

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)	2024-00152
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)	

ORDER

On October 4, 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 information provided in response to Commission Staff's Second Request for Information (Staff's Second Request), Item 1, Attachments 1 and 2; and the Attachment to Item 8 pursuant to KRS 61.878(1)(c)(1).

Duke Kentucky filed an additional petition on October 4, 2024, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for ten years for information provided in response Sierra Club's First Request for Information (Sierra Club's First Request) Attachment 2 to Item 4; the Attachment to Item 5; Item 7(a) Attachments 1 and 2; Item 40; the Attachment to Item 44; Item 48(d) Attachments 1 and 2; the Attachment to Item 48(f); Item 49 Attachment 1; the Attachment to Item 57(e); Item 65: and Item 74.

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 The 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 determining whether materials should be exempt from disclosure, the Commission must balance the potential harm from disclosure with "the effect of protecting a given document from scrutiny by the public and potential intervenors."⁴

COMMISSION STAFF'S SECOND REQUEST FOR INFORMATION

Duke Kentucky's response to Staff's Second Request, Item 1, contains portions highlighted for redaction as confidential detailing market risk evaluations involving internal dispatch costs that provide generating unit operational characteristics, vendor pricing information and assumptions, identified reliability risks, pricing forecasts spanning several years into the future, and the Duke Kentucky's strategies for optimizing its unit operations, including evaluations in procuring a reliable source of cost-effective reagent supply for

¹ KRS 61.872(1).

² See KRS 61.871.

³ 807 KAR 5:001, Section 13(2)(c).

⁴ Case 2018-00153, *Electronic Application of Kentucky Utilities Company for an Order Authorizing the Issuance of Securities and Assumption of Obligations and an Order Amending and Extending Existing Authority with Respect to Revolving Line of Credit* (Ky. PSC Aug. 22, 2018) at 2, citing *Southeastern United Medigroup, Inc. v. Hughes*, 952 S.W.2d 195, 199 (Ky. 1997), *abrogated on other grounds by Hoskins v. Maricle*, 150 S.W.3d 1 (Ky. 2004).

East Bend.⁵ Attachments 1 and 2 to Item 1, include detailed modeling and optimization assumptions that disclose operational characteristics and business.⁶ Duke Kentucky argued that this 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).⁷

Having considered the petition and the material at issue, the Commission finds that the highlighted portion in Item 1, and the entirety of Attachments 1 and 2, are 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).

Duke Kentucky's response to Staff's Second Request, Attachment to Item 8, contains detailed information and Duke Kentucky analysis and forecasts, and modeling assumptions comparing various compliance strategies, as well as pricing for resources.⁸ Duke Kentucky argued the highlighted portion is protected under KRS 61.878(1)(c)(1) as information generally recognized as confidential and proprietary, and disclosure would place the Duke Kentucky at a competitive disadvantage in the wholesale electric market.⁹

Having considered the petition and the material at issue, the Commission finds that the Attachment to Item 8, is generally recognized as confidential or proprietary, that

⁵ Petition (Staff's Second Request filed Oct. 4, 2024) at 3, paragraph b(i).

⁶ Petition at 3-4, paragraph b(i).

⁷ Petition at 4, paragraph b(i).

⁸ Petition at 4, paragraph b(ii).

⁹ Petition at 4-5, paragraph b(ii).

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).

SIERRA CLUB'S FIRST REQUEST FOR INFORMATION

Duke Kentucky's response to Sierra Club's First Request, Attachment 2 to Item 4, contains detailed information regarding East Bend's operating characteristics, including heat rate, capacity factors, outage information and market revenues for multiple years.¹⁰ Duke Kentucky argued that the information contains commercially sensitive information, and disclosure of the contract would place Duke Kentucky at a competitive disadvantage, and deserves protection under KRS 61.878(1)(c)(1).¹¹

Having considered the petition and the material at issue, the Commission finds that Attachment 2 to Item 4, is generally recognized as confidential or proprietary, that disclosure of the material would place Duke Kentucky at a competitive disadvantage, as competitors would gain insight into the Duke Kentucky's financial valuation of resources, thus meeting the criteria for confidential treatment pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

Duke Kentucky's response to Sierra Club's First Request, Attachment to Item 5, contains detailed information regarding the anticipated future operational characteristics of Duke Kentucky's coal unit, and analysis and forecasts, as well as pricing for

¹⁰ Petition (Sierra Club First Request filed Oct. 4, 2024) at 3, paragraph b(i).

