

**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 )

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**PETITION FOR CONFIDENTIAL TREATMENT OF DUKE ENERGY KENTUCKY, INC. FOR CERTAIN SUPPLEMENTAL RESPONSES TO THE ATTORNEY GENERAL’S AUGUST 23, 2024, FIRST REQUEST FOR INFORMATION**

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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 supplemental responses to the Attorney General of the Commonwealth of Kentucky’s (AG) First Request for Information issued on August 23, 2024:

- (1) The highlighted information contained in the Confidential Supplemental response to AG-DR-01-004;
- (2) The highlighted information contained in the Confidential Supplemental response to AG-DR-01-005;
- (3) The highlighted information contained in the Confidential Supplemental response to AG-DR-01-011; and,

- (4) The highlighted information contained in the Confidential Supplemental response to AG-DR-01-012.

Specifically, Duke Energy Kentucky seeks confidential treatment of information referred to herein as the “Confidential Information,” which, broadly speaking, includes information related vendor pricing, contract negotiations, market risks, and 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 for Which Confidential Treatment is Sought**

**i. The highlighted information contained in the Confidential Supplemental response to AG-DR-01-004**

AG Request No. 01-004 states as follows:

Confirm that the costs of using the MEL technology has been increasing for several reasons, including: (i) the production of calcium sulfite solids that are difficult to dewater, which requires the use of additional materials and processing; and (ii) it requires the use of an expensive reagent, quicklime, and stabilization additives.

- a. Confirm that these rising costs are affecting the competitiveness of the East Bend plant in power generation markets. If so confirmed, provide any data to support this conclusion.
- b. Confirm that from the 1980s when quicklime cost approximately \$40 / ton, the cost had risen to \$133 / ton, an increase of approximately 232%.

In supplemental response to AG Request No. 01-004, the Company provides analysis that includes and contains updated detailed vendor pricing information, negotiated contract terms, 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 was derived through a confidential request for proposal (RFP) process, 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 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.

**ii. The highlighted information contained in the Confidential Supplemental response to AG-DR-01-005**

AG Request No. 01-005 states as follows:

Reference the Application in this matter, paragraph 11. Provide a more detailed explanation to support the Company’s assertion that it expects the cost of the MEL reagent to continue rising at a rate double that of limestone.

In supplemental response to AG Request No. 01-005, the Company provides analysis that includes and contains detailed vendor pricing information, negotiated contract terms, market risks, 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 was derived through a confidential direct solicitation and subsequent negotiations, 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 negotiated

pricing information is generally recognized as confidential and proprietary. The highlighted information also satisfies the third element because disclosure of these contract terms would place the Company at a disadvantage with future such negotiations, as counter-parties would have access to the Company's risk assessments, and pricing from parties, potentially resulting in a lack of bargaining power for the Company and less favorable contract terms.

**iii. The highlighted information contained in the Confidential Supplemental response to AG-DR-01-011**

AG Request No. 01-011 states as follows:

Referring to Application paragraph no. 15, confirm that DEK identified the following potential solutions: 1) a Lime Stone Conversion project; 2) conducting a request for proposals (RFP) to explore alternative sources for the existing MEL product with the correct chemical composition to operate the WFGD system; and 3) system renovations for onsite mixing of magnesium hydroxide with hi-calcium quicklime to create a replacement mag-lime product that possesses similar chemical composition to operate the existing WFGD system. If so confirmed, confirm also that:

- a. DEK did not receive any cost-competitive bids in response to the RFP, thus eliminating that potential alternative;
- b. Onsite chemical mixing was a more expensive alternative, and thus would further erode the East Bend plant's cost competitiveness; and
- c. The conversion of the WFGD to a limestone inhibited oxidation process is the most economic and most reasonable solution.

In supplemental response to AG Request No. 01-011, the Company provides updates to contract negotiations that includes and contains detailed vendor pricing information and negotiated terms that depict 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 was derived through a confidential direct solicitation followed by confidential negotiations, 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 negotiated pricing information is generally recognized as confidential and proprietary. The highlighted information also satisfies the third element because disclosure of these negotiated terms and pricing would place the Company at a disadvantage with future such negotiations, as counter-parties would have access to what the Company pays for its reagent supply, and potentially have a chilling effect on counterparties willingness negotiate favorable pricing out of fear of their pricing being publicly disclosed resulting in a lack of bargaining power for the Company and less favorable contract terms.

**iv. The highlighted information contained in the Confidential Supplemental response to AG-DR-01-012**

AG Request No. 01-012 states as follows:

Provide copies of any cost-benefit analyses / studies the Company conducted in regard to the study of the alternatives outlined in the Application, and as discussed in the question immediately above.

In supplemental response to AG Request No. 01-012, the Company provides analysis that includes and contains updated contract terms and detailed vendor pricing information, 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 was derived through a confidential direct solicitation and subsequent negotiation and 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 negotiated pricing information is generally recognized as confidential and proprietary. The highlighted information also satisfies the third element because disclosure of these negotiated contract terms and risks identified would place the Company at a disadvantage with future such negotiations, as counter-parties would have access to the Company’s pricing for commodities, potentially resulting in a chilling effect on future counter parties willingness to negotiate favorable terms out of fear of their pricing becoming public thereby creating a lack of bargaining power for the Company and less favorable contract terms.

**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

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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 being filed in paper medium; that the electronic filing was transmitted to the Commission on November 1, 2024; and that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding.

*/s/Rocco D'Ascenzo*  
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Rocco D'Ascenzo