

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

In the Matter of:

THE ELECTRONIC APPLICATION OF DUKE )  
ENERGY KENTUCKY, INC., FOR: 1) AN )  
ADJUSTMENT OF THE ELECTRIC RATES; 2) ) CASE NO.  
APPROVAL OF NEW TARIFFS; 3) APPROVAL ) 2024-00354  
OF ACCOUNTING PRACTICES TO ESTABLISH )  
REGULATORY ASSETS AND LIABILITIES; )  
AND 4) ALL OTHER REQUIRED APPROVALS )  
AND RELIEF.

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**PETITION FOR CONFIDENTIAL TREATMENT OF DUKE ENERGY  
KENTUCKY, INC. FOR CERTAIN RESPONSES TO THE ATTORNEY  
GENERAL'S JANUARY 8, 2025  
FIRST REQUEST FOR INFORMATION**

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Duke Energy Kentucky, Inc. (Duke Energy Kentucky or the Company), by counsel, pursuant to 807 KAR 5:001, Section 13(2), KRS 61.878(1)(c), and other applicable law, respectfully moves the Public Service Commission of Kentucky (Commission) for an Order granting confidential treatment to the identified portions of the following responses and attachments filed in its responses to the Attorney General's (AG) First Request for Information issued on January 8, 2025:

- (1) AG-DR-01-003(a) Confidential Attachment;
- (2) AG-DR-01-004(a) Confidential Attachment;
- (3) Confidential response to AG-DR-01-020(k);
- (4) Confidential response to AG-DR-01-034(a);
- (5) AG-DR-01-035(a) Confidential Attachment;
- (6) AG-DR-01-076(c) Confidential Attachment 2;

- (7) AG-DR-01-076(f) Confidential Attachment;
- (8) AG-DR-01-085 Confidential Attachment 2;
- (9) AG-DR-01-101 Confidential Attachments 1 – 3;
- (10) AG-DR-01-102 Confidential Attachment;
- (11) AG-DR-01-106(d) Confidential Attachments 1 – 16;
- (12) AG-DR-01-132 Confidential Attachments 3, 5, and 9 – 12;
- (13) AG-DR-01-133 Confidential Attachments 1 – 8;
- (14) AG-DR-01-134 Confidential Attachments 5, 6, and 10 – 13; and,
- (15) AG-DR-01-136 Confidential Attachment 2.

Specifically, Duke Energy Kentucky seeks confidential treatment of information referred to herein as the “Confidential Information,” which, broadly speaking, includes detailed information pertaining to the Company’s compensation and benefits, information, analysis, and reports prepared by third-party vendors that are subject to confidentiality provisions that restrict the Company from providing this information publicly, the Company’s capitalization guidelines, forecasted budget information, vendor contracts, and other information.

## **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 documents 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. Confidential Attachments to AG-DR-01-003(a) and AG-DR-01-004(a);**

AG Request No. 01-003(a) states as follows:

Refer to the Application generally. Provide the following information for Duke Kentucky salaried employees, as well as all salaried employees whose costs are allocated to Duke Kentucky, and separate each response by company/utility.

a. Provide the position, title, and salary for each salaried employee for the years 2020 – 2025.

AG Request No. 01-004(a) requests the following information:

Refer to the Application generally. Provide the following information for Duke Kentucky non-salaried employees, as well as for all non-salaried employees whose costs are allocated to Duke Kentucky, and separate each response by company/utility.

(a) Provide the position, title, and wages for each non-salaried employee for the years 2020 – 2025.

In response to AG Request No. 01-003(a), Duke Energy Kentucky provides an attachment that details the position, title, and annual salary for each salaried employee paid by Duke Energy Kentucky. In response to AG Request No. 01-004(a), Duke Energy Kentucky provides an attachment that details the position, title, and annual salary for each non-salaried employee paid by Duke Energy Kentucky. The detail provided in these two confidential attachments is not publicly reported, and Duke Energy Kentucky is not required to do so, thus satisfying the first element of the statutory standard for confidentiality of a proprietary record. These confidential attachments satisfy the second element of the standard as disclosure of the specific compensation tied to positions and titles of individual employees would provide competitors insight into the Duke Energy Kentucky's compensation philosophies, policies, and practices. Duke Energy Kentucky competes for employees among a robust pool of employers, including other regional utilities. The level of compensation provided by the Company is instrumental in recruiting and retaining highly qualified employees. If competitors had ready access to this

information, they could use it to place Duke Energy Kentucky at a disadvantage in recruiting and retaining employees. Finally, the Commission has previously granted confidential treatment of this information in prior proceedings.<sup>1</sup>

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).

