

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 SUPPLEMENTAL 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 supplemental responses and attachments to Commission Staff’s (STAFF) First Request for Information issued on August 23, 2024:

- (1) The highlighted information contained in the Confidential Supplemental response to STAFF-DR-01-002;
- (2) The highlighted information contained in the Confidential Supplemental response to STAFF-DR-01-003;
- (3) The highlighted information contained in the Confidential Supplemental response to STAFF-DR-01-005;

- (4) The highlighted information contained in the Confidential Supplemental response to STAFF-DR-01-009;
- (5) The highlighted information contained in the Confidential Supplemental response to STAFF-DR-01-021 and STAFF-DR-01-021 Confidential Supplemental Attachment; and,
- (6) The highlighted information contained in the Confidential Supplemental 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, negotiated contract terms, market and reliability risks, cost information, 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 and Attachments for Which Confidential Treatment is Sought

i. The highlighted information contained in the Confidential Supplemental response to STAFF-DR-01-002

STAFF Request No. 01-002 states as follows:

Refer to the Verderame Direct Testimony, page 16, lines 22-24 and page 17, lines 1-8.

- a. Compare and contrast the assumptions used in the production cost modeling of the two scenarios.
- b. Explain whether the forecast PJM energy and capacity market prices modeled in the present proceeding are the same as those used in Duke Kentucky’s Integrated Resource Plan Case No. 2024-00197.2 If not, explain any differences and the reasons for those differences in the assumptions used.
- c. Explain how the recent results of the PJM 2024/2025 Base Residual Auction affect Duke Kentucky’s analysis in the present proceeding.
- d. Explain how, if at all, the Duke Energy Ohio Kentucky (DEOK) PJM Load Zone being constrained affects Duke Kentucky’s ability to acquire replacement capacity if the Limestone Conversion project is not approved.

In supplemental response to STAFF Request No. 01-002, the Company provides analysis that includes and contains detailed vendor pricing information and negotiated contract 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 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 and risks identified would place the Company at a disadvantage with future such negotiations, as counterparties would have access to the Company's charges from parties, and could potentially have a chilling effect on future negotiations as potential vendors would be hesitant to negotiate favorable contract terms out of concern of their pricing becoming public, thereby resulting in a lack of bargaining power for the Company and less favorable contract terms for customers.

ii. The highlighted information contained in the Confidential Supplemental response to STAFF-DR-01-003

STAFF Request No. 01-003 states as follows:

Refer to the Verderame Direct Testimony, page 17, lines 12-14.

- a. Explain whether the modeled PJM purchase volume prices are premised on no other generator in the DEOK PJM Load Zone having the same MEL issues, and thus, PJM energy prices are not affected by this particular environmental reagent issue.

- b. In addition to reducing higher cost PJM energy purchase volumes, explain what other factors will lead to an estimated \$1.48/MWh decline in the system average fuel rate.
- c. Confirm that reagent costs are recovered in the environmental surcharge rate and not the fuel adjustment clause. If not confirmed, explain why not.

In supplemental response to STAFF Request No. 01-003, the Company provides analysis that includes and contains detailed vendor pricing information and negotiated contract 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 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 and risks identified would place the Company at a disadvantage with future such negotiations, as counter-parties would have access to the Company's charges from parties, and could potentially have a chilling effect on future negotiations as potential vendors would be hesitant to negotiate favorable contract terms out of concern of their pricing becoming public, thereby resulting in a lack of bargaining power for the Company and less favorable contract terms for customers.

iii. The highlighted information contained in the Confidential Supplemental response to 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 supplemental response to STAFF Request No. 01-005, the Company provides analysis that includes and contains 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 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 charges, 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.

iv. The highlighted information contained in the Confidential Supplemental response to 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 supplemental response to STAFF Request No. 01-009, Duke Energy Kentucky includes and contains vendor pricing information and negotiated contract terms from a direct solicitation, 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 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, 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.

v. The highlighted information contained in the Confidential Supplemental response to STAFF-DR-01-021 and STAFF-DR-01-021 Confidential Supplemental 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.

The Company's supplemental response to Staff Request No. 01-021 includes the Company's analysis that includes and contains detailed vendor pricing information and negotiated

contract 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 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 and risks identified would place the Company at a disadvantage with future such negotiations, as counter-parties would have access to the Company's charges from parties, and could potentially have a chilling effect on future negotiations as potential vendors would be hesitant to negotiate favorable contract terms out of concern of their pricing becoming public, thereby resulting in a lack of bargaining power for the Company and less favorable contract terms for customers.

Additionally, in supplemental response to STAFF Request No. 01-021, Duke Energy Kentucky provides STAFF-DR-01-021 Confidential Supplemental Attachment, which contains detailed updated information and Company analysis and forecasts, as well as pricing for operation of the Company's generation 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, operating costs, potential revenues, and load assumptions 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. The highlighted information contained in the Confidential Supplemental response to 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 supplemental response to STAFF Request No. 01-022, Duke Energy Kentucky provides updated detailed cost projections, risk assessments, pricing, and detailed information relating to the Company’s projected annual reagent expenditures. 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. Moreover, releasing this information would disclose confidential pricing terms negotiated with an existing supplier that if released, would have a chilling effect on suppliers’ willingness to negotiate more favorable contract terms out of concern their pricing would be made public.

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

Rocco D'Ascenzo