

**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) Case No. 2024-00152
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)**

**SIERRA CLUB’S MOTION TO INCORPORATE THE
RECORD OF CASE NO. 2024-00192 BY REFERENCE ONLY**

Pursuant to 807 K.A.R. 5:001, Section 11(5), Sierra Club, by counsel, moves that the following confidential documents filed in Case No. 2024-00197, *Electronic 2024 Integrated Resource Plan of Duke Energy Kentucky, Inc.*, be incorporated by reference into the record of this proceeding:

1. Duke Energy Kentucky’s 2024 Integrated Resource Plan – Confidential version;
2. Discovery Response: KSES DR-01-013 – Confidential version;
3. Discovery Response: KSES DR-01-045 – Confidential version; and
4. Discovery Response: Staff DR-01-005 – Confidential version.

Incorporation by reference of the requested records will facilitate efficient development of a robust record without prejudice to any party.

BACKGROUND

In this proceeding, Duke Energy Kentucky, Inc. (“Duke” or “the Company”), seeks a Certificate of Public Convenience and Necessity (“CPCN”) authorizing construction and conversion of the wet flue gas desulfurization system (“WFGD”) at East Bend Unit 2 from a quicklime handling process to a limestone handling process (“East Bend CPCN”). The Company asserts that the retrofit is needed because quicklime costs are escalating, making East Bend less competitive in the PJM energy markets, to the point were without a new and more affordable quicklime source, Duke “would likely be forced to retire the plant prematurely.”¹

According to witness testimony, the Company considered two alternatives to the proposed project: entering into a multi-year contract with a quicklime supplier (which it refers to as the status quo) and a process where a standard high calcium quicklime product was procured and mixed on-site with a magnesium hydroxide slurry to derive the correct chemical composition necessary to continue operating the existing WFGD process.²

Incorporating the requested documents by reference will benefit the Commission and other parties by making available already-existing information on East Bend operational options and potential cost implications thereof that Duke has previously documented in its 2024 IRP.

¹ Application of Duke 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 (July 25, 2024) (“Duke CPCN Application”) at 5-6; *see also* Direct Testimony of John A. Verderame on Behalf of Duke (“Verderame Direct”) at 6 (“making East Bend less and less economic to run”).

² Verderame Direct at 14-15.

LEGAL STANDARD

The Procedural Rules of the Public Service Commission of Kentucky (“the Commission”), allow for the record of a case in the Commission’s files, or other document(s) on file with the Commission, to be made a part of the record in another proceeding by reference only.³ “The Commission generally grants motions to incorporate records from other cases.”⁴ The Commission has approved requests to incorporate material by reference where, for example, forcing the applicant to refile the requested information would be “unnecessarily redundant,”⁵ and where incorporation by reference would save the parties the “time and financial resources” of reproducing the materials.⁶

Here, the incorporation by reference of the requested records from Case No. 2024-00197, *Electronic 2024 Integrated Resource Plan of Duke Energy Kentucky, Inc.*, will avoid unnecessary reproduction of documents, facilitate efficient review of the matter, and will be useful to the Commission in determining whether Duke’s proposal satisfies the requirements necessary to secure a CPCN. In order to obtain a CPCN, the Company must show a need for the

³ 807 K.A.R. 5:001, Section 11(5).

⁴ *In re: Elec. Application of Delta Natural Gas Co., Inc. for a CPCN to Construct a Pipeline to Serve the Cities of Nicholasville & Wilmore*, Case No. 2022-00085, 2022 WL 1195076, at *1 (Ky. P.S.C. Apr. 13, 2022) (citing *In re: Application of Kentucky Utilities Co. for an Order Authorizing the Issuance of Securities and the Assumption of Obligations*, Case No. 2006-00155, Order (May 9, 2006) at 1; *In re: Proposed Adjustment of the Wholesale Water Service Rates of the City of Augusta*, Case No. 2015-00039, Order (Ky. P.S. C. Feb. 3, 2016) at 19; *In re: Application of Big Rivers Electric Corp. for Approval to Issue Evidences of Indebtedness*, Case No. 2017-00243, Order (Ky. P.S.C. July 11, 2017) at 1).

