

RECEIVED

COMMONWEALTH OF KENTUCKY

FEB 14 2011

BEFORE THE PUBLIC SERVICE COMMISSION

PUBLIC SERVICE COMMISSION

| | | |
|---|---|-------------------|
| An Examination of the Application of |) | |
| The Fuel Adjustment Clause of Duke Energy |) | Case No. 2010-494 |
| Kentucky, Inc from November 1, 2008 through |) | |
| October 31, 2010 |) | |

**PETITION OF DUKE ENERGY KENTUCKY, INC.
FOR CONFIDENTIAL TREATMENT OF INFORMATION CONTAINED IN ITS
RESPONSES TO COMMISSION STAFF'S FIRST SET OF DATA REQUESTS**

Duke Energy Kentucky, Inc. (Duke Energy Kentucky or Company), pursuant to 807 KAR 5:001, Section 7, respectfully requests the Commission to classify and protect certain information provided by Duke Energy Kentucky in its response to data request Nos. 5, 6, 9, 24 and 29, as requested by Commission Staff (Staff) in this case on January 26, 2011. The information that Staff seeks through discovery and for which Duke Energy Kentucky now seeks confidential treatment (Confidential Information) shows the Company's projected fuel requirements both in tons and dollars,¹ sales forecasts in both kilo Watt hours (kWh) and dollars,² planned outages and maintenance schedules by plant,³ coal bid analysis and tabulation sheets,⁴ and internal fuel procurement policies and procedures which, happens to also include sensitive information regarding Duke Energy Kentucky's regulated utility affiliates in the Carolinas and Indiana.⁵

The response in No. 5 and No. 6 and No. 24 contains sensitive information, the disclosure of which would injure Duke Energy Kentucky and its competitive position and business interest.

¹ Data Request No. 5
² Data Request No. 6
³ Data Request No. 9
⁴ Data Request No. 24
⁵ Data Request No. 29

Specifically, the response to No. 5 provides Duke Energy Kentucky's anticipated future fuel requirement and costs. The response in No. 6 provides a list of projected sales by customer class including anticipated revenue. Together, these responses could provide power marketing competitors and fuel vendors with knowledge regarding Duke Energy Kentucky's operating costs and commodity positions that will allow them potentially to manipulate the marketplace so as to unnecessarily cause consumers to pay more for electricity than they otherwise would. Similarly, the list of projected outages and costs, as contained in response to Data Request No. 9, will grant vendors a distinct advantage in that they would be able to anticipate Duke Energy Kentucky's maintenance schedules. The information contained in response to Data request No. 24 includes bid tabulations for several coal vendors who responded to a coal solicitation. Releasing this information would give those vendors access to each-other's costs which would act to the detriment of Duke Energy Kentucky and its customers in the future as vendors would know how competing suppliers price their commodities.

The sensitive information contained in response to Data Request No. 29, includes the recommended contract term coverage level strategy, by year for Duke Energy Kentucky, Duke Energy Indiana, and Duke Energy Carolinas. Duke Energy Corporation's Regulated Fuels Group is responsible for the procurement of coal for the regulated utilities in the Duke Energy Corporate footprint and thus its policies and procedures are all-encompassing. The public disclosure of the information described above would place Duke Energy Kentucky at a commercial disadvantage as it negotiates contracts with various suppliers and vendors and potentially harm Duke Energy Kentucky's competitive position in the marketplace, to the detriment of Duke Energy Kentucky and its customers.

In support of this Petition, Duke Energy Kentucky states:

1. The Kentucky Open Records Act exempts from disclosure certain commercial information. KRS 61.878 (1)(c). To qualify for this exemption and, therefore, maintain the confidentiality of the information, a party must establish that disclosure of the commercial information would permit an unfair advantage to competitors of that party. Public disclosure of the information identified herein would, in fact, prompt such a result for the reasons set forth below.
2. Public disclosure of projected fuel requirements (No. 5) would afford Duke Energy Kentucky's competitors and potential vendors a distinct competitive advantage in any contractual negotiations. Vendors and competitors would know Duke Energy Kentucky's projected monthly fuel requirements for the next two years. This information could be used against Duke Energy Kentucky as it negotiates to satisfy its projected requirements.
3. Similarly, Public disclosure of projected forecasted demand and sales revenue (No. 6) would afford Duke Energy Kentucky's competitors a distinct competitive advantage in bidding for and securing new bulk power loads and afford an obvious advantage to Duke Energy Kentucky's wholesale power purchasers and sellers in any contractual negotiations.
4. Likewise, public disclosure of information regarding Duke Energy Kentucky's plant maintenance schedules (No. 9) would provide critical "down time" information which would necessarily impair Duke Energy Kentucky's ability to negotiate with prospective contractors and vendors.
5. Disclosure of the factors underlying Duke Energy Kentucky's bid analysis/selection process (No. 24) would also damage Duke Energy Kentucky's

competitive position and business interests. If the Commission grants public access to the information requested in No. 24, potential bidders could manipulate the bid solicitation process to the detriment of Duke Energy Kentucky and its ratepayers by tailoring bids to correspond to and comport with Duke Energy Kentucky's bidding criteria and process.

