

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

In the Matter of:

**ELECTRONIC 2024 INTEGRATED RESOURCE
PLAN OF DUKE ENERGY KENTUCKY, INC.**) **Case No. 2024-00197**

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**SIERRA CLUB’S MOTION TO INCORPORATE THE
RECORD OF CASE NO. 2024-00152 BY REFERENCE ONLY**

Pursuant to 807 K.A.R. 5:001, Section 11(5), Sierra Club, by counsel, moves that the following confidential documents filed in Case No. 2024-00152, *Electronic Application of Duke Energy Kentucky, Inc. for a Certificate of Public Convenience and Necessity to Convert its Wet Flue Gas Desulfurization System*, be incorporated by reference into the record of this proceeding:

1. Discovery Response: Sierra-DR-01-007(a) Attachment 1– Confidential version;
2. Discovery Response: Sierra-DR-01-007(a) Attachment 2 – Confidential version;
3. Discovery Response: STAFF-DR-02-008 Attachment – Confidential Version; and
4. Forthcoming Supplemental Discovery Response: Duke’s forthcoming supplemental discovery response regarding an unsolicited updated supply offer from its lime supplier about a potential long-term lime supply contract. Given that other information about supply offers requested confidential treatment, this supplemental discovery response will probably also include a confidential version.

Incorporation by reference of the requested records will facilitate efficient development of a robust record without prejudice to any party. In Case No. 2024-00152, the Commission

already incorporated all records from this matter through September 27, 2024, finding that “incorporation of the case will provide a more complete review of all information,” and that “[r]equiring refiling would be unnecessarily redundant.”¹ The same is true here. Incorporating by reference the requested records from the CPCN proceeding will provide for the efficient review of all relevant information without prejudice to any party.

BACKGROUND

In this proceeding, Duke Energy Kentucky, Inc. (“Duke” or “the Company”), filed its 2024 Integrated Resource Plan (“IRP”). The 2024 IRP evaluated several scenarios around the conversion or retirement of East Bend as prescribed courses of action under the U.S. Environmental Protection Agency’s (“EPA”) Clean Air Act (“CAA”) Section 111 Update for existing coal facilities. The four compliance pathways under the EPA 111 Rules are: (1) convert to dual fuel by 2030, (2) convert to operate on 100% gas by 2030, (3) retire by 2032, or (4) add carbon capture and sequestration (“CCS”) by 2032.² The three different compliance pathways modeled by Duke in the 2024 IRP are retirement by 2032, convert to gas by 2030 and retire by 2045, and co-firing with gas, or dual fuel operation (“DFO”) and then retire by 2039.³

In Case No. 2024-00152, Duke seeks a Certificate of Public Convenience and Necessity (“CPCN”) authorizing construction and conversion of the wet flue gas desulfurization system (“WFGD”) at East Bend Unit 2 from a quicklime handling process to a limestone handling process (“East Bend CPCN”), which would cost \$125.8 million.⁴ The Company asserts that the

¹ Case No. 2024-00152, Order (Oct. 10, 2024) at 3.

² Case No. 2024-00197, Duke Response to Staff-DR-01-023(c) (provided Sept. 4, 2024).

³ Duke 2024 IRP at 56.

⁴ Case No. 2024-000152, Application of Duke 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 (July 25, 2024) at 1, 8.

retrofit is needed because quicklime costs are escalating and it cannot obtain a long-term supply of quicklime, which Duke claims could force Duke “to retire the plant prematurely.”⁵

In the 2024 IRP, Duke did not evaluate the Limestone Conversion Project because the Company assumed the project would proceed as part of all of the modeling runs. Thus, the 2024 IRP modeling cannot determine if there is a lower cost alternative pathway to the Limestone Conversion Project. This means that neither Duke nor intervening parties know whether pursuing an alternative portfolio without the Limestone Conversion Project is cheaper if that cost can be avoided.