⁵ *In re: Elec. Tariff Filing of Boone County Water District to Remove Subdistrict A & B Surcharges from its Tariff*, Case No. 2022-00101, Order (July 18, 2022) at 1.

⁶ *In re: Application of Big Rivers Electric Coop. for Approval to Issue Evidences of Indebtedness*, Case No. 2017-00243, Order (Ky. P.S.C. July 11, 2017) at 1.

construction project and an absence of wasteful duplication.⁷ Need requires “a showing of a substantial inadequacy of existing service”;⁸ and wasteful duplication refers to “an excess of capacity over need” and “an excessive investment in relation to productivity or efficiency, and an unnecessary multiplicity of physical properties.”⁹ Demonstrating an absence of wasteful duplication requires showing that “a thorough review of all reasonable alternatives has been performed.”¹⁰ The proposal selected need not be the absolute least cost, but “[t]he fundamental principle of reasonable least-cost alternative is embedded in [the] analysis.”¹¹

ARGUMENT

Incorporating the requested records from the Company’s ongoing IRP proceeding into the record of this proceeding will efficiently enable a more thorough and complete evaluation of the Company’s CPCN request, without being burdensome, and without prejudice to any party. The specified records are relevant to this proceeding, their incorporation by reference in this proceeding is permitted under the Commission’s rules, and all parties to this proceeding, including the Commission, will benefit from the efficiencies of incorporation by reference. The specified records are relevant to the questions of need and wasteful duplication, particularly including the Company’s assessment of potentially cost-effective alternatives in light of the full range of regulatory, capital, operating, and fuel costs that East Bend faces. In order to reach a

⁷ *Ky. Utils. Co. v. Pub. Serv. Comm’n*, 252 S.W. 2d 885, 890 (Ky. 1952); *In re Elec. Application of Kentucky Power Co. for a CPCN to Rebuild the Wooton-Stinnett Portion of the Hazard-Pineville 161 KV Line in Leslie County*, Case No. 2022-00118, Final Order (Ky. P.S.C. Sept. 22, 2022) at 16-17.

⁸ Case No. 2022-00118, Final Order (Ky. P.S.C. 2022) at 16 (quoting *Ky. Utils. Co.*, 252 S.W. 2d at 890).

⁹ *Id.*

¹⁰ Case No. 2022-00118, Final Order (Ky. P.S.C. Sept. 22, 2022) at 16.

¹¹ *Id.* at 16-17.

logical and factually supported determination in this CPCN proceeding, the Commission must evaluate each of those issues.

Although significant details on these issues are lacking in Duke’s case-in-chief, the Company’s filings in its IRP proceeding offer additional evidence for the Commission’s consideration. An IRP includes “resource . . . and other operating performance and system information,” and discusses the utility’s plan and the actions it proposes,¹² particularly actions to be undertaken within the next three years.¹³

Pertinent to the East Bend CPCN request, the Company’s 2024 IRP evaluated a range of potential operational alternatives for East Bend Unit 2. In the IRP, Duke stated that its Preferred Portfolio for compliance with Clean Air Act rules is to convert East Bend to 40% gas co-firing by January 1, 2030, and retire the plant by 2039.¹⁴ Duke also evaluated other alternatives as potentially cost-effective, including converting East Bend to 100% gas firing and retiring East Bend by 2032 or 2036, among others.¹⁵

In this proceeding, data and information concerning potential operational futures for East Bend, which are part of Duke’s 2024 IRP record, will aid the Commission’s determination of whether the Company can adequately show need for the East Bend CPCN, and an absence of

¹² 807 K.A.R. 5:058, Section 1(2).

¹³ 807 K.A.R. 5:058, Section 5(5) (“The plan shall contain a summary [and] . . . [t]he summary shall include . . . Steps to be taken during the next three (3) years to implement the plan,” *inter alia*).

