

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF EAST)	
KENTUCKY POWER COOPERATIVE, INC. FOR)	
AN ORDER APPROVING THE ESTABLISHMENT)	
OF A REGULATORY ASSET FOR THE)	CASE NO.
EXPENSES ASSOCIATED WITH THE REGIONAL)	2025-00193
TRANSMISSION EXPANSION PROCESS AND)	
EXPENSES ASSOCIATED WITH COAL)	
COMBUSTION RESIDUALS)	

ORDER

On June 27, 2025, East Kentucky Power Cooperative, Inc. (EKPC) filed an application seeking authority to establish a regulatory asset for (1) the expenses associated with the Regional Transmission Expansion Process (RTEP) and (2) the accretion and depreciation expenses associated with Coal Combustion Residuals legacy surface impoundment (Legacy CCR) asset retirement obligations (ARO). EKPC requested authority to establish regulatory assets for the expenses associated with RTEP through December 31, 2025, and the expenses associated with Legacy CCR AROs through all subsequent years.¹ Additionally, EKPC requested a decision no later than September 30, 2025, and, in the event that the Commission was unable to issue a decision by that date, requested the Commission direct EKPC to (1) record a credit to expenses and record a debit to the regulatory asset account for \$20,927,140, consisting of \$20,165,905 associated with RTEP and \$761,234 associated with depreciation and

¹ Application at 10, paragraph 27.

accretion expenses for the Legacy CCR AROs, in the 2025 financial statements to bring the regulatory asset account balance to the amount requested for 2025 and (2) to also record all accretion and depreciation in 2025 and subsequent years as regulatory assets.² No party requested intervention in this proceeding. EKPC responded to one request for information from Commission Staff.³ 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 EKPC's case, that the system of accounts shall conform as nearly as practicable to the system adopted or approved by the United States Department of Agriculture, Rural Utilities Service (RUS).⁴ The RUS 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, which was codified as Accounting Standards Codification (ASC) 980, Regulated Operations, provides the criteria for recognition of a regulatory asset.⁵

² Application at 10.

³ EKPC's Response to Commission Staff's First Request for Information (Staff's First Request) (filed July 30, 2025).

⁴ Codified as 7 CFR 1767. The current version of the RUS system of accounts became effective May 27, 2008, and is also published and referenced as RUS Bulletin 17678-1.

⁵ 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:

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 industry sponsored initiative; or (4) an extraordinary or nonrecurring expense that over time will result in a saving that fully offsets the cost.⁶

With respect to AROs, the RUS USoA states:

An asset retirement obligation represents a liability for the legal obligation associated with the retirement of a tangible long-lived asset that a company is required to settle as a result of an existing or enacted law, statute, ordinance, or written or

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.

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.

⁶ 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.

oral contract or by legal construction of a contract under the doctrine of promissory estoppel. An asset retirement cost represents the amount capitalized when the liability is recognized for the long-lived asset that gives rise to the legal obligation. The amount recognized for the liability and an associated asset retirement cost shall be stated at the fair value of the asset retirement obligation in the period in which the obligation is incurred.⁷

The RUS USoA requires that when a utility records the liability for an ARO, the electric utility plant giving rise to the legal obligation is to be charged with the associated asset retirement costs. The asset retirement costs are then depreciated over the life of the asset that gives rise to the ARO. In periods subsequent to the initial recording of the ARO, the utility shall recognize the period-to-period changes of the ARO due to the accretion of the liability. The utility shall monitor measurement changes of the ARO on a timely basis and shall recognize such changes as an adjustment to the liability and the corresponding electric utility plant.

KRS 278.183 states in applicable part “. . . a utility shall be entitled to the current recovery of its costs of complying with the Federal Clean Air Act as amended and those federal, state, or local environmental requirements which apply to coal combustion wastes and by-products from facilities utilized for production of energy from coal in accordance with the utility's compliance plan. . . .”

BACKGROUND

EKPC is an electric utility and generation and transmission cooperative that provides electric generation capacity and electricity to its 16-member distribution cooperatives, which, in turn, distribute and sell electricity at retail to approximately

⁷ 7 C.F.R. § 1767.15(y).

