

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF DUKE ENERGY)	
KENTUCKY, INC. FOR A CERTIFICATE OF)	CASE NO.
PUBLIC CONVENIENCE AND NECESSITY)	2022-00084
AUTHORIZING THE PHASE ONE)	
REPLACEMENT OF THE AM07 PIPELINE)	

ORDER

On July 8, 2022, 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 for ten years for a spreadsheet provided by Duke Kentucky in response to Commission Staff’s Second request for Information (Staff’s Second Request), Item 1(c).

The Commission is a public agency subject to Kentucky's Open Records Act, which requires that all public records “be open for inspection by any person, except as otherwise provided by KRS 61.870 to 61.884.”¹ In support of its petition, Duke Kentucky argued for the application of KRS 61.878(1)(c)(1), which exempts records that are “[g]enerally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.” Exceptions to the free and open examination of public records contained in

¹ KRS 61.872(1).

KRS 61.878 should be strictly construed.² The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.³

The spreadsheet provided in response to Staff's Second Request, Item 1(c), is a breakdown of estimated cost components for the work proposed in its certificate of public convenience and necessity (CPCN) application. Duke Kentucky argued that it plans on distributing requests for proposals (RFPs) for bids for this work and the bids could be manipulated if this information were disclosed.

Having considered the petition and the material at issue, the Commission finds that Duke Kentucky's petition should be granted. Estimated construction costs could be used by contractors to manipulate the bidding process and unfairly disadvantage Duke Kentucky with its competitors. This type of information is generally recognized as confidential or proprietary.⁴ However, the Commission has recently held that five years is a sufficient period for this type of cost information to become obsolete.⁵ The Commission also notes that final winning bids will be subject to disclosure as they impact revenue requirement for ratemaking.⁶ The designated material meets the criteria for

² See KRS 61.871.

³ 807 KAR 5:001E, Section 13(2)(c).

⁴ See Case No. 2021-00358, *Electronic Application of Jackson Purchase Energy Corporation for a General Adjustment of Rates and Other General Relief* (Ky. PSC Feb. 28, 2022), Order at 2–3.

⁵ Order, (Ky. PSC July 18, 2022); Case No. 2019-00269, *Electronic Application of Big Rivers Electric Corporation for Enforcement of Rate and Service Standards* (Ky. PSC Dec. 8, 2021), Order at 2–3; Case No. 2021-00462, *Electronic Joint Application of Kentucky Utilities Company, Nolin Rural Electric Cooperative Corporation, and East Kentucky Power Cooperative, Inc. for Approval of an Agreement Modifying an Existing Territorial Boundary Map and Establishing the Retail Electric Supplier for Glendale Megasite in Hardin County, Kentucky* (Ky. PSC Feb. 9, 2022), Order at 2–3.

⁶ Case No. 2021-00358, (Ky. PSC Feb. 28, 2022), Order at 2–3.

confidential treatment and is exempted from public disclosure for five years pursuant to 807 KAR 5:001E, Section 13, and KRS 61.878(1)(c)(1).

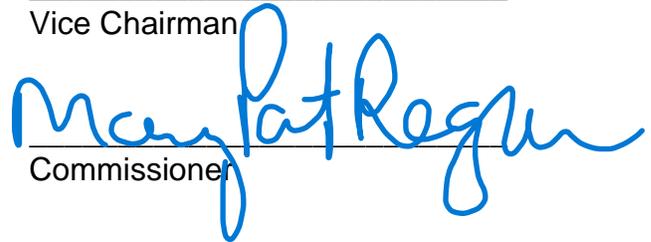
IT IS THEREFORE ORDERED that:

1. Duke Kentucky's petition for confidential treatment is granted.
2. Duke Kentucky's response to Staff's Second Request, Item 1(c) granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for five years or until further Order of this Commission.
3. Use of the designated material granted confidential treatment by this Order in any Commission proceeding shall comply with 807 KAR 5:001E, Section 13(9).
4. Duke Kentucky shall inform the Commission if the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment.
5. If a nonparty to this proceeding requests to inspect the material granted confidential treatment by this Order and the period during which the material has been granted confidential treatment has not expired, Duke Kentucky shall have 30 days from receipt of written notice of the request to demonstrate that the material still falls within the exclusions from disclosure requirements established in KRS 61.878. If Duke Kentucky is unable to make such demonstration, the requested material shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.
6. The Commission shall not make the requested material available for inspection for 30 days from the date of service of an Order finding that the material no longer qualifies for confidential treatment in order to allow Duke Kentucky to seek a remedy afforded by law.

PUBLIC SERVICE COMMISSION


Chairman

Vice Chairman


Commissioner



ATTEST:


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