

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

The Electronic Application of Duke Energy	)	
Kentucky, Inc. for a Certificate of Public	)	
Convenience and Necessity to Convert its Wet Flue	)	Case No. 2024-00152
Gas Desulfurization System from a Quicklime	)	
Reagent Process to a Limestone Reagent Handling	)	
System at its East Bend Generating Station and for	)	
Approval to Amend its Environmental Compliance	)	
Plan for Recovery by Environmental Surcharge	)	
Mechanism	)	

---

**PETITION FOR CONFIDENTIAL TREATMENT OF DUKE ENERGY KENTUCKY, INC. FOR CERTAIN RESPONSES TO COMMISSION STAFF’S AUGUST 23, 2024, FIRST REQUEST FOR INFORMATION**

---

Duke Energy Kentucky, Inc. (Duke Energy Kentucky or Company), by counsel, pursuant to 807 KAR 5:001, Section 13(2), KRS 61.878(1)(c), and other applicable law, moves the Public Service Commission of Kentucky (Commission) for an Order granting confidential treatment to the following responses and attachments to Commission Staff’s (STAFF) First Request for Information issued on August 23, 2024:

- (1) Response to STAFF-DR-01-005.
- (2) Response to STAFF-DR-01-009.
- (3) STAFF-DR-01-014 Confidential Attachment.
- (4) STAFF-DR-01-020 Confidential Attachments 1 through 3.
- (5) STAFF-DR-01-021 Confidential Attachment; and,
- (6) Response to STAFF-DR-01-022.

Specifically, Duke Energy Kentucky seeks confidential treatment of information referred

to herein as the “Confidential Information,” which, broadly speaking, includes information related to vendor pricing, market and reliability risks, contracts, vendor pricing and cost information, assessments of critical utility infrastructure, as well as internal cost projections.

## **I. MOTION FOR CONFIDENTIAL TREATMENT**

### **a. Statutory Standard**

Administrative Regulation 807 KAR 5:110, Section 5 sets forth the procedure by which certain information filed with the Commission shall be treated as confidential. Specifically, the party seeking confidential treatment must establish “each basis upon which the petitioner believes the material should be classified as confidential” in accordance with the Kentucky Open Records Act, KRS 61.878. *See* 807 KAR 5:110 Section 5(2)(a)(1).

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 Confidential Information 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.

**b. Responses and Attachments for Which Confidential Treatment is Sought**

**i. STAFF-DR-01-005**

STAFF Request No. 01-005 states as follows:

Refer to the Duke Kentucky Application, page 5, Item 12.

- a. Explain the specific additional limitations to MEL supply that are referred to here.
- b. Explain how the limitations may lead to material cost increases and a risk in availability of supply alternatives.

In response to STAFF Request No. 01-005, Duke Energy Kentucky includes and contains detailed market risk evaluations involving vendor pricing information, identified reliability risks, pricing forecasts, and the Company's strategies, attempts, and evaluations in procuring a reliable source of cost-effective reagent supply for East Bend's wet-flue gas desulfurization process. The Company requests that the highlighted information contained within the response be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1). The highlighted information is not publicly available, thus satisfying the first element of the statutory standard for confidentiality of a proprietary record. The highlighted information satisfies the second element of the standard, as negotiated pricing information is generally recognized as confidential and proprietary. The highlighted information also satisfies the third element because disclosure of these charges, RFP participation, and risks identified would place the Company at a disadvantage with future such negotiations, as counter-parties would have access to the Company's risk assessments, and charges from parties, potentially resulting in or exacerbating a lack of bargaining power for the Company and less favorable contract terms.

**ii. STAFF-DR-01-009**

STAFF Request No. 01-009 states as follows:

Refer to the Verderame Direct Testimony, page 14, line 21 and page 15, line 8, where two alternatives to the proposed project were discussed.

- a. Explain whether any other alternatives were considered beyond these.
- b. If so, list those alternatives and discuss why they were not included here.

In response to STAFF Request No. 01-009, Duke Energy Kentucky includes and contains vendor pricing information from a request for proposal, market risks, pricing forecasts, and the Company's strategies and evaluations in procuring a reliable source of cost-effective reagent supply for East Bend's wet-flue gas desulfurization process. The Company requests that the highlighted information contained within the response be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1). The highlighted information is not publicly available, thus satisfying the first element of the statutory standard for confidentiality of a proprietary record. The highlighted information satisfies the second element of the standard, as negotiated pricing information is generally recognized as confidential and proprietary. The highlighted information also satisfies the third element because disclosure of these charges, RFP participation, and risks identified would place the Company at a disadvantage with future such negotiations, as counter-parties would have access to the Company's risk assessments, and charges from parties, potentially resulting in a lack of bargaining power for the Company and less favorable contract terms.

**iii. STAFF-DR-01-014 Confidential Attachment**

STAFF Request No. 01-014 states as follows:

Provide a copy of the Engineering, Procurement and Construction (EPC) contract with AECOM.

In response to STAFF Request No. 01-014, Duke Energy Kentucky provides STAFF-DR-

01-014 Confidential Attachment, which is a vendor contract that includes sensitive vendor pricing information. The Company requests that this Attachment be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1), and additionally requests that the Attachment be treated as confidential in its entirety pursuant to 807 KAR 5:001E, Section 13(2)(a)(3)(b).

