

**COMMONWEALTH OF KENTUCKY**

**BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

ELECTRONIC 2024 INTEGRATED RESOURCE	)	CASE NO.
PLAN OF DUKE ENERGY KENTUCKY, INC.	)	2024-00197

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**PETITION FOR CONFIDENTIAL TREATMENT OF DUKE ENERGY KENTUCKY, INC. FOR CERTAIN SUPPLEMENTAL ATTACHMENT TO SIERRA CLUB’S SEPTEMBER 25, 2024 SECOND 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 attachment filed in its supplemental response to Sierra Club’s (SIERRA) Second Request for Information issued on September 25, 2024:

- (1) SIERRA-DR-02-006 Confidential Supplemental Attachment 1.

Specifically, Duke Energy Kentucky seeks confidential treatment of information referred to herein as the “Confidential Information,” which, broadly speaking, generally includes detailed models and modeling input information, financing assumptions, resource costs, and data analysis related to forecasted capital and operations and management (O&M) costs, as well as future construction projects at the Company’s generating station. The public disclosure of the information described would place Duke Energy Kentucky at a commercial disadvantage as it manages its business in the wholesale power markets, negotiates contracts with various suppliers and vendors, and as it seeks to execute thee future strategies in that disclosure could potentially harm Duke Energy Kentucky’s

competitive position in the marketplace, to the detriment of Duke Energy Kentucky and its customers. Moreover, to the extent the requested information is subject to licensing agreements, disclosure of the information would be in violation of such agreements and could put the Company in an adverse legal position to the detriment of its customers.

## **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 document for which Duke Energy Kentucky is seeking confidential treatment, which is described in further detail below, satisfies each of these three statutory criteria.

**b. Attachment for Which Confidential Treatment is Sought**

**i. SIERRA-DR-02-006 Confidential Supplemental Attachment 1**

SIERRA Request No. 02-006 states as follows:

Refer to Docket Number 2024-00152, application for a CPCN for converting the wet FGD from a quicklime to a limestone system.

- a. Please provide the capital, fixed O&M, and variable O&M costs associated with this retrofit.
- b. Were any of the costs in response to (a) included in the IRP modeling?
  - i. If so, please explain where these costs were included, including what inputs were changed and in what scenarios they were changed.
  - ii. If not, please explain why not.
- c. Please provide the annual costs of quicklime at East Bend assumed in the CPCN modeling.
- d. Were any of the costs in response to (c) included in the IRP modeling?
  - i. If so, please explain where these costs were included, including what inputs were changed and in what scenarios they were changed.
  - ii. If not, please explain why not.
- e. Please provide the annual costs of limestone (post conversion) at East Bend assumed in the CPCN modeling.
- f. Were any of the costs in response to (e) included in the IRP modeling?
  - i. If so, please explain where these costs were included, including what inputs were changed and in what scenarios they were changed.
  - ii. If not, please explain why not.

- g. Please provide any analyses the Company conducted on the impacts of dispatch costs from converting the FGD.
- h. Please provide any analyses the Company conducted to estimate the costs and/or benefits of converting the FGD.
- i. Please provide any other analyses that the Company conducted to evaluate the decision to convert to limestone.

In response to SIERRA Request No. 02-006, Duke Energy Kentucky provides SIERRA-DR-02-006 Confidential Supplemental Attachment 1, which contains sensitive and proprietary data, models, modeling assumptions, forecasts, and dispatch costs. This document updates reagent costs and their impact on unit economics from a previously filed version that includes the costs known at the time the initial response was created. The Company requests that this Attachment be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1), and additionally requests the Attachment be treated as confidential in their entirety pursuant to 807 KAR 5:001E, Section 13(2)(a)(3)(b).

SIERRA-DR-02-006 Confidential Attachment 1 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 coefficients and data in the Company’s forecast models are proprietary to the Company and are Company work product. Finally, the third element is satisfied, as disclosure of this information would result in a commercial disadvantage. SIERRA-DR-02-006 Confidential Supplemental Attachment 1 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 work and ideas developed by Duke Energy Kentucky and insight into how the Company finances its operations.

**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 likely impair the interests of the Company if publicly disclosed.

The Company does not object to limited disclosure of the confidential information described herein, pursuant to an acceptable protective agreement, with the Attorney General or other intervenors with a legitimate interest in reviewing the same for the purpose of participating in this case.

To the extent the Confidential Information becomes generally 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,

*/s/ Rocco 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 December 4, 2024; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that submitting the original filing to the Commission in paper medium is no longer required as it has been granted a permanent deviation.<sup>1</sup>

*/s/Rocco D'Ascenzo*  
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*Counsel for Duke Energy Kentucky, Inc.*

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<sup>1</sup>*In the Matter of Electronic Emergency Docket Related to the Novel Coronavirus COVID-19, Order, Case No. 2020-00085 (Ky. PSC July 22, 2021).*