¹¹ Petition at 4, paragraph b(i).

resources.¹² Duke Kentucky argued that the information contains commercially sensitive information if publicly released would place Duke Kentucky at a competitive disadvantage, and should be protected under KRS 61.878(1)(c)(1).¹³

Having considered the petition and the material at issue, the Commission finds that the Attachment to Item 5, is generally recognized as confidential or proprietary, that disclosure of the material would place Duke Kentucky at a competitive disadvantage, as competitors would gain insight into the Duke Kentucky's financial valuation of resources, thus meeting the criteria for confidential treatment pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

Duke Kentucky's response to Sierra Club's First Request, Item 7(a), Attachments 1 and 2, include a multi-jurisdictional request for proposal and internal analysis in procuring a reliable source of cost-effective reagent supply for East Bend.¹⁴ Duke Kentucky highlighted information but still requested confidential treatment be granted in its entirety for these items. Duke Kentucky argued that the information contains commercially sensitive information, and disclosure of the contract would place Duke Kentucky at a competitive disadvantage, and deserves protection under KRS 61.878(1)(c)(1).¹⁵

Having considered the petition and the material at issue, the Commission finds that Item 7(a), Attachments 1 and 2 should be granted, in part, and denied, in part. Although Duke Kentucky highlighted information for redaction, the petition requested confidential

¹² Petition at 5, paragraph b(ii).

¹³ Petition at 5, paragraph b(ii).

¹⁴ Petition at 6, paragraph b(iii).

¹⁵ Petition at 6-7, paragraph b(iii).

treatment in its entirety and only the Appendices to Item 7(a), Attachment 1, contain information that would be recognized as confidential or proprietary, that disclosure of the material would place Duke Kentucky at a competitive disadvantage, as competitors would gain insight into Duke Kentucky's financial valuation of resources, thus meeting the criteria for confidential treatment pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1). Thus, Duke Kentucky's motion for confidential treatment for Item 7(a), Attachments 1 in its entirety should be denied, but should be granted to the extent of the portions of the document highlighted for redaction.

The Commission finds that Item 7(a), Attachment 2, in its entirety, should be granted confidential treatment because this information is generally recognized as confidential or proprietary, that disclosure of the material would place Duke Kentucky at a competitive disadvantage, as competitors would gain insight into the Duke Kentucky's financial valuation of resources, thus meeting the criteria for confidential treatment pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

Duke Kentucky's response to Sierra Club's First Request, Item 40 contains highlighted portions detailing vendor pricing and contract information, market risks, pricing forecasts, and Duke Kentucky's strategies and evaluations in procuring a reliable source of cost-effective reagent supply for East Bend.¹⁶ Duke Kentucky argued the highlighted portion was derived through a confidential request for proposal (RFP) and subsequent negotiation process, is not publicly available, and should be protected under KRS 61.878(1)(c)(1).¹⁷

¹⁶ Petition at 7, paragraph b(iv).

¹⁷ Petition at 7–8, paragraph b(iv).

Having considered the petition and the material at issue, the Commission finds that the highlighted portion in Item 40, is generally recognized as confidential or proprietary, that disclosure of the material would place Duke Kentucky at a competitive disadvantage, thus meeting the criteria for confidential treatment pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

The Attachment to Item 44 of Duke Kentucky's response to Sierra Club's First Request, contains detailed information and Duke Kentucky analysis of pricing for reagent resources and transportation from the last 10 years.¹⁸ Duke Kentucky argued that the information is not publicly available, and contains commercially sensitive, information, and if publicly released would place Duke Kentucky at a competitive disadvantage, and that the entirety of the filed document should be protected under KRS 61.878(1)(c)(1).¹⁹

Having considered the petition and the material at issue, the Commission finds that the Attachment to Item 44 is confidential, in part. Only the highlighted portions in the Attachment to Item 44, are generally recognized as confidential or proprietary, that disclosure of the material would place Duke Kentucky at a competitive disadvantage, thus meeting the criteria for confidential treatment pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

Duke Kentucky's response to Sierra Club's First Request, Item 48(d), Attachments 1 and 2, contain detailed modeling information, Duke Kentucky analysis of coal unit operation and forecasts, pricing for resources, and detailed PowerSIMM

¹⁸ Petition at 8, paragraph b(v).