570,000 customers in 89 counties in Kentucky.⁸ EKPC owns and operates approximately 2,963 megawatts (MW) of net summer generating capacity and 3,265 MW of net winter generating capacity, comprised of coal-fired units, natural gas-fired units, landfill gas-to-energy facilities, solar farms, and purchased hydropower.⁹

RTEP:

EKPC defined the PJM promulgated RTEP as “a 24 month planning process that identifies reliability issues over a 15-year horizon and is guided by planning criteria established by PJM Interconnection (PJM), the North American Electric Reliability Corporation, Reliability First Corporation, and each member Transmission-Ownning utilities (TO)”.¹⁰ For projects that are identified and incorporated into the PJM RTEP, based on a list of criteria, certain PJM load zones are allocated costs, which are assigned to the relevant load zone and collected through a Transmission Enhancement Charge (TEC) by PJM.¹¹

EKPC provided that its TECs for RTEP projects for 2024 were approximately \$10.4 million and that, since integrating into PJM in 2013, its TECs have been, at most, \$14.2 million.¹² EKPC further provided that through May 2025, its TECs were approximately \$12.3 million and were projected to total approximately \$29.5 million for

⁸ Application at 1-2.

⁹ Application at 2.

¹⁰ Application at 4.

¹¹ Application at 4-5.

¹² Application at 5.

2025.¹³ EKPC updated its 2025 projection to include information for June 2025, though its projection did not materially change.¹⁴

Legacy CCR AROs:

In December of 2014, the Environmental Protection Agency (EPA) promulgated The Disposal of Coal Combustion Residuals from Electric Utilities Rule, 40 CFR part 257, Subpart D (CCR Rule). EKPC explained that this rule establishes the standards for the disposal, as non-hazardous waste and by-products, of Coal Combustion Residuals (CCR), which EKPC provided are the result of combustion of coal, and are also known as coal ash, coal combustion by-products and, as later included by the EPA, fly ash, bottom ash, boiler slag, and flue gas desulfurization materials generated from burning coal for the purpose of generating electricity by an electric utility.¹⁵ In 2015, a final rule governing CCR was issued by the EPA (2015 CCR Rule), which EKPC explained created regulations for managing CCRs, and imposed extensive new requirements for certain CCR impoundments and landfills.¹⁶ Finally, on May 8, 2024, the Legacy CCR Rule was published by the EPA, expanding the scope of the 2015 CCR Rule to include Legacy CCR Surface Impoundments (LSIs) and CCR Management Units (CCRMUs).¹⁷

EKPC produces coal-fired electrical generation and has several regulated CCR units at its generating facilities, including four permitted CCR landfills and the CCR surface impoundment at Spurlock Station, which EKPC explained is in the process of

¹³ Application at 5.

¹⁴ EKPC's Response to Staff's First Request, Item 1.

¹⁵ Application at 5-6.

¹⁶ Application at 6.

¹⁷ Application at 6.

closure by removal.¹⁸ Though it is evaluating any potential changes, timelines, and requirements for the Legacy CCR Rule, EKPC acknowledged that it must continue to prepare to comply with the Legacy CCR Rule unless, or until, new rules are promulgated.¹⁹ As such, EKPC recorded AROs at December 31, 2024, which it explained represented its best estimate of groundwater monitoring and closure certification costs at an LSI site, and for expected costs related to facility evaluations at various sites where CCRMUs areas of interest were identified.²⁰

Pursuant to the requirements of the RUS USoA, EKPC records depreciation expense for the ARO-related assets and accretion expense for the ARO-related liabilities on a monthly basis, which EKPC expects to be \$610,502 and \$150,732, respectively, for the year ended December 31, 2025.²¹ EKPC stated that it believes the ARO settlement costs will be recoverable through the Environmental Surcharge Mechanism (ES) when the costs to complete the projects are incurred; however, EKPC argued that this delayed recovery creates a mismatch of revenues and expenses in financial statements, due to expenses that are recognized as the ARO balances being accreted and depreciated, while the revenue will not be recognized until the actual project costs are recovered through the ES.²²

¹⁸ Application at 6.

¹⁹ Application at 7.

²⁰ Application at 7.

²¹ Application at 7.

²² Application at 7.

