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VIA OVERNIGHT DELIVERY

October 30, 2015

Mr. Jeff Derouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard, P.O. Box 615
Frankfort, Kentucky 40602-0615

RECEIVED

NOV 02 2015

PUBLIC SERVICE
COMMISSION

Re: ***Case No. 2015-00187***
In the Matter of the 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

Dear Mr. Derouen:

Enclosed please find an original and eight copies of the *Responses of Duke Energy Kentucky, Inc. to Commission Staff's Fourth Set of Requests for Information*, for filing in the above referenced matter.

Please date-stamp the two copies of the letter and filing and return to me in the enclosed envelope.

Sincerely,

Rocco D'Ascenzo
Associate General Counsel
rocco.d'ascenzo@duke-energy.com

cc: Hon. Jennifer Hans

**COMMONWEALTH OF KENTUCKY
BEFORE THE
KENTUCKY PUBLIC SERVICE COMMISSION**

RECEIVED

NOV 02 2015

PUBLIC SERVICE
COMMISSION

In The Matter of:

The Application of Duke Energy Kentucky, Inc.,)
For an Order Approving the Establishment of a) Case No. 2015-00187
Regulatory Asset for the Liabilities Associated)
With Ash Pond Asset Retirement Obligations.)

**PETITION OF DUKE ENERGY KENTUCKY, INC.
FOR CONFIDENTIAL TREATMENT OF INFORMATION
CONTAINED IN ITS RESPONSES TO COMMISSION STAFF'S
FOURTH REQUESTS FOR INFORMATION**

Duke Energy Kentucky, Inc. (Duke Energy Kentucky or Company), pursuant to 807 KAR 5:001, Section 13, respectfully requests the Commission to classify and protect certain information provided by Duke Energy Kentucky in attachments to its responses to Data Request Nos. 6 and 9 as requested by Commission Staff (Staff) in this case on October 19, 2015. The information that Staff seeks through discovery and for which Duke Energy Kentucky now seeks confidential treatment (Confidential Information), shows confidential critical utility infrastructure described in confidential inspection logs and reports.¹

In support of this Petition, Duke Energy Kentucky states:

1. The Kentucky Open Records Act exempts from disclosure certain critical infrastructure information per KRS 61.878(1)(m). To qualify for this exemption and, therefore, maintain the confidentiality of the information, a party must establish that disclosure of the record would expose a vulnerability in providing the location of public

¹ See Data Request Nos. 6 and 9.

utility critical systems. . Public disclosure of the information identified herein would, in fact, prompt such a result for the reasons set forth below.

2. Specifically, the Response to Commission's request in No. 6 depicts a detailed assessment of the condition of the ash pond containment structures and their viability for the term expected for reliable service. The Response to Commission's request No. 9 includes the most recent inspection report of the East Bend Ash pond. These assessments are not publically available and if disclosed would publicly release confidential and critical utility infrastructure.

3. The information contained in the Attachments to Staff Data Request Nos. 6 and 9 contain confidential inspection records and analysis that include and contain detailed depictions, locations, schematic drawings, modeling analysis and photographs of confidential utility infrastructure, including, but not limited to, waste water systems, which is protected for security and safety reasons as defined under KRS 61.878(1)(m)(1). If publicly released, this information would provide details regarding utility infrastructure that, in the wrong hands, could be exploited and used in ways that could create a security and potential public safety risks. Therefore this information should remain confidential.

4. The Confidential Information in response to Nos. 6 and 9 is distributed within Duke Energy Kentucky, only to those who must have access for business reasons, and is generally recognized as confidential and proprietary in the energy industry.

5. The Confidential Information for which Duke Energy Kentucky is seeking confidential treatment is not known outside of Duke Energy Corporation.

6. Duke Energy Kentucky does not object to limited disclosure of the confidential information described herein, pursuant to an acceptable protective

agreement, with the Attorney General or other intervenors with a legitimate interest in reviewing the same for the purpose of participating in this case.

7. This information was, and remains, integral to Duke Energy Kentucky's effective execution of business decisions. And such information is generally regarded as confidential or proprietary. Indeed, as the Kentucky Supreme Court has found, "information concerning the inner workings of a corporation is 'generally accepted as confidential or proprietary.'" *Hoy v. Kentucky Industrial Revitalization Authority*, 904 S.W.2d 766, 768 (Ky. 1995).

