

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELIZABETH L. EICHELBERGER)	
)	
COMPLAINANT)	
)	
V.)	CASE NO.
)	2022-00289
DUKE ENERGY KENTUCKY, INC.)	
)	
DEFENDANT)	

ORDER

This matter arises on three petitions filed on November 17, 2022, December 14, 2022, and December 16, 2022, by Duke Energy Kentucky, Inc. (Duke Kentucky), pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for an indefinite period for information described herein.

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 Exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.² The

¹ KRS 61.872(1).

² See KRS 61.871.

party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.³

In support of its petitions, Duke Kentucky argued for the application of KRS 61.878(1)(c)(1), which provides an exception to the requirement for public disclosure for records that are “generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.” However, Duke Kentucky also argued that a customer’s energy usage and billing information should remain confidential to protect the customer, which would be encompassed by KRS 61.878(1)(a), which exempts “[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.”

NOVEMBER 17, 2022 PETITION

In its petition filed on November 17, 2022, Duke Kentucky requested confidential treatment for an indefinite period for Exhibit A to Duke Kentucky’s Answer to the Complaint. Exhibit A consists of a spreadsheet calculating Ms. Eichelberger’s budget billing and includes her energy usage data and other customer billing information.

As a basis for its petition, Duke Kentucky asserted that the information in Exhibit A is generally recognized as confidential in the energy industry and not known outside of Duke Kentucky and that customer usage data should be protected.

DECEMBER 14, 2022 PETITION

In its petition filed on December 14, 2022, Duke Kentucky requested confidential treatment for an indefinite period for Attachments 1 and 2 to its response to Commission

³ 807 KAR 5:001, Section 13(2)(c).

Staff's Request for Information (Staff's First Request), Item 1. These attachments consist of two spreadsheets calculating Ms. Eichelberger's budget billing and includes her energy usage data and other customer billing information.

As a basis for its petition, Duke Kentucky asserted that this information is generally recognized as confidential in the energy industry and not known outside of Duke Kentucky and that customer usage data should be protected.

DECEMBER 16, 2022 PETITION

In its petition filed on December 16, 2022, Duke Kentucky requested confidential treatment for an indefinite period for the Confidential Supplemental Attachment to its response to Staff's First Request, Item 3. This attachment consists of a spreadsheet calculating Ms. Eichelberger's budget billing and includes her energy usage data and other customer billing information.

As a basis for its petition, Duke Kentucky asserted that this information is generally recognized as confidential in the energy industry and is not known outside of Duke Kentucky and that customer usage data should be protected.

DISCUSSION AND FINDINGS

Having considered the petitions and the information at issue, the Commission finds that the designated material contained in the November 17, 2022, December 14, 2022, and December 16, 2022, Duke Kentucky petitions should be denied. Both Ms. Eichelberger and Duke Kentucky have filed bills into the record without redacting usage data. Ms. Eichelberger does not appear to consider disclosure of this information an invasion of personal privacy. Furthermore, disclosure of Duke Kentucky's method of calculating bills should be preferred in order to keep Duke Kentucky's bill calculation

methods transparent.⁴ Duke Kentucky has not met its burden to demonstrate that its billing calculations are generally considered proprietary or that its competitors would receive an unfair advantage as a result of disclosure. The designated material does not meet the criteria for confidential treatment and should not be exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(a) or (1)(c)(1).

IT IS THEREFORE ORDERED that:

1. Duke Kentucky's petitions for confidential treatment are denied.
2. 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.
3. 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.
4. 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.
5. The designated material for which Duke Kentucky's request for confidential treatment has been denied shall neither be placed in the public record nor made available

⁴ See Case No. 2021-00324, *Joseph J. Oka v. Duke Energy Kentucky, Inc.* (Ky. PSC Apr. 8, 2022), Order at 3, in which net metering billing spreadsheets were publicly disclosed.

for inspection for 30 days from the date of service of this Order in order to allow Duke Kentucky to seek a remedy afforded by law.

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PUBLIC SERVICE COMMISSION



Chairman



Vice Chairman



Commissioner

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rcs
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



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