¹⁹ Petition at 8–9, paragraph b(v).

Modeling characteristics.²⁰ Duke Kentucky argued that the information represents the inner workings of a corporation, is not publicly available, and contains commercially sensitive, information, and if publicly released would place Duke Kentucky at a competitive disadvantage, and deserves protection under KRS 61.878(1)(c)(1).²¹

Having considered the petition and the material at issue, the Commission finds that Item 48(d), Attachments 1 and 2 is granted in part and denied in part. Item 48(d), Attachment 1 is a public document and should not be granted confidential treatment. The information provided in Item 48(d), Attachment 2 is generally recognized as confidential or proprietary, and therefore meets the criteria for confidential treatment pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

The Attachment to Item 48(f) of Duke Kentucky's response to Sierra Club's First Request, also contains detailed modeling information, Duke Kentucky analysis of coal unit operation and forecasts, pricing for resources, and detailed PowerSIMM Modeling characteristics.²² Duke Kentucky again argued that the information represents the inner workings of a corporation, is not publicly available, and contains commercially sensitive, information, and if publicly released would place Duke Kentucky at a competitive disadvantage, and deserves protection under KRS 61.878(1)(c)(1).²³

Having considered the petition and the material at issue, the Commission finds that the Attachment to Item 48(f) should be given confidential treatment. The information in

²⁰ Petition at 10, paragraph b(vi).

²¹ Petition at 10, paragraph b(vi).

²² Petition at 10, paragraph b(vi).

²³ Petition at 10, paragraph b(vi).

the Attachment to Item 48(f), is generally recognized as confidential or proprietary, that disclosure of the material would place Duke Kentucky at a competitive disadvantage, thus meeting the criteria for confidential treatment pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

Duke Kentucky's response to Sierra Club's First Request, Item 49, Attachment 1, contains detailed information regarding projected variable operations and maintenance costs and Duke Kentucky analysis and forecasts, as well as pricing for resources.²⁴ Duke Kentucky argued that the information contains commercially sensitive information, and if publicly released would place Duke Kentucky at a competitive disadvantage, and should be protected under KRS 61.878(1)(c)(1).²⁵

Having considered the petition and the material at issue, the Commission finds that Item 49, Attachment 1, is generally recognized as confidential or proprietary, that disclosure of the material would place Duke Kentucky at a competitive disadvantage, as competitors would gain insight into the Duke Kentucky's financial valuation of resources, thus meeting the criteria for confidential treatment pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

The Attachment to Item 57(e) of Duke Kentucky's response to Sierra Club's First Request contains Duke Kentucky's detailed generation unit commitment and dispatch cost offers in the competitive wholesale energy markets for calendar year 2024.²⁶ Duke Kentucky argued that releasing this information would disclose sensitive generating unit

²⁴ Petition at 11, paragraph b(vii).

²⁵ Petition at 11, paragraph b(vii).

²⁶ Petition at 12, paragraph b(viii).

commitment information each day in the market, which would provide insight into how Duke Kentucky may offer the unit in the future, and if publicly released would place Duke Kentucky at a competitive disadvantage, and deserves protection under KRS 61.878(1)(c)(1).²⁷

Having considered the petition and the material at issue, the Commission finds that the Attachment to Item 57(e) is generally recognized as confidential or proprietary, that disclosure of the material would place Duke Kentucky at a competitive disadvantage, thus meeting the criteria for confidential treatment pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

Duke Kentucky's response to Sierra Club's First Request Item 65 contains highlighted portions relating to Duke Kentucky's projected savings on variable operating and maintenance.²⁸ Duke Kentucky argued the highlighted portion is not publicly available, contains commercially sensitive information, and if publicly released would place Duke Kentucky at a competitive disadvantage, and should be protected under KRS 61.878(1)(c)(1).²⁹

Having considered the petition and the material at issue, the Commission finds that the highlighted portion in Item 65, is generally recognized as confidential or proprietary, that disclosure of the material would place Duke Kentucky at a competitive disadvantage, thus meeting the criteria for confidential treatment pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

²⁷ Petition at 12–13, paragraph b(viii).

