

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)	2025-00002
ITS EAST BEND GENERATING STATION AND)	
FOR APPROVAL TO AMEND ITS)	
ENVIRONMENTAL COMPLIANCE PLAN FOR)	
RECOVERY BY ENVIRONMENTAL SURCHARGE)	
MECHANISM)	

ORDER

On March 19, 2025, 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 10 years for information provided in response to Commission Staff's Second Request for Information (Staff's Second Request) Attachment to Item 3, and the highlighted portion of the response to Item 8.

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

¹ KRS 61.872(1).

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

DISCUSSION AND FINDINGS

Duke Kentucky's response to Staff's Second Request, Attachment to Item 3, contains vendor pricing solicitation and contract term negotiations for magnesium enhanced lime (MEL) supply with a supplier.⁵ Duke Kentucky argued that this information contains commercially sensitive information related to the Duke Kentucky's financial and operational projections and disclosure of this information would result in a commercial disadvantage if disclosed,⁶ and should remain confidential pursuant to KRS 61.878(1)(c)(1).

Having considered the petition and the material at issue, the Commission finds that the entirety of the Attachment to Item 3, is generally recognized as confidential or proprietary, that disclosure of the material would permit an unfair commercial advantage

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 Mar. 19, 2025) at 3, paragraph (b)(i).

⁶ Petition at 3, 3-4, paragraph (b)(i).

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, Item 8, contains portions highlighted as confidential detailing agreement terms of confidential suppliers that provided an offer for potential MEL supply.⁷ Duke Kentucky argued that the information is not publicly available, and could have a chilling effect on future request for proposal participation, an adverse impact on Duke Kentucky's costs, and ultimately prices paid by customers⁸, and should remain confidential pursuant to KRS 61.878(1)(c)(1).

Having considered the petition and the material at issue, the Commission finds that the highlighted portion in Item 8, is generally recognized as confidential or proprietary, that disclosure of the material could have an adverse effect which 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 March 19, 2025 petition for confidential treatment for the entirety of the Attachment to Item 3, and the highlighted portions of Item 8, in response to Staff's Second Request is granted.

⁷ Petition at 4, paragraph (b)(ii).

⁸ Petition at 5, paragraph (b)(ii),

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.

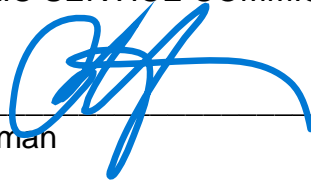
3. Use of the designated material granted confidential treatment by this Order in any Commission proceeding shall comply with 807 KAR 5:001, Section 13(9).

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

Vice-Chairman



Commissioner

ATTEST:

Executive Director

ENTERED
APR 16 2025_{AH}
KENTUCKY PUBLIC
SERVICE COMMISSION

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