COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF DUKE ENERGY KENTUCKY, INC. FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO CONVERT ITS WET FLUE 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	)	CASE NO. 2025-00002

DUKE ENERGY KENTUCKY, INC.'S PETITION FOR CONFIDENTIAL TREATMENT OF INFORMATION CONTAINED IN ITS APPLICATION

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 certain information provided by Duke Energy Kentucky in its Application:

(1) The highlighted information contained in the Confidential Direct Testimony of John A. Verderame and Confidential Attachment JAV-2; and,

(2) The highlighted information contained in the Confidential Direct Testimony of Chad M. Donner.

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, market risks, and cost information, as well as internal modeling, forecasts and 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. Information for Which Confidential Treatment is Sought

i. The highlighted information contained in the Confidential Direct Testimony of John A. Verderame and Confidential Attachment JAV-2

John A. Verderame's Confidential Direct Testimony includes vendor pricing information, market risk analysis, pricing forecasts and the Company's strategies and evaluations for procuring a reliable resource of cost-effective reagent supply for East Bend's wet-flue gas desulfurization process. Confidential Attachment JAV-2 contains proprietary modeling and analysis that includes and contains pricing forecasts, unit dispatch projections, load assumptions, used to inform 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 in Mr. Verderame's testimony be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1), and additionally requests that Confidential Attachment JAV-2 be treated as confidential in its entirety pursuant to 807 KAR 5:001E, Section 13(2)(a)(3)(b).

The highlighted information in Mr. Verderame's testimony was derived through a confidential request for proposal (RFP) process and confidential solicitation and negotiation, 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 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. Likewise, the confidential information in JAV-2 depicts the Company's internal forecasts of generating unit performance, projected sales, dispatch costs and load projections for several years in the future. If released, this information would provide competitors with sensitive economic information that would adversely affect the Company's ability to compete in the wholesale electric markets, harming customers.

ii. The highlighted information contained in the Confidential Direct Testimony of Chad M. Donner

Chad M. Donner's Confidential Direct Testimony contains detailed operational cost projections, anticipated savings, pricing, and detailed information relating to the Company's projected annual expenditures for 2023 through 2029. The Company requests that the highlighted information contained in Mr. Donner's testimony 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.

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).

II. CONCLUSION

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 January 28, 2025; and that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding.

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