

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF DUKE ENERGY)	
KENTUCKY, INC. FOR A CERTIFICATE OF)	
PUBLIC CONVENIENCE AND NECESSITY TO)	
CONVERT ITS WET FLUE GAS)	
DESULFURIZATION SYSTEM FROM A)	
QUICKLIME REAGENT PROCESS TO A)	CASE NO.
LIMESTONE REAGENT HANDLING SYSTEM AT)	2024-00152
ITS EAST BEND GENERATING STATION AND)	
FOR APPROVAL TO AMEND ITS)	
ENVIRONMENTAL COMPLIANCE PLAN FOR)	
RECOVERY BY ENVIRONMENTAL SURCHARGE)	
MECHANISM)	

ORDER

On March 13, 2025, Duke Energy Kentucky, Inc. (Duke Kentucky) filed a motion, pursuant to KRS 278.400, requesting a rehearing of the Order entered February 13, 2025, regarding the Commission’s decision denying confidential treatment to Duke Kentucky’s response to Sierra Club’s First Request for Information (Sierra Club’s First Request) Item 48(d), Attachment 1, issued on September 2024.¹ In addition, Duke Kentucky resubmitted the response and requested the Commission find that the highlighted portions of Sierra Club’s First Request Item 48(d), Attachment 1 be afforded confidential treatment for ten years pursuant to KRS 61.870.²

¹ Order (Ky. PSC Feb. 13, 2025) at 7-8.

² Duke Kentucky’s Motion for Rehearing (filed Mar. 13, 2025) at 4.

LEGAL STANDARD

KRS 278.400, which establishes the standard of review for motions for rehearing, limits rehearing to new evidence not readily discoverable at the time of the original hearings, to correct any material errors or omissions, or to correct findings that are unreasonable or unlawful. A Commission Order is deemed unreasonable only when “the evidence presented leaves no room for difference of opinion among reasonable minds.”³ An order can only be unlawful if it violates a state or federal statute or constitutional provision.⁴

By limiting rehearing to correct material errors or omissions, and findings that are unreasonable or unlawful, or to weigh new evidence not readily discoverable at the time of the original hearings, KRS 278.400 is intended to provide closure to Commission proceedings. Rehearing does not present parties with the opportunity to relitigate a matter fully addressed in the original Order.

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.”⁵ The exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.⁶ The party requesting that materials be treated confidentially has the burden of establishing

³ *Energy Regulatory Comm'n v. Kentucky Power Co.*, 605 S.W.2d 46 (Ky. App. 1980).

⁴ *Public Service Comm'n v. Conway*, 324 S.W.3d 373, 377 (Ky. 2010); *Public Service Comm'n v. Jackson County Rural Elec. Coop. Corp.*, 50 S.W.3d 764, 766 (Ky. App. 2000); *National Southwire Aluminum Co. v. Big Rivers Elec. Corp.*, 785 S.W.2d 503, 509 (Ky. App. 1990).

⁵ KRS 61.872(1).

⁶ See KRS 61.871.

that one of the exceptions is applicable.⁷ In determining whether materials should be exempt from disclosure, the Commission must balance the potential harm from disclosure with "the effect of protecting a given document from scrutiny by the public and potential intervenors."⁸

DUKE KENTUCKY'S MOTION

In its motion, Duke Kentucky asked the Commission to grant a rehearing with respect to its decision denying confidential treatment to Duke Kentucky's response to Sierra Club's First Request, Item 48(d), Attachment 1. Duke Kentucky asserted that the Commission erred in denying confidential by erroneously determining that the document in its entirety is a public document.

Sierra Club's First Request, Item 48(d), Attachment 1, contains detailed modeling information, Duke Kentucky analysis of coal unit operation and forecasts, pricing for resources, and detailed PowerSIMM Modeling characteristics.⁹ In support of the motion, Duke Kentucky conducted a thorough search both online and internally to ascertain whether the document is available to the public or if Duke Kentucky may have filed the document publicly in a different case.¹⁰ Despite these efforts, Duke Kentucky found no evidence to suggest that the response to Sierra Club's First Request, Item 48(d),

⁷ 807 KAR 5:001, Section 13(2)(c).

