

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)

**RESPONSE OF DUKE ENERGY KENTUCKY, INC. TO SIERRA CLUB’S
MOTION TO INCORPORATE THE RECORD OF CASE NO. 2024-00197 BY
REFERENCE ONLY**

Duke Energy Kentucky, Inc. (Duke Energy Kentucky or the Company) respectfully requests that the Kentucky Public Service Commission (Commission or KPSC) deny the Sierra Club’s Motion to Incorporate the Record of Case No. 2024-00197 by reference only (Motion). The Motion should be denied because the Sierra Club’s request will unnecessarily confuse the issues in the two cases, and create an undue burden on the Company by effectively forcing it to defend and litigate the contents of its Integrated Resource Plan (IRP) in two concurrently pending proceedings, resulting in unnecessary duplication and expense for the Company by having to potentially be prepared to present evidence and witnesses for its IRP in this case as well.

To the extent the Commission entertains the Sierra Club’s Motion, the Company requests the Commission limit the scope of such incorporation in this case to only the merits of the Company’s presently pending Application for a certificate of public

convenience and necessity (CPCN). The Sierra Club should not be permitted to incorporate material related to issues extraneous to this proceeding, such as the continued operation of the Company's East Bend Generating Station, issues around its timing of retirement, or whether other non-fossil units could or should be used to meet customer energy demands today. Permitting discovery and arguments on these extraneous issues in this proceeding is contrary to the standard for the Commission's approval of Sierra Club's intervention in these proceedings, which is "to present issues or to develop facts that assist the commission in fully considering the matter *without unduly complicating or disrupting the proceedings.*"¹ Inserting these additional issues will complicate and delay this proceeding because it will confuse issues, duplicates the litigation of the IRP merits, and will waste Company and Commission resources.

I. INTRODUCTION

On May 8, 2024, the Company filed its "Notice of Intent to File an Application 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" (Limestone Conversion) thereby opening the above-styled docket.² On July 25, 2024, the Company filed its Application for approval of a CPCN to convert its wet flue gas desulfurization system (WFGD) from a quicklime reagent process to a limestone reagent handling system at its East Bend Generating Station (East Bend), for approval to amend its environmental compliance plan and to amend

¹ 807 KAR 5:001 Section 1 (11)(b); emphasis added.

² *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 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*, Case No. 2024-00152, Notice of Intent (May 8, 2024).

its Environmental Surcharge Mechanism (ESM).³ As explained in the Company's Application, the proposed Limestone Conversion is intended to address reagent supply scarcity and associated price risks that could impact the Company's ability to continue providing cost-effective, safe and reliable service to our Kentucky customers.⁴

On June 21, 2024, the Company also filed its IRP in Case No 2024-00197. The IRP contains "Duke Energy Kentucky's proposed roadmap to meet future energy and demand requirements without compromising reliability of service, energy affordability or the power demands of a growing region."⁵ On July 16, 2024, the Commission established a procedural schedule in the 2024 IRP proceeding, that among other things, established procedural timelines for discovery, comments and an evidentiary hearing. On July 23, 2024, the Sierra Club filed a motion to intervene in the 2024 IRP proceeding and the Commission granted its motion on August 6, 2024.⁶ At present, one round of discovery has been issued and responded to by the Company, including discovery by the Sierra Club. The 2024 IRP docket remains open and is developing.

Likewise, on August 9, 2024, the Commission issued its procedural order in this case, setting forth timelines for discovery, intervenor testimony, rebuttal testimony, and an opportunity for a public hearing. This case's docket also remains open and continues to develop.

Now, the Sierra Club seeks to conflate the two proceedings by requesting that the 2024 IRP docket be incorporated into this proceeding. The Sierra Club points to specific documents filed confidentially in the 2024 IRP docket that it now wishes be incorporated

³ See *Id.*, Application (July 25, 2024).

⁴ Application, at 6.

⁵ *In the Matter of the Electronic 2024 Integrated Resource Plan of Duke Energy Kentucky, Inc.*, Case No. 2024-00197, Integrated Resource Plan at 3 (June 21, 2024).

⁶ *Id.*, Sierra Club's Motion to Intervene (July 23, 2024); *Id.*, Order (Aug. 6, 2024).

into this case.⁷ The documents identified by Sierra Club thus far for incorporation are: 1) the entire confidential 2024 IRP and 2) confidential discovery responses to data requests issued by Staff and the Kentucky Solar Energy Society that among other things, include the Company's modeling forecasts and third-party supplied data for supply-side capital costs for generating resources evaluated in the 2024 IRP.⁸

The issue in this proceeding is not whether the Company should retire and replace its East Bend coal-fired unit, and with what resources it should do so. The issue is simply whether the Company has adequately demonstrated that converting to a Limestone-based reagent handling system is reasonable, or whether the Company should continue with its current Lime-based reagent handling and face the continued risks of price escalation and supply constraints. The other issues are not relevant and indeed are not resolvable in this CPCN proceeding because of recent changes in Kentucky law.

