

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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	)	CASE NO.
LIMESTONE REAGENT HANDLING SYSTEM AT	)	2024-00152
ITS EAST BEND GENERATING STATION AND	)	
FOR APPROVAL TO AMEND ITS	)	
ENVIRONMENTAL COMPLIANCE PLAN FOR	)	
RECOVERY BY ENVIRONMENTAL SURCHARGE	)	
MECHANISM	)	

ORDER

On July 25, 2024, Duke Energy Kentucky, Inc. (Duke Kentucky), pursuant to KRS 278.020, KRS, 278.183, and 807 KAR 5:001 submitted an application to amend its Environmental Compliance Plan (Compliance Plan) to grant Duke Kentucky authority to recover the costs associated with its Compliance Plan amendment through its existing environmental surcharge, and for issuing a Certificate of Public Convenience and Necessity (CPCN) for the construction and conversion of its existing Wet Flue Gas Desulfurization sulfur dioxide (SO<sub>2</sub>) emissions system (WFGD) from a quicklime handling process to a limestone handling process to continue to meet existing environmental regulations. After two Informal Conferences (IC) with all relevant parties, Duke Kentucky filed a motion for leave to withdraw its application without prejudice on December 17, 2024, in order to refile in accordance with KRS 278.183(2), and requested that this case be incorporated into the record of the new case to be initiated by Duke Kentucky.

## SUCCESSION OF ORDERS FROM THE COMMISSION

On August 9, 2024, the Commission issued an Order outlining the process for receipt and payment of invoices for a qualified, competent consultant engaged by the Commission pursuant to KRS 278.183(4) as well as a procedural schedule in this matter. Thereafter, on a monthly basis, the consultant engaged by the Commission sent its invoices to the Commission for review and payment; the Commission included the invoices, as part of an Order, to Duke Kentucky for reimbursement for payment.<sup>1</sup>

On August 28, 2024, the Commission issued an Order granting intervention by the Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention (Attorney General) pursuant to KRS 367.150(8).

On September 4, 2024, the Commission issued an Order granting intervention by Sierra Club pursuant to 807 KAR 5:001, Section 4(11)(b). Sierra Club subsequently filed a motion to incorporate the record of Case No. 2024-00197 into the record of this case pursuant to 807 KAR 5:001, Section 11(5), which the Commission granted in its entirety as of any filings made prior to or as of September 27, 2024, by an Order issued on October 10, 2024. In addition, for the purpose of representing Sierra Club in this matter, the Commission admitted Nathaniel Shoaff and Kristin Henry *pro hac vice* by Order on November 26, 2024, and admitted Cassandra McCrae *pro hac vice* by Order on December 16, 2024.

## INFORMAL CONFERENCES

Pursuant to a Staff Notice issued on November 27, 2024, an IC was conducted on December 6, 2024. The purpose of the IC was to discuss scheduling and hearing

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<sup>1</sup> Order (Ky. PSC Aug. 9, 2024) at 2.

logistics. Staff also informed Duke Kentucky that the statutory date of this case would be January 25, 2025. After further discussion, the parties agreed to reconvene on December 13, 2024, for further discussions as to scheduling going forward after consultation with their respective represented entities.<sup>2</sup> On December 13, 2024, an IC was conducted, to continue the discussions from the IC held December 6, 2024. Duke Kentucky stated that the utility intended to withdraw its application. Duke Kentucky stated that, after notice was published again, it was going to restart the statutory clock by refiling. In addition, although Staff could not speak for the Commission, the parties expressed a desire to incorporate the current case record in the new case and to the extent possible, asked Staff to assist the parties in a smooth transition to the new case, including intervention and *pro hac vice* admittances.<sup>3</sup>

### DISCUSSION AND FINDINGS

Pursuant to 807 KAR 5:001, Section 5(1), Duke Kentucky filed a motion for leave to withdraw its application on December 17, 2024. Duke Kentucky argued that, following the submission of its initial application on July 25, 2024, new information came to light regarding the basis for its initial request, and although Duke Kentucky updated the record as quickly as possible and additional testimony for intervenors was permitted, this new information resulted in delays to the proceeding.<sup>4</sup> Duke Kentucky also argued that the basis for the request was to allow the Commission and parties sufficient time to review the application request, afford the parties due process, and a reasonable opportunity to

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<sup>2</sup> Informal Conference Memo (filed Dec. 11, 2024).

<sup>3</sup> Informal Conference Memo (filed Dec. 16, 2024).

