

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF DUKE ENERGY KENTUCKY, )	
INC. FOR AN ORDER APPROVING THE )	
ESTABLISHMENT OF A REGULATORY ASSET )	CASE NO.
FOR THE LIABILITIES ASSOCIATED WITH ASH )	2015-00187
POND ASSET RETIREMENT OBLIGATIONS )	

ORDER

On March 31, 2023, Duke Energy Kentucky, Inc. (Duke Kentucky) filed a petition, pursuant to 807 KAR 5:001E, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment to an attachment to its annual report of updated calculations for the East Bend asset retirement obligation (ARO) balance (Attachment to the ARO Update) for ten years. The attachment to the ARO Update contains projected costs related to the closure of the coal ash pond located at Duke Kentucky’s East Bend Generating Station in compliance with the United States Environmental Protection Agency’s Disposal of Coal Combustion Residuals from Electric Utilities final rule (CCR Rule).

In support of its petition, Duke Kentucky requested confidential treatment under KRS 61.878(1)(m), arguing that public disclosure would provide potential vendors with detailed information about projected expenses, which could harm Duke Kentucky in future negotiations with those vendors.

Commission regulation 807 KAR 5:001E, Section 13(2)(1), states that a request for confidential treatment must establish specific grounds pursuant to KRS 61.878 for

classification of the material as confidential. Additionally, 807 KAR 5:001E, Section 13(2)(c) provides that the movant has the burden of proof to show that the material falls within the exclusions from disclosure requirements established in KRS 61.878.

KRS 61.878(1)(m) prohibits public disclosure of utility critical infrastructure records that, if publicly disclosed, would have a reasonable likelihood of threatening public safety by exposing a vulnerability in preventing, protecting against, mitigating, or respond to a terrorist act.

Having considered the petition and the material at issue, the Commission finds that the designated material does not meet the criteria for confidential treatment and should not be exempted from public disclosure pursuant to 807 KAR 5:001E, Section 13, and KRS 61.878(1)(m). This is because the designated material does not contain critical infrastructure, but instead contains projects costs related to the ARO, and thus KRS 61.878(1)(m) is not applicable to the designated material.

IT IS THEREFORE ORDERED that:

1. Duke Kentucky's March 31, 2023 petition for confidential treatment is denied.
2. The designated material denied confidential treatment by this Order is not exempt from public disclosure and shall be placed in the public record and made available for public inspection.
3. If Duke Kentucky objects to the Commission's determination that the requested material not be granted confidential treatment, it must seek either rehearing pursuant to KRS 278.400 or judicial review of this Order pursuant to KRS 278.410.


Failure to exercise either of these statutory rights will be deemed as agreement with the Commission's determination of which materials should be granted confidential treatment.

4. Within 30 days of the date of service of this Order, Duke Kentucky shall file a revised version of the designated material for which confidential treatment was denied, reflecting as unredacted the information that has been denied confidential treatment.

5. The designated material for which Duke Kentucky's request for confidential treatment has been denied shall neither be placed in the public record nor made available for inspection for 30 days from the date of service of this Order in order to allow Duke Kentucky to seek a remedy afforded by law.

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PUBLIC SERVICE COMMISSION

  
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Chairman

  
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Vice Chairman

  
\_\_\_\_\_  
Commissioner

ATTEST:

  
\_\_\_\_\_  
Executive Director

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