

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)

**PETITION FOR CONFIDENTIAL TREATMENT OF DUKE ENERGY KENTUCKY,
INC. FOR CERTAIN RESPONSES 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 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 responses and attachments to Intervenor Sierra Club’s (SIERRA) First Request for Information issued on September 20, 2024:

- (1) SIERRA-DR-01-004 Confidential Attachment 2;
- (2) SIERRA-DR-01-005 Confidential Attachment;
- (3) SIERRA-DR-01-007(a) Confidential Attachments 1 and 2;
- (4) Highlighted portion of the response to SIERRA-DR-01-040;
- (5) SIERRA-DR-01-044 Confidential Attachment;
- (6) SIERRA-DR-01-048(d) Confidential Attachments 1 and 2 and SIERRA-DR-01-048(f) Confidential Attachment;

- (7) SIERRA-DR-01-049 Confidential Attachment 1;
- (8) SIERRA-DR-01-057(e) Confidential Attachment;
- (9) Highlighted portion of the response to SIERRA-DR-01-065; and,
- (10) Highlighted portion of the response to SIERRA-DR-01-074.

Specifically, Duke Energy Kentucky seeks confidential treatment of information referred to herein as the “Confidential Information,” which, broadly speaking, includes sensitive generating operating characteristics, information related to vendor pricing, market and reliability risks, contracts, vendor pricing and cost information, assessments of critical utility infrastructure, as well as internal cost 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. SIERRA-DR-01-004 Confidential Attachment 2

SIERRA Request No. 01-004 states as follows:

For East Bend Unit 2, please provide the following historical annual data, from 2018 to present:

- a. Fixed O&M cost
- b. Non-fuel variable O&M cost
- c. Fuel costs
- d. Capital costs
- e. Heat rate
- f. Generation
- g. Capacity rating
- h. Capacity factor
- i. Forced outage rate
- j. Planned outage rate
- k. Energy revenues
- l. Capacity revenues
- m. Ancillary services revenues
- n. Unforced capacity (“UCAP”)

In response to SIERRA Request No. 01-004, Duke Energy Kentucky provides SIERRA-DR-01-004 Confidential Attachment 2, which contains detailed information regarding East Bend’s operating characteristics, including heat rate, capacity factors, outage information and market

revenues for multiple years. The Company requests that this Attachment be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1), and additionally requests that this Attachment be treated as confidential in its entirety pursuant to 807 KAR 5:001E, Section 13(2)(a)(3)(b).

The 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 satisfies this standard, as Duke Energy Kentucky’s operational costs for its generating unit represents inner workings of the 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 operation of its coal unit and revenues by year for several years, 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 future outlook.

ii. SIERRA-DR-01-005 Confidential Attachment

SIERRA Request No. 01-005 states as follows:

For East Bend Unit 2, please provide the following projected annual data, for the years 2025 through 2046, or the latest year available if not available through 2046:

- a. Fixed O&M cost
- b. Non-fuel variable O&M cost
- c. Fuel costs
- d. Capital costs
- e. Heat rate
- f. Generation
- g. Capacity rating
- h. Capacity factor
- i. Forced outage rate

- j. Planned outage rate
- k. Energy revenues
- l. Capacity revenues
- m. Ancillary services revenues
- n. Unforced capacity (“UCAP”)

In response to SIERRA Request No. 01-005, Duke Energy Kentucky provides SIERRA-DR-01-005 Confidential Attachment, which contains detailed information regarding the anticipated future operational characteristics of the Company’s coal unit and the Company analysis and forecasts, as well as pricing for resources. The Company requests that this Attachment be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1), and additionally requests that this Attachment be treated as confidential in its entirety pursuant to 807 KAR 5:001E, Section 13(2)(a)(3)(b).

The 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 satisfies this standard, as Duke Energy Kentucky’s projected costs and characteristics of operation and 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 parameter 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.

iii. SIERRA-DR-01-007(a) Confidential Attachments 1 and 2

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 response to SIERRA Request No. 01-007, Duke Energy Kentucky provides SIERRA-DR-01-007(a) Confidential Attachments 1 and 2, which includes a multi-jurisdictional request for proposal and internal analysis and contains vendor pricing information from a request for proposal, thus disclosing market risks, pricing forecasts, and 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 these Attachments be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1), and additionally requests that the Attachments be treated as confidential in their entirety pursuant to 807 KAR 5:001E, Section 13(2)(a)(3)(b).

The information contained in these attachments are not publicly available, thus satisfying the first element of the statutory standard for confidentiality of a proprietary record. SIERRA-DR-01-007(a) Confidential Attachments 1 and 2 satisfy the second element of the standard, as negotiated pricing information is generally recognized as confidential and proprietary. The Attachments also satisfy the third element because disclosure of these charges, RFP participation,

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 would result in making public information for other utility jurisdictions, which would discourage their willingness to participate in group RFPs across the Duke Energy enterprise, thereby adding additional cost to Duke Energy Kentucky as it would have to issue stand-alone RFPs and would not be able to attempt to leverage its being part of a larger company to try to obtain better pricing.

iv. Highlighted portion of the 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 response to SIERRA Request No. 01-040, Duke Energy Kentucky provides analysis that includes and contains detailed vendor pricing and contract information, market risks, pricing forecasts, and 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 with the response be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1). The highlighted information was derived through a confidential request for proposal (RFP) and subsequent negotiation process, and 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 is generally recognized as confidential and proprietary. The highlighted information also satisfies the third element because disclosure of these charges, RFP participation, 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.

v. SIERRA-DR-01-044 Confidential Attachment

SIERRA Request No. 01-044 states as follows:

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."

