

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

In the Matter of:

The Electronic Application of Duke Energy	)	
Kentucky, Inc. for a Certificate of Public	)	
Convenience and Necessity to Convert its Wet Flue	)	Case No. 2024-00152
Gas 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	)	

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**PETITION FOR CONFIDENTIAL TREATMENT OF DUKE ENERGY KENTUCKY, INC. FOR CERTAIN SUPPLEMENTAL RESPONSES TO INTERVENOR SIERRA CLUB’S SEPTEMBER 20, 2024, FIRST REQUEST FOR INFORMATION**

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Duke Energy Kentucky, Inc. (Duke Energy Kentucky or Company), by counsel, pursuant to 807 KAR 5:001, Section 13(2), KRS 61.878(1)(c), and other applicable law, moves the Public Service Commission of Kentucky (Commission) for an Order granting confidential treatment to the following supplemental responses and attachments to Intervenor Sierra Club’s (SIERRA) First Request for Information issued on September 20, 2024:

- (1) The highlighted information contained in the Confidential Supplemental response to SIERRA-DR-01-007;
- (2) The highlighted information contained in the Confidential Supplemental response to SIERRA-DR-01-025;
- (3) The highlighted information contained in the Confidential Supplemental response to SIERRA-DR-01-040;

- (4) The highlighted information contained in the Confidential Supplemental response to SIERRA-DR-01-047;
- (5) The highlighted information contained in the Confidential Supplemental response to SIERRA-DR-01-048 and SIERRA-DR-01-048(d) Confidential Supplemental Attachment 2;
- (6) The highlighted information contained in the Confidential Supplemental response to SIERRA-DR-01-049 and SIERRA-DR-01-049 Confidential Supplemental Attachment 1; and,
- (7) The highlighted information contained in the Confidential Supplemental response to SIERRA-DR-01-065.

Specifically, Duke Energy Kentucky seeks confidential treatment of information referred to herein as the “Confidential Information,” which, broadly speaking, includes confidential negotiated contract terms, sensitive generating operating characteristics, information related to vendor pricing, market and reliability risks, and other cost information and projections.

## **I. MOTION FOR CONFIDENTIAL TREATMENT**

### **a. Statutory Standard**

Administrative Regulation 807 KAR 5:110, Section 5 sets forth the procedure by which certain information filed with the Commission shall be treated as confidential. Specifically, the party seeking confidential treatment must establish “each basis upon which the petitioner believes the material should be classified as confidential” in accordance with the Kentucky Open Records Act, KRS 61.878. *See* 807 KAR 5:110 Section 5(2)(a)(1).

The Kentucky Open Records Act exempts certain records from the requirement of public inspection. *See* KRS 61.878. In particular, KRS 61.878(1)(c)(1) excludes from the Open Records Act:

Records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records[.]

This exception “is aimed at protecting records of private entities which, by virtue of involvement in public affairs, must disclose confidential or proprietary records to a public agency, if disclosure of those records would place the private entities at a competitive disadvantage.” Ky. OAG 97-ORD-66 at 10 (Apr. 17, 1997).

KRS 61.878(1)(c)(1) requires the Commission to consider three criteria in determining confidentiality: (1) whether the record is confidentially disclosed to an agency or required by an agency to be disclosed to it; (2) whether the record is generally recognized as confidential or proprietary; and (3) whether the record, if openly disclosed, would present an unfair commercial advantage to competitors of the entity that disclosed the records. The Confidential Information for which Duke Energy Kentucky is seeking confidential treatment, each of which is described in further detail below, satisfies each of these three statutory criteria.

**b. Responses and Attachments for Which Confidential Treatment is Sought**

**i. The highlighted information contained in the Confidential Supplemental response to SIERRA-DR-01-007**

SIERRA Request No. 01-007 states as follows:

Please refer to the Direct Testimony of Chad M. Donner, at page 8, and answer the following requests:

- a. Please provide the 2023 Request for Proposal (RFP) documents and responsive bids.

