

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 THE ATTORNEY GENERAL’S SEPTEMBER 20, 2024 SECOND 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 to the Attorney General of the Commonwealth of Kentucky’s (AG) Second Request for Information issued on September 20, 2024:

- (1) The highlighted information contained in the Confidential Supplemental response to AG-DR-02-002.

Specifically, Duke Energy Kentucky seeks confidential treatment of information referred to herein as the “Confidential Information,” which, broadly speaking, includes information related vendor pricing, negotiated contract terms, 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. Response for Which Confidential Treatment is Sought

i. The highlighted information contained in the Confidential Supplemental response to AG-DR-02-002

AG Request No. 02-002 states as follows:

Reference the direct testimony of Chad M. Donner at p. 8.

- a. Provide the percentage of projected savings in variable operating and maintenance that DEK believes the Limestone Conversion Project would produce.
- b. Provide the percentage of projected savings in fuel cost that DEK believes the Limestone Conversion Project would produce.
- c. Provide any projections of additional off-system sales that DEK believes the Limestone Conversion Project would produce. Provide these figures both in terms of MWh, and the projected percentage increase of off-system sales.
- d. Explain whether DEK foresees any changes to its off-system sales clause in the event it is granted the requested CPCN.

In supplemental response to AG Request No. 02-002, the Company provides analysis that includes detailed vendor pricing information, and negotiated contract terms, 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 contract negotiations through a direct solicitation, 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 would be hesitant to provide competitive pricing out of fear their pricing would become public, potentially resulting in a lack of bargaining power for the Company and less favorable contract terms for customers.

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.

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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