COMMONWEALTH OF KENTUCKY
BEFORE THE
KENTUCKY PUBLIC SERVICE COMMISSION

In The Matter of:

The Application of Duke Energy Kentucky, Inc., for a Declaratory Order that the Construction of a New Landfill Constitutes an Ordinary Extension in the Usual Course of Business or, in the Alternative, for a Certificate of Public Convenience and Necessity.	)	Case No. 2015-00089

PETITION OF DUKE ENERGY KENTUCKY, INC.
FOR CONFIDENTIAL TREATMENT OF INFORMATION
CONTAINED IN ITS RESPONSES TO COMMISSION STAFF'S
FIRST REQUESTS FOR INFORMATION

Duke Energy Kentucky, Inc. (Duke Energy Kentucky or Company), pursuant to 807 KAR 5:001, Section 13, respectfully requests the Commission to classify and protect certain information provided by Duke Energy Kentucky in its responses to Data Request Nos. 5 and 6 as requested by Commission Staff (Staff) in this case on April 13, 2015. The information that Staff seeks through discovery and for which Duke Energy Kentucky now seeks confidential treatment (Confidential Information), shows the identify of third party vendors who provided price quotes for services requested by Duke Energy Kentucky.[1]

In support of this Petition, Duke Energy Kentucky states:

1. The Kentucky Open Records Act exempts from disclosure certain commercial information. KRS 61.878(1)(c). To qualify for this exemption and, therefore, maintain the confidentiality of the information, a party must establish that disclosure of

[1] *See* Data Request Nos. 5 and 6.

the commercial information would permit an unfair advantage to competitors of that party. Public disclosure of the information identified herein would, in fact, prompt such a result for the reasons set forth below.

2. The Commission's request in No. 5 seeks documentation of the market inquiries of third party landfill operators (Operator). The identity of the Operator should be afforded confidential protection - if disclosed, this would very likely impair Duke Energy Kentucky's relationship with this operator as it would publicly disclose the price this particular operator would charge Duke Energy Kentucky.

3. The Commission's request in No. 6 seeks a cost breakdown of the on-site disposal expenses. In that response, the identity of the third party is provided and should be afforded confidential protection - if disclosed, this would very likely impair Duke Energy Kentucky's relationship with this third party.

4. The Confidential Information in response to Nos. 5 and 6 is distributed within Duke Energy Kentucky, only to those who must have access for business reasons, and is generally recognized as confidential and proprietary in the energy industry.

5. The Confidential Information for which Duke Energy Kentucky is seeking confidential treatment is not known outside of Duke Energy Corporation.

6. Duke Energy Kentucky 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.

7. This information was, and remains, integral to Duke Energy Kentucky's effective execution of business decisions. And such information is generally regarded as

confidential or proprietary. Indeed, as the Kentucky Supreme Court has found, "information concerning the inner workings of a corporation is 'generally accepted as confidential or proprietary.'" *Hoy v. Kentucky Industrial Revitalization Authority*, 904 S.W.2d 766, 768 (Ky. 1995).

8. In accordance with the provisions of 807 KAR 5:001, Section 13(3), the Company is filing one copy of the Confidential Information separately under seal, and one copy without the confidential information included.

9. 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 or its customers if publicly disclosed.

10. 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,

DUKE ENERGY KENTUCKY, INC.

Rocco D'Ascenzo /jkr

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been served via overnight mail to the following party on this 24 day of April 2015.

Rocco D'Ascenzo/jkr
Rocco O. D'Ascenzo

Hon. Jennifer Hans
Office of the Attorney General
Utility Intervention and Rate Division
1024 Capital Center Drive
Frankfort, Kentucky 40601

VERIFICATION

STATE OF OHIO)
) **SS:**
COUNTY OF HAMILTON)

The undersigned, Peggy Laub, Director of Rates & Regulatory Planning, being duly sworn, deposes and says that she has personal knowledge of the matters set forth in the foregoing data requests, and that the answers contained therein are true and correct to the best of her knowledge, information and belief.

