

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

APPLICATION OF DUKE ENERGY KENTUCKY,	)	
INC. FOR A CERTIFICATE OF PUBLIC	)	CASE NO.
CONVENIENCE AND NECESSITY AUTHORIZING	)	2026-00086
THE PHASE FIVE REPLACEMENT OF THE AM07	)	
PIPELINE	)	

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**PETITION OF DUKE ENERGY KENTUCKY, INC.**  
**FOR CONFIDENTIAL TREATMENT OF INFORMATION**

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Duke Energy Kentucky, Inc. (Duke Energy Kentucky or Company), pursuant to 807 KAR 5:001, Section 13, respectfully requests the Commission to classify and protect certain information provided by Duke Energy Kentucky filed in this proceeding requesting a Certificate of Public Convenience and Necessity (CPCN) for approval of the construction of the fifth phase of its AM07 Pipeline Replacement Project (Phase Five). The information for which Duke Energy Kentucky now seeks confidential treatment is contained in Supplemental Confidential Exhibits 3(e) and 3(h) (Confidential Information). Supplemental Confidential Exhibits 3(e) and 3(h) both contain information about critical utility infrastructure by way of detailed engineering drawings showing the exact route, location, depths, pressures, and nature of the proposed construction. Supplemental Confidential Exhibit 3(h) also contains an encroachment agreement with a third party that is subject to confidentiality provisions that restrict the Company from providing this information publicly. The public release of this information would create a safety and security risk for both the Company and its customers and/or would be detrimental to the Company's future ability to negotiate similar contracts.

In support of this Petition, Duke Energy Kentucky states:

1. The Kentucky Open Records Act exempts from disclosure certain records in KRS 61.878(1)(m)(1)(f) and (1)(g). To qualify for this exemption and, therefore, maintain the confidentiality of the information, a party must establish that disclosure of the records would “have a reasonable likelihood of threatening the public safety by exposing a vulnerability in preventing, protecting against, mitigating, or responding to a terrorist act and limited to:...

- f. Infrastructure records that expose a vulnerability referred to in this subparagraph through the disclosure of the location, configuration, or security of critical systems, including public utility critical systems. These critical systems shall include but not be limited to information technology, communication, electrical, fire suppression, ventilation, water, wastewater, sewage, and gas systems;
- g. The following records when their disclosure will expose a vulnerability referred to in this subparagraph: detailed drawings, schematics, maps, or specifications of structural elements, floor plans, and operating, utility, or security systems of any building or facility owned, occupied, leased, or maintained by a public agency...”

2. Additionally, 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).

3. 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.

4. On the basis of KRS 61.878(1)(m)(1)(f) and (1)(g), Duke Energy Kentucky requests confidential treatment of Supplemental Confidential Exhibits 3(e) and 3(h) insofar as both include engineering drawings showing the precise location of gas systems considered to be critical infrastructure information. This information needs to be kept confidential in order to continue to provide delivery of safe and reliable gas service to Duke Energy Kentucky customers. The release of this information would threaten the public safety by providing precise locations of critical utility natural gas infrastructure that could be used and exploited to the detriment of the safety of the general public.

5. On the basis of KRS 61.878(1)(c)(1), Duke Energy Kentucky requests confidential treatment of Supplemental Confidential Exhibit 3(h) which contains an encroachment agreement with a third party that is subject to confidentiality provisions that restrict the Company from providing this information publicly. The public release of this agreement and its terms, including pricing terms, would be detrimental to the Company's future ability to negotiate similar agreements.

6. The encroachment agreement in Supplemental Confidential Exhibit 3(h) is not publicly available, and Duke Energy Kentucky is not required to make it public, thus satisfying the first element of the statutory standard for confidentiality of a proprietary

record. The second element is met as such agreements are generally considered confidential as they contain proprietary pricing information and negotiated contract terms and conditions that are maintained as confidential between the contracting parties. This agreement also contained confidentiality language at the time of its execution. The third element is satisfied as public disclosure of this agreement would place the Company at a disadvantage in future negotiations as potential counterparties would have access to what the Company currently pays or expects to pay. Moreover, counterparties would be less willing to negotiate with the Company out of fear of their sensitive pricing and contractual terms would be made public, in spite of marking the agreement as confidential.

7. The Confidential Information for which Duke Energy Kentucky is seeking confidential treatment was developed internally by Duke Energy Corporation and Duke Energy Kentucky personnel and/or the other party to the agreement, is not on file publicly with any agency, and is not available from any commercial or other source outside Duke Energy Kentucky. The aforementioned information is distributed within Duke Energy Kentucky only to those employees who must have access for business reasons and is generally recognized as confidential and proprietary in the gas industry.

8. Duke Energy Kentucky does not object to limited disclosure of the confidential information described herein, pursuant to an acceptable protective agreement, the Attorney General, or other intervenors with a legitimate interest in reviewing the same for the purpose of participating in this case.

9. This information was, and remains, integral to Duke Energy Kentucky's effective execution of business decisions. And such information is generally regarded as confidential or proprietary. Indeed, as the Kentucky Supreme Court has found,

“information concerning the inner workings of a corporation is ‘generally accepted as confidential or proprietary.’” *Hoy v. Kentucky Industrial Revitalization Authority*, Ky., 904 S.W.2d 766, 768 (Ky. 1995).

10. In accordance with the provisions of 807 KAR 5:001, Section 13(3), the Company is filing one copy of the Confidential Information separately under seal, and one copy without the confidential information included.

11. Duke Energy Kentucky respectfully requests that the Confidential Information contained in Supplemental Confidential Exhibits 3(e) and 3(h) be withheld from public disclosure until such time as the facilities depicted therein are no longer in service. This will assure that the Confidential Information – if disclosed after that time – will no longer be commercially sensitive so as to likely impair the interests of the Company or its customers if publicly disclosed.

12. To the extent the Confidential Information becomes generally 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/Larisa M. Vaysman*

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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 in paper medium; that the electronic filing was transmitted to the Commission on May 29, 2026 that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that submitting the original filing to the Commission in paper medium is no longer required as it has been granted a permanent deviation.<sup>1</sup>

*/s/Larisa M. Vaysman*  
\_\_\_\_\_ *Counsel for Duke Energy Kentucky, Inc.*

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<sup>1</sup> *In the Matter of Electronic Emergency Docket Related to the Novel Coronavirus COVID-19*, Case No. 2020-00085, Order (Ky. P.S.C. July 22, 2021).