On October 11, 2024, Duke filed a Motion to stay the proceeding in Case No. 2024-00152, because new information has called into question whether this project is needed at all. Specifically, the Company recently received an unsolicited updated supply offer from its lime supplier about a potential long-term lime supply contract. Duke notes that this development may negate the need for this project entirely: “The Company has engaged with the supplier for further discussions. Although conversions [sic; assuming Duke meant conversations] continue, these initial conversations lead the Company to recommend a brief pause in this proceeding.”⁶ Although Duke’s Motion does not indicate any of the relevant terms of the proposed long-term supply contract, such as price, quantity, or duration, at a minimum, this offer undercuts the idea that the \$125.8 million retrofit is needed at all. It certainly calls into question whether the proposed \$125.8 million retrofit project is in the best interest of ratepayers, given the newly available long-term contract that would allow Duke to continue with the previously-dismissed

⁵ *Id.* at 5-6; *see also* Case No. 2024-000152, Direct Testimony of John A. Verderame on Behalf of Duke at 6 (“making East Bend less and less economic to run”).

⁶ Case No. 2024-000152, Duke Motion for Stay of Proceeding (Oct. 11, 2024) at 3.

status quo alternative.⁷ As Duke explained in its Motion for Stay, “this new information will prompt, at a minimum, an obligation to update certain responses to discovery already provided in this proceeding.”⁸ Those updated discovery responses have not yet been provided by Duke, although the Company recognizes its relevance to the proceeding. In its Motion to Stay, Duke noted that “such supplemental information will provide for a comprehensive evaluation, by intervenors and the Commission, of the Company’s Application, as compared to the information presently of record.”⁹

Since Duke assumed that the Limestone Conversion Project, including its \$125.8 million in up front capital costs, would proceed, Duke included the Project as an input assumption in each of the modeling runs for the 2024 IRP. But now that the need for this project might be mooted by a new, unsolicited offer for reagent, incorporating the requested documents by reference will benefit the Commission and other parties by making available already-existing information on East Bend operational options and potential cost implications thereof that Duke has either already documented in its CPCN Proceeding or subsequently provides in that docket.

LEGAL STANDARD

The Procedural Rules of the Public Service Commission of Kentucky (“the Commission”), allow for the record of a case in the Commission’s files, or other document(s) on file with the Commission, to be made a part of the record in another proceeding by reference

⁷ On October 18, 2024, the Commission denied Duke’s request for a stay. Case No. 2024-00152, Order (Oct. 18, 2024). Although the Commission noted that Duke could withdraw or amend its application in response to the new information, *see id.* at 3, Duke has not done so yet.

⁸ Case No. 2024-000152, Duke Motion for Stay of Proceeding (Oct. 11, 2024) at 3.

⁹ *Id.*

only.¹⁰ “The Commission generally grants motions to incorporate records from other cases.”¹¹

The Commission has approved requests to incorporate material by reference where, for example, forcing the applicant to refile the requested information would be “unnecessarily redundant,”¹² and where incorporation by reference would save the parties the “time and financial resources” of reproducing the materials.¹³

Here, the incorporation by reference of the requested records from Case No. 2024-00152, *Electronic Application of Duke Energy Kentucky, Inc. for a Certificate of Public Convenience and Necessity to Convert its Wet Flue Gas Desulfurization System*, will avoid unnecessary reproduction of documents, facilitate efficient review of the matter, and will be useful to the Commission in determining whether Duke’s 2024 IRP is legally sufficient.

In order to ensure that utilities “furnish adequate, efficient and reasonable service” and charge “fair, just and reasonable rates,”¹⁴ Kentucky regulation requires “regular reporting and commission review of load forecasts and resource plans of the state’s electric utilities to meet future demand with an adequate and reliable supply of electricity at the lowest possible cost for all customers within their service areas, and satisfy all related state and federal laws and

¹⁰ 807 K.A.R. 5:001, Section 11(5).

