

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN ELECTRONIC EXAMINATION OF THE)	
APPLICATION OF THE FUEL ADJUSTMENT)	CASE NO.
CLAUSE OF DUKE ENERGY KENTUCKY, INC.)	2024-00148
FROM MAY 1, 2023 THROUGH OCTOBER 31,)	
2023)	

ORDER

On August 26, 2024, Duke Energy Kentucky, Inc. (Duke Kentucky) filed a petition,¹ pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for ten years for internal fuel procurement policies and procedures, as it relates to coal procurement.²

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.”³ In support of its motion, EKPC argued for the application of KRS 61.878(1)(c)(1), which exempts from disclosure “[r]ecords confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if opening disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.” Exceptions to the free and open examination of public records contained in

¹ Duke Kentucky’s Petition for Confidential Treatment (Petition) (filed Aug. 26, 2024).

² Petition at 1.

³ KRS 61.872(1).

KRS 61.878 should be strictly construed.⁴ The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.⁵

In support of its petition, Duke Kentucky asserted that, in response to Commission Staff's First Request for Information (Staff's First Request), Item 11, it provided confidential information related to risk tolerances and recommended contract term coverage level strategies for Duke Kentucky and its regulated utility affiliates in other jurisdictions.⁶ Duke Kentucky argued that disclosure of the information would put Duke Kentucky at a disadvantage in future contract negotiations with various suppliers and vendors as well as potentially harm Duke Kentucky's competitive position in the marketplace.⁷

Having considered the petition and the material at issue, the Commission finds that the internal fuel procurement policies and procedures, as it relates to coal procurement, are generally recognized as confidential or proprietary; 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 August 26, 2024 petition for confidential treatment is granted.

⁴ See KRS 61.871.

⁵ 807 KAR 5:001E, Section 12(2)(c).

⁶ Petition at 3.

⁷ Petition at 3-4.

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 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:


Executive Director

*Kristen Ryan
Senior Paralegal
Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45201

*Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45202

*Rocco O D'Ascenzo
Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45201