- b. If the Company has issued an RFP for the MEL product since 2023, please identify each such RFP and provide RFP documents and responsive bids for each such RFP.
- c. Please provide details of the evaluation that Duke conducted about “the possibility of mixing standard high calcium quicklime and magnesium hydroxide”
- d. The Direct Testimony of J. Michael Geers, page 12, line 20, suggests that actual procurement and mixing occurred. Did this evaluation entail actual mixing of these components or was the evaluation limited to a paper study? Please provide any documents, results, reports, etc. pertaining to these studies.

In supplemental response to SIERRA Request No. 01-007, the Company provides analysis that includes and contains detailed vendor pricing information and negotiated contract terms that depict the Company’s strategies and evaluations in procuring a reliable source of cost-effective reagent supply for East Bend’s wet-flue gas desulfurization process. The Company requests that the highlighted information contained within the response be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1). The highlighted information was derived through a confidential direct solicitation and subsequent negotiations, is not publicly available, thus satisfying the first element of the statutory standard for confidentiality of a proprietary record. In *Hoy v. Kentucky Indus. Revitalization Auth.*, 907 S.W.2d 766, 768 (Ky. 1995), the Kentucky Supreme Court held that documents detailing the “inner workings of a corporation (are) ‘generally recognized as confidential or proprietary.’” The highlighted information satisfies this standard, as negotiated pricing information is generally recognized as confidential and proprietary. The highlighted information also satisfies the third element because disclosure of these negotiated contract terms, and risks identified would place the Company at a disadvantage with future such negotiations, as counter-parties would have access to the Company’s risk assessments, and charges from parties, potentially resulting in a lack of bargaining power for the Company and less favorable contract terms. Moreover, disclosing this information publicly would likely have a chilling effect on

counterparties who would become unwilling to negotiate to favorable terms with the Company because it could be used by other counterparties in future negotiations.

**ii. The highlighted information contained in the Confidential Supplemental response to SIERRA-DR-01-025**

SIERRA Request No. 01-025 states as follows:

Please explain how Duke's modeling in support of this CPCN application incorporates the EPA's updated Mercury Air Toxics Standards ("MATS") rule, if at all.

In supplemental response to SIERRA Request No. 01-025, the Company provides analysis that includes and contains detailed vendor pricing information and negotiated contract terms that depict the Company's strategies and evaluations in procuring a reliable source of cost-effective reagent supply for East Bend's wet-flue gas desulfurization process. The Company requests that the highlighted information contained within the response be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1). The highlighted information was derived through a confidential direct solicitation and subsequent negotiations, is not publicly available, thus satisfying the first element of the statutory standard for confidentiality of a proprietary record. In *Hoy v. Kentucky Indus. Revitalization Auth.*, 907 S.W.2d 766, 768 (Ky. 1995), the Kentucky Supreme Court held that documents detailing the "inner workings of a corporation (are) 'generally recognized as confidential or proprietary.'" The highlighted information satisfies this standard, as negotiated pricing information is generally recognized as confidential and proprietary. The highlighted information also satisfies the third element because disclosure of these negotiated contract terms, and risks identified would place the Company at a disadvantage with future such negotiations, as counter-parties would have access to the Company's risk assessments, and charges from parties, potentially resulting in a lack of bargaining power for the Company and less favorable contract terms. Moreover, disclosing this information publicly would likely have a chilling effect on

counterparties who would become unwilling to negotiate to favorable terms with the Company because it could be used by other counterparties in future negotiations.

**iii. The highlighted information contained in the Confidential Supplemental response to SIERRA-DR-01-040**

SIERRA Request No. 01-040 states as follows:

Please refer to the Direct Testimony of Witness Verderame, page 7, lines 6-7, where it states “The Company reached an interim agreement, but at more than double the price of the prior contract.”

- a. Please state the term of the interim agreement that the Company reached with the supplier.
- b. Before the interim agreement was reached, how often was the Company contracting with this particular supplier? (i.e., were contracts entered into for one year, five years, etc.)
- c. Please explain how long the Company has been contracting with this supplier.