**ii. Confidential response to AG-DR-01-020(k)**

AG Request No. 01-020(k) requests the following information:

Refer to the Caldwell Testimony at 34 – 35.

(k) Provide the contribution amounts to disability insurance that are paid by Duke Kentucky and the employees.

In response to AG Request No. 01-020(k), Duke Energy Kentucky provides confidential information related to the benefits provided to its employees. The Company requests the highlighted information in response to AG Request No. 01-020(k) be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1). The highlighted information in response to AG Request No. 01-020(k) is not publicly reported, and Duke Energy Kentucky is not required to do so, thus satisfying the first element of the statutory standard for confidentiality of a proprietary record. The information also satisfies the second element of the standard, as detailed information about the benefits provided by an employer to its employees is generally recognized as confidential. Finally, the information also satisfies the third element because disclosure of detailed benefit information would provide

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<sup>1</sup> *In the Matter of the Electronic Application of Duke Energy Kentucky, Inc., for 1) An Adjustment of the Natural Gas Rates; 2) Approval of New Tariffs; and 3) All Other Required Approvals, Waivers, and Relief*, Case No. 2022-00372, Order (Feb. 10, 2023).

competitors information Duke Energy Kentucky's benefits philosophies, policies, and practices. If competitors had ready access to this information, they could use it to place Duke Energy Corp. and Duke Energy Kentucky at a disadvantage in recruiting and retaining employees. The highlighted portion of the Company's response to AG-DR-01-020(k) should therefore be treated as confidential and protected accordingly.

**iii. Confidential response to AG-DR-01-034(a);**

AG Request No. 01-034 states as follows:

Refer to the Luke Testimony at 17. Mr. Luke asserts that based upon the Company's 2024 IRP, East Bend should be replaced with a 664 MW 1x1 natural gas combined cycle ("CC") unit.

a. Provide the estimated cost for a completed 664 MW 1x1 natural gas CC unit.

In response to AG Request No. 01-034, Duke Energy Kentucky is providing its estimated costs to construct a new natural gas CC unit. This information is not publicly available, thus satisfying the first element of the statutory standard for confidentiality of a proprietary record. This cost estimate satisfies the second element of the standard, as this information is highly confidential and proprietary to the Company as it would provide potential vendors and suppliers tremendous insight into the estimated costs for a new CC unit. This information meets the third element as if disclosed, this information would put the Company at a competitive disadvantage in future negotiations with potential vendors and suppliers and potentially inhibit the Company's ability to responsibly manage its costs. The highlighted portion of the Company's response to AG-DR-01-034(a) should therefore be treated as confidential and protected accordingly.

**iv. AG-DR-01-035(a) Confidential Attachment;**

AG Request No. 01-035 states as follows:

Refer to the Luke Testimony at 20. Mr. Luke states that, “as coal prices increase, plants like East Bend will become more unfavorable in the competitive market.”

a. Provide documentation supporting Mr. Luke’s assertion that coal prices are increasing or projected to increase.

In response to AG Request No. 01-035, Duke Energy Kentucky is providing AG-DR-01-035(a) Confidential Attachment which provides information from a third-party vendor related to future coal prices. The highlighted information in AG-DR-01-035(a) Confidential Attachment is not public and not publicly available, thus satisfying the first element of the statutory standard for confidentiality of a proprietary record. The information in AG-DR-01-035(a) Confidential Attachment satisfies the second element, as the future coal price information was provided by a third-party for a fee that derives value from not being publicly available and constitutes a “trade secret” under KRS 365.880(4). The attachment also satisfies the third element as the information is the work product of a third-party vendor that has economic value from not being generally known. Disclosure of this information would result in a commercial disadvantage to the Company and could violate the Company’s agreement with the third-party to maintain the confidentiality of this information. The Company requests that the highlighted portions of AG-DR-01-035 Confidential Attachment 1 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).