<sup>4</sup> Duke Kentucky's Motion for Leave to Withdraw Application Without Prejudice (Motion) (filed Dec. 17, 2024) at 2.

brief the issues due to a rapidly approaching statutory deadline scheduled to occur on January 25, 2025, pursuant to KRS 278.183(2).<sup>5</sup>

In addition, Duke Kentucky requested that the Commission incorporate the record of the present case, Case No. 2024-00152, in the new proceeding once filed, with the hope that it would allow for an expeditious resolution in the new case and avoid unnecessary duplication of discovery for the intervening parties.<sup>6</sup>

Having considered the motion and the material at issue, the Commission grants Duke Kentucky's request to withdraw its application and makes several related findings. The Commission finds that all unsubmitted or unpaid invoices received from the consultant engaged by the Commission will be ordered to be paid, referencing this case number, by Duke Kentucky in accordance with the August 9, 2024 Order.

In order to simplify and expediate the processing of a future application relating back to this matter, the Attorney General should be granted intervention pursuant to KRS 367.150(8). Sierra Club should also be granted intervention in the matter in order to assist the Commission in developing the record while not complicating the proceedings. In fact, Sierra Club had already filed expert testimony related to the issues raised in this matter. Case No. 2024-00197<sup>7</sup> should also be incorporated into the record of the future matter pursuant to 807 KAR 5:001, Section 11(5), which in this matter the Commission granted in its entirety as of any filings made prior to or as of September 27, 2024, by an Order issued on October 10, 2024.

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<sup>5</sup> Duke Kentucky's Motion at 1.

<sup>6</sup> Duke Kentucky's Motion at 2.

<sup>7</sup> Case No. 2024-00197, *Electronic 2024 Integrated Resource Plan of Duke Energy Kentucky, Inc.*

The Commission should incorporate, in its entirety, the record from this matter into any new case initiated by Duke Kentucky mirroring the requests in this case. In addition, should Duke Kentucky decide to initiate a new case, it should be refiled and processed with a statutory date within six months of submittal pursuant to KRS 278.183(2).

Should Duke Kentucky refile its application relating back to this case, admittance of Nathaniel Shoaff, Kristin Henry, and Cassandra McCrae *pro hac vice* should be granted by the Commission to the extent possible; however, nothing in this order supersedes SCR 3.030 and the Kentucky Bar Association's sole discretion regarding *pro hac vice* admissions. Any attorney practicing in the Commonwealth of Kentucky pursuant to SCR 3.030 shall be required to file notice of the Bar Association's approval of such.

IT IS THEREFORE ORDERED that:

1. Duke Kentucky's motion to withdraw its application is granted.
2. The application filed by Duke Kentucky on July 25, 2024, is dismissed without prejudice.
3. Duke Kentucky shall be responsible for any unsubmitted invoices sent to Commission for review and payment according to the August 9, 2024 Order.
4. If Duke Kentucky files a new application relating back to this case, it shall reference this case and this Order in the new application.
5. If Duke Kentucky files a new application relating back to this case the Attorney General and Sierra Club shall be granted intervention. Duke Kentucky shall serve all parties with a copy of the new application.
6. Case No. 2024-00197 shall be incorporated into the record of the new case in its entirety as of any filings made prior to or as of September 27, 2024.

7. If Duke Kentucky files a new application relating back to this case, the record of this matter shall be incorporated in its entirety.

8. Re-admittance of Nathaniel Shoaff, Kristin Henry, and Cassandra McCrae *pro hac vice* will be granted to the extent possible; however, nothing in this Order supersedes SCR 3.030 and the Kentucky Bar Association's sole discretion on the matter.


9. If Duke Kentucky files a new application relating back to this case, it shall be refiled and processed with a statutory date within six months of submittal pursuant to KRS 278.183(2).

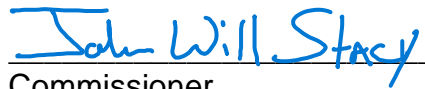
10. The hearing scheduled on Tuesday, January 14, 2025, at 9 a.m. Eastern Standard Time, is cancelled.

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

PUBLIC SERVICE COMMISSION

  
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Chairman

  
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Commissioner

  
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Commissioner

ATTEST:

   
\_\_\_\_\_  
Executive Director

ENTERED  
JAN 6 2025  
KENTUCKY PUBLIC SERVICE COMMISSION <sup>jdc</sup>

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