8. In accordance with the provisions of 807 KAR 5:001, Section 13(3), the Company is filing one copy of the Confidential Information separately under seal, and one copy without the confidential information included.

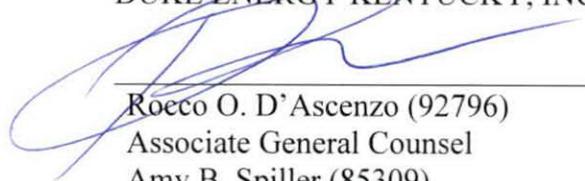
9. Duke Energy Kentucky respectfully requests that the Confidential Information be withheld from public disclosure for a period of ten years. This will assure that the Confidential Information – if disclosed after that time – will no longer be commercially sensitive so as to likely impair the interests of the Company or its customers if publicly disclosed.

10. To the extent the Confidential information becomes generally available to the public, whether through filings required by other agencies or otherwise, Duke Energy Kentucky will notify the Commission and have its confidential status removed, pursuant to 807 KAR 5:001 Section 13(10)(a).

WHEREFORE, Duke Energy Kentucky, Inc., respectfully requests that the Commission classify and protect as confidential the specific information described herein.

Respectfully submitted,

DUKE ENERGY KENTUCKY, INC.



Rocco O. D'Ascenzo (92796)
Associate General Counsel
Amy B. Spiller (85309)
Deputy General Counsel
Duke Energy Business Services, LLC
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Cincinnati, Ohio 45201-0960
Phone: (513) 287-4320
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e-mail:rocco.d'ascenzo@duke-energy.com

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been served via overnight mail to the following party on this 30th day of October, 2015.



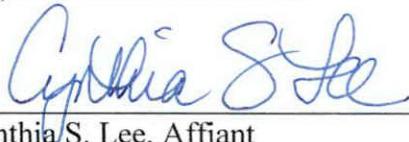
Rocco O. D'Ascenzo

Hon. Jennifer Hans
Office of the Attorney General
Utility Intervention and Rate Division
1024 Capital Center Drive
Frankfort, Kentucky 40601

VERIFICATION

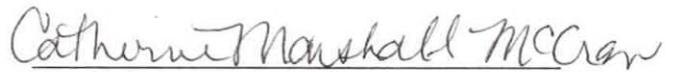
STATE OF NORTH CAROLINA)
) SS:
COUNTY OF MECKLENBURG)

The undersigned, Cynthia S. Lee, being duly sworn, deposes and says that she is the Director of Asset Accounting, being duly sworn, deposes and says that she has personal knowledge of the matters set forth in the foregoing data requests, and that the answers contained therein are true and correct to the best of her knowledge, information and belief.



Cynthia S. Lee, Affiant

Subscribed and sworn to me by Cynthia S. Lee on this 28 day of October, 2015.



NOTARY PUBLIC

My Commission expires: 7-6-2020



VERIFICATION

STATE OF OHIO)
) **SS:**
COUNTY OF HAMILTON)

The undersigned, Tammy Jett, Principal Environmental Specialist, being duly sworn, deposes and says that she has personal knowledge of the matters set forth in the foregoing data requests, and that the answers contained therein are true and correct to the best of her knowledge, information and belief.

Tammy Jett

Tammy Jett, Affiant

Subscribed and sworn to before me by Tammy Jett on this 23rd day of October, 2015.

Ruth M. Loccisano

NOTARY PUBLIC

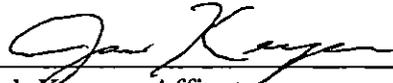
My Commission Expires: 06-08-2017

RUTH M. LOCCISANO
Notary Public, State of Ohio
My Commission Expires 06-18-2017

VERIFICATION

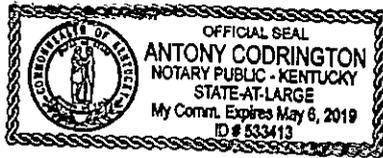
STATE OF KENTUCKY)
) SS:
COUNTY OF BOONE)

The undersigned, Jacob Keegan, Lead Engineer, being duly sworn, deposes and says that he has personal knowledge of the matters set forth in the foregoing data requests, and that the answers contained therein are true and correct to the best of his knowledge, information and belief.