Peggy Laub
Peggy Laub, Affiant

Subscribed and sworn to before me by Peggy Laub on this 16TH day of April, 2015.

Adele M. Frisch
NOTARY PUBLIC

ADELE M. FRISCH
Notary Public, State of Ohio
My Commission Expires 01-05-2019

My Commission Expires: 1/5/2019

VERIFICATION

STATE OF NORTH CAROLINA)
)
COUNTY OF MECKLENBURG)

SS:

The undersigned, Joseph A. Miller, Jr, VP Central Engineering & Services, being duly sworn, deposes and says that he has personal knowledge of the matters set forth in the foregoing data requests, and that the answers contained therein are true and correct to the best of his knowledge, information and belief.

Joseph A. Miller, Jr., Affiant

Subscribed and sworn to before me by Joseph A. Miller, Jr. on this 15th day of April, 2015.

NOTARY PUBLIC Kristi L. Aiken

My Commission Expires: 1/29/2017

VERIFICATION

STATE OF OHIO)
) **SS:**
COUNTY OF HAMILTON)

The undersigned, Tammy Jett, Principal Environmental Specialist, being duly sworn, deposes and says that she has personal knowledge of the matters set forth in the foregoing data requests, and that the answers contained therein are true and correct to the best of her knowledge, information and belief.

Tammy Jett

Tammy Jett, Affiant

Subscribed and sworn to before me by Tammy Jett on this 17th day of April, 2015.

Adele M. Frisch

NOTARY PUBLIC

My Commission Expires: 1/5/2019

VERIFICATION

STATE OF OHIO)
) **SS:**
COUNTY OF HAMILTON)

The undersigned, Tom Wiest, Engineer II, being duly sworn, deposes and says that he has personal knowledge of the matters set forth in the foregoing data requests, and that the answers contained therein are true and correct to the best of his knowledge, information and belief.

Tom Wiest, Affiant

Subscribed and sworn to before me by Tom Wiest on this 17TH day of April, 2015.

NOTARY PUBLIC

My Commission Expires: 1/5/2019

VERIFICATION

STATE OF OHIO)
) **SS:**
COUNTY OF HAMILTON)

The undersigned, Nick Sellet, Supt Technical, being duly sworn, deposes and says that he has personal knowledge of the matters set forth in the foregoing data requests, and that the answers contained therein are true and correct to the best of his knowledge, information and belief.

Nick Sellet, Affiant

Subscribed and sworn to before me by Nick Sellet on this 17th day of April, 2015.

NOTARY PUBLIC

ADELE M. FRISCH
Notary Public, State of Ohio
My Commission Expires 01-05-2019

My Commission Expires: 1/5/2019

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Duke Energy Kentucky
Case No. 2015-00089
STAFF's First Set Data Requests
Date Received: April 13, 2015

STAFF-DR-01-001

REQUEST:

Refer to the Application, paragraph 20, where Duke Kentucky requests that the Commission render a decision within 90 days of the date the application was filed in this matter.

a. Explain in specific detail why Duke Kentucky has requested that the Commission render a decision within 90 days of date the application was filed.

b. How would the project be affected if the Commission were not to render a decision until 120 to 150 days after the date the application was filed?

RESPONSE:

a. Duke Energy Kentucky requested that the Commission approve the response within 90 days for several reasons.

First, construction needs to begin on Cell 1 (phases are referred to as cells in this document) of the landfill as soon as possible in order to have new landfill capacity in place to allow for the necessary transition period from the East Landfill to the West Landfill. Duke Energy Kentucky's goal is to scale down the operation of the existing landfill over time until it eventually reaches its capacity. An overlap in the operation of the proposed landfill and the existing landfill is required to do this.