²⁸ Petition at 13, paragraph b(ix).

²⁹ Petition at 13–14, paragraph b(ix).

Duke Kentucky's response to Sierra Club's First Request, Item 74 contains highlighted portions identifying participants in a competitive RFP for lime reagents.³⁰ Duke Kentucky argued disclosure of the highlighted portions would result in a commercial disadvantage for Duke Kentucky as potential future RFP participants would be discouraged from providing responses if their identity and potential other information like pricing were to be made public, and should be protected under KRS 61.878(1)(c)(1).³¹

Having considered the petition and the material at issue, the Commission finds that the highlighted portions in Item 74 are generally recognized as confidential or proprietary, that disclosure of the material would place Duke Kentucky at a competitive disadvantage, thus meeting the criteria for confidential treatment pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

IT IS THEREFORE ORDERED that:

1. Duke Kentucky's October 4, 2024, petition for confidential treatment for information provided in the highlighted portions of Item 1, and the entirety of Attachments 1 and 2, in response to Staff's Second Request, and the Attachment to Item 8 is granted.

2. Duke Kentucky's petition for confidential treatment for information provided in response to Sierra Club's First Request, Attachment 2 to Item 4, Attachment to Item 5, the highlighted portion of Item 40, the Attachment to Item 48(f), Item 49 Attachment 1, the Attachment to Item 57(e), the highlighted portions of Item 65, and the highlighted portions of Item 74 is granted.

³⁰ Petition at 14, paragraph b(x).

³¹ Petition at 14, paragraph b(x).

3. Duke Kentucky's petition for confidential treatment for information provided in response to Item 7(a), Attachment 1 and 2 to Sierra Club's First Request is granted, in part, and denied, in part. Only the Appendices to Item 7(a), Attachment 1 are granted confidential treatment; whereas, Item 7(a), Attachment 2, should be given confidential treatment in its entirety. Any items not specifically granted confidential treatment related to Item 7(a) are denied confidential treatment.

4. Duke Kentucky's petition for confidential treatment for information provided in the Attachment to Item 44 in response to Sierra Club's First Request is granted, in part, limiting the confidential treatment to only the highlighted portions.

5. Duke Kentucky's petition for confidential treatment for information provided in Item 48(d), Attachments 1 and 2 to Sierra Club's First Request is granted in part, and denied in part. Item 48(d), Attachment 1 is a public document and should not be granted confidential treatment. The information provided in Item 48(d), Attachment 2, should be given confidential treatment in its entirety.

6. 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.

7. 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).

8. If the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment, Duke Kentucky shall inform the Commission and file with the Commission an unredacted copy of the designated material.

9. 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.

10. 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.

11. If Duke Kentucky objects to the Commission's determination that the requested material not be granted confidential treatment, it must seek either rehearing pursuant to KRS 278.400 or judicial review of this Order pursuant to KRS 278.410. Failure to exercise either of these statutory rights will be deemed as agreement with the Commission's determination of which materials should be granted confidential treatment.

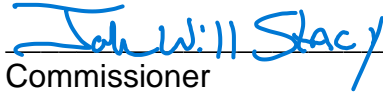
12. Within 30 days of the date of service of this Order, Duke Kentucky shall file a revised version of the designated material for which confidential treatment was denied, reflecting as unredacted the information that has been denied confidential treatment.

13. The designated material for which Duke Kentucky's request for confidential treatment has been denied shall neither be placed in the public record nor made available for inspection for 30 days from the date of service of this Order in order to allow Duke Kentucky to seek a remedy afforded by law.

PUBLIC SERVICE COMMISSION



Chairman

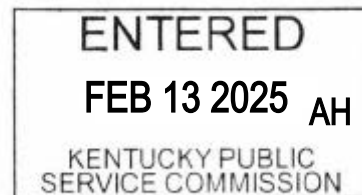


Commissioner



Commissioner

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