

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)	CASE NO.
QUICKLIME REAGENT PROCESS TO A)	2025-00002
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 RESPONSES TO COMMISSION STAFF’S
MARCH 12, 2025 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 response and attachment to Commission Staff’s (Staff) Second Request for Information issued on March 12, 2025:

- (1) STAFF-DR-02-003 Confidential Attachment; and
- (2) Highlighted portion of the response to STAFF-DR-02-008.

Specifically, Duke Energy Kentucky seeks confidential treatment of information referred to herein as the “Confidential Information,” which, broadly speaking, includes sensitive information related to vendor pricing, counterparties to confidential solicitations and negotiations, market and reliability risks, contracts, as well as 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. STAFF-DR-02-003 Confidential Attachment

Staff Request No. 02-003 states as follows:

Refer to the Direct Testimony of John Verderame (Verderame Direct Testimony), page 10. Provide the most recent supplier's magnesium enhanced lime (MEL) secondary response to the Duke Kentucky long-term MEL request for proposal or, if no secondary response exists, the offer that resulted in the described agreement in principle.

In response to Staff Request No. 02-003, Duke Energy Kentucky provides STAFF-DR-02-003 Confidential Attachment, which contains confidential vendor pricing solicitation and contract term negotiations for MEL supply with a supplier. The Company requests that this Attachment be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1) and additionally requests that the Attachment be treated as confidential in its entirety pursuant to 807 KAR 5:001, 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 includes confidential contract negotiations and pricing terms and thus, satisfies this standard as it represents 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 and operational 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 and future counterparties would be discouraged from providing responses if their identity, supply capability, and potential other information like pricing and agreement terms were to be made public. This could have a chilling effect on future RFP participation and contract negotiations and have an adverse impact on the Company's costs, and ultimately prices paid by customers.

ii. Highlighted portion of the response to STAFF-DR-02-008

Staff Request No. 02-008 states as follows:

Refer to the Direct Testimony of Nathan Gagnon (Gagnon Direct Testimony), page 8, lines 9-17. Explain the assumption that the duration of a long-term lime supply agreement may not provide a seamless transition to a Combined Cycle generator for East Bend.

In response to Staff Request No. 02-008, Duke Energy Kentucky provides the agreement terms of confidential suppliers that provided an offer for potential MEL supply. The Company requests that the highlighted information within this 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 it represents 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 disclosure of this information would result in a commercial disadvantage for Duke Energy Kentucky as potential future RFP participants and bilateral counterparties would be discouraged from providing responses if their identity, supply capability, and potential other information like pricing and agreement terms were to be made public. This could have a chilling effect on future RFP participation and have an adverse impact on the Company's costs, and ultimately prices paid by 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).

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 March 19, 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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