¹¹ *In re: Elec. Application of Delta Natural Gas Co., Inc. for a CPCN to Construct a Pipeline to Serve the Cities of Nicholasville & Wilmore*, Case No. 2022-00085, 2022 WL 1195076, at *1 (Ky. P.S.C. Apr. 13, 2022) (citing *In re: Application of Kentucky Utilities Co. for an Order Authorizing the Issuance of Securities and the Assumption of Obligations*, Case No. 2006-00155, Order (Ky. P.S.C. May 9, 2006) at 1; *In re: Proposed Adjustment of the Wholesale Water Service Rates of the City of Augusta*, Case No. 2015-00039, Order (Ky. P.S.C. Feb. 3, 2016) at 19; *In re: Application of Big Rivers Electric Corp. for Approval to Issue Evidences of Indebtedness*, Case No. 2017-00243, Order (Ky. P.S.C. July 11, 2017) at 1).

¹² *In re: Elec. Tariff Filing of Boone County Water District to Remove Subdistrict A & B Surcharges from its Tariff*, Case No. 2022-00101, Order (Ky. P.S.C. July 18, 2022) at 2.

¹³ *In re: Application of Big Rivers Electric Corp. for Approval to Issue Evidences of Indebtedness*, Case No. 2017-00243, Order (Ky. P.S.C. July 11, 2017) at 1.

¹⁴ K.R.S. § 278.030(1)-(2).

regulations.”¹⁵ For that purpose, regulations require that electric utilities file an Integrated Resource Plan (“IRP”) every three years.

Regulations explicitly articulate the information that utilities must include in an IRP: historical and projected demand, resource information, financial data, and other operating performance and system information.¹⁶ And regulations also specify how the IRP should utilize and analyze that information: it should “discuss the facts, assumptions, and conclusions, upon which the plan is based and the actions it proposes.”¹⁷ In selecting a resource mix, the utility must not only demonstrate how that resource mix satisfies reliable and adequate supply at lowest possible cost, but also test key uncertainties, including alternative resource options that may be cost-effective.¹⁸ The IRP should not merely lock in an assumption, but instead toggle between them, showing “how uncertainties in those assumptions and judgments were incorporated into analyses.”¹⁹ The IRP is intentionally and obviously designed to ensure that Kentuckians have access to affordable and reliable electricity by proactively planning for the future and testing assumptions. Utilities must analyze *at a granular level* the economics, reliability, and environmental risk of existing generation and contrast it with other options, including replacement generation.

ARGUMENT

Incorporating the requested records from the Company’s ongoing CPCN proceeding into the record of this proceeding will efficiently enable a more thorough and complete evaluation of the Company’s 2024 IRP, without being burdensome, and without prejudice to any party. The

¹⁵ 807 K.A.R. 5:058 (necessity, function, and conformity).

¹⁶ 807 K.A.R. 5:058, Section 1(2).

¹⁷ *Id.*

¹⁸ *Id.* Section 8(1).

¹⁹ *Id.* Section 8(5)(b).

specified records are relevant to this proceeding, their incorporation by reference in this proceeding is permitted under the Commission's rules, and all parties to this proceeding, including the Commission, will benefit from the efficiencies of incorporation by reference. The specified records are relevant to the question of whether the IRP inappropriately locked in an assumption and should have instead evaluated uncertainties in those assumptions and judgments.²⁰ In order to reach a logical and factually supported determination in this IRP proceeding, the Commission must evaluate the validity of the assumption that the Limestone Conversion Project will go forward under all scenarios.

The Company's 2024 IRP evaluated a range of potential operational alternatives for East Bend Unit 2. In the IRP, Duke stated that its Preferred Portfolio for compliance with Clean Air Act rules is to convert East Bend to 40% gas co-firing by January 1, 2030, and retire the plant by 2039.²¹ Duke also evaluated other alternatives as potentially cost-effective, including converting East Bend to 100% gas firing and retiring East Bend by 2032 or 2036, among others.²² Under each of these considered alternatives, the modeling incorporated the upfront capital cost of the Limestone Conversion Project. However, new information about an unsolicited offer to reagent calls into question whether this across-all-scenarios assumption is reasonable.

If Duke can secure a long-term supply of quicklime it could avoid the need for this \$125.8 million capital investment in its entirety. In addition, this new reagent offer could change the viability and the Present Value Revenue Requirement for some of the considered alternatives.

