

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
APRIL 7, 2025, THIRD 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 highlighted information contained within the following attachment submitted in response to Commission Staff’s (Staff) Third Request for Information issued on April 7, 2025:

- (1) Highlighted information contained within STAFF-DR-03-001 Confidential Attachment.

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, confidential contract solicitations and negotiations, and potential cost projections for many years into the future.

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. Attachment for Which Confidential Treatment is Sought

i. Highlighted information contained within STAFF-DR-03-001 Confidential Attachment

Staff Request No. 03-001 states as follows:

Refer to Duke Kentucky’s response to Commission Staff’s Second Request for Information (Staff’s Second Request), Item 3, including documents dated October and November 2024. Duke Kentucky presumably intended to provide an attachment documenting the magnesium enhanced lime (MEL) supplier’s new proposal dated on or about March 13, 2025, that potentially extending the term and lowering the price. Provide the correct attachment that corresponds with the March 13, 2025 new proposal.

In response to Staff Request No. 03-001, Duke Energy Kentucky provides STAFF-DR-03-001 Confidential Attachment, which contains a highlighted confidential vendor pricing solicitation and contract term negotiations for MEL supply with a supplier. The Company requests that the highlighted information contained within the Attachment be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1).

The highlighted 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 highlighted 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 highlighted 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 future pricing and agreement terms were to be made public. This could have a chilling effect on future supply offers, RFP participation, and contract negotiations 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.

/s/ Rocco D'Ascenzo

Rocco O. D'Ascenzo (92796)

Deputy General Counsel

Larisa M. Vaysman (98944)

Associate General Counsel

Duke Energy Business Services LLC

139 East Fourth Street, 1303-Main

Cincinnati, Ohio 45201-0960

(513) 287-4320

(513) 370-5720 (f)

rocco.d'ascenzo@duke-energy.com

larisa.vaysman@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 April 17, 2025; and that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding.

John G. Horne, II
The Office of the Attorney General
Utility Intervention and Rate Division
700 Capital Avenue, Ste 118
Frankfort, Kentucky 40601
John.Horne@ky.gov

Joe F. Childers, Esq.
Childers & Baxter, PLLC
The Lexington Building
201 West Short Street, Suite 300
Lexington, KY 40507
(859) 253-9824
joe@jchilderslaw.com

Of counsel (not licensed in Kentucky)

Kristin A. Henry Sierra Club
2101 Webster Street, Suite 1300
Oakland, CA 94612
kristin.henry@sierraclub.org

Nathaniel T. Shoaff
Sierra Club 2101 Webster Street, Suite 1300
Oakland, CA 94612
nathaniel.shoaff@sierraclub.org

Cassandra McCrae Earthjustice
1617 JFK Blvd., Ste. 2020
Philadelphia, PA 19103
cmccrae@earthjustice.org

/s/Rocco D'Ascenzo
Counsel for Duke Energy Kentucky, Inc.