⁸ Case 2018-00153, *Electronic Application of Kentucky Utilities Company for an Order Authorizing the Issuance of Securities and Assumption of Obligations and an Order Amending and Extending Existing Authority with Respect to Revolving Line of Credit* (Ky. PSC Aug. 22, 2018) at 2, citing *Southeastern United Medigroup, Inc. v. Hughes*, 952 S.W.2d 195, 199 (Ky. 1997), abrogated on other grounds by *Hoskins v. Maricle*, 150 S.W.3d 1 (Ky. 2004).

⁹ Duke Kentucky's Motion for Rehearing at 4.

¹⁰ Duke Kentucky's Motion for Rehearing at 2.

Attachment 1 is available to the public nor that it was previously filed in a manner that would make it public.¹¹

However, Duke Kentucky acknowledged the public interest in transparent proceeding before the Commission, and reviewed Sierra Club's First Request, Item 48(d), Attachment 1 in light of the Commission's Order.¹² Although Duke Kentucky maintained that the entirety of the document is confidential, Duke Kentucky acquiesced that portions of the attachment may be considered as public.¹³

Duke Kentucky has revised its initial request and now respectfully submits that the Commission find the highlighted information contained in Sierra Club's First Request, Item 48(d), Attachment 1, receive confidential treatment pursuant to KRS 61.878.¹⁴ Duke Kentucky argued that the information represents the inner workings of a corporation, is not publicly available, and contains commercially sensitive, information, and if publicly released would place Duke Kentucky at a competitive disadvantage, and deserves protection under KRS 61.878(1)(c)(1).¹⁵

DISCUSSION AND FINDINGS

Based up a review of the motion and the case record, and being otherwise sufficiently advised, the Commission finds that Duke Kentucky's motion for rehearing should be granted. The Commission did not make a finding as to confidential treatment

¹¹ Duke Kentucky's Motion for Rehearing at 2.

¹² Duke Kentucky's Motion for Rehearing at 4.

¹³ Duke Kentucky's Motion for Rehearing at 4.

¹⁴ Duke Kentucky's Motion for Rehearing at 5.

¹⁵ Duke Kentucky's Motion for Rehearing at 5.

of the material other than the entirety of the attachment did not warrant confidential treatment.¹⁶

In addition, Duke Kentucky has resubmitted Sierra Club's First Request, Item 48(d), Attachment 1, with the identity of the portions requiring confidential treatment highlighted. The Commission agrees that the limited request is a change in circumstance such that rehearing is appropriate. Therefore, the Commission finds that the highlighted information provided in Item 48(d), Attachment 1 is generally recognized as confidential or proprietary, and meets the criteria for confidential treatment pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

IT IS THEREFORE ORDERED that:

1. Duke Kentucky's motion for rehearing is granted.
2. Duke Kentucky's motion for confidential treatment for the highlighted information provided in Item 48(d), Attachments 1 to Sierra Club's First Request is granted.
3. The designated material granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for ten years or until further order of this Commission.
4. Use of the designated material granted confidential treatment by this Order in any Commission proceeding shall comply with 807 KAR 5:001, Section 13(9).
5. If the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment, Duke

¹⁶ Order (Ky. PSC Feb. 13, 2025) at 8.

Kentucky shall inform the Commission and file with the Commission an unredacted copy of the designated material.

6. 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.

7. 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.

8. The remainder of the February 13, 2025 Order not in conflict with this Order shall remain in effect.

PUBLIC SERVICE COMMISSION



Chairman



Commissioner

Commissioner

ATTEST:



Executive Director

AP

ENTERED
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KENTUCKY PUBLIC
SERVICE COMMISSION

*Angela M Goad
Assistant Attorney General
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KY 40601-8204

*Lawrence W Cook
Assistant Attorney General
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KY 40601-8204

*Debbie Gates
Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45201

*J. Michael West
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KY 40601-8204

*Joe F. Childers
Childers & Baxter PLLC
300 Lexington Building, 201 West Sho
Lexington, KY 40507

*Minna Sunderman
Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45201

*John G Horne, II
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KY 40601-8204

*Rocco O D'Ascenzo
Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45201

*Kristin Henry
Staff Attorney
Sierra Club Environmental Law Program
2101 Webster Street
Suite 1300
Oakland, CA 94612

*Sarah Lawler
Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45201

*Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45202

*Larisa Vaysman
Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45201