**v. AG-DR-01-076(c) Confidential Attachment 2**

AG Request No. 01-076(c) requests the following information:

Refer to the table showing historic and forecast planned outage maintenance expenses for East Bend 2 and the Woodsdale CTs in the Lawler Testimony at 12.

(c) Identify and describe each of the planned maintenance outages for East Bend 2 and each of the Woodsdale CTs in each of the years 2015 through 2024 (actual) and those budgeted/forecast in each of the years 2025-2027. Provide the start and end dates, a description of the scope of work, the total expense, and the expense broken down by category, i.e., straight time payroll and related payroll taxes, overtime payroll and the related payroll taxes, pension, OPEB, employee welfare, materials and supplies, contractor, and each other identifiable category.

In response to AG Request No. 01-076, Duke Energy Kentucky is providing AG-DR-01-076(c) Confidential Attachment 2 which provides dates and descriptions for forecasted planned outages scheduled in 2025-2027. This information is not publicly available, thus satisfying the first element of the statutory standard for confidentiality of a proprietary record. This information satisfies the second element of the standard, as this information is highly confidential and proprietary to the Company as it would provide energy market participants with valuable information about planned future outages of the Company's generation plants. This information meets the third element as if disclosed, this information would put the Company at a competitive disadvantage in future negotiations to obtain replacement power or to obtain vendors to perform work for its planned outages and potentially inhibit the Company's ability to responsibly manage its costs.

The Company requests that AG-DR-01-076(c) Confidential Attachment 2 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).

**vi. AG-DR-01-076(f) Confidential Attachment**

AG Request No. 01-076(f) requests the following information:

Refer to the table showing historic and forecast planned outage maintenance expenses for East Bend 2 and the Woodsdale CTs in the Lawler Testimony at 12.

(f) Refer to the FERC USOA Electric Plant Instructions, Number 10 Additions and Retirements of Electric Plant, part C(3), which states:

When a minor item of depreciable property is replaced independently of the retirement unit of which it is a part, the cost of replacement shall be charged to the maintenance account appropriate for the item, except that if the replacement effects a substantial betterment (the primary aim of which is to make the property affected more useful, more efficient, of greater durability, or of greater capacity), the excess cost of the replacement over the estimated cost at current prices of replacing without betterment shall be charged to the appropriate plant account.

i. Provide a copy of all internal guidelines, policies, and/or procedures that address the Company's accounting to ensure compliance with this USOA plant instruction. If none, then so state and explain why the Company has no internal guidelines, policies, and/or procedures that address this USOA plant instruction.

ii. Indicate if the Company has ever capitalized betterment costs to an appropriate plant account. If so, describe and provide a copy of the guidelines, policies, and/or procedures the Company followed to make this determination and provide a listing, description, and the amounts by plant account of all such capitalized betterment costs for East Bend 2 and the Woodsdale CTs in each year 2020 through 2024 and the Company's budgeted/forecast costs in each year 2025 through 2027.

In response to AG Request No. 01-076(f), Duke Energy Kentucky is providing AG-DR-01-076(f) Confidential Attachment which is the capitalization guidelines for Duke Energy Corporation. AG-DR-01-076(f) Confidential Attachment is proprietary in nature

and not publicly available, thus satisfying the first element of the statutory standard for confidentiality of a proprietary record. AG-DR-01-076(f) Confidential Attachment satisfies the second element of the standard as it was developed by internal expertise and contains detailed information regarding the operations of the Company and Duke Energy Corporation including, but not limited to, how the Company accounts for various business transactions, capitalizes assets for its electric and natural gas businesses, and otherwise manages its business operations and finances. Finally, AG-DR-01-076(f) Confidential Attachment also satisfies the third element because if this information were to become publicly available, competitors, potential vendors, and transaction counterparties would have access to information regarding the Company's operations that would place it at a significant disadvantage in its operations as it competes for business or negotiates contracts.

The Company requests that AG-DR-01-076(f) Confidential 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).