In supplemental response to SIERRA Request No. 01-040, Duke Energy Kentucky provides analysis that includes and contains detailed vendor pricing and contract term negotiations that depict the Company’s strategies and evaluations in procuring a reliable source of cost-effective reagent supply for East Bend’s wet-flue gas desulfurization process. The Company requests that the highlighted information contained within the response be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1). The highlighted information was derived through a confidential direct solicitation and subsequent negotiations, is not publicly available, thus satisfying the first element of the statutory standard for confidentiality of a proprietary record. In *Hoy v. Kentucky Indus. Revitalization Auth.*, 907 S.W.2d 766, 768 (Ky. 1995), the Kentucky Supreme Court held that documents detailing the “inner workings of a corporation (are) ‘generally recognized as confidential or proprietary.’” The highlighted information satisfies this standard, as negotiated pricing information is generally recognized as confidential and proprietary. The highlighted information also satisfies the third element because disclosure of these negotiated contract terms,

and risks identified would place the Company at a disadvantage with future such negotiations, as counter-parties would have access to the Company's risk assessments, and charges from parties, potentially resulting in a lack of bargaining power for the Company and less favorable contract terms. Moreover, disclosing this information publicly would likely have a chilling effect on counterparties who would become unwilling to negotiate to favorable terms with the Company because it could be used by other counterparties in future negotiations.

**iv. The highlighted information contained in the Confidential Supplemental response to SIERRA-DR-01-047**

SIERRA Request No. 01-047 states as follows:

Please refer to the Direct Testimony of Witness Verderame, page 13, lines 16-19, where it states, "Finally, as discussed below and not included in the \$166.1 million impact above, the project saves \$6.1 million in fuel and purchase power costs, \$18.6 million in reagent costs, and \$3 million in additional non-native off-system sales margin on average per year."

- a. Please explain how the fuel and purchase power costs, reagent costs, and additional non-native off-system sales margin were calculated.
- b. Please explain the difference between the \$3 million in additional non-native off-system sales margin and the energy market impact of \$15.8 million per year referenced on page 13, lines 5-6 of Witness Verderame's testimony. Please refer to the Direct Testimony of Witness Verderame, page 7, lines 6-7, where it states "The Company reached an interim agreement, but at more than double the price of the prior contract."

In supplemental response to SIERRA Request No. 01-047, the Company provides analysis that includes and contains detailed vendor pricing information and negotiated contract terms that depict the Company's strategies and evaluations in procuring a reliable source of cost-effective reagent supply for East Bend's wet-flue gas desulfurization process. The Company requests that the highlighted information contained within the response be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1). The highlighted information was derived through a confidential direct solicitation and subsequent negotiations, is not publicly available, thus satisfying the first

element of the statutory standard for confidentiality of a proprietary record. In *Hoy v. Kentucky Indus. Revitalization Auth.*, 907 S.W.2d 766, 768 (Ky. 1995), the Kentucky Supreme Court held that documents detailing the “inner workings of a corporation (are) ‘generally recognized as confidential or proprietary.’” The highlighted information satisfies this standard, as negotiated pricing information is generally recognized as confidential and proprietary. The highlighted information also satisfies the third element because disclosure of these negotiated contract terms, and risks identified would place the Company at a disadvantage with future such negotiations, as counter-parties would have access to the Company’s risk assessments, and charges from parties, potentially resulting in a lack of bargaining power for the Company and less favorable contract terms. Moreover, disclosing this information publicly would likely have a chilling effect on counterparties who would become unwilling to negotiate to favorable terms with the Company because it could be used by other counterparties in future negotiations.

**v. The highlighted information contained in the Confidential Supplemental response to SIERRA-DR-01-048 and SIERRA-DR-01-048(d) Confidential Supplemental Attachment 2**

SIERRA Request No. 01-048 states as follows:

Please refer to the Direct Testimony of Witness Verderame, page 14, lines 5-7, where it states, “Stochastic production cost modeling shows that conversion to a limestone reagent process is economic in most future scenarios with reduced variable operational costs of ~\$12.03/MWh reducing dispatch cost ....”

- a. Please confirm if the stochastic production cost modeling was performed using the EnCompass software. If the EnCompass software was not used, please provide the name of the software used.
- b. Please provide, in machine readable format, the hourly market price forecasts modeled for each scenario.
- c. Please provide the modeling period for the stochastic production cost modeling.
- d. Please provide the modeling input and output files, in machine readable format, used to perform the stochastic production cost modeling.



