

**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 RESPONSES TO COMMISSION STAFF’S NOVEMBER 8, 2024, THIRD 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 responses and attachments to Commission Staff’s (STAFF) Third Request for Information issued on November 8, 2024:

- (1) Highlighted portion of the response to STAFF-DR-03-001;
- (2) STAFF-DR-03-005 Confidential Attachment; and,
- (3) Highlighted portion of the response to STAFF-DR-03-010.

Specifically, Duke Energy Kentucky seeks confidential treatment of information referred to herein as the “Confidential Information,” which, broadly speaking, includes information related to internal sensitive modeling, cost projections, analysis of dispatch costs, third party/vendor pricing including updates on contract negotiations, market analysis, and reliability risks.

## 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. Highlighted portion of the response to STAFF-DR-03-001**

STAFF Request No. 03-001 states as follows:

Provide a status update associated with the negotiations of the supply offer for the lime reagent referenced in the motion for stay of proceeding filed October 11, 2024.

a. If Duke Kentucky has reached a final agreement, provide the agreement.

b. If Duke Kentucky has not reached a final agreement, provide a monthly update of the ongoing evaluation of the supply offer until this case is final or the Commission orders otherwise. Include in the monthly updates the status of negotiations, the date of the next meeting to discuss the offer and provide any updated drafts of the agreement.

c. Confirm that, should Duke Kentucky reach an agreement prior to a final Order being issued in this matter, it intends to withdraw this application. If not confirmed, explain the response.

In response to STAFF Request No. 03-001, Duke Energy Kentucky includes and contains detailed market risk evaluations that include vendor pricing information and ongoing contract negotiations and assumptions, and the Company's strategies for optimizing its unit operations, including 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 in the response to Staff Request No. 03-001 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 ongoing contract negotiations 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. If released, this information would place the Company at a significant disadvantage in the wholesale electric markets and undermine its ability to negotiate prices for fuel and reagents to operate its generating units in a low-cost efficient manner.

**ii. STAFF-DR-03-005 Confidential Attachment**

STAFF Request No. 03-005 states as follows:

Refer to the Application, page 6, paragraph 15, and the Direct Testimony of John Verderame, pages 14–16. Provide the cost estimate details for each of the three alternatives considered including:

- a. Limestone conversion project;
- b. Alternative lime source; and
- c. On-Site mixing of a Mag-Lime product.

In response to STAFF Request No. 03-005, Duke Energy Kentucky provides STAFF-DR-03-005 Confidential Attachment, which contains detailed information and Company analysis and forecasts, and modeling assumptions comparing various compliance strategies, as well as pricing for resources, including ongoing contract negotiations and sensitive vendor pricing. This analysis forecasts costs many years into the future and if released, would place the Company at a competitive disadvantage in the wholesale electric market. 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.

**iii. Highlighted portion of the response to STAFF-DR-03-010**

STAFF Request No. 03-010 states as follows:

Provide the estimated expense to convert East Bend from a dual fuel generation unit to an NGCC as proposed in Duke Kentucky's 2024 IRP. Include in this estimate a specific breakdown for each portion of the project.

In response to STAFF Request No. 03-010, Duke Energy Kentucky provides detailed information regarding confidential cost information from vendor pricing, internal modeling, and internal cost assumptions. The Company requests that the highlighted be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1).

The highlighted information in the response 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 confidential information also satisfies the third element because disclosure of these costs would place the Company at a disadvantage with future 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 have a chilling effect on vendors willingness to negotiate out of concern they

prices could be used against them in the future by other parties, thereby resulting in 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 15<sup>th</sup>, 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