

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 )	CASE NO.
AUTHORIZING THE PHASE TWO )	2023-00210
REPLACEMENT OF THE AM07 PIPELINE )	

ORDER

On June 28, 2023, Duke Energy Kentucky, Inc. (Duke Kentucky) filed a petition, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for ten years for Attachment BAS-1 to the Direct Testimony of Bradley A. Seiter appended to Duke Kentucky’s application and for an indefinite period for Exhibit 3 to said application.

The Commission is a public agency subject to Kentucky's Open Records Act, which requires that all public records “be open for inspection by any person, except as otherwise provided by KRS 61.870 to 61.884.”<sup>1</sup> Exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.<sup>2</sup> The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.<sup>3</sup>

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<sup>1</sup> KRS 61.872(1).

<sup>2</sup> See KRS 61.871.

<sup>3</sup> 807 KAR 5:001, Section 13(2)(c).

In support of its petition, Duke Kentucky argued the application of two provisions of KRS 61.870. KRS 61.878(1)(c)(1) exempts records that are “[g]enerally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.”

Under KRS 61.878(1)(m), the Open Records Act exempts “[p]ublic records the disclosure of which 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 . . .”<sup>4</sup> The exemption is limited to certain types of records, including:

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.<sup>5</sup>

A terrorist act is defined as including a criminal act intended to “[d]isrupt a system” identified in the above.<sup>6</sup>

Attachment BAS-1 to the Direct Testimony of Bradley A. Seiter consists of gas pipeline replacement estimated itemized construction costs. Duke Kentucky argued that public disclosure of these figures would result in a competitive disadvantage resulting from contractors manipulating the bid negotiation process and should be exempt from disclosure under KRS 61.878(1)(c)(1).

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<sup>4</sup> KRS 61.878(1)(m)(1).

<sup>5</sup> KRS 61.878(1)(m)(1)(f).

<sup>6</sup> KRS 61.878(1)(m)(2)(b).

Exhibit 3 to the application is a series of engineering drawings of gas pipeline systems including maps of the existing and proposed pipeline. Duke Kentucky asserted that pipeline drawings and locations should be kept confidential to prevent the gas utility system from being compromised by exposing vulnerabilities pursuant to KRS 61.878(1)(m).

Having considered the petition and the material at issue, the Commission finds that Duke Kentucky's petition should be granted, but, for Attachment BAS-1, the period for confidential treatment should be limited to five years rather than ten years requested by Duke Kentucky. Estimated construction costs could be used by contractors to manipulate the bidding process and unfairly disadvantage Duke Kentucky with its competitors.<sup>7</sup> This type of information is generally recognized as confidential or proprietary, and thus meets the criteria for confidential treatment and is exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1). However, consistent with recent determinations regarding similar material, the Commission concludes that five years is a sufficient period for cost information to become obsolete, and thus finds that the designated material in Attachment BAS-1 is granted confidential treatment for a period of five years.<sup>8</sup>

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<sup>7</sup> Case No. 2022-00084, *Electronic Application of Duke Energy Kentucky, Inc. for a Certificate of Public Convenience and Necessity Authorizing the Phase One Replacement of the AM07 Pipeline* (Ky. PSC July 18, 2022), Order at 3.

<sup>8</sup> Case No. 2022-00084, (Ky. PSC July 18, 2022), Order at 3; Case No. 2019-00269, *Electronic Application of Big Rivers Electric Corporation for Enforcement of Rate and Service Standards* (Ky. PSC Dec. 8, 2021), Order at 2-3; Case No. 2021-00462, *Electronic Joint Application of Kentucky Utilities Company, Nolin Rural Electric Cooperative Corporation, and East Kentucky Power Cooperative, Inc. for Approval of an Agreement Modifying an Existing Territorial Boundary Map and Establishing the Retail Electric Supplier for Glendale Megasite in Hardin County, Kentucky* (Ky. PSC Feb. 9, 2022), Order at 2-3.

Regarding the engineering drawings and maps, these documents are primarily an inseparable combination of both existing pipeline infrastructure and proposed pipelines to be connected to that infrastructure. Therefore, the existing pipeline locations should be protected under KRS 61.878(1)(m) by keeping these documents confidential in their entirety.<sup>9</sup> The designated material meets the criteria for confidential treatment and is exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(m) for an indefinite period.

IT IS THEREFORE ORDERED that:

1. Duke Kentucky's petition for confidential treatment is granted.
2. Attachment BAS-1 to the Direct Testimony of Bradley Seiter granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for five years or until further Order of this Commission.
3. Exhibit 3 to Duke Kentucky's application granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for an indefinite period or until further Order of this Commission.
4. Use of the designated material granted confidential treatment by this Order in any Commission proceeding shall comply with 807 KAR 5:001, Section 13(9).
5. Duke Kentucky shall inform the Commission if the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment.
6. If a nonparty to this proceeding requests to inspect the material granted confidential treatment by this Order and the period during which the material has been

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<sup>9</sup> Case No. 2022-00084, July 18, 2022 Order at 3.

granted confidential treatment has not expired, Duke Kentucky shall have 30 days from receipt of written notice of the request to demonstrate that the material still falls within the exclusions from disclosure requirements established in KRS 61.878. If Duke Kentucky is unable to make such demonstration, the requested material shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

7. The Commission shall not make the requested material available for inspection for 30 days from the date of service of an Order finding that the material no longer qualifies for confidential treatment in order to allow Duke Kentucky to seek a remedy afforded by law.

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PUBLIC SERVICE COMMISSION

*Walt Cole*

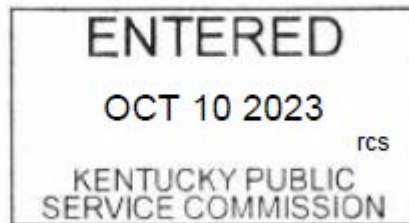
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*Angie Hadden* *per KAC*  
*w/permission*

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