The overlap in operations of the existing landfill and the proposed landfill is required because, as the existing landfill reaches capacity, the operating area (area for trucks and other equipment) gets prohibitively smaller. A smaller operating area makes the operation of the existing landfill less efficient and does not allow the Poz-o-tec adequate time to develop the pozzolanic reaction (set up) before it is necessary to place more Poz-o-tec in the area.

Duke Energy Kentucky is targeting 2017 as the completion timeframe (including the permit to operate) for Cell 1 of the proposed landfill to allow approximately 1-2 years to transition its operations from the existing landfill to Cell 1 of the new landfill.

Additionally, US EPA's Coal Combustion Residual (CCR) rule was published in the Federal Register on as April 17, 2015. The proposed landfill's Cell 1 does not meet the liner design requirements in the CCR rule. The rule allows landfill cells that start construction within 180 days of publication of the rule in the Federal Register to be considered an existing landfill. If defined as an existing landfill, Cell 1 can be constructed in accordance with the currently permitted liner design.

Modification of the design of Cell 1 would require a modification to the existing permit that was included in the Application Exhibit 2. Modification to the design and permit would require significant engineering efforts, and it is assumed that it would take a minimum of 1 year to complete. This delay would require an acceleration in the planned construction schedule and increase the cost of the proposed landfill.

It is also critical that the construction of the landfill begins in the summer so that liner foundations, liners, and protective cover for the liners can be installed before temperatures at, or below freezing occur in order to meet liner construction requirements in the landfill permit. Delay in construction of these items would either require an accelerated schedule or delay the in-service date of the new landfill.

Finally, high density polyethylene (HDPE) liner prices are heavily influenced by oil indices. Oil prices are currently low but are expected to increase in the future. It is advantageous to Duke Energy Kentucky to procure the HDPE liner before oil prices increase to ensure the lowest price possible for this material is obtained.

b. A 120-150 day Commission approval period would allow less time to commence and complete construction of the first cell of the proposed landfill. This in turn would not provide sufficient time to permit a smooth transition from the current landfill to the existing landfill. The monetary impact of the expedited construction schedule and increase in liner cost has not been estimated. A significant delay also creates the possibility that construction could not commence before the effective date of the CCR rule which would create further delays and likely significant costs.

PERSON RESPONSIBLE: Joseph A. Miller, Jr./Thomas E. Wiest/Nicholas R. Sellet

STAFF-DR-01-002

REQUEST:

Provide the following information for the existing East Bend Landfill:

a. Original cost;

b. Accumulated depreciation;

c. Year in service;

d. Depreciable life; and

e. Capacity in terms of tons or cubic yards.

RESPONSE:

a. Due to the manual nature of plant records prior to 2000, it is difficult to quantify these numbers. Duke Energy Kentucky will supplement these numbers.

b. Due to the manual nature of plant records prior to 2000, it is difficult to quantify these numbers. Duke Energy Kentucky will supplement these numbers.

c. The first equipment went in service in 1981.

d. The depreciable life is 100 years for equipment recorded to FERC Plant account 311 and 55 years for equipment recorded to FERC Plant account 312.

e. 23 million cubic yards of permitted air space.

PERSON RESPONSIBLE: Nicholas R. Sellet/Peggy Laub

STAFF-DR-01-003

REQUEST:

State whether there are Duke Ohio landfills that could be or are permitted to accept the waste material from the East Bend Generating Station, and whether Duke Kentucky explored that option.

a. If so, identify the landfills that could accommodate East Bend's waste material.

b. If so, provide the cost to transfer material to Duke Ohio landfills.

RESPONSE:

Duke Energy Kentucky sold its Miami Fort Station and W.H. Zimmer Station, including associated landfills to Dynegy; therefore Duke Energy Ohio, Inc. no longer owns those landfills. The remaining Duke Energy landfill in Ohio is located at the W.C. Beckjord Station.