Jacob Keegan, Affiant

Subscribed and sworn to before me by Jacob Keegan on this 22nd day of October, 2015.





NOTARY PUBLIC

My Commission Expires: *May 6, 2019*

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STAFF-DR-04-001

REQUEST:

Refer to the Application, page 4, paragraph 7, where it states the CCR Final Rule “may include ultimate closure of the existing ash pond....” Provide details of any uncertainty regarding ultimate closure of the East Bend ash pond.

RESPONSE: As stated in the Application, various tests must occur for purposes of determining operating compliance with the CCR final rule before a fully informed decision can be made as to whether to close the ash pond at East Bend. These "tests" including the installing a groundwater monitoring network which meets the requirements of the CCR rule, conducting sampling and analysis of that network, conducting a statistical evaluation to determine if the sample results show a statistical exceedance. If a statistical exceedance is determined to be above the groundwater protection standards for any of the Appendix IV constituents listed in the CCR rule, the ash pond must shut down or be retrofitted with a new liner that meets CCR rule requirements. This process of determination move towards ceasing the receipt of ash in the pond is expected to take until 2019 at the earliest. In addition, a safety factor assessment must be conducted by October 2016 which specifically meets the requirements of the CCR rule. If that analysis concludes that the pond does not meet the minimum factors of safety prescribed in the CCR rule, and repairs cannot be made to rectify that situation, the pond must begin closure within six months. The pond must also be evaluated for compliance with the

Location Restrictions provided in the CCR rule. The demonstrations for compliance with the Location Restrictions must be completed by October 2018. Failure to make a demonstration of compliance with Location Restrictions requires closure to begin within six months of not meeting the demonstration. The outcome of these various "tests" has not been determined at this time. This provides the uncertainty mentioned in the Application.

PERSON RESPONSIBLE: Tammy Jett

REQUEST:

Refer to the Application, page 8, paragraph 14, where it states that “the Company must begin analyzing the status of the East Bend ash pond...”

- a. Describe in detail the current condition of the East Bend ash ponds and whether there are any conditions that warrant accelerating the closing of the ponds.
- b. Provide a list of the items being addressed in the analysis and the status of the analysis.

RESPONSE:

- a. Currently, the condition of the East Bend ash pond is good. At this time, there are no known conditions that warrant accelerating the closing of the ponds. However, the evaluation of the ash pond condition still has to be determined under the CCR rule. The ash pond is in groundwater assessment at this time with the Kentucky Department for Environmental Protection. This is not expected to accelerate the closure of the ash pond.
- c. A list of the items being addressed in the analysis of the condition of the ash pond includes the following: (1) CCR rule factor of safety analysis (2) compliance with the CCR rule location restrictions (3) compliance with the CCR rule groundwater monitoring requirements (4) groundwater modeling to determine what type of

closure, if required, would be most effective (5) a written closure-post-closure plan to comply with the CCR rule. As far as status of the analysis, the groundwater modeling has begun in 2015 and is expected to continue into 2016. The groundwater monitoring requirements analysis and installation has begun in 2015 and is expected to continue into 2016 and 2017. The preliminary factor of safety analysis has been completed. A review of that analysis is expected during 2015 and into 2016. The closure and post-closure plan has been started in 2015 and is expected to continue into 2016 and possibly 2017.

PERSON RESPONSIBLE: Tammy Jett

STAFF-DR-04-003

REQUEST:

Refer to Duke Kentucky's response to Staff's Initial Request for Information ("Staff's First Request"), Item 6.a., where it states that "\$155 thousand was planned for plugging the pipe beneath the ash pond." Also consider that Duke Energy experienced an ash pond spill into the Dan River at the Dan River Steam Station in North Carolina in 2014 due to a failed underground pipe:

- a. Provide details on the location, depth, amount of overburden, size, material, and construction of the pipe at East Bend, contrasting or illustrating similarities to the above referenced Dan River Steam Station pipe.
- b. Explain whether the pipe at the East Bend ash pond discharges into surface water.
- c. If the pipe at the East Bend ash pond does not discharge into surface water, would its failure result in ground water contamination, or any other problems?