²⁰ *Id.*

²¹ Duke 2024 IRP at 61 ("Converting East Bend to DFO [dual-fuel option] by 2030 enables Duke Energy Kentucky to reliably serve its customers under the EPA CAA Section 111 Update while providing for a measured transition out of coal generation. While the plan ultimately calls for a combined cycle to replace East Bend, this plan allows East Bend to remain in service until 2039.").

²² *Id.* at 9-10.

Duke claims that it will take four to five years to co-fire the East Bend plant with gas.²³ If Duke is able to enter into a quicklime contract for five years, it could evaluate whether conversion of the entire plant to gas or retirement of the East Bend plant and replacement with a new combined cycle plant is a lower-cost alternative. The current modeling and analysis never evaluate this because the \$125.8 million is included in all scenarios. These are just two of the possible alternatives that could have their feasibility impacted by this new, long-term quicklime offer.

At this juncture, incorporating the requested records filed or soon to be filed in the Company's CPCN proceeding offers the least burdensome avenue to ensuring a robust record concerning the Company's 2024 IRP. The requested records consist of the confidential version of Request for Proposal, responses to the Request for Proposal, a document describing Duke's Spring 2023 and East Bend modeling assumptions, and unsolicited new long-term offer for reagent. Because parties may not use records on file with the Commission and designated as confidential in the CPCN proceeding for any activity or purpose beyond that one proceeding, such records could only be made a part of this record if refiled by the Company, offered in response to a data request, or incorporated by reference. Requiring the Company to expend time and financial resources refile, or responding to additional data requests already answered in the CPCN, would be wasteful and unnecessarily redundant.²⁴ Instead, to the extent relevant, parties may offer public records from the CPCN into evidence in this proceeding and incorporating the

²³ Case No. 2024-00197, Duke Response to Staff-DR-01-022(a) (provided Sept. 4, 2024).

²⁴ *In re: Elec. Tariff Filing of Boone County Water District to Remove Subdistrict A & B Surcharges from its Tariff*, Case No. 2022-00101, Order (Ky. P.S.C. July 18, 2022) at 2 (granting motion to incorporate by reference and noting that “[r]equiring refile would be unnecessarily redundant”); *In re: Application of Big Rivers Electric Corp. for Approval to Issue Evidences of Indebtedness*, Case No. 2017-00243, Order (Ky. P.S.C. July 11, 2017) at 1 (finding good cause to incorporate records by reference where utility sought to “eliminate[] the need to expend time and financial resources to reproduce them for filing in this proceeding”).

requested records by reference affords parties the same opportunity with respect to relevant confidential records, with no additional burden on the Company.

Additionally, no party to this proceeding would be prejudiced by incorporation of the requested records. Both the Office of the Attorney General and Sierra Club are intervenors in the Company's CPCN proceeding, are familiar with the record in both proceedings, and already have access to the requested records. Incorporation of the requested records imposes no additional obligations on Duke or on the Commission, which retains its ordinary role in managing the development of the record.

CONCLUSION

Sierra Club respectfully requests that the following confidential records, filed in Case No. 2024-00152, be incorporated by reference into the record of this proceeding:

1. Discovery Response: Sierra-DR-01-007(a) Attachment 1– Confidential version;
2. Discovery Response: Sierra-DR-01-007(a) Attachment 2 – Confidential version;
3. Discovery Response: STAFF-DR-02-008 Attachment – Confidential Version; and
4. Forthcoming Supplemental Discovery Response: Duke's forthcoming supplemental discovery response regarding an unsolicited updated supply offer from its lime supplier about a potential long-term lime supply contract. Given that other information about supply offers requested confidential treatment, this supplemental discovery response will probably also include a confidential version.

Dated: October 29, 2024

Respectfully submitted,

/s/ Joe F. Childers

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CERTIFICATE OF SERVICE

This is to certify that the foregoing copy of *Sierra Club's Motion to Incorporate the Record of Case No. 2024-00152 By Reference Only* in this action is being electronically transmitted to the Commission on October 29, 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