The W.C. Beckjord Station is a retired station, and its landfill is not permitted as a residual solid waste landfill and is unable to accept the Poz-o-tec material that East Bend Station produces without a new permit. Duke Energy Kentucky estimates that obtaining a new permit for the W.C. Beckjord Station landfill would require extensive design changes that would take 5-7 years to complete and would require Duke Energy Ohio to incur great costs it would not have reason to incur otherwise.

Zimmer Station's and Miami Fort Station's landfills are not currently permitted to accept CCR from East Bend Station. There is no apparent benefit to Dynegy to modify the landfill permits in order to take East Bend Station's CCR without significant financial commitment from Duke Energy Kentucky.

PERSON RESPONSIBLE: Thomas E. Wiest

STAFF-DR-01-004

REQUEST:

Refer to the Application, paragraph 9.

a. Explain why Duke Kentucky is proposing to construct the landfill in eight phases, rather than to complete the project in its entirety now.

b. Describe the criteria for determining when each of the proposed phases will be constructed.

c. Provide the capacity in terms of tons or cubic yards of each of the proposed phases of the West Landfill.

d. Provide the construction schedule for each proposed phase of the landfill.

RESPONSE:

a. There are multiple reasons why Duke Energy Kentucky proposes construction of individual cells rather than complete the project in its entirety now: 1) It is considered standard industry practice, 2) The capital cost to complete the entire landfill at once would very high for a short term spend and be difficult to procure, 3) some of the in-active cells would have to be maintained for 25 or more years, this would increase maintenance costs for erosion control, protective cover for the liner, etc., and 4) it allows Duke Energy Kentucky to update the design as needed to meet new regulations.

b. The fill rate, and remaining capacity for each proposed cell will be monitored. This data will be combined with projections of CCR generation to project the end of life of each phase. The construction of the next cell will be started so that there is adequate time to construct it before the existing cell's life ends and transition to the newly constructed cell.

c. This data is provided in the Application, Exhibit 2, Page 2 in the lower table with the header "Waste Data."

d. Each cell of the landfill is expected to take approximately 2 years to construct. The schedule is shown in Staff-DR-01-006 Attachment. This is based on the average production of CCR by East Bend Station.

PERSON RESPONSIBLE: Thomas E. Wiest/Nicholas R. Sellet

STAFF-DR-01-005 PUBLIC

REQUEST:

Refer to the application, paragraph 15. Provide documentation of the market inquiries of third party landfill operators, including how the estimated costs of $33-$35 per ton were determined.

RESPONSE:

CONFIDENTIAL PROPRIETARY TRADE SECRET

The price was based on an inquiry to the [redacted] located in Walton, Kentucky. This is the closest landfill to East Bend Station geographically and was selected because it would minimize distance trucked and trucking costs. [redacted] verbally quoted a disposal fee of $25 per ton. The additional cost ($8-$10 per ton) would be for trucking the material the approximately 14 miles from East Bend Station to the landfill, this was a rough budgetary estimate based on on-site hauling costs. This price was significantly higher than the expected on-site landfill costs so no additional inquiry was completed. These estimates are in 2014 dollars and do not include any provisions for fuel price adjustments that may be required in the future.

PERSON RESPONSIBLE: Thomas E. Wiest

STAFF-DR-01-006 PUBLIC

REQUEST:

Refer to the Application, paragraph 16.

a. Provide a detailed construction-cost breakdown for each phase of the landfill that supports the fully loaded budgeted cost of $159 million.

b. Provide a detailed cost breakdown of the on-site disposal expenses of $3.5 million.

c. Does the budgeted cost of $159 million include the cost of the land transferred to Duke Kentucky or a pro-rata portion of the cost?