RESPONSE:

a. The response to Staff's Initial Request for Information (Staff's First Request), Item 6a did refer to \$155 thousand planned for plugging the pipe beneath the ash pond. The pipe and design at the East Bend ash pond is not similar to the Dan River Steam Station underground pipe failure situation. The Dan River pipe was a stormwater drainage pipe on top of which the Dan River ash pond was constructed. The East Bend ash pond pipe was constructed as part of the ash pond permitted design. The East Bend pipe is designed

to release water from within the pond under an NPDES/KYPDES permitted outfall. The East Bend pipe was never located underneath the bottom of the ash pond as the Dan River pipe was located. While the original NPDES outfall pipe included a riser pipe which went through the pond dike wall and beneath the toe of the dike to discharge to a permitted outfall, the pipe has since been reconstructed. The original riser pipe was cut off and filled with grout. A new principal spillway was installed at a higher elevation in the pond. The new pipe goes thru the side of the dike wall at a higher elevation and through the outside of the dike wall. This provides an extra assurance that, on the rare circumstance of a pipe failure, damage will be limited. There is no longer pipe running beneath the toe of the pond dike. The pipe replacement was completed via a permitted project with KDEP Division of Surface Water/Dam Safety.

- b. The pipe at the East Bend ash pond does discharge into surface water under an NPDES/KYPDES permit.
- c. Please see the response to b. above.

PERSON RESPONSIBLE: Tammy Jett

REQUEST:

Refer to attachment (a) in Duke Kentucky's response to Staff's First Request, Item 6.

- a. Confirm that this report and the current cost estimates for the project taken from it are a decade old.
- b. On page 3, it is stated, "No extraordinary environmental [*sic*] costs for demolition have been included....." Is this the current assumption?
- c. Also on page 3, it is stated, "Items buried in the ground are left in place." Is this statement currently correct for the ash pond area? If so, provide a list of the items buried under the ash pond and indicate the possible problems to be caused by leaving them buried in place.
- d. On page 13, one description of the actions to be taken will be to "plug circulating water pipe with slurry & place concrete at ends."
 - (1) Provide details of the slurry, its components, ultimate consistency, and to what level it occupies/fills the pipe.
 - (2) Is the treatment description above accurate and complete, or are there other actions and/or precautions currently planned that would prevent a pipe failure and problems, such as, a possible ash pond spill?

RESPONSE:

- a. Yes, the East Bend Demolition Study prepared by Sargent & Lundy is from 2005. However, this study is not the basis for the current cost estimate for closing the ash pond at East Bend. It is the basis for the Cost of Removal (COR) depreciation rates which are in effect for Duke Energy Kentucky, a portion of which relates to ash pond closure. A very small amount of COR (approximately \$4 million) is being accrued through depreciation rates based on that 2005 study which was included as part of our 2006 base electric rate case. The current cost estimate is approximately \$107.7 million (before inflation, profit margin, and risk premium) as provided in the response to STAFF-DR-01-001. FERC requires that COR related to legal obligations be excluded from account 108. As such, Duke Energy Kentucky has proposed in paragraph 16.c. of the Application to remove the \$0.9 million COR accrued through 6/30/2015 based on the 2005 dismantlement study from account 108 and apply this reserve to the proposed regulatory asset in account 182.3.
- b. No. The 2005 East Bend Demolition Study is no longer the basis of the current cost estimate. It was only provided as support for the COR accrual through 6/30/2015 to be removed from account 108 in accordance with FERC requirements.
- c. The statement on page 3, "Items buried in the ground are left in place." is not currently correct for the ash pond area. This statement appears to indicate were some generic assumptions made when this report was put together. There are no "items buried in the ground" in the ash pond area.

d. Regarding the page 13, description of the actions to be taken identified as “plug circulating water pipe with slurry & place concrete at ends.” a project to plug the current pipe and install a new pipe has already taken place (See answer to Staff Data Request Number 4, question 3 for details.)

(1) The slurry used for the pipe replacement mentioned in question 3 is a typical flowable fill. It is a cementitious grout. It is expected that the same type of material and process would be used to close the new pipe in the event of a complete ash pond closure. The entire pipe was filled with grout. It was a pressure grout job where a plug was placed at one end of the pipe and grout was pumped through it. The process was vented to ensure evacuation of air.

(2) Is the treatment description above accurate and complete, or are there other actions and/or precautions currently planned that would prevent a pipe failure and problems, such as, a possible ash pond spill?