- e. Please explain what modeling inputs were modeled with stochastic inputs.
- f. Please explain how the stochastic inputs were developed.
- g. Please explain which scenarios are included in the “conversion to a limestone reagent process is economic in most future scenarios.”
- h. Please provide the scenarios in which the conversion to a limestone reagent process is not economic.
- i. Please provide the off-system sales and purchases for the scenarios evaluated in the stochastic production cost modeling. Please refer to the Direct Testimony of Witness Verderame, page 9, lines 10-11, which states, “It is only in the recent years that the MEL reagent costs have climbed exponentially, and supply became a concern.”

In supplemental response to SIERRA Request No. 01-048, the Company provides analysis that includes and contains detailed vendor pricing information and negotiated contract terms that depict the Company’s strategies and evaluations in procuring a reliable source of cost-effective reagent supply for East Bend’s wet-flue gas desulfurization process. The Company requests that the highlighted information contained within the response be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1). The highlighted information was derived through a confidential direct solicitation and subsequent negotiations, is not publicly available, thus satisfying the first element of the statutory standard for confidentiality of a proprietary record. In *Hoy v. Kentucky Indus. Revitalization Auth.*, 907 S.W.2d 766, 768 (Ky. 1995), the Kentucky Supreme Court held that documents detailing the “inner workings of a corporation (are) ‘generally recognized as confidential or proprietary.’” The highlighted information satisfies this standard, as negotiated pricing information is generally recognized as confidential and proprietary. The highlighted information also satisfies the third element because disclosure of these negotiated contract terms, and risks identified would place the Company at a disadvantage with future such negotiations, as counter-parties would have access to the Company’s risk assessments, and charges from parties, potentially resulting in a lack of bargaining power for the Company and less favorable contract terms. Moreover, disclosing this information publicly would likely have a chilling effect on

counterparties who would become unwilling to negotiate to favorable terms with the Company because it could be used by other counterparties in future negotiations.

The supplemental attachment includes detailed modeling and optimization assumptions that disclose sensitive operational characteristics, raw data used in modeling to operate its coal unit. If released, this information would place the Company at a significant disadvantage in the wholesale electric markets and undermine its ability to negotiate prices for fuel and reagents to operate its generating units in a low-cost efficient manner. The Company requests that the highlighted information contained within the Attachment be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1) and additionally requests that the Attachment be treated as confidential in its entirety pursuant to 807 KAR 5:001E, Section 13(2)(a)(3)(b). The highlighted information in the supplemental Attachment to Sierra Request No. 01-048(d) is not publicly available, thus satisfying the first element of the statutory standard for confidentiality of a proprietary record. The highlighted information satisfies the second element of the standard, as the detailed raw operational data is generally recognized as confidential and proprietary. The highlighted information also satisfies the third element because disclosure of the operational characteristics and modeling of operations would place the Company at a disadvantage in the competitive energy markets as competitors would have insight into how the Company models its generation and future performance many years into the future.

**vi. The highlighted information contained in the Confidential Supplemental response to SIERRA-DR-01-049 and SIERRA-DR-01-049 Confidential Supplemental Attachment 1**

SIERRA Request No. 01-049 states as follows:

Please refer to the Direct Testimony of Witness Verderame page 14, lines 12-14, where it states, “This modeling showed a net decrease in forecasted dispatch costs of \$12.78/MWh in the 2027 through 2029 operating period when operating on limestone.”

- a. Please confirm that Variable Operations and Maintenance (“VOM”) costs are included in the forecasted dispatch costs.
- b. Please provide the forecasted VOM for East Bend from 2025 to 2029 without the limestone conversion.
- c. Please provide the forecasted VOM for East Bend from 2025 to 2029 with the limestone conversion.
- d. Please provide the historical VOM for East Bend from 2019 through 2024.