RESPONSE:

CONFIDENTIAL PROPRIETARY TRADE SECRET

a. Please see Staff-DR-01-006 Attachment.

b. The cost is a combination of trucking costs and loading and placement costs. The trucking cost was estimated to be $3.25 per ton plus a placement cost and loading of $1.20 per ton, these prices total to a disposal cost of 4.45 per ton. This price was multiplied by the average production of CCR (1,000,000 cubic yards) totaling approximately $4.5 million. These prices were based on a budgetary estimate provided by [redacted]. Duke Energy anticipates the price would fall in the $3.5 million to $4.5 million dollar range. These estimates are in 2014 dollars and do not include any provisions for fuel price adjustments that may be required in the future.

c. The land cost is not included in the $159 million.

PERSON RESPONSIBLE: Thomas E. Wiest/Nicholas R. Sellet

East Bend Station West Landfill Construction Schedule and Cost Breakdown			
	Construction Starts	Construction Ends*	Cost of Construction ($, millions)
Phase 1	2015	2017	29.5
Phase 2	2019	2021	18
Phase 3	2022	2024	18
Phase 4	2026	2028	18
Phase 5	2030	2032	18
Phase 6	2034	2036	12.5
Phase 7	2036	2038	12.5
Phase 8	2039	2041	20
Landfill Cap	2045	2047	12.5
Total			**159**

*Construction Ends indicates that the landfill permit to operate has been received from KDEP, additional construction may continue past these dates

STAFF-DR-01-007

REQUEST:

State whether any permits in addition to those included in Exhibits 1 and 2 to the Application will be required for the project.

RESPONSE:

No additional permits are needed to complete the construction of this project.

Duke Energy Kentucky will be required to obtain a permit to operate the proposed landfill from the Kentucky Department of Environmental Protection upon completion of construction of the proposed landfill Cell 1, prior to operating the landfill cell. Duke Energy Kentucky will submit the application for this permit upon completion of construction of Cell 1 of the proposed landfill.

PERSON RESPONSIBLE: Tammy Jett/Thomas E. Wiest/Nicholas R. Sellet

Duke Energy Kentucky
Case No. 2015-00089
STAFF's First Set Data Requests
Date Received: April 13, 2015

STAFF-DR-01-008

REQUEST:

Refer to the Application, Exhibit 1, pages 4 and 6 of 15, which lists the facilities from which waste streams may be accepted. The name "Beckford Facility" is listed as one of the facilities. Confirm that this should be "Beckjord Station."

RESPONSE:

Yes. It is intended to refer to Beckjord Station.

PERSON RESPONSIBLE: Tammy Jett

Duke Energy Kentucky
Case No. 2015-00089
STAFF's First Set Data Requests
Date Received: April 13, 2015

STAFF-DR-01-009

REQUEST:

Refer to the Application, pages 1-2, which state that the "current landfill is projected to reach its capacity in the next three to four years," and to the Application, Exhibit 4, page 3, which contains Duke Kentucky's response to Commission Staff's Second Data Request in Case No. 2003-00252[1] and states that the "two landfills will provide the necessary capacity to accommodate an additional 38 years of operation of the East Bend Generating Station."

a. Confirm that the landfill referenced on page 2 of the Application is the same landfill referenced on page 3 of Exhibit 4 to the Application.

b. Explain the contradiction in the time period during which the landfill referenced on page 2 of the Application will reach capacity and the time period during which the landfill(s) referenced on page 3 of Exhibit 4 to the Application will reach capacity.

RESPONSE:

a. The landfill referenced on page 2 of the Application is the same landfill that is referenced on page 3 of Exhibit 4 to the Application.

[1] Case No. 2003-00252, *Application of the Union Light, Heat And Power Company for a Certificate of Public Convenience and Necessity to Acquire Certain Generation resources and Related Property; For Approval of Certain Purchase Power Agreements; For Approval of Certain Accounting Treatment; and For Approval of Deviation from requirements of KRS 278.2207 and 278.2213(6),* Responses to Staff's Second Required (filed Sept. 2, 2003).

b. Additional cells 15 and 16 were added to the existing landfill in the 2006-2007 timeframe to extend the life of the existing landfill until approximately 2018. The existing landfill cannot be expanded any further because of geographic restrictions created by the existing power station, the existing ash basin, the road (KY-338), and wetland areas.