ANSWER: See answer to Staff Data Request Number 4, question 3 for details. The pipe was replaced. No other actions or precautions are currently planned at this time since the pipe was replaced.

PERSON RESPONSIBLE: a. - b. - Cindy Lee
c. - d. - Tammy Jett

STAFF-DR-04-005

REQUEST:

Refer to Duke Kentucky's response to Staff's Second Request for Information, Item 2.a., which identifies the type and amount of the estimated costs of closing the East Bend Ash pond, include "storm water controls and dam breaching controls." Provide details of the activities included in storm water and dam-breaching controls and the level of assurance that these measures are anticipated to provide to prevent accidental environmental damage.

RESPONSE:

Exact detail of storm water and dam-breaching controls are not currently available because draft closure plans are still being developed for the ash pond. The closure plan is not anticipated to be in final draft form until it is required by the CCR rule in October, 2016. It should be noted that the closure plan required by the CCR is not a directive to actually close the pond. It is indeed only a directive to have a written plan to close should the need arise to actually close the pond. Most closure plans address the possibility of using storm water and dam breaching controls to help prevent dike wall failure and thus environmental damage by the release of ash.

In general, storm water and dam-breaching controls are anticipated to provide a level of assurance that these measures will help prevent accidental environmental damage because both measures will help control water in the pond and head pressure on the dike

walls. When water accumulation and head pressure are properly managed, the probability of a stability issue or dike wall failure are greatly lessened.

PERSON RESPONSIBLE: Tammy Jett

**Duke Energy Kentucky
Case No. 2015-00187
Staff Fourth Set Data Requests
Date Received: October 19, 2015**

**STAFF-DR-04-006 PUBLIC as to
Attachment only**

REQUEST:

Has there been an assessment of the condition of the ash pond containment structure(s) and their viability for the term expected for reliable service? If so, provide the assessment.

RESPONSE:

CONFIDENTIAL PROPRIETARY TRADE SECRET as to Attachment only

The most recent complete assessment of the condition of the ash pond containment structure(s), as far as stability of the pond, was completed by the engineering firm BBC&M in 2011. Based on their assessment, the pond is expected to provide reliable service into the foreseeable future. Please see Confidential Attachment Staff-DR-04-006 provided in CD format, filed with the Commission under a Petition for Confidential Treatment.

PERSON RESPONSIBLE: Tammy Jett

STAFF-DR-04-007

REQUEST:

What controls and/or assurances are in place, or being earnestly considered, to prevent ground water contamination from the ash pond site?

RESPONSE:

Duke Energy has a groundwater monitoring system in place for the ash pond and is working with KDEP assessing this system to determine if it is appropriate. KDEP receives the ash pond groundwater monitoring reports and works with Duke Energy as needed to address any groundwater contamination deemed to be from the ash pond.

PERSON RESPONSIBLE: Tammy Jett

**Duke Energy Kentucky
Case No. 2015-00187
Staff Fourth Set Data Requests
Date Received: October 19, 2015**

STAFF-DR-04-008

REQUEST:

How often does Duke Kentucky inspect the structural integrity of the East Bend ash pond?

RESPONSE:

The East Bend ash pond is inspected on a weekly basis.

PERSON RESPONSIBLE: Jacob Keegan

**Duke Energy Kentucky
Case No. 2015-00187
Staff Fourth Set Data Requests
Date Received: October 19, 2015**

STAFF-DR-04-009 PUBLIC

REQUEST:

Provide a copy of the most recent inspection report conducted by Duke Kentucky concerning the structural integrity of the East Bend ash pond.

RESPONSE:

CONFIDENTIAL PROPRIETARY TRADE SECRET

See STAFF-DR-04-009 CONF Attachment, filed with the Commission under a Petition for Confidential Treatment.

PERSON RESPONSIBLE: Jacob Keegan

STAFF-DR-04-010

REQUEST:

Have there been any violations, notices, or litigation filed or issued by any environmental agency regarding the ash ponds at the East Bend over the past ten years? If so, identify and explain each incident and provide any relevant information regarding each incident.

RESPONSE:

There have there been no violations, notices, or litigation filed or issued by any environmental agency regarding the ash pond at the East Bend Station over the past ten years.

