

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF DUKE ENERGY KENTUCKY, INC.)	
FOR A CERTIFICATE OF PUBLIC CONVENIENCE)	CASE NO.
AND NECESSITY AUTHORIZING THE PHASE TWO)	2023-00210
REPLACEMENT OF THE AM07 PIPELINE)	

PETITION OF DUKE ENERGY KENTUCKY, INC.
FOR CONFIDENTIAL TREATMENT OF INFORMATION
CONTAINED IN ITS APPLICATION

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 Application filed in this proceeding requesting a Certificate of Public Convenience and Necessity (CPCN) for approval of the construction of the second phase of its AM07 Pipeline Replacement Project (Phase Two). The information for which Duke Energy Kentucky now seeks confidential treatment is contained in Confidential Exhibit 3 which includes critical utility infrastructure by way of detailed engineering drawings showing the exact route, location, depths, pressures, and nature of the proposed construction; and Confidential Attachment BAS-1 to the Direct Testimony of Bradley A. Seiter that depicts confidential pricing information (Confidential Information). The public release of this information would create a security risk for both the Company and its customers as well as limit the Company's ability to negotiate pricing with potential vendors, which will ultimately be borne by customers.

In support of this Petition, Duke Energy Kentucky states:

1. The Kentucky Open Records Act exempts from disclosure certain records in KRS 61.878(1)(m)(1)(f) and (1)(g). To qualify for this exemption and, therefore, maintain the confidentiality of the information, a party must establish that disclosure of the records would “have a reasonable likelihood of threatening the public safety by exposing a vulnerability in preventing, protecting against, mitigating, or responding to a terrorist act and limited to:...

f. Infrastructure records that expose a vulnerability referred to in this subparagraph through the disclosure of the location, configuration, or security of critical systems, including public utility critical systems. These critical systems shall include but not be limited to information technology, communication, electrical, fire suppression, ventilation, water, wastewater, sewage, and gas systems;

g. The following records when their disclosure will expose a vulnerability referred to in this subparagraph: detailed drawings, schematics, maps, or specifications of structural elements, floor plans, and operating, utility, or security systems of any building or facility owned, occupied, leased, or maintained by a public agency...”

2. Duke Energy Kentucky requests confidential treatment of Confidential Exhibit 3 and Confidential Attachment BAS-1, attached to Bradley A. Seiter’s testimony. Confidential Exhibit 3 includes engineering drawings showing the precise location of gas systems considered to be critical infrastructure information. This information needs to be kept confidential in order to continue to provide delivery of safe and reliable gas service to Duke Energy Kentucky customers. The release of this information would threaten the

public safety by providing precise locations of critical utility natural gas infrastructure that could be used and exploited to the detriment of the safety of the general public.

3. Confidential Attachment BAS-1 also includes the Company's estimated and detailed costs of construction for the Phase Two project. The Kentucky Open Records Act exempts certain records from the requirement of public inspection. *See* KRS 61.878. In particular, KRS 61.878(1)(c)(1) excludes from the Open Records Act:

Records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records[.]

This exception "is aimed at protecting records of private entities which, by virtue of involvement in public affairs, must disclose confidential or proprietary records to a public agency, if disclosure of those records would place the private entities at a competitive disadvantage." Ky. OAG 97-ORD-66 at 10 (Apr. 17, 1997). KRS 61.878(1)(c)(1) requires the Commission to consider three criteria in determining confidentiality: (1) whether the record is confidentially disclosed to an agency or required by an agency to be disclosed to it; (2) whether the record is generally recognized as confidential or proprietary; and (3) whether the record, if openly disclosed, would present an unfair commercial advantage to competitors of the entity that disclosed the records. The documents for which Duke Energy Kentucky is seeking confidential treatment, each of which is described in further detail below, satisfies each of these three statutory criteria.

4. The cost estimates included in Confidential Attachment BAS-1 are based upon Duke Energy Kentucky's analysis based upon costs for prior projects. Duke Energy Kentucky intends to issue competitive solicit bids for the construction of this project and if potential vendors know what the Company anticipates the costs to be for various in

terms, the Company would be placed at a competitive disadvantage as it seeks to negotiate better pricing. If potential vendors have access to the Company's anticipated costs, they would be less likely to negotiate with the Company, ultimately harming customers.

5. The information for which Duke Energy Kentucky is seeking confidential treatment was developed internally by Duke Energy Corporation and Duke Energy Kentucky personnel, is not on file publicly with any agency, and is not available from any commercial or other source outside Duke Energy Kentucky. The aforementioned information is distributed within Duke Energy Kentucky only to those employees who must have access for business reasons and is generally recognized as confidential and proprietary in the gas industry.

6. Duke Energy Kentucky does not object to limited disclosure of the confidential information described herein, pursuant to an acceptable protective agreement, 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*, Ky., 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 contained in Confidential Exhibit 3 be withheld from public disclosure until such time as the facilities depicted therein are no longer in service and that Confidential Attachment BAS-1 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,

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CERTIFICATE OF SERVICE

This is to certify that the foregoing electronic filing is a true and accurate copy of the document in paper medium; that the electronic filing was transmitted to the Commission on June 28, 2023; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that submitting the original filing to the Commission in paper medium is no longer required as it has been granted a permanent deviation.¹

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¹*In the Matter of Electronic Emergency Docket Related to the Novel Coronavirus COVID-19, Order, Case No. 2020-00085 (Ky. P.S.C. July 22, 2021).*