PERSON RESPONSIBLE: Thomas E. Wiest

STAFF-DR-01-010

REQUEST:

Refer to the Application, paragraph 5, which describes the material "Poz-o-tec" as a stable material that sets up much like concrete. Explain why it is necessary to produce this material from components from whatever source, and why its production is necessary for the station's handling of flue gas desulfurization materials.

RESPONSE:

East Bend Station does not utilize a forced oxidation process in its flue gas desulfurization process (FGD) and as result cannot not produce synthetic gypsum.

The Poz-o-tec by-product is the method to safely stabilize and ultimately dispose of the liquid sulfate waste ("slurry") produced from the scrubber at East Bend. The basic composition of Poz-o-tec is approximately 20% by weight fly ash, 77% by weight slurry, and 3% by weight lime.

To make the Poz-o-tec product, the slurry is pumped from the absorber towers at the FGD into thickener tanks where the solids start to separate from the liquids. The slurry is then pumped to vacuum filters for further dewatering. Once the dewatering process is complete resulting sulfates (filter cake) will contain approximately 45 to 50 percent solids. The filter cake is conveyed to a mixer where it is combined with fly ash and lime to create the Poz-o-tec. The Poz-o-tec is 56-61 percent solids by weight.

Once the Poz-o-tec is in the landfill slower chemical reactions take place to reach the required strengths for landfill stability.

The production of the Poz-o-tec material is necessary because the slurry without the fly ash and lime additives would not be able to meet the strength requirements for construction of stable slopes within the landfill.

PERSON RESPONSIBLE: Tammy Jett

STAFF-DR-01-011

REQUEST:

Refer to the Application, Exhibit 2, page 5. Explain why the switch setting levels for the lift station pumps indicate a "N/A" for the lag pump.

RESPONSE:

The pumping system is not designed to be a leading/lagging pump system. Only one of these pumps will operate at a time and the other is a backup so that the proposed landfill's runoff can be treated in the event one of the pumps fails or requires maintenance.

PERSON RESPONSIBLE: Tammy Jett

Duke Energy Kentucky
Case No. 2015-00089
STAFF's First Set Data Requests
Date Received: April 13, 2015

STAFF-DR-01-012

REQUEST:

Explain what role Duke Energy Business Services LLC has had and will have in engineering and constructing the proposed landfill.

RESPONSE:

Duke Energy Business Services LLC (DEBS) is the service company for Duke Energy Corporation and its affiliated companies. DEBS employees provide numerous services for Duke Energy Kentucky pursuant to a service agreement most recently approved by the Commission as part of the merger between Duke Energy Corporation and Progress Energy. The services DEBS employees have had and will have in relation to the constructing and engineering of the proposed landfill include, but are not limited to, design, engineering, permitting, oversight, Enterprise Health and Safety support, budgeting, and operation. The current landfill is operated by both Duke Energy Kentucky and DEBS employees.

The following activities related to the construction of the proposed landfill are planned to be provided by vendors: 1) construction of the new landfill cells will be competitively bid, 2) engineering (detail engineering, site planning, and permitting) of new cells will either be competitively bid or provided by an alliance engineering vendor on a time and material basis; and, 3) construction quality control and quality assurance

will be either competitively bid or provided by an alliance vendor on a time and material basis.

PERSON RESPONSIBLE: Joseph A. Miller, Jr.

Duke Energy Kentucky
Case No. 2015-00089
STAFF's First Set Data Requests
Date Received: April 13, 2015

STAFF-DR-01-013

REQUEST:

Confirm that the life expectancy of the proposed landfill is 30 years.

RESPONSE:

Yes, that is correct.

PERSON RESPONSIBLE: Joseph A. Miller, Jr.