner

ATTEST:

Executive Director

ENTERED

DEC 23 2025

jdc

KENTUCKY PUBLIC SERVICE COMMISSION

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