6. The public disclosure of the information described in No. 29 would make public the coal procurement strategy for all of Duke Energy Corporation's regulated utility operations, and would place Duke Energy Kentucky and its sister utilities at a commercial disadvantage as it negotiates contracts with various suppliers and vendors and potentially harm Duke Energy Kentucky's competitive position in the marketplace, to the detriment of Duke Energy Kentucky and its customers. It should be noted that Duke Energy Kentucky is only seeking confidential protection of a limited section of the procedure document which sets forth the guidelines for procurement of long term contracts for fuel.
7. The information in No. 5, No. 6, No. 9, No. 24 and No. 29 was developed internally by Duke Energy Corporation and Duke Energy Kentucky personnel, is not on file with any public agency, and is not available from any commercial or other source outside Duke Energy Kentucky. The aforementioned information in all five responses is distributed within Duke Energy Kentucky only to those employees who must have access for business reasons, and is generally recognized as confidential and proprietary in the energy industry.
8. The information for which Duke Energy Kentucky is seeking confidential treatment is not known outside of Duke Energy Corporation.

9. Duke Energy Kentucky does not object to limited disclosure of the confidential information described herein, pursuant to an acceptable protective agreement, to the Attorney General or other intervenors with a legitimate interest in reviewing the same for the purpose of participating in this case.
10. The Commission has treated the same information described herein as confidential in other utilities' responses to the same data requests such as Louisville Gas and Electric Company Case No. 2008-521⁶ and Kentucky Utilities Case 2008-520⁷ and for Duke Energy Kentucky in Case No. 2008-00522⁸.
11. This information was, and remains, integral to Duke Energy Kentucky's effective execution of business decisions. And such information is generally regarded as confidential or proprietary. Indeed, as the Kentucky Supreme Court has found, "information concerning the inner workings of a corporation is 'generally accepted as confidential or proprietary.'" *Hoy v. Kentucky Industrial Revitalization Authority, Ky.*, 904 S.W.2d 766, 768.
12. In accordance with the provisions of 807 KAR 5:001 Section 7, the Company is filing with the Commission one copy of the Confidential Material highlighted and ten (10) copies without the confidential information.

⁶ Case No. 2008-521, Letter granting Confidential treatment, March 20, 2009.

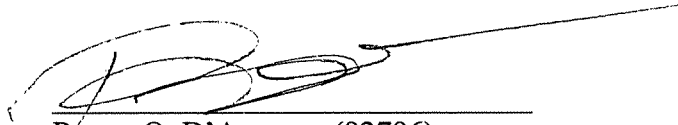
⁷ Case No. 2008-520, Letter granting Confidential treatment, March 20, 2009.

⁸ Case No. 2008-522, Letter granting Confidential treatment, March 20, 2009.

WHEREFORE, Duke Energy Kentucky, Inc. respectfully requests that the Commission classify and protect as confidential the specific information described herein.

Respectfully submitted,

DUKE ENERGY KENTUCKY, INC.

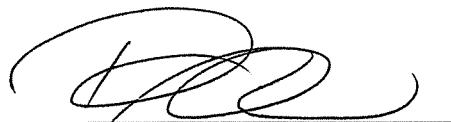


Rocco O. D'Ascenzo (92796)
Associate General Counsel
Amy B. Spiller (85309)
Deputy General Counsel
Duke Energy Business Services, LLC
139 East Fourth Street, 1303 Main
Cincinnati, Ohio 45201-0960
Phone: (513) 287-4320
Fax: (513) 287-4385
e-mail: rocco.d'ascenzo@duke-energy.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing filing was served on the following via overnight mail, postage prepaid, this 14th day of February 2011:

Dennis G. Howard II
Assistant Attorney General
The Kentucky Office of the Attorney General
1024 Capital Center Drive
Frankfort, Kentucky 40602-2000



Rocco O. D'Ascenzo