REQUEST FOR A REGULATORY ASSET

RTEP:

EKPC requested authorization to establish regulatory assets for the expenses associated with the RTEP through December 31, 2025, in the amount of \$20.2 million.²³ This amount represents EKPC's total projected TECs of approximately \$29.5 million for 2025, less its RTEP expenses embedded in base rates of \$9.3 million.²⁴ EKPC explained that the primary driver for its projected \$18.1 million increase in RTEP expenses for 2025, from approximately \$10.4 million in 2024, is an increase in EKPC's assigned costs for the RTEP project rebuilding the Mt. Storm-Valley 500kV line in the Dominion Energy Zone.²⁵ EKPC explained that its Solution-Based Distribution Factors (SBDFA) for this RTEP project increased from 6.65 percent in 2024 to 52.21 percent in 2025, which resulted in a change in annual cost allocation from \$2.5 million to \$21.7 million, respectively.²⁶ EKPC stated it anticipates that additional significant increases to the PJM assigned TECs will occur in the future, considering the load growth and generation deactivation trends along with evolution in transmission planning policy.²⁷ Without the proposed regulatory asset treatment for the RTEP expenses, EKPC projected its 2025 Times Interest Earned Ratio (TIER) would decrease to 0.96 given budgeted margin and interest expense, in which EKPC would not meet its debt covenants.²⁸ Additionally, EKPC explained that, in this

²³ Application at 10.

²⁴ Application at 5.

²⁵ Application at 5.

²⁶ Application at 5.

²⁷ Application at 5.

²⁸ EKPC's Response to Staff's First Request, Item 2b.

application, it is only requesting a one-time deferral of 2025 RTEP expenses in excess of the amount imbedded in base rates, given its request for an ongoing deferral for RTEP expenses in its rate case.²⁹

Legacy CCR AROs:

EKPC requested that Legacy CCR ARO-related depreciation and accretion expenses for 2025 and all subsequent years be recorded as a regulatory asset.³⁰ EKPC argued that the proposed treatment would defer recognition of its ARO expenses until recovery occurs, which would result in an appropriate matching of revenues and expenses in each accounting period.³¹ The proposed regulatory asset includes \$761,234 associated with Legacy CCR ARO-related expenses, which consists of depreciation and accretion expenses for the Dale LSI Ash Ponds Nos. 2, 3, and 4, as well as the Cooper, Spurlock, Smith, and Hancock Creek CCRMUs.³²

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.

²⁹ EKPC's Response to Staff's First Request, Item 6.

³⁰ Application at 8.

³¹ Application at 8.

³² Application, Exhibit 2.

RTEP:

Historically, the Commission has approved the establishment of a regulatory asset in which the costs are extraordinary, even while they may not have been non-recurring.³³ While the Commission acknowledges that these expenses are not non-recurring, the proposed deferral of RTEP expenses is an isolated request for only 2025 expenses. Additionally, the sharp increase in RTEP expenses from 2024 to 2025 is extraordinary in nature and could not have reasonably been anticipated or included in EKPC's planning. In exercising discretion to allow the creation of a regulatory asset, the Commission's overarching consideration is the context in which the regulatory asset is sought to be established and not necessarily the specific nature of the costs.

The consequences of denying the proposed regulatory asset treatment could negatively impact the overall financial condition of the utility. Additionally, the Commission notes that its historic authorization of requests to establish regulatory assets has typically been in response to requests by investor-owned utilities (IOU) rather than that of a cooperative utility. Unlike an IOU, EKPC has no shareholders to absorb the costs associated with RTEP expenses and has TIER metrics to achieve in order to prevent default. The financial consequences of a default will fall squarely upon EKPC's member distribution cooperatives and, ultimately, upon ratepayers. The Commission finds that the regulatory asset authorized herein should be for the amount of RTEP expenses in excess of what is recovered through base rates through December 31, 2025,

³³ Case No. 2008-00436, *The 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); the Commission approved EKPC's establishment of a regulatory asset associated with its non-FAC-recoverable forced outage replacement power costs based upon its need to satisfy the requirements of the debt covenants in its Private Credit Facility Agreement.

or approximately \$20,145.367. The Commission notes that the authorization of regulatory asset treatment for 2025 RTEP expenses does not constitute authorization for subsequent years, and the Commission reserves the evaluation of the deferral of all subsequent years of RTEP expenses in excess of the amount established in base rates for EKPC's rate case.