¹⁴ Duke Energy Kentucky, Inc.’s 2024 Integrated Resource Plan, Case No. 2024-00197, at 61 (“Converting East Bend to DFO [dual-fuel option] by 2030 enables Duke Energy Kentucky to reliably serve its customers under the EPA CAA Section 111 Update while providing for a measured transition out of coal generation. While the plan ultimately calls for a combined cycle to replace East Bend, this plan allows East Bend to remain in service until 2039.”), https://psc.ky.gov/pscpcf/2024-00197/e.rolfes-adkins%40duke-energy.com/09092024025857/DEK_IRP_PUBLIC_06212024.pdf.

¹⁵ *Id.* at 9-10.

wasteful duplication. The reasonableness of the Company's proposed capital investment in East Bend Unit 2 depends, in part, on how long the new WFGD process will be needed at East Bend.

Staff's initial data requests in this proceeding, and the Company's responses thereto, confirm the relevance of this information. In response to Staff's request for a copy of the 2024 IRP, the Company offered no objection, but did not produce a copy of the 2024 IRP, instead referring Commission Staff to a public filing in Case No. 2024-00197.¹⁶ In another request, Staff inquired about the potential retirement plans for East Bend 2, and the Company responded by referring to its 2024 IRP, particularly the alternative operational pathways and retirement timelines for East Bend Unit 2.¹⁷ Staff's interest in this information reflects its relevance to the factual determinations that must be made by the Commission in this CPCN proceeding.

At this juncture, incorporating the requested records filed in the Company's IRP proceeding offers the least burdensome avenue to ensuring a robust record concerning the East Bend CPCN proposal. The requested records consist of the confidential version of the 2024 IRP, and three confidential data responses that provide detail on capital cost projections for resource alternatives evaluated in the 2024 IRP. Because parties may not use records on file with the Commission and designated as confidential in the IRP proceeding for any activity or purpose beyond that one proceeding, such records could only be made a part of this record if refiled by the Company, offered in response to a data request, or incorporated by reference.¹⁸ Requiring the Company to expend time and financial resources refile, or responding to additional data

¹⁶ Staff-DR-01-012.

¹⁷ Staff-DR-01-013.

¹⁸ Of note, although one of Staff's initial data requests already asked for a copy of the 2024 IRP in this proceeding, the Company's response did not offer that document into the record of this proceeding.

requests already answered in the IRP, would be wasteful and unnecessarily redundant.¹⁹ Instead, to the extent relevant, parties may offer public records from the IRP into evidence in this proceeding through intervenor testimony, and incorporating the requested records by reference affords parties the same opportunity with respect to relevant confidential records, with no additional burden on the Company.

Additionally, no party to this proceeding would be prejudiced by incorporation of the requested records. Both the Office of the Attorney General and Sierra Club are intervenors in the Company's 2024 IRP proceeding, are familiar with the record in both proceedings, and already have access to the requested records. Incorporation of the requested records imposes no additional obligations on Duke or on the Commission, which retains its ordinary role in managing the development of the record.

CONCLUSION

Sierra Club respectfully requests that the following confidential records, filed in Case No. 2024-00197, be incorporated by reference into the record of this proceeding:

1. Duke Energy Kentucky's 2024 Integrated Resource Plan – Confidential version;
2. Discovery Response: KSES DR-01-013 – Confidential version;
3. Discovery Response: KSES DR-01-045 – Confidential version;
4. Discovery Response: Staff DR-01-005 – Confidential version.

¹⁹ *In re: Elec. Tariff Filing of Boone County Water District to Remove Subdistrict A & B Surcharges from its Tariff*, Case No. 2022-00101, Order (Ky. P.S.C. July 18, 2022) at 2 (granting motion to incorporate by reference and noting that “[r]equiring refiling would be unnecessarily redundant”); *In re: Application of Big Rivers Electric Coop. for Approval to Issue Evidences of Indebtedness*, Case No. 2017-00243, Order (Ky. P.S. C. July 11, 2017) at 1 (finding good cause to incorporate records by reference where utility sought to “eliminate[] the need to expend time and financial resources to reproduce them for filing in this proceeding”).

Dated: September 11, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that the foregoing copy of *Sierra Club's Motion to Incorporate the Record of Case No. 2024-00197 By Reference Only* in this action is being electronically transmitted to the Commission on September 11, 2024, and that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding.

/s/ Joe F. Childers
JOE F. CHILDERS