

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 February 25, 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 ten years for the responses and attachments to Intervenor Sierra Club’s First Request for Information (Sierra Club’s First Request) Attachment to Item 6(b); Attachments 1 through 3 to Item 8; the highlighted information in Item 9; Attachments 1 through 5 to Item 15; and the highlighted information contained in Item 17, Item 18, Item 19, Item 20, Item 28, and Item 32.

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.”<sup>1</sup> The exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.<sup>2</sup> The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.<sup>3</sup> 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."<sup>4</sup>

### DISCUSSION AND FINDINGS

Duke Kentucky’s response to Sierra Club’s First Request, Attachment to Item 6(b), contains detailed modeling information, analysis of operation and forecasts, pricing for resources, and detailed PowerSIMM modeling characteristics.<sup>5</sup> Duke Kentucky argued that the information contains commercially sensitive information, and disclosure would place Duke Kentucky at a competitive disadvantage, and deserves protection in its entirety under KRS 61.878 (1)(c)(1).<sup>6</sup>

Having considered the petition and the material at issue, the Commission finds that the Attachment to Item 6(b), is generally recognized as confidential or proprietary, that

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<sup>1</sup> KRS 61.872(1).

<sup>2</sup> See KRS 61.871.

<sup>3</sup> 807 KAR 5:001, Section 13(2)(c).

<sup>4</sup> 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).

<sup>5</sup> Petition (Sierra Club First Request filed Feb. 25, 2025) at 3, paragraph (b)(i).

<sup>6</sup> Petition at 4, paragraph (b)(i).

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, Attachments 1 through 3 to Item 8, contains detailed modeling information, analysis of coal unit operation and forecasts, pricing for resources, and detailed modeling input and output characteristics.<sup>7</sup> Duke Kentucky argued that the information contains commercially sensitive information related to financial and operations projections, and disclosure would place Duke Kentucky at a competitive disadvantage, and deserves protection in their entirety under KRS 61.878 (1)(c)(1).<sup>8</sup>

Having considered the petition and the material at issue, the Commission finds that the Attachments 1 through 3 to Item 8, 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 and outlook, 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, the highlighted information in Item 9 concerning forecasted compliance costs pricing and projected savings that informed Duke Kentucky's resource and planning strategies and evaluations

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<sup>7</sup> Petition at 5, paragraph (b)(ii).

<sup>8</sup> Petition at 5, paragraph (b)(ii).

in procuring a reliable source of supply to meet customer demand.<sup>9</sup> Duke Kentucky argued that the information contains sensitive information related to financial and operations projections, and disclosure would place Duke Kentucky at a commercial disadvantage, and deserves protection in their entirety under KRS 61.878 (1)(c)(1).<sup>10</sup>

Having considered the petition and the material at issue, the Commission finds that the highlighted information in Item 9, 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 and outlook, 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, Attachments 1 through 5 to Item 15, contains detailed vendor pricing and contract information, contract negotiations, and the Duke Kentucky's strategies and evaluations in procuring a reliable source of cost-effective reagent supply for East Bend's wet-flue gas desulfurization process.<sup>11</sup> Duke Kentucky argued that disclosure of these negotiations, request for proposal (RFP) participation, and risks identified would place Duke Kentucky at a disadvantage with future such negotiations, as competitors would have access to risk assessments and charges from parties, potentially resulting in a lack of bargaining power

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<sup>9</sup> Petition at 6, paragraph (b)(iii).

<sup>10</sup> Petition at 6, paragraph (b)(iii).

<sup>11</sup> Petition at 7, paragraph (b)(iv).

and less favorable contract terms, and deserves protection in their entirety under KRS 61.878 (1)(c)(1).<sup>12</sup>

Having considered the petition and the material at issue, the Commission finds that the Attachments 1 through 5 to Item 15, are generally recognized as confidential or proprietary, that disclosure of the material would place Duke Kentucky at a competitive disadvantage, as competitors would have access to sensitive information, potentially resulting in a lack of bargaining power and less favorable contract terms, thus meeting the criteria for confidential treatment pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

The highlighted information contained in Duke Kentucky's response to Sierra Club's First Request, Item 17, Item 18, Item 19, Item 20, Item 28, and Item 32 provides the identities of confidential suppliers, potential suppliers, and contracting counter parties that Duke Kentucky solicited for potential supply and request for proposals (RFP) participants.<sup>13</sup> In sum of all these petitions, Duke Kentucky argued that disclosure of this information could result in a commercial disadvantage as future RFP participants would be discouraged from providing responses, thus creating a chilling effect on future RFP participation, and deserves protection under KRS 61.878(1)(c)(1).<sup>14</sup>

Having considered the petition and the material at issue, the Commission finds that the highlighted information in Item 17, Item 18, Item 19, Item 20, Item 28, and Item 32, is generally recognized as confidential or proprietary, that disclosure of the material would

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<sup>12</sup> Petition at 7, paragraph (b)(iv).

<sup>13</sup> Petition at 8–9, paragraph (b)(v).

<sup>14</sup> Petition at 9, paragraph (b)(v).

place Duke Kentucky at a competitive disadvantage, and could have a chilling effect on future negotiations, 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 February 25, 2025 petition for confidential treatment for the entirety of the Attachment to Item 6(b); the entirety of Attachments 1 through 3 to Item 8; the highlighted information in Item 9; the entirety of Attachments 1 through 5 to Item 15; and the highlighted information contained in Item 17, Item 18, Item 19, Item 20, Item 28, and Item 32, is granted.

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.

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PUBLIC SERVICE COMMISSION

  
\_\_\_\_\_  
Chairman

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Vice Chairman

  
\_\_\_\_\_  
Commissioner

ATTEST:

  
\_\_\_\_\_  
Executive Director

ENTERED  
APR 16 2025 AH  
KENTUCKY PUBLIC  
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