

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)	

**MOTION OF DUKE ENERGY KENTUCKY, INC. FOR REHEARING
FOR A CERTAIN RESPONSE TO INTERVENOR SIERRA CLUB’S
SEPTEMBER 20, 2024, FIRST REQUEST FOR INFORMATION**

Duke Energy Kentucky, Inc. (Duke Energy Kentucky or Company), by counsel, pursuant to KRS 278.400, respectfully moves the Public Service Commission of Kentucky (Commission) for Rehearing of its Order¹ entered in this matter on February 13, 2025. Specifically, Duke Energy Kentucky asks the Commission to grant rehearing with respect to its decision denying confidential treatment to Attachment 1 of Duke Energy Kentucky’s response to Item 48(d) of the Intervenor Sierra Club’s First Request for Information (SIERRA-DR-01-48(d) Confidential Attachment 1) issued on September 2024. As discussed below, the Commission erred in denying confidential treatment for the SIERRA-DR-01-48(d) Confidential Attachment 1 (Attachment 1) by erroneously determining that the document in its entirety is a public document.

¹ Order, February 13, 2024 (Order)

I. MOTION FOR REHEARING FOR CONFIDENTIAL TREATMENT

a. The Commission Erred in Denying Confidential Treatment by Determining the SIERRA-DR-01-048(d) Confidential Attachment 1 as Public

On February 13, 2025, the Commission issued its Order stating that “Item 48(d), Attachment 1 is a public document and should not be granted confidential treatment.” After performing research and review, the Company respectfully disagrees with the Commission’s determination that Attachment 1 is a public document. In an effort to verify whether the document is publicly available, the Company conducted a thorough search both online and internally to ascertain whether the document is available to the public or if the Company may have filed the document publicly in a different case. Despite these efforts, the Company has found no evidence to suggest that Attachment 1 is available to the public nor that it was previously filed in a manner that would make it public. To the best of the Company’s knowledge, Attachment 1 is not a public document and remains confidential. Therefore, the Company respectfully believes that the Commission erred in its Order denying confidential treatment to Attachment 1 by classifying the attachment as public. If the Commission agrees on rehearing to determine that the document is not public, it should grant confidential treatment for Attachment 1 for reasons outlined in section b.

b. Confidential Treatment should be granted for SIERRA-DR-01-048(d) Confidential Attachment 1

i. 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.

**ii. Response and Attachment for SIERRA-DR-01-048(d) Confidential
Attachment 1**

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.

In response to SIERRA Request No. 01-048, Duke Energy Kentucky provides SIERRA-DR-01-048(d) Confidential Attachments 1, which contains detailed modeling information, Company analysis of coal unit operation and forecasts, pricing for resources, and detailed PowerSIMM Modeling characteristics. In acknowledging the public interest in transparent proceeding before the Commission, Duke Energy Kentucky has reviewed Attachment 1 in light of the Commission’s Order and while the Company maintains that the entirety of the document is confidential, the Company believes that portions of the attachment may be considered as public. Duke Energy Kentucky respectfully submits that the Commission find that the highlighted information contained in Attachment 1 to be proprietary and confidential and that making it public would put Duke Energy Kentucky and its customers at a competitive disadvantage. The Company requests that the highlighted portions of Attachment 1 be afforded confidential treatment pursuant

to KRS 61.878(1)(c)(1) and additionally requests that Attachment 1 pursuant to 807 KAR 5:001, Section 13(2)(a)(3)(b).

The highlighted confidential data 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 confidential data includes production cost modeling characteristics, outputs showing projected generation unit operational and dispatch characteristics. Specifically, the items contained in Attachment 1 are confidential as they are station specific inputs used in Duke Energy Kentucky’s day ahead and real time offer process as well as modeling future generation output and costs and thus, satisfies this standard, as Duke Energy Kentucky’s modeling represents the inner workings of a corporation and, therefore, meets the second element of the statutory standard. The confidential data also satisfies the third element, as it contains commercially sensitive information related to the Company’s financial and operational 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 valuation of resources and outlook.

c. Request for Rehearing for Confidential Treatment

Duke Energy Kentucky respectfully requests that the Commission grant rehearing of the February 13 Order and grant confidential treatment to SIERRA-DR-01-048(d) Confidential Attachment 1 and that it 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 grant rehearing of the February 13 Order and classify and protect as confidential the specific information described herein.

Respectfully submitted,

DUKE ENERGY KENTUCKY, INC.

/s/ Rocco O. D'Ascenzo

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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 March 13th, 2025; and that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding.

/s/Rocco D'Ascenzo

Rocco D'Ascenzo