

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 September 6, 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 First Request for Information (Staff's First Request), Item 5, Item 9(a), Attachment to Item 14, Attachments 1 through 3 to Item 20, Attachment to Item 21, and Item 22, pursuant to KRS 61.878(1)(c)(1).

Duke Kentucky also filed a petition on September 6, 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 to the Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention's (Attorney General) First Request for Information (Attorney General's First Request), Item 7.

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 FIRST REQUEST FOR INFORMATION

Duke Kentucky's response to Staff's First Request, Item 5, contains information detailing market risk evaluations involving vendor pricing information, identified reliability risks, pricing forecasts, and the company's strategies, attempts, and evaluations in procuring a reliable source of cost-effective reagent supply for East Bend Generating Station's (East Bend) wet-flue gas desulfurization (WFGD) process.⁵ Duke Kentucky argued that the information is not publicly available, generally recognized as confidential

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).

⁵ Petition (filed Aug. 12, 2024) at 3, paragraph b(i).

and proprietary, and would place Duke Kentucky at a disadvantage if disclosed, and should remain confidential pursuant to KRS 61.878(1)(c)(1).⁶

Having considered the petition and the material at issue, the Commission finds that the highlighted information in Item 5 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).

Duke Kentucky's response to Staff's First Request, Item 9(a), contains highlighted information from a request for proposal, market risks, pricing forecasts, and Duke Kentucky's strategies and evaluations in procuring a reliable source of cost-effective reagent supply for East Bend's WFGD process.⁷ Duke Kentucky argued the information is protected under KRS 61.878(1)(c)(1) as information generally recognized as confidential and proprietary, and disclosure would result in a lack of bargaining power and less favorable contract terms.⁸

Having considered the petition and the material at issue, the Commission finds that the highlighted information in Item 9(a) is generally recognized as confidential or proprietary, that disclosure of the material could result in a lack of bargaining power and less favorable contract terms it therefore meets the criteria for confidential treatment and

⁶ Petition at 3, paragraph b(i).

⁷ Petition at 4, paragraph b(ii).

⁸ Petition at 4, paragraph b(ii).

should be exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

The Attachment to Duke Kentucky's response to Staff's First Request, Item 14, is a vendor contract that includes sensitive vendor pricing information. Duke Kentucky argued that vendor contracts are generally recognized as confidential and proprietary, and disclosure of the contract would place Duke Kentucky at a disadvantage with future such negotiations, potentially resulting in increased costs for these services for customers and deserve protection under KRS 61.878(1)(c)(1).⁹

Having considered the motion and the material at issue, the Commission finds that the Attachment to Duke Kentucky's response to Staff's First Request, Item 14, should be granted, in part. Only the material terms of the contract are generally recognized as confidential or proprietary and should be exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1). Material terms are generally defined as including:

- a. contract pricing information, including seller, purchase order number and payment terms;
- b. contract scope of work provisions, including contract expectations; and
- c. commercially sensitive terms which are generally recognized as confidential or proprietary.

As such, Duke Kentucky should file a redacted copy of the response in accordance with this finding into the public record.

⁹ Petition at 5, paragraph b(iii).

Duke Kentucky's response to Staff's First Request, Item 20, Attachments 1 through 3, contain detailed information relating to the condition of the East Bend WFGD Absorbers. Pursuant to KRS 61.878(1)(c)(1), Duke Kentucky argued that Attachments 1 through 3 are generally recognized as confidential and proprietary, and disclosure would create a competitive disadvantage, as competitors would have access to work and ideas developed by Duke Kentucky.¹⁰

Having considered the petition and the material at issue, the Commission finds that Attachments 1 through 3 filed in response to Staff's First Request, Item 20, are generally recognized as confidential or proprietary, and that if disclosed, would permit an unfair commercial advantage should Duke Kentucky need to bid specific projects out for repair or correction; they therefore meet 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).