- a. Please provide the MEL reagent costs for the past ten years. Please provide these broken out by commodity and transportation costs.
- b. Please explain when Duke Energy Kentucky was first made aware that supply was a concern.

In response to SIERRA Request No. 01-044, Duke Energy Kentucky provides SIERRA-DR-01-044 Confidential Attachment, which contains detailed information and Company analysis of pricing for reagent resources and transportation from the last 10 years. The Company requests that this Attachment be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1), and additionally requests that this Attachment be treated as confidential in its entirety pursuant to 807 KAR 5:001E, Section 13(2)(a)(3)(b).

The 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 satisfies this standard, as Duke Energy Kentucky’s costs for compliance represent 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 condition 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.

vi. SIERRA-DR-01-048(d) Confidential Attachments 1 and 2 and SIERRA-DR-01-048(f) Confidential Attachment

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 and 2, as well as SIERRA-DR-01-048(f) Confidential

Attachment, which contains detailed modeling information, Company analysis of coal unit operation and forecasts, pricing for resources, and detailed PowerSIMM Modeling characteristics. The Company requests that these Attachments be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1), and additionally requests that these Attachments be treated as confidential in their entirety pursuant to 807 KAR 5:001E, Section 13(2)(a)(3)(b).

The 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 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.

vii. SIERRA-DR-01-049 Confidential 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 response to SIERRA Request No. 01-049, Duke Energy Kentucky provides SIERRA-DR-01-049 Confidential Attachment 1, which contains detailed information regarding projected variable operations and maintenance costs and Company analysis and forecasts, as well as pricing for resources. The Company requests that this 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 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 satisfies this standard, as Duke Energy Kentucky’s projected expenditures and generating unit operating assumptions represent 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 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.

viii. SIERRA-DR-01-057(e) Confidential Attachment

SIERRA Request No. 01-057 states as follows:

Please refer to the response to AG-DR-01-007 and the file named “AG-DR-01-007 CONF Attachment”.

- a. Please explain which costs are included in the Incremental Cost Offers for East Bend.
- b. Please confirm that the Incremental Cost Offer for East Bend includes the cost of Magnesium Enhanced Lime.
 - i. If confirmed, please provide the Magnesium Enhanced Lime cost, in \$/MWH, for each of the months and years provided in the Attachment.
- c. For each month and year provided in the Attachment, please provide the fuel cost included in the Incremental Cost Offer for East Bend.
- d. Please explain which factors drove the increase in the Incremental Cost Offers over the period of June 2022 through February 2023.
- e. Please provide East Bend's Incremental Cost Offers for 2024.
- f. For each offer type in columns D-K, please state the Energy Offer Schedule Type as defined by PJM (e.g., Cost (1) Schedule, Price Parameter Limited Schedule (79) Schedule, Price (99) Schedule).

In response to SIERRA Request No. 01-057, Duke Energy Kentucky provides SIERRA-DR-01-057(e) Confidential Attachment, which includes and contains the Company's detailed generation unit commitment and dispatch cost offers in the competitive wholesale energy markets for calendar year 2024. Releasing this information would disclose sensitive generating unit commitment information each day in the market, which would provide insight into how the Company may offer the unit in the future. The Company requests that this Attachment be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1), and additionally requests that this Attachment be treated as confidential in its entirety pursuant to 807 KAR 5:001E, Section 13(2)(a)(3)(b).

SIERRA-DR-01-057(e) Confidential Attachment is not publicly available, thus satisfying the first element of the statutory standard for confidentiality of a proprietary record. The second element is also satisfied, as this information is commercially sensitive and proprietary information that constitutes a "trade secret" under KRS 365.880(4). The third element is satisfied, as disclosure of this information would result in a commercial disadvantage. SIERRA-DR-01-057(e) Confidential Attachment contains Company work product and if this information is publicly

released, it will place the Company at a competitive disadvantage, as competitors would have access to the operations of the Company's generating units, their commitment details and costs, and the work and ideas developed by Duke Energy Kentucky to manage their generating assets in the wholesale energy markets.

ix. Highlighted portion of the 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 response to SIERRA Request No. 01-065, Duke Energy Kentucky provides detailed cost projections, anticipated savings, 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.

x. Highlighted portion of the response to SIERRA-DR-01-074

SIERRA Request No. 01-074 states as follows:

Please refer to the Company's response to STAFF-DR-01-022

- a. Please provide the names of the "eleven potential lime suppliers."
- b. Please provide the names of the companies that provided responses.

In response to SIERRA Request No. 01-074, Duke Energy Kentucky provides the identities of participants in a competitive RFP for lime reagents. 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 potential future RFP participants would be discouraged from providing responses if their identity and potential other information like pricing were to be made public. This could have a chilling effect on future RFP participation and

have an adverse impact on the Company's costs, and ultimately prices paid by customers.

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)

Deputy General Counsel

Duke Energy Business Services LLC

139 East Fourth Street, 1303-Main

Cincinnati, Ohio 45201-0960

Phone: (513) 287-4320

Fax: (513) 287-4385

E-mail: rocco.d'ascenzo@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 October 4th, 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

Rocco D'Ascenzo