STAFF-DR-01-014 Confidential Attachment is not publicly available, thus satisfying the first element of the statutory standard for confidentiality of a proprietary record. STAFF-DR-01-014 Confidential Attachment satisfies the second element of the standard, as vendor contracts are generally recognized as confidential and proprietary because they include confidential pricing and other contract terms. Finally, it also satisfies the third element because disclosure of vendor contracts would place the Company at a disadvantage with future such negotiations, as potential vendors would have access to what the Company currently pays or expects to pay for similar services, potentially resulting in increased costs for these services for customers.

**iv. STAFF-DR-01-020 Confidential Attachments 1 through 3**

STAFF Request No. 01-020 states as follows:

Provide copies of the most recent condition assessment of the East Bend Station WFGD Absorbers (3).

In response to STAFF Request No. 01-020, Duke Energy Kentucky provides STAFF-DR-01-020 Confidential Attachments 1 through 3, which contains detailed information relating to the condition of the East Bend Station WFGD Absorbers. The Company requests that these Attachments be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1), and additionally requests that the Attachments be treated as confidential in its entirety pursuant to 807 KAR 5:001E, Section 13(2)(a)(3)(b).

STAFF-DR-01-020 Confidential Attachments 1 through 3 are not publicly available, thus satisfying the first element of the statutory standard for confidentiality of a proprietary record. The

second element is also satisfied, as this information is commercially sensitive and proprietary information that constitutes a “trade secret” under KRS 365.880(4). Information relating to how the Company assesses the condition of its generating units is proprietary to the Company and is Company work product. The third element is satisfied, as disclosure of this information would result in a commercial disadvantage. STAFF-DR-01-020 Confidential Attachments 1 through 3 contain Company work product and if this information is publicly released, it will place the Company at a competitive disadvantage, as competitors would have access to work and ideas developed by Duke Energy Kentucky.

**v. STAFF-DR-01-021 Confidential Attachment**

STAFF Request No. 01-021 states as follows:

Refer to the Application, page 6, paragraph 14. Provide the analysis that was conducted to support the impact the higher cost of lime-based reagent has on the unit’s capacity factor.

In response to STAFF Request No. 01-021, Duke Energy Kentucky provides STAFF-DR-01-021 Confidential Attachment, which contains detailed information and Company analysis and forecasts, as well as pricing for resources. The Company requests that this Attachment be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1), and additionally requests that this Attachment be treated as confidential in its entirety pursuant to 807 KAR 5:001E, Section 13(2)(a)(3)(b).

The confidential data is not publicly available, thus satisfying the first element of the statutory standard for confidentiality of a proprietary record. In *Hoy v. Kentucky Indus. Revitalization Auth.*, 907 S.W.2d 766, 768 (Ky. 1995), the Kentucky Supreme Court held that documents detailing the “inner workings of a corporation (are) ‘generally recognized as confidential or proprietary.’” The confidential data satisfies this standard, as Duke Energy

Kentucky's projected capital expenditures represent the inner workings of a corporation and, therefore, meets the second element of the statutory standard. The confidential data also satisfies the third element, as it contains commercially sensitive information related to the Company's financial projections and disclosure of this information would result in a commercial disadvantage for Duke Energy Kentucky as competitors would gain invaluable insight into the Company's financial valuation of resources and outlook.

**vi. STAFF-DR-01-022**

STAFF Request No. 01-022 states as follows:

Refer to the Application, page 6, paragraph 15. Provide a detailed financial and benefit/cost analysis for each of the three alternatives that were considered for the Limestone Conversion Project.

In response to STAFF Request No. 01-022, Duke Energy Kentucky provides detailed cost projections, anticipated savings, pricing, and detailed information relating to the Company's projected annual expenditures and vendor-specific pricing. The Company requests that the highlighted information within the response be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1). The highlighted information is not publicly available, thus satisfying the first element of the statutory standard for confidentiality of a proprietary record. In *Hoy v. Kentucky Indus. Revitalization Auth.*, 907 S.W.2d 766, 768 (Ky. 1995), the Kentucky Supreme Court held that documents detailing the "inner workings of a corporation (are) 'generally recognized as confidential or proprietary.'" The highlighted information satisfies this standard, as Duke Energy Kentucky's projected expenditures and anticipated cost savings represent the inner workings of a corporation and, therefore, meets the second element of the statutory standard. The highlighted information also satisfies the third element, as it contains commercially sensitive information related to the Company's financial projections and disclosure of this information would result in a

commercial disadvantage for Duke Energy Kentucky as competitors would gain invaluable insight into the Company's financial outlook, making the ability to achieve those savings or even improve upon them difficult.

**c. Request for Confidential Treatment**

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 impair the interests of the Company if publicly disclosed.

To the extent the Confidential Information becomes 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.

/s/ Rocco O. D'Ascenzo

Rocco O. D'Ascenzo (92796)

Deputy General Counsel

Duke Energy Business Services LLC

139 East Fourth Street, 1303-Main

Cincinnati, Ohio 45201-0960

Phone: (513) 287-4320

Fax: (513) 287-4385

E-mail: rocco.d'ascenzo@duke-energy.com



**CERTIFICATE OF SERVICE**

This is to certify that the foregoing electronic filing is a true and accurate copy of the document being filed in paper medium; that the electronic filing was transmitted to the Commission on September 6<sup>th</sup>, 2024; and that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding.

John G. Horne, II  
The Office of the Attorney General  
Utility Intervention and Rate Division  
700 Capital Avenue, Ste 118  
Frankfort, Kentucky 40601

*/s/Rocco D'Ascenzo*

\_\_\_\_\_  
Rocco D'Ascenzo