**vii. AG-DR-01-085 Confidential Attachment 2**

AG Request No. 01-085 states as follows:

Provide Duke Kentucky's capital expenditures by year from 2022 through 2029. Provide actual expenditures for years 2022 through 2024 and projected expenditures for years 2025 through 2029. Provide capital expenditures separated between steam and other production, distribution, transmission, and general plant.

In response to AG Request No. 01-085, Duke Energy Kentucky is providing AG-DR-01-085 Confidential Attachment 2 which provides projected capital expenditures for

Duke Energy Kentucky from 2025 through 2029. AG-DR-01-085 Confidential Attachment 2 is proprietary in nature and not publicly available, thus satisfying the first element of the statutory standard for confidentiality of a proprietary record. AG-DR-01-085 Confidential Attachment 2 satisfies the second element of the standard as it contains detailed confidential information regarding the future Company investments and capital projects. Finally, AG-DR-01-085 Confidential Attachment 2 satisfies the third element because if this information were to become publicly available, competitors, potential vendors, and transaction counterparties would have access to information regarding the Company's future investments and capital projects that could harm the Company's ability to negotiate with potential vendors and suppliers related to these future capital projects and potentially inhibit the Company's ability to properly manage its costs.

The Company requests that AG-DR-01-085 Confidential Attachment 2 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).

**viii. AG-DR-01-101 Confidential Attachments 1 – 3 and  
AG-DR-01-102 Confidential Attachment**

AG Request No. 01-101 states as follows:

Provide the two most recent pension and OPEB actuarial reports for Duke Energy, Duke Ohio, and the Company.

AG Request No. 01-102 states as follows:

Provide the pension and OPEB actuarial reports for Duke Energy, Duke Ohio, and the Company and/or all other support for the test year pension cost and expense and OPEB cost and expense included in the test year.

In response to these requests, Duke Energy Kentucky is providing AG-DR-01-101

Confidential Attachments 1 – 3 and AG-DR-01-102 Confidential Attachment. These attachments are pension and OPEB actuarial reports prepared by third-party vendors for Duke Energy, Duke Energy Ohio, and the Company and are not publicly available, thus satisfying the first element of the statutory standard for confidentiality of a proprietary record. These attachments satisfy the second element, as they are reports generated by a third-party vendor for a fee that derives value from not being publicly available and constitutes a “trade secret” under KRS 365.880(4). The third element is satisfied, as disclosure of these documents could violate the Company’s agreement with these third-party vendors to maintain the confidentiality of these reports and result in a commercial disadvantage as Duke Energy Kentucky may be barred from obtaining future reports from these vendors.

The Company requests that Confidential Attachments 1 – 3 to AG-DR-01-101 and the Confidential Attachment to AG-DR-01-102 be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1), and additionally requests that these attachments be treated as confidential in its entirety pursuant to 807 KAR 5:001E, Section 13(2)(a)(3)(b).

**ix. AG-DR-01-106(d) Confidential Attachments 1 – 16**

AG Request No. 01-106(d) seeks the following information:

Refer to the Company’s vegetation management program.

d. Provide a copy(ies) of the contract(s) with the contractor(s) that performs the vegetation management services.

In response to this request, Duke Energy Kentucky is providing AG-DR-01-106(d) Confidential Attachments 1 – 16. These attachments are the Company’s current vegetation management contracts with various third-party vendors. These contracts are not publicly available, thus satisfying the first element of the statutory standard for confidentiality of a

proprietary record. The second element is met as such contracts are generally considered confidential as they contain proprietary pricing information and negotiated contract terms and conditions that are maintained as confidential between the two contracting parties. The third element is satisfied as public disclosure of these contracts would place the Company at a disadvantage in future negotiations as potential vendors would have access to what the Company currently pays or expects to pay for such services. Moreover, vendors would be less willing to negotiate with the Company out of fear of their sensitive and competitive pricing and contractual terms would be made public.

The Company requests that AG-DR-01-106(d) Confidential Attachments 1 – 16 be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1), and additionally requests that these attachments be treated as confidential in its entirety pursuant to 807 KAR 5:001E, Section 13(2)(a)(3)(b).

