

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.)	2021-00296
FROM NOVEMBER 1, 2020 THROUGH APRIL)	
30, 2021)	

ORDER

On September 1, 2021, Duke Energy Kentucky, Inc. (Duke Kentucky) filed a petition, pursuant to 807 KAR 5:001E, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for ten years for information included in Duke Kentucky’s responses to Commission Staff’s First Request for Information (Staff’s First Request), Items 4 and 11.¹

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.”² KRS 61.878(1)(c)(1) exempts records that are “[g]enerally recognized as confidential or proprietary, which if openly 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 Order (Ky. PSC Aug. 18, 2021), Appendix.

² KRS 61.872(1).

KRS 61.878 should be strictly construed.³ The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.⁴

DISCUSSION AND FINDINGS

In support of its petition, Duke Kentucky argued that its response to Staff's First Request, Item 4 contained sensitive information about Duke Kentucky's fuel procurement strategy, risk mitigation actions, and tolerances. Duke Kentucky further argued that the public disclosure of this information could allow competitors to manipulate the marketplace and financially harm Duke Kentucky and its customers.

Duke Kentucky also argued that its response to Staff's First Request, Item 11 contained its confidential fuel procurement policies, which, if disclosed, would place Duke Kentucky at a commercial disadvantage as it negotiated contracts with suppliers and vendors.

Having considered the petition and the material at issue, the Commission finds that Duke Kentucky's petition should be granted. The designated material contained in Duke Kentucky's response to Staff's First Request, Item 4 contains sensitive information about Duke Kentucky's fuel procurement strategies. The Commission finds that the information contained in Duke Kentucky's response to Staff's First Request, Item 4 is generally recognized as confidential or proprietary and the public disclosure of said material would permit an unfair commercial advantage to Duke Kentucky's competitors.⁵

³ See KRS 61.871.

⁴ 807 KAR 5:001E, Section 13(2)(c).

⁵ KRS 61.871(1)(c)(1); Case No. 2019-00006, *Electronic Examination of the Application of the Fuel Adjustment Clause of Duke Energy Kentucky, Inc. from November 1, 2016 through October 31, 2018* (Ky. PSC Jan. 8, 2020), Order at 2.

Similarly, the Commission finds that the information contained in Duke Kentucky's response to Staff's First Request, Item 11 is generally recognized as confidential or proprietary; it therefore meets the criteria for confidential treatment and is exempted from public disclosure pursuant to 807 KAR 5:001E, Section 13, and KRS 61.878(1)(c)(1).⁶

IT IS THEREFORE ORDERED that:

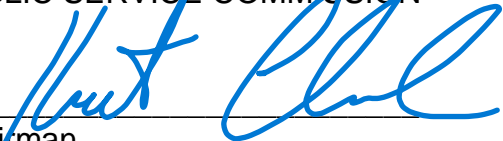
1. Duke Kentucky's petition for confidential treatment is granted.
2. The designated material granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for ten years or until further Order of this Commission.
3. Use of the designated material granted confidential treatment by this Order in any Commission proceeding shall comply with 807 KAR 5:001E, Section 13(9).
4. Duke Kentucky shall inform the Commission if the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment.
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 Case No. 2018-00220, *Electronic Examination of the Application of the Fuel Adjustment Clause of Duke Energy Kentucky, Inc. from November 1, 2017 through April 30, 2018* (Ky. PSC Oct. 16, 2018), Order at 1–2.

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.

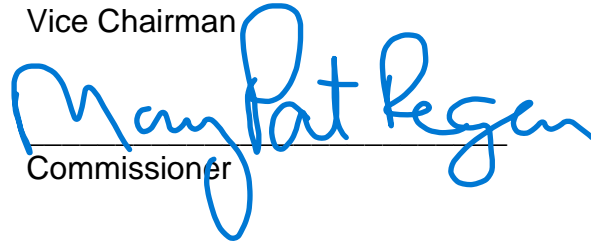
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PUBLIC SERVICE COMMISSION



Chairman

Vice Chairman



Commissioner

ENTERED
FEB 16 2023 bsb
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



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