II. LAW AND ARGUMENT

A. **The Sierra Club's Motion unduly complicates and disrupts this proceeding.**

The standard for permissive intervention in proceedings before the Commission is set forth in 807 KAR 5:001 Section 4(11)(b), which provides in relevant part that:

The Commission shall grant a person to intervene if the Commission finds that he or she has made a timely motion for intervention and that he or she has a special interest in the case that is not otherwise adequately represented or that his or her intervention is likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings."⁹

⁷ Sierra Club Motion, at 1 (Sept. 11, 2024).

⁸ *Id.*

⁹ *Id.*

By Order dated September 4, 2024, the Commission, over the Company's objection, granted the Sierra Club's out-of-time intervention in this proceeding.¹⁰ In doing so, the Commission found that the Sierra Club's intervention "is likely to present issues or develop facts that will assist the Commission in considering this matter without unduly complicating the proceedings pursuant to 807 KAR 5:001, Section 4(11)(b)."¹¹ Yet, the Sierra Club's Motion requesting to incorporate the record in the currently pending Case No. 2024-00197 (2024 IRP Case) effectively does just that.

The issue in the above-styled case is narrow and involves whether the Company should convert the lime-based reagent handling processes at the East Bend Generating Station (East Bend) to a limestone-based process in order to address risks of supply certainty, reduce costs, and continue complying with existing environmental regulations, all to continue operating the plant to meet customer demand in a safe, reliable, and reasonable cost manner. The CPCN requested in this case is to address an operational constraint the Company is experiencing today. If the Commission rules in the negative, the Company will continue its existing reagent handline process until the unit is no longer capable of operation either economically, or due to an inability to no longer comply with environmental regulations. At that time, the Company will address the unit retirement and replacement in accordance with Kentucky Law.

Conversely, the 2024 IRP Case presents the Company's latest plan of a generating resource portfolio that will be needed to provide for its customers energy needs over a longer-term, fifteen-year, planning horizon. The two cases, while addressing issues affecting the continued operating of the Company's East Bend, nonetheless address

¹⁰ Order, at 3 (Sept. 4, 2024).

¹¹ *Id.*

different issues. The 2024 IRP Case presents long-term planning scenarios, multiple cases, including assumptions regarding market prices, supply side costs, environmental regulations, and load and resource operational modeling for the Company’s entire generating portfolio now and in the future.

While the Company’s proposal to construct the limestone handling conversion in this case will be approved or denied by the Commission, the Commission does not similarly “approve” the IRP for implementation. The purpose of the IRP is provide for a review of the utility’s long-range resource planning by the Commission Staff, who then issues a report with recommendations to be considered and addressed in the next future IRP.¹² Indeed, the base case IRP scenario for replacing East Bend assumes the unit can continue operating through 2038 with identified and timely upgrades, including a dual-fuel conversion in compliance with environmental regulations. The unit retirement and replacement strategies examined in the IRP are impossible to implement in the near-term horizon that is being addressed in this CPCN. Thus, the purposes of the two cases are entirely different.

Nor is the Commission able to approve or order a retirement for the unit in this case. Pursuant to KRS 278.264, the Company cannot propose, and the Commission cannot approve a fossil-fueled unit retirement unless it overcomes a rebuttable presumption against the unit’s retirement.¹³ And pursuant to KRS 164.2807,¹⁴ before the Company can

¹² 807 KAR 5:058, Section 11.

¹³ KRS 278.264, creates a rebuttable presumption against retirement of a fossil fueled generating unit and requires the utility that wishes to retire such a unit to demonstrate that it will replace the unit with capacity that 1) is dispatchable; 2) maintains or improves grid reliability and resilience; 3) maintains minimum reserve requirements established by a reliability coordinator; and 4) has the same or higher capacity value as the unit to be retired; 5) retirement will not cause harm by incurring incremental costs that could be avoided by continued operation; and 5) the retirement was not due to financial incentives or benefits offered by a federal agency.

¹⁴ KRS 164.2807, among other things, requires a utility planning to retire a fossil-fueled generating unit to first give notice to the “EPIC” commission at least 180 days before filing its application under KRS 278.264.

even make such a request, it must go through a gating process before Kentucky's Energy Planning and Inventory Commission (EPIC). Neither of those events have occurred, nor can they in this proceeding. Therefore, any arguments, analysis, positions, inquiries and assumptions regarding East Bend's potential retirement or replacement are irrelevant and outside the scope of this proceeding.