- x. AG-DR-01-132 Confidential Attachments 3, 5, and 9 – 12; AG-DR-01-133 Confidential Attachments 1 – 8; AG-DR-01-134 Confidential Attachments 5, 6, and 10 – 13; and AG-DR-01-136 Confidential Attachment 2**

AG Request No. 01-132 seeks the following information:

Provide all work papers and supporting documentation used and relied upon by Mr. Nowak in the preparation of his Direct Testimony and exhibits. Provide all spreadsheets in Excel format with cell formulas intact.

AG Request No. 01-133 requests the following information:

Provide all bond rating agency reports (Standard and Poor's, Moody's, Fitch) on Duke Energy and Duke Kentucky from 2023 through the most recent month in 2024.

AG Request No. 01-134 seeks the following information:

Provide copies of all articles, reports, and publications cited by Mr. Nowak in his Direct Testimony.

AG Request No. 01-136(d) asks for the following information:

Provide the current S&P and Moody's credit ratings for each Duke operating company.

In response to these requests, Duke Energy Kentucky provides Confidential Attachments 3, 5, and 9 – 12 to AG-DR-01-132, Confidential Attachments 1 – 8 to AG-DR-01-133, Confidential Attachments 5, 6, and 10 – 13 to AG-DR-01-134, and Confidential Attachment 2 to AG-DR-01-136(d). Each of these attachments are proprietary reports, articles, analysis, or other information provided by third-party vendors such as Moody's, S&P Global, and Blue Chip Financial. These attachments are not publicly available, thus satisfying the first element of the statutory standard for confidentiality of a proprietary record. These attachments satisfy the second element, as they are reports, articles, and analysis generated by a third-party vendor for a fee that derives value from not being publicly available and constitutes a "trade secret" under KRS 365.880(4). The third element is satisfied, as disclosure of these documents could violate the Company's agreement with these third-party vendors to maintain the confidentiality of these reports, articles, and analysis and result in a commercial disadvantage as Duke Energy Kentucky may be barred from obtaining future information from these vendors. Access to this type of information is integral to Duke Energy Kentucky's business.

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).

### **c. Request for Confidential Treatment**

The Kentucky Open Records Act exempts from disclosure information that, due to its confidential and proprietary nature, would permit “an unfair commercial advantage to competitors of the entity that disclosed the records” if openly disclosed.<sup>2</sup> The Confidential Information was, and remains, integral to Duke Energy Kentucky’s effective execution of business decisions. Indeed, as the Kentucky Supreme Court has found, “information concerning the inner workings of a corporation is ‘generally accepted as confidential or proprietary.’”<sup>3</sup> The information for which Duke Energy Kentucky is seeking confidential treatment was either developed internally, or acquired on a proprietary basis, by Duke Energy Corporation and Duke Energy Kentucky personnel, is not on file publicly with any public agency, and is not publicly available from any commercial or other source. The aforementioned information is distributed within Duke Energy Kentucky only to those employees who must have access for business reasons, and is generally recognized as confidential and proprietary in the utility industry.

Duke Energy Kentucky respectfully requests that the Confidential Information be withheld from public disclosure for a period of twenty 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.

To the extent the Confidential Information becomes generally available to the public, whether through filings required by other agencies or otherwise, Duke Energy

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<sup>2</sup> See KRS 61.878(1)(c)1.

<sup>3</sup> *Hoy v. Kentucky Industrial Revitalization Authority*, Ky., 907 S.W.2d 766, 768 (Ky. 1995).

Kentucky will notify the Commission and have its confidential status removed, pursuant to 807 KAR 5:001 Section 13(10)(a).

Duke Energy Kentucky does not object to limited disclosure of the Confidential Information pursuant to an acceptable protective agreement entered into with any intervenors with a legitimate interest in reviewing the same for the sole purpose of participating in this case.

In accordance with the provisions of 807 KAR 5:001, Section 13(2)(e), the Company is filing one copy of the Confidential Information separately under seal, and the appropriate number of copies with the Confidential Information redacted.

## **II. CONCLUSION**

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 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 in paper medium; that the electronic filing was transmitted to the Commission on January 22, 2025; 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>4</sup>

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

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<sup>4</sup> *In the Matter of Electronic Emergency Docket Related to the Novel Coronavirus COVID-19*, Order, Case No. 2020-00085 (Ky. P.S.C. July 22, 2021).