The attachment to Duke Kentucky's response to Staff's First Request, Item 21, contains details of Duke Kentucky's projected capital expenditures and financial projections.¹¹ Duke Kentucky argued that disclosure of the Attachment would result in a commercial disadvantage for Duke Kentucky as competitors would gain invaluable insight into the company's financial valuation of resources and outlook, and deserved protection under KRS 61.878(1)(c)(1).¹²

¹⁰ Petition at 5, paragraph b(iv).

¹¹ Petition at 6, paragraph b(v).

¹² Petition at 7, paragraph b(v).

Having considered the petition and the material at issue, the Commission finds that the Attachment to the response to Staff's First Request, Item 21, is generally recognized as confidential or proprietary, that if disclosed would permit an unfair commercial advantage to competitors of the disclosing party. In addition, the attachment contains projected expenses so it could be used to disadvantage Duke Kentucky in future negotiations with vendors; 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).

In response to Staff's First Request, Item 22, Duke Kentucky stated that it provided detailed cost projections, anticipated savings, pricing, and detailed information relating to the company's projected annual expenditures and vendor-specific pricing,¹³ and requested that the certain information within the response be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1), because public disclosure of the highlighted information would result in a commercial disadvantage since competitors would gain invaluable insight into the Duke Kentucky's financial outlook, making the ability to achieve those savings or even improve upon them difficult.¹⁴

Having considered the petition and the material at issue, the Commission finds that the motion does not accurately describe what is being requested for confidential treatment in Staff's First Request, Item 22. However, upon review of the filing, the information provided in the response is generally recognized as confidential or proprietary, and if

¹³ Petition at 7, paragraph b(vi).

¹⁴ Petition at 8, paragraph b(vi).

disclosed would permit an unfair commercial advantage against Duke Kentucky. Although the motion is inaccurate, the designated information does meet 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).

ATTORNEY GENERAL'S FIRST REQUEST FOR INFORMATION

In the Attachment provided in response to the Attorney General's First Request, Item 7, Duke Kentucky provided detailed generation unit commitment and dispatch costs in the competitive wholesale energy markets for multiple years. Duke Kentucky argued that the information is commercially sensitive, proprietary, and if publicly released, would place Duke Kentucky at a competitive disadvantage, and should be protected under KRS 61.878(1)(c)(1).

Having considered the petition and the material at issue, the Commission finds that the Attachment provided in response to Attorney General's First Request, Item 7, is generally recognized as confidential or proprietary, and that if disclosed, 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).

IT IS THEREFORE ORDERED that:

1. Duke Kentucky's September 6, 2024 petition for confidential treatment for information provided in response to Staff's First Request, Item 5, highlighted portions of Item 9(a), Attachments 1 through 3 to Item 20, the Attachment to Item 21, and the highlighted portions of Item 22 is granted.

2. Duke Kentucky's petition for confidential treatment for information provided in the Attachment to Item 14 to Staff's First Request is granted, in part, and denied, in part, limiting the confidential treatment to only the material terms defined above. Duke Kentucky shall file a redacted copy of the response in accordance with this finding into the public record

3. Duke Kentucky's petition for confidential treatment for information provided in response to the Attorney General's First Request, Item 7 is granted.

4. The designated material denied confidential treatment by this Order is not exempt from public disclosure and shall be placed in the public record and made available for public inspection.

5. 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.

6. 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.

7. 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.

8. 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).

9. 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.

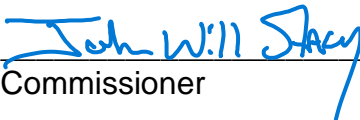
10. If a nonparty to this proceeding requests to inspect the material granted confidential treatment by this Order and the period during which the material has been granted confidential treatment has not expired, Duke Kentucky shall have 30 days from receipt of written notice of the request to demonstrate 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.

11. 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:


Executive Director

ENTERED
FEB 18 2025 AH
KENTUCKY PUBLIC
SERVICE COMMISSION

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