The Company maintains that the two proceedings should remain separate. They have different purposes, different witnesses, different burdens of proof, and incorporating the IRP docket in this case will result in unnecessary duplication and confusion of issues, a result that is at odds with the standard for intervention. Although a hearing is not yet requested or scheduled in this proceeding, if one is, and the 2024 IRP docket becomes incorporated, without appropriate safeguards, the Company would be obligated to present all the witnesses identified in the IRP proceeding in this case as well. This will present an unreasonable burden and expense on the Company by making it defend and support its entire IRP in two concurrent proceedings. The Company would have no idea what issues intervening parties could wish to bring up in this case during an evidentiary hearing. Nor would it know which of the witnesses that have supported evidence in the IRP must appear at any hearing for the CPCN proceeding. Moreover, although the Commission rightfully determined that the Company need not respond to the Sierra Club's initial discovery requests in this proceeding, as can be clearly seen by the questions they posed, the Sierra Club intends to pursue (and potentially litigate) the merits of continued operation of the Company's fossil generation.

As the Company pointed out in its Objection to Sierra Club's intervention, their motivation in participating in this case is explicit, to "illuminate the economic and environmental risks associated with continued reliance on fossil fuel-fired generation" and

to promote renewable energy and storage capacity.¹⁵ In the Sierra Club's First Request for Information to Duke Energy Kentucky (RFI), the Sierra Club sought information regarding:

- East Bend's historical Fixed O&M, Non-fuel variable O&M, capital costs, revenues, and unforced capacity.¹⁶
- East Bend's projected operational costs;¹⁷
- Present Value Revenue Requirements;¹⁸
- Retirement and replacement alternatives;¹⁹
- Compliance strategy with other environmental regulations (Effluent Liquid Guidelines, Mercury Air Toxics Standards, Good Neighbor, Regional Haze);²⁰
- Environmental Enforcement communications;²¹
- PJM dispatch decisions as "must run" vs self-scheduling.²²

Again, this information, while potentially relevant to the Company's pending IRP proceeding which is about the Company's long-term generation supply strategy, has no bearing on the current Application which is how the Company will continue complying with existing regulations given current price and supply concerns. All these issues unnecessarily complicate and disrupt the current proceeding, the record and goes far beyond whether the Limestone conversion is a reasonable proposal.

¹⁵ Sierra Club Motion to Intervene Out-of-Time, at 5-6.

¹⁶ See Sierra Club RFI 1.4.

¹⁷ Sierra Club RFI 1.5.

¹⁸ Sierra Club RFI 1.6.

¹⁹ Sierra Club RFI 1.15.

²⁰ Sierra Club RFI 1.19, 1.20, 1.231.24, 1.25, 1.28, 1.29, 1.30, and 1.31 .

²¹ Sierra Club RFI 1.39.

²² Sierra Club RFI 1.38.

Should the Commission decide to incorporate the IRP record as the Sierra Club requests, it should also include appropriate guardrails and limiting instructions as to the use of this information to issues relevant to this proceeding, and not the merits of retirement/replacement alternatives that have, or should have been, considered. The latter is solely relevant to the 2024 IRP proceeding and would unduly complicate this case. Additionally, it would be redundant and duplicative, because the Sierra Club, as an intervening party in the Company's 2024 IRP case, can conduct relevant discovery and take positions regarding the continued operation of the Company's only base load coal unit in that proceeding. Further, the Commission should be mindful of the expense the Company will have to incur if it must bring additional IRP-supporting witnesses to any evidentiary hearing of this case simply because the Sierra Club the IRP itself and confidential modeling assumptions are incorporated.

III. CONCLUSION

For the foregoing reasons, Duke Energy Kentucky, Inc., respectfully requests that the Commission deny the Sierra Club's untimely Motion.

Respectfully submitted,

DUKE ENERGY KENTUCKY, INC.

/s/ Rocco O. D'Ascenzo
Rocco O. D'Ascenzo (92796)
Deputy General Counsel
Larisa Vaysman (98944)
Associate General Counsel
Duke Energy Business Services LLC
139 East Fourth Street, 1303-Main
Cincinnati, Ohio 45201-0960
Phone: (513) 287-4320
Fax: (513) 370-5720
rocco.d'ascenzo@duke-energy.com
larisa.vaysman@duke-energy.com

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 September 18, 2024; and that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding.

John G. Horne, II
The Office of the Attorney General
Utility Intervention and Rate Division
700 Capital Avenue, Ste 118
Frankfort, Kentucky 40601
John.Horne@ky.gov

Joe F. Childers, Esq.
Childers & Baxter, PLLC
The Lexington Building
201 West Short Street, Suite 300
Lexington, KY 40507
(859) 253-9824
joe@jchilderslaw.com

Of counsel (not licensed in Kentucky)

Kristin A. Henry
Sierra Club
2101 Webster Street, Suite 1300
Oakland, CA 94612
kristin.henry@sierraclub.org

/s/Rocco D'Ascenzo

Rocco D'Ascenzo