

**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 SEPTEMBER 20, 2024 SECOND 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) Second Request for Information issued on September 20, 2024:

- (1) Highlighted portion of the response to STAFF-DR-02-001, as well as its Confidential Attachments 1 and 2; and
- (2) STAFF-DR-02-008 Confidential Attachment;

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, 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-02-001, as well as its Confidential Attachments 1 and 2**

STAFF Request No. 02-001 states as follows:

Refer to Duke Kentucky's response to Commission Staff's First Request for Information (Staff's First Request), Item 2(a).

a. Explain, in detail, the process Duke Kentucky used to calculate the East Bend dispatch cost of a basket of market coals that is optimized to derive a blended product that serves as a least-cost market dispatch coal, inclusive of coal cost, reagent costs, and transportation.

b. Provide the calculation for quicklime that resulted in a blended coal that had a #5.62 SO<sub>2</sub> content and a heat content of 11703 Btu/lb. Include in the response any associated work papers or sources used for the calculation.

c. Provide the derivation of the dispatch cost and the escalation from \$3.83/MMBtu to \$4.19/MMBtu over the model horizon. Include in the response any associated work papers or sources used for the calculation.

d. Provide the calculation for the limestone scenario that resulted in the modeled coal of #6 SO<sub>2</sub> product at 11782 Btu/lb. Include in the response any associated work papers or sources used for the calculation.

e. Provide the derivation of the dispatch cost escalating from \$2.77/MMBtu to \$2.97/MMBtu over the model horizon from the limestone scenario. Include in the response any workpapers or sources used for the calculation.

In response to STAFF Request No. 02-001, Duke Energy Kentucky includes and contains detailed market risk evaluations involving internal dispatch costs that provide sensitive generating unit operational characteristics, vendor pricing information and assumptions, identified reliability risks, pricing forecasts spanning several years into the future, 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) and additionally requests that the two Attachments be treated as confidential in their entirety pursuant to 807 KAR 5:001E, Section 13(2)(a)(3)(b). The highlighted information in the response to Staff Request No. 02-001 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 charges, RFP participation, and risks identified would place the Company at a disadvantage with future such negotiations, as counterparties 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. The Two attachments include detailed modeling and optimization assumptions that disclose sensitive operational characteristics and business strategies to operate its coal unit. 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-02-008 Confidential Attachment**

STAFF Request No. 02-008 states as follows:

Refer to Duke Kentucky's response to Staff's First Request, Item 21 and refer to Application at page 6, paragraph 14. Confirm Duke Kentucky did no further analysis to support the impact the higher cost of lime-based reagent has on the unit's capacity factor and dispatch ranking. If not confirmed, provide in the response any work papers or documents supporting the estimates and cost of the lime.

In response to STAFF Request No. 02-008, Duke Energy Kentucky provides STAFF-DR-02-008 Confidential Attachment, which contains detailed information and Company analysis and forecasts, and modeling assumptions comparing various compliance strategies, as well as pricing for resources. 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.

**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](mailto: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 October 4<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