In supplemental response to SIERRA Request No. 01-049, the Company provides analysis that includes and contains detailed vendor pricing information and negotiated contract terms that depict the Company’s strategies and evaluations in procuring a reliable source of cost-effective reagent supply for East Bend’s wet-flue gas desulfurization process. The Company requests that the highlighted information contained within the response be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1). The highlighted information was derived through a confidential direct solicitation and subsequent negotiations, is not publicly available, thus satisfying the first element of the statutory standard for confidentiality of a proprietary record. In *Hoy v. Kentucky Indus. Revitalization Auth.*, 907 S.W.2d 766, 768 (Ky. 1995), the Kentucky Supreme Court held that documents detailing the “inner workings of a corporation (are) ‘generally recognized as confidential or proprietary.’” The highlighted information satisfies this standard, as negotiated pricing information is generally recognized as confidential and proprietary. The highlighted information also satisfies the third element because disclosure of these negotiated contract terms, and risks identified would place the Company at a disadvantage with future such negotiations, as counter-parties would have access to the Company’s risk assessments, and charges from parties, potentially resulting in a lack of bargaining power for the Company and less favorable contract terms. Moreover, disclosing this information publicly would likely have a chilling effect on

counterparties who would become unwilling to negotiate to favorable terms with the Company because it could be used by other counterparties in future negotiations.

The Supplement to Attachment 1 includes detailed modeling and optimization assumptions that disclose sensitive operational characteristics and forecasted variable operations and maintenance costs, which depict business strategies to operate its coal unit. If released, this information would place the Company at a significant disadvantage in the wholesale electric markets and undermine its ability to negotiate prices for fuel and reagents to operate its generating units in a low-cost efficient manner. The highlighted information in the Supplement to Attachment a to Sierra-DR-01-049 is not publicly available, thus satisfying the first element of the statutory standard for confidentiality of a proprietary record. The highlighted information satisfies the second element of the standard, as negotiated pricing information and operational forecasts is generally recognized as confidential and proprietary. The highlighted information also satisfies the third element because disclosure of this data would place the Company at a disadvantage in the competitive wholesale electric markets as competitors would have insight into how the Company views and prices its generation in the future, including forecasted costs to operate.

**vii. The highlighted information contained in the Confidential Supplemental response to SIERRA-DR-01-065**

SIERRA Request No. 01-065 states as follows:

Please refer to the Company's CPCN Application, at page 8, paragraph 19.

- a. Please quantify the "reduced variable operational cost" noted.
- b. Please quantify the "higher overall reagent expenditure due to the anticipated increase in economic dispatch."
- c. Please quantify the expected "significantly lower" cost per ton of reagent, for each year from now through the retirement of East Bend.
- d. Please quantify the reduction in "maintenance" noted.
- e. Please explain how there will be "fuel cost savings" as a result of the Limestone Conversion Project that is noted on this page.

In supplemental response to SIERRA Request No. 01-065, Duke Energy Kentucky provides detailed cost projections, confidential negotiated contract terms and pricing, and detailed information relating to the Company's projected savings on variable operating and maintenance. The Company requests that the highlighted information within the response be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1). The highlighted information is not publicly available, thus satisfying the first element of the statutory standard for confidentiality of a proprietary record. In *Hoy v. Kentucky Indus. Revitalization Auth.*, 907 S.W.2d 766, 768 (Ky. 1995), the Kentucky Supreme Court held that documents detailing the "inner workings of a corporation (are) 'generally recognized as confidential or proprietary.'" The highlighted information satisfies this standard, as Duke Energy Kentucky's projected expenditures and anticipated cost savings represent the inner workings of a corporation and, therefore, meets the second element of the statutory standard. The highlighted information also satisfies the third element, as it contains commercially sensitive information related to the Company's financial projections and disclosure of this information would result in a commercial disadvantage for Duke Energy Kentucky as competitors would gain invaluable insight into the Company's financial outlook, making the ability to achieve those savings or even improve upon them difficult.

**c. Request for Confidential Treatment**

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 impair the interests of the Company if publicly disclosed.

To the extent the Confidential Information becomes 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.

/s/ Rocco O. D'Ascenzo

Rocco O. D'Ascenzo (92796)

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**CERTIFICATE OF SERVICE**

This is to certify that the foregoing electronic filing is a true and accurate copy of the document being filed in paper medium; that the electronic filing was transmitted to the Commission on November 1, 2024; and that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding.

*/s/Rocco D'Ascenzo*

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Rocco D'Ascenzo