Legacy CCR AROs:

The Commission has historically approved similar requests to defer the ARO expenses to a regulatory asset. The Commission approved the establishment of regulatory assets for ARO-related depreciation and accretion expenses for Louisville Gas and Electric Company³⁴ and Kentucky Utilities Company³⁵ when those utilities adopted Statement of Financial Accounting Standards No. 143, Accounting for Asset Retirement Obligations.³⁶ Duke Energy Kentucky, Inc. received regulatory asset approval for ARO for the East Bend ash pond.³⁷ Big Rivers Electric Corporation received regulatory asset approval for the AROs for the Green and Station Two ash ponds,³⁸ and the Coleman ash

³⁴ Case No. 2003-00426, *Application of Louisville Gas and Electric Company for an Order Approving an Accounting Adjustment to be Included in Earnings Sharing Mechanism Calculations for 2003* (Ky. PSC Dec. 23, 2003).

³⁵ Case No. 2003-00427, *Application of Kentucky Utilities Company for an Order Approving an Accounting Adjustment to be Included in Earnings Sharing Mechanism Calculations for 2003* (Ky. PSC Dec. 23, 2003).

³⁶ Statement of Financial Accounting Standards No. 143 is now codified as ASC Topic 410.

³⁷ Case No. 2015-00187, *Application of Duke Energy Kentucky, Inc. for an Order Approving the Establishment of a Regulatory Asset for the Liabilities Associated with Ash Pond Asset Retirement Obligations* (Ky. PSC Dec. 15, 2015).

³⁸ Case No. 2015-00333, *Electronic Application of Big Rivers Electric Corporation for Authority to Establish Regulatory Assets for Expenses Related to the Coal Combustion Residuals Rule* (Ky. PSC Jan. 5, 2016).

pond, if legacy ponds were added to the CCR Rule.³⁹ EKPC received regulatory asset approval for the AROs for the Dale and Cooper stations' asbestos removal, ash ponds, and ash landfill⁴⁰ and the Smith station landfill.⁴¹

Based on the evidence of record and being otherwise sufficiently advised, the Commission finds that EKPC's request to establish regulatory assets for the expenses associated with the RTEP through December 31, 2025, and Legacy CCR AROs through all subsequent years should be granted.

IT IS THEREFORE ORDERED that:

1. EKPC's request for authorization to establish regulatory assets for the expenses associated with the RTEP through December 31, 2025, is granted.
2. EKPC's request for authorization to establish regulatory assets for the Legacy CCR ARO-related depreciation and accretion expenses for 2025 and all subsequent years is granted.
3. The regulatory asset accounts established in this case are for accounting purposes only.

³⁹ Case No. 2019-00435, *Electronic Application of Big Rivers Electric Corporation for Approval of Its 2020 Environmental Compliance Plan, Authority to Recover Costs through a Revised Environmental Surcharge and Tariff, the Issuance of a Certificate of Public Convenience and Necessity for Certain Projects, and Appropriate Accounting and Other Relief* (Ky. PSC Sept. 11, 2020).

⁴⁰ Case No. 2014-00432, *Application of East Kentucky Power Cooperative, Inc. for an Order Approving the Establishment of Regulatory Assets for the Depreciation and Accretion Expenses Associated with Asset Retirement Obligations* (Ky. PSC July 21, 2015).

⁴¹ Case No. 2018-00027, *Application of East Kentucky Power Cooperative, Inc. for an Order Approving the Establishment of a Regulatory Asset for the Depreciation and Accretion Expenses Associated with the Smith Station Landfill Asset Retirement Obligations* (Ky. PSC Mar. 8, 2018).

4. EKPC 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. EKPC shall file annually updated ARO calculations reflecting any studies, reports, or change in other assumptions for the Legacy CCR ARO balances as originally recorded on December 31, 2024. The annual update shall be based upon the balances as of December 31 of each year and the updated calculations shall be submitted at the same time EKPC files its annual report with the Commission.

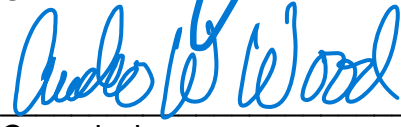
6. Any documents filed in the future pursuant to ordering paragraphs 4-5 herein shall reference this case number and shall be retained in the post-case correspondence file.

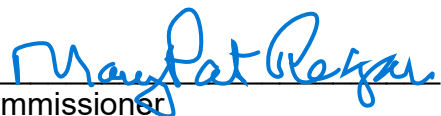
7. The amount, if any, of the regulatory assets authorized herein that is to be amortized and included in rates shall be determined in EKPC's next base rate case.

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

PUBLIC SERVICE COMMISSION


Chairman


Commissioner


Commissioner

ATTEST:


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