In 2009, Duke Energy Kentucky did receive a letter from the Division of Water, Dam Safety that was titled a “non-compliance.” However, once Duke Energy Kentucky submitted its engineering plans to the Division of Water, Dam Safety, the submittal was satisfactory and accepted. Duke Energy Kentucky did not receive a notice of violation. The Division of Water, Dam Safety regularly inspects Duke Energy Kentucky’s East Bend ash pond.

PERSON RESPONSIBLE: Tammy Jett

REQUEST:

Refer to Duke Kentucky's response to Item 1 of Staff's Post Hearing Data Request in Case No. 2015-00089,¹ where it states, "Other portions of the plea agreement – such as the requirement that the Companies establish a National Environmental Compliance plan for the coal ash basins – will apply to the Kentucky facilities because those portions also include facilities 'operated' by employees of DEBS." Identify and explain the current and future ramifications of this provision on Duke Kentucky and DEBS.

RESPONSE:

Under the terms of the Plea Agreements and associated Judgments in Case Nos. 5:15-CR-62, 67, and 68 (Eastern District of North Carolina) and associated, Duke Energy Business Services, LLC, Duke Energy Carolinas, LLC, and Duke Energy Progress, LLC must take specified steps to ensure that it is complying with legal obligations regarding coal ash management. Neither the Plea Agreements nor the Judgments impose new requirements with respect to the closure of coal ash impoundments or handling of coal ash; rather, they impose additional oversight of any such obligations arising from federal or state law.

¹ Case No. 2015-00089, *Application of Duke Energy Kentucky, Inc. for a Declaratory Order that the Construction of a New Landfill Constitutes an Ordinary Extension in the Usual Course of Business or, in the Alternative, for a Certificate of Public Convenience and Necessity* (Ky. PSC July 24, 2015).

Certain details that may affect the current and future ramifications of the above-referenced provision on Duke Kentucky and DEBS have not yet been fully resolved. Duke Energy Business Services, Duke Energy Carolinas, and Duke Energy Progress are subject to the oversight of a Court Appointed Monitor, as well as ongoing oversight by the Federal District Court for the Eastern District of North Carolina (the “Court”), each of which may make decisions about the nature of the obligations in the Plea Agreements and Judgments. In particular, the Nationwide Environmental Compliance Plan (“NECP”) (the current name of the “National Environmental Compliance Plan” referred to in Duke Energy’s Response to Item 1) was submitted by Duke Energy to the Court for approval on October 15, 2015; the Court has not yet approved the NECP and may request changes. As a result, Duke Energy cannot comment definitively on the contents of the NECP. Nonetheless, based on communications with the Court Appointed Monitor, the Court, the United States Probation Office, and the Federal Government parties to the Plea Agreements, Duke Energy anticipates the following current and future ramifications of this provision on Duke Kentucky and DEBS:

1. For the term of probation (5 years from May 14, 2015), DEBS will be required to report to the Probation Office if it learns of crimes committed by its agents or employees within the scope of their employment. This requirement includes DEBS agents and employees working in Kentucky and at Duke Kentucky sites.
2. For the term of probation, DEC, DEP, and DEBS must make routine reports to the Court Appointed Monitor of any violations of environmental laws committed by those three entities. This includes any violation of environmental laws by a

DEBS employee working in Kentucky or at a Duke Kentucky site, but it does not include violations of environmental laws by Duke Kentucky.

3. For each year during the term of probation, the Court Appointed Monitor will arrange for an environmental audit of each site with a coal ash impoundment wholly owned or operated by a Duke Energy affiliate. Final audit reports will be publicly available on Duke Energy's external website, Duke-Energy.com. Duke Energy anticipates that one Duke Kentucky site, East Bend, will be audited in accordance with this requirement; however, that decision will be made by the Court Appointed Monitor.
4. Duke Energy has established a hotline/website, called the "Environmental Concerns Line," that allows employees and members of the public to report potential violations of environmental laws at Duke Energy facilities. The Environmental Concerns line is available to employees of Duke Kentucky and to residents of Kentucky.
5. Duke Energy has established new positions within the Environmental Health & Safety organization that will track compliance with legal and regulatory requirements related to coal ash management at Duke Energy sites with coal ash impoundments. Duke Energy anticipates that these new employees will be tracking compliance in Kentucky at the East Bend site.

PERSON RESPONSIBLE: Steven Struble