

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)	CASE NO.
REGULATORY ASSET FOR THE LIABILITIES)	2015-00187
ASSOCIATED WITH ASH POND ASSET)	
RETIREMENT OBLIGATIONS)	

ORDER

On March 27, 2020, Duke Energy Kentucky, Inc. (Duke Kentucky) filed a petition, pursuant to KRS 61.878(1)(c)¹ and 807 KAR 5:001, Section 13, requesting that the Commission grant confidential protection to an attachment to its annual report of updated calculations for the East Bend asset retirement obligation (ARO) balance (Attachment to the ARO Update). Duke Kentucky requests that the Attachment to the ARO Update remain confidential 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).

¹ Duke Kentucky cited to KRS 61.878(1)(m), which exempts critical utility infrastructure information from public disclosure, as the basis for its petition for confidential treatment of the designated information. However, the commercial nature of the designated information, which does not contain critical utility infrastructure information, and Duke Kentucky's arguments regarding unfair commercial advantage set forth to support its request for confidential treatment, indicate that the citation to KRS 61.878(1)(m) was inadvertent and that Duke Kentucky intended to request confidential treatment for the designated material pursuant to KRS 61.878(1)(c).

In support of its petition, Duke Kentucky states that public disclosure of the designated information would provide competitors with detailed information regarding the amounts Duke Kentucky anticipates spending in future years to comply with the CCR Rule, which would put Duke Kentucky at a competitive disadvantage in future contract negotiations and inhibit Duke Kentucky's efforts to manage and reduce those costs. Because public disclosure would permit an unfair commercial advantage to its competitors, Duke Kentucky asserts that the designated information is generally recognized as confidential and exempt from public disclosure pursuant to KRS 61.878.

The Commission notes that we have previously granted Duke Kentucky's requests for confidential treatment for its annual ARO reports filed on March 31, 2016, March 28, 2017, April 2, 2018, and April 1, 2019, which contain the same type of information for which confidential treatment is requested here.

Having carefully considered the petition and the materials at issue, the Commission finds that the designated materials contained in the Attachment to the ARO Update are records generally recognized as confidential or proprietary, which, if openly disclosed, would permit an unfair commercial advantage to competitors, and therefore meet the criteria for confidential treatment and are exempted from public disclosure pursuant to KRS 61.878(1)(c) and 807 KAR 5:001, Section 13.

IT IS THEREFORE ORDERED that:

1. Duke Kentucky's petition for confidential protection for the Attachment to the ARO Update is granted.

2. The materials set forth in the Attachment to the ARO Update shall not be placed in the public record or made available for public inspection for ten years or until further Orders of this Commission.

3. Use of the materials in question in any Commission proceeding shall be in compliance with 807 KAR 5:001, Section 13(9).

4. Duke Kentucky shall inform the Commission if the materials in question become publicly available or no longer qualify for confidential treatment.

5. If a non-party to this proceeding requests to inspect materials granted confidential treatment by this Order and the period during which the materials have been granted confidential treatment has not run, Duke Kentucky shall have 30 days from receipt of written notice of the request to demonstrate that the materials still fall within the exclusions from disclosure requirements established in KRS 61.878. If Duke Kentucky is unable to make such demonstration, the requested materials shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

6. The Commission shall not make the requested materials available for inspection for 30 days following an Order finding that the materials no longer qualify for confidential treatment in order to allow Duke Kentucky to seek a remedy afforded by law.

By the Commission



ATTEST:

A handwritten signature in blue ink, consisting of stylized initials and a surname, positioned above a horizontal line.

Executive Director

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