

**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)	Case No. 2024-00152
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)	

**SIERRA CLUB’S REPLY IN SUPPORT OF MOTION TO
INCORPORATE CERTAIN RECORDS BY REFERENCE ONLY**

Sierra Club replies in support of its motion to incorporate, by reference only, certain records already filed with the Public Service Commission (“the Commission”) in Case No. 2024-00197, specifically: Duke Energy Kentucky’s (“the Company” or “Duke”) 2024 Integrated Resource Plan (confidential version) and three confidential data responses (“the Motion”).¹ The Company opposes incorporation of these records, claiming confusion of the issues and undue burdens.² Respectfully, that’s hogwash.

The requested records are relevant to this Certificate of Public Convenience and Necessity (“CPCN”) proceeding, and their incorporation by reference is the most efficient and least burdensome means of introducing evidence under the Commission’s rules. The narrow incorporation by reference requested here imposes no additional work on any party and does not

¹ Sierra Club’s Motion to Incorporate the Record by Reference Only (Sept. 11, 2024) (“Motion”).

² Duke Energy Kentucky, Inc.’s, Response to Sierra Club’s Motion to Incorporate the Record of Case No. 2024-00197 by Reference Only (Sept. 18, 2024) (“Resp.”).

expand the scope of the Commission’s review. The Commission should grant the request, and the Company should allow the orderly development of the record to continue.

The Company’s response focuses on non-issues, relitigating the settled petition for intervention, and imagining circumstances that do not exist. To set the record straight, one, Sierra Club’s intervention is settled,³ and the standard for intervention is irrelevant to a request to incorporate records already on file with the Commission.⁴ Two, the Motion seeks only incorporation by reference of the complete 2024 IRP and three specified data responses—not incorporation of the entire IRP record.⁵ Three, the Motion did not seek consolidation of the IRP proceeding and this CPCN proceeding—the proceedings remain separate.⁶ Four, the Motion did not subpoena or otherwise request the appearance of witnesses.⁷ Five, this is a CPCN case before the Public Service Commission—not a proceeding under KRS § 278.264,⁸ and not a process before some other entity under KRS § 164.2807.⁹ In directing the Commission’s attention toward these non-issues, the Company’s Response confuses the issues and wastes resources.

Sierra Club’s Motion did neither of those things, and should be granted.

³ Sept. 4, 2024 Order (granting intervention).

⁴ *E.g.*, *contra* Resp. at 4-5 (predicting opposition to request for documents to be incorporated to the record of this proceeding, by reference only, on standard for intervention).

⁵ *Contra* Resp. at 3 (misstating request as seeking the entire “2024 IRP docket” be incorporated into this proceeding”).

⁶ *Contra* Resp. at 7 (maintaining that “two proceedings should remain separate,” as though there is a pending motion for consolidation).

⁷ *Contra* Resp. at 1, 7, 9.

⁸ *Contra* Resp. at 6 (arguing about retirement proceedings that are not at issue).

⁹ *Contra* Resp. at 6-7 (arguing about proceedings before another entity that are not at issue).

I. THE REQUESTED RECORDS ARE RELEVANT AND WILL NOT CONFUSE THE ISSUES.

Introduction of the requested requests will not confuse the issues in this CPCN proceeding, and Duke’s contrary view is unsupported and poorly reasoned. According to the Company, the requested records will confuse the issues in this proceeding by conflating (1) a claimed need to retrofit East Bend 2 in order to avoid continued uneconomic operation and retirement earlier than previously anticipated, and (2) Duke’s long-term generation supply strategy, as memorialized in its 2024 IRP. Near-term action and long-term planning are indeed distinct, but it strains credulity to insist one is not relevant to the other.

Under the long-standing CPCN standard, the requested records are plainly relevant. A CPCN application is not judged according to some vague reasonableness standard,¹⁰ but whether a utility adequately shows need and an absence of wasteful duplication.¹¹ Facts concerning potentially cost-effective alternatives, and a utility’s plans to meet load, go to the heart of determining both prongs.¹² In this context, the relevance of a utility’s long-range plan to a generation-related CPCN request should be clear, especially to a utility.

Indeed, Duke itself interjected alternatives and possible changes to East Bend’s retirement plan into this proceeding.¹³ Duke cannot have it both ways—after acknowledging the

¹⁰ *Contra* Duke at 4 (“The **issue is simply whether** the Company has adequately demonstrated that converting to a Limestone-based reagent handling system **is reasonable...**”) (emphasis added); *id.* at 8 (“All these issues unnecessarily complicate and disrupt the current proceeding, the record and goes far beyond whether the Limestone conversion is a reasonable proposal.”).

¹¹ *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 Wootton-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.

¹² *E.g.*, Case No. 2022-00402, Final Order (Ky. P.S.C. Nov. 6, 2023) at 10-11 (“To demonstrate that a proposed facility does not result in wasteful duplication, we have held that the applicant must demonstrate that a thorough review of all reasonable alternatives has been performed.”); Case No. 2022-00118, Final Order (Ky. P.S.C. Sept. 22, 2022) at 16 (quoting *Ky. Utils. Co.*, 252 S.W. 2d at 890).

¹³ Application at ¶13 (without obtaining “reagents necessary to operate its WFGD, . . . [the Company] would likely be forced to retire the plant prematurely”); Direct Testimony of John A. Verderame at 14

need for alternatives and including retirement among them, it would be fundamentally unfair to ratepayers to foreclose the further development of the record on those issues.

