

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)	CASE NO.
LIMESTONE REAGENT HANDLING SYSTEM AT)	2024-00152
ITS EAST BEND GENERATING STATION AND)	
FOR APPROVAL TO AMEND ITS)	
ENVIRONMENTAL COMPLIANCE PLAN FOR)	
RECOVERY BY ENVIRONMENTAL SURCHARGE)	
MECHANISM)	

ORDER

On November 15, 2024, 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 Duke Kentucky's responses to Commission Staff's Third Request for Information (Staff's Third Request), as it applies to the application for a Certificate of Public Convenience and Necessity (CPCN) to convert its wet flue gas desulfurization system (WFGD) from a quicklime reagent process to a limestone reagent system at its East Bend Generating Station. Duke Kentucky requested confidential treatment for the highlighted portion of Item 1, the Attachment to Item 5, and the highlighted portions of Item 10, pursuant to KRS 61.878(1)(c)(1).

LEGAL STANDARD

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.”¹ Exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.² The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.³

In support of its petition, Duke Kentucky argued the application of KRS 61.878(1)(c)(1), which provides an exception to the requirement for public disclosure for records that are “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.”

Duke Kentucky’s response to Staff’s Third Request, Item 1, contains highlighted information of detailed market risk evaluations that include vendor pricing information and ongoing contact negotiations and assumptions, and Duke Kentucky’s strategies for optimizing its unit operations, including evaluations in procuring a reliable source of cost-effective reagent supply for East Bend’s wet-flue gas desulfurization process.⁴ Duke Kentucky argued that the highlighted information is not publicly available, generally recognized as confidential and proprietary, and would place Duke Kentucky at a disadvantage if disclosed, and should remain confidential pursuant to KRS 61.878(1)(c)(1).⁵

¹ KRS 61.872(1).

² See KRS 61.871.

³ 807 KAR 5:001, Section 13(2)(c).

⁴ Petition for Confidential Information (Petition) (filed Nov. 15, 2024), at 3, paragraph b(i).

⁵ Petition at 3, paragraph b(i).

Having considered the petition and the material at issue, the Commission finds that the highlighted information in Duke Kentucky's response to Staff's Third Request, Item 1, is generally recognized as confidential or proprietary, and that disclosure of the material would permit an unfair commercial advantage to competitors of the disclosing party; it therefore meets the criteria for confidential treatment and should be exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1) for a ten-year period.

The attachment to Duke Kentucky's response to Staff's Third Request, Item 5, contains detailed information and Duke Kentucky's analysis and forecasts, and modeling assumptions comparing various compliance strategies, as well as pricing for resources, including ongoing contract.⁶ Duke Kentucky argued that, if released, it would place the company at a competitive disadvantage in the wholesale electric market, and therefore, should be protected under KRS 61.878(1)(c)(1).⁷

Having considered the petition and the material at issue, the Commission finds that the attachment to Duke Kentucky's response to Staff's Third Request, Item 5, is generally recognized as confidential or proprietary, that disclosure of the material would permit a competitive disadvantage in the wholesale electric market; it therefore meets the criteria for confidential treatment and should be exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1) for a ten year period.

Duke Kentucky's response to Staff's Third Request, Item 10, contains highlighted portions providing detailed information regarding confidential cost information from

⁶ Petition at 4, paragraph b(ii).

⁷ Petition at 4, paragraph b(ii).

vendor pricing, internal modeling, and internal cost assumptions.⁸ Duke Kentucky argued that, if released, would place the company at a competitive disadvantage in the wholesale electric market, and is therefore protected under KRS 61.878(1)(c)(1).⁹

Having considered the petition and the material at issue, the Commission finds that the highlighted information in Duke Kentucky's response to Staff's Third Request, Item 10, is generally recognized as confidential or proprietary, that disclosure of the material would permit an unfair commercial advantage to competitors of the disclosing party; it therefore meets the criteria for confidential treatment and should be exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1) for a ten year period.

IT IS THEREFORE ORDERED that:

1. Duke Kentucky's November 15, 2024 petition for confidential treatment is granted as set forth above.
2. The designated material granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for ten years or until further order of this Commission.
3. 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).
4. If the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment, Duke

⁸ Petition at 5, paragraph b(iii).

⁹ Petition at 5, paragraph b(iii).

Kentucky shall inform the Commission and file with the Commission an unredacted copy of the designated material.


5. 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 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.

6. 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.

PUBLIC SERVICE COMMISSION



Chairman



Commissioner



Commissioner

ATTEST:

 *RP*

Executive Director

ENTERED
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KENTUCKY PUBLIC
SERVICE COMMISSION

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