Of course the Company's 2024 IRP bears some relevance to a \$125 million capital project intended to secure East Bend's operational future.¹⁴ Duke recognized the relevance of this subject matter when it submitted the CPCN application, and when responding to Staff's Initial Data Requests.¹⁵ For Duke to complain now, and to do so without reconciling its own evidence on alternatives to the proposed project and retirement dates, or its responses to Staff requests, gives the impression that Duke obstructs only because this is the Sierra Club's request.

II. THE INTRODUCTION OF RELEVANT EVIDENCE BY REFERENCE DOES NOT CAUSE AN UNDUE BURDEN.

The Company also complains that incorporating records by reference creates an undue burden, but nothing could be further from the truth. Under the Commission's procedural rules, incorporating records already on file with the Commission is truly the least burdensome avenue to introduce relevant evidence into the record of this proceeding. Any burdens posed by Sierra Club's request are de minimis and easily proportionate to the Company's CPCN request.

("This magnitude of relative value increase would be expected to continue through the operational life of the facility, assuming current conditions and retirement dates."); Direct Testimony of Sarah E. Lawler at 7 (representing that "savings would be expected to continue through the operational life of the facility, assuming current conditions and retirement dates."); *id.* at Attach. SEL-1 (estimated revenue requirement and rates based on a 2038 retirement date).

¹⁴ *E.g.*, Case No. 2021-00393, Order, Appx. A at 60 (Ky. P.S.C. Sept. 16, 2022) ("an IRP is supposed to reflect a utility's actual plan for meeting projected load"); Case No. 2023-00310, Final Order, Appx. A at 49-50 (Ky. P.S.C. Aug. 20, 2024) ("BREC's IRP is nearly useless to inform any future CPCN application evaluation. . . . BREC apparently has no plans to apply for a CPCN for generation in the near future. If BREC files for a CPCN requesting additional generation, it should consider including an updated load forecast and resource portfolio analysis demonstrating that the requested generation asset is the most reasonable cost-effective solution to the identified need.").

¹⁵ *E.g.*, Duke's Resp. to Staff-DR-01-012 and Staff-DR-01-013.

Complaints about the timing of the 2024 IRP and Duke’s CPCN application must also fail. To start, it is neither unusual nor unduly burdensome for a regulated electric utility to have multiple open cases before the Commission at once.¹⁶

Moreover, Duke is responsible for the timing of this CPCN request¹⁷—no one else—and should recognize the good fortune in the timing here. As Duke faces a critical operational decision with serious cost implications, it is optimal—not burdensome—to have just completed what should have been a rigorous analysis of current regulatory, economic, and practical realities, and the exercise of good judgment in defining, comparing, and deciding amongst various operational choices.¹⁸

Incorporating by reference Duke’s 2024 IRP and three data responses is not the same thing as relitigating the IRP.¹⁹ If it were, in practical effect, that would keep a utility’s IRP out of the record in all cases before the Commission, lest a utility complain that it is being forced to relitigate the IRP proceeding. That would be absurd. Particularly in a CPCN such as this one, an IRP should be among a utility’s best evidence of the context in which its need arises, and its

¹⁶ For example, in 2023, Big Rivers Electric Corporation had eleven proceedings before the Commission, including its 2023 IRP (Case No. 2023-00310), changes to its large industrial customer tariffs (Case No. 2023-00312), review of its environmental surcharge mechanism (Case No. 2023-00373), changes to its qualified facilities tariff (Case No. 2023-00102), request for an economic development rate for a certain customer (Case No. 2023-00045), and various other matters.

¹⁷ Based on the record so far, it appears that the Company was aware of “issues with lime supply, quality, and price escalation” as early as 2022, when it “approached AECOM to assess the technical feasibility of converting the FGD system to use lower-cost limestone reagent in an inhibited oxidation process (LSIO)[.]” Application, Ex. 4 AECOM’s Preliminary Engineering Report, at 5 of 78.

¹⁸ Case No. 2023-00310, Final Order, Appx. A at 49 (Ky. P.S.C. Aug. 20, 2024) (“Optimally, a utility should plan to file a CPCN application shortly after its IRP is filed, if the IRP plans for construction of new generation within the first five years of the planning horizon, with minimal changes in the justification for the planned project from the IRP.”).

¹⁹ While Commission Staff’s review of the 2024 IRP is ongoing in Case No. 2024-00197, the 2024 IRP has been final since submitted on June 21, 2024. As Duke notes, IRP reviews are not fully litigated cases, Staff does not have authority to change the as-submitted IRP, and the reviews do not end in a Commission decision.

reasons for confidence that the investment will prove cost-effective over a resource's remaining operational life, supporting both need and the avoidance of wasteful duplication.

If incorporated, the IRP and data responses can speak for themselves, and that is all Sierra Club's motion sought. In any event, the Sierra Club continues to acknowledge²⁰ and welcome the Commission's role in managing the orderly development of a record capable of supporting reasoned decision-making in this CPCN proceeding.

CONCLUSION

Sierra Club's Motion seeks the efficient entry of relevant evidence into the record, nothing more. For the reasons offered in the Motion as well as the foregoing reply, pursuant to 807 KAR 5:001, Section 11(5), the Sierra Clubs asks that the Commission incorporate the following records from Case No. 2024-00197, by reference only, 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.

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Respectfully submitted,

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²⁰ Motion at 7.

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CERTIFICATE OF SERVICE

This is to certify that the foregoing copy of Sierra Club's Reply in Support of Motion to Incorporate the Certain Records from Case No. 2024-00192 by Reference Only in this action is being electronically transmitted to the Commission on September 23, 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