

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF DUKE ENERGY)	CASE NO.
KENTUCKY, INC. TO AMEND ITS DEMAND SIDE)	2022-00251
MANAGEMENT PROGRAMS)	

ORDER

This matter arises on three petitions for confidential treatment filed by Duke Energy Kentucky, Inc. (Duke Kentucky). On September 23, 2022, Duke Kentucky filed a petition, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential protection for ten years for its responses to Commission Staff's First Request for Information (Staff's First Request), Item 2 and the Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention (Attorney General's) First Request for Information (Attorney General's First Request), Items 21 and 22.

On November 10, 2022, Duke Kentucky filed a petition, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential protection for ten years for its responses to Commission Staff's Third Request for Information (Staff's Third Request), Item 1.

On April 14, 2023, Duke Kentucky filed a petition, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential protection for ten years for its responses to Commission Staff's Post-Hearing Request for Information (Staff's Post-Hearing Request), Items 2(b) and 3.

LEGAL STANDARD

KRS 61.878(1)(c)(1) 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.” KRS 61.878(1)(j) exempts from disclosure [p]reliminary recommendations, and preliminary memoranda in which opinions are expressed or policies formulated or recommended.”

Under KRS 61.878(1)(m), the Open Records Act exempts “[p]ublic records the disclosure of which would have a reasonable likelihood of threatening the public safety by exposing a vulnerability in preventing, protecting against, mitigating, or responding to a terrorist act . . .”¹ The exemption is limited to certain types of records, including:

Infrastructure records that expose a vulnerability referred to in this subparagraph through the disclosure of the location, configuration, or security of critical systems, including public utility critical systems. These critical systems shall include but not be limited to information technology, communication, electrical, fire suppression, ventilation, water, wastewater, sewage, and gas systems.²

A terrorist act is defined as including a criminal act intended to “[d]isrupt a system” identified in the above.³

Exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.⁴ Under 807 KAR 5:001, Section 13(2), a

¹ KRS 61.878(1)(m)(1).

² KRS 61.878(1)(m)(1)(f).

³ KRS 61.878(1)(m)(2)(b).

⁴ See KRS 61.871.

confidential treatment petition requires the movant to establish specific grounds under KRS 61.878, and places the burden of proof on the movant.

SEPTEMBER 23, 2022 PETITION

Duke Kentucky's response to Staff's First Request, Item 2 consists of the Peak Time Rebate (PTR) research proposal. Duke Kentucky's response to Attorney General's First Request, Items 21 and 22 are Demand Side Management (DSM) modeling inputs and projected avoided costs. Duke Kentucky cited KRS 61.878(1)(m) in support of its petition.

Having considered the petition and the material at issue, the Commission finds that Duke Kentucky's petition should be denied. None of the designated material consists of information exposing vulnerabilities to public utility critical systems. Under 807 KAR 5:001, Section 13(2), a confidential treatment petition requires movant to establish specific grounds under KRS 61.878, and places the burden of proof on movant. Duke Kentucky has not met this burden.

NOVEMBER 10, 2022 PETITION

Duke Kentucky's response to Staff's Third Request, Item 1 consists of projected avoided costs. Duke Kentucky cited KRS 61.878(1)(m) in support of its petition.

Having considered the petition and the material at issue, the Commission finds that Duke Kentucky's petition should be denied. None of the designated material consists of information exposing vulnerabilities to public utility critical systems. Under 807 KAR 5:001, Section 13(2), a confidential treatment petition requires movant to establish specific grounds under KRS 61.878, and places the burden of proof on movant. Duke Kentucky has not met this burden.

APRIL 14, 2023 PETITION

Duke Kentucky’s response to Staff’s Post-Hearing Request, Item 2(b) includes a “Preliminary Load Impact Results DEK PTR Incentive Test -- Summer 2022” report. Duke Kentucky argued that the report is exempt from disclosure as a preliminary memorandum under KRS 61.878(1)(j) because it was not the forthcoming final report. Duke Kentucky’s response to Staff’s Post-Hearing Request, Item 3 consists of projected avoided costs. Duke Kentucky asserted that KRS 61.878(1)(c)(1) exempted this information from disclosure because it incorporates third-party price forecasts and Duke Kentucky’s proprietary information, the disclosure of which would injure Duke Kentucky and its competitive position and business interests.

Having considered the petition and the material at issue, the Commission finds that Duke Kentucky’s petition should be granted. The “Preliminary Load Impact Results DEK PTR Incentive Test -- Summer 2022” report is a preliminary memorandum as it was not the final report on the PTR program and therefore should remain confidential. Projected avoided costs should remain confidential under KRS 61.878(1)(c)(1) because the estimated energy costs used to calculate this information are proprietary and if disclosed would allow competitors to unfairly compete in a number of ways, including competing for Economic Development Rate (EDR) special contract partners and using cost data in place of paying for their own such data.⁵ The designated material therefore meets the

⁵ See Case No. 2020-00016, *Electronic Application of Louisville Gas and Electric Company and Kentucky Utilities Company for Approval of a Solar Power Contract and Two Renewable Power Agreements to Satisfy Customer Requests for a Renewable Energy Source Under Green Tariff Option #3* (Ky. PSC May 8, 2020), Order at 8.

criteria for confidential treatment and should be exempted from public disclosure for ten years pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1) and (j).

IT IS THEREFORE ORDERED that:

1. Duke Kentucky's September 23, 2022 and November 10, 2022 petitions for confidential treatment are denied.

2. Duke Kentucky's April 14, 2023 petition for confidential treatment is granted.

3. 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.

4. 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).

5. Duke Kentucky shall inform the Commission if the designated material granted confidential treatment becomes publicly available or no longer qualifies for confidential treatment.

6. 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.

7. The Commission shall not make the requested material for which confidential treatment was granted 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.

8. 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.

9. 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 shall be granted confidential treatment.

10. 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.

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

PUBLIC SERVICE COMMISSION



Chairman


Vice Chairman


Commissioner

ENTERED
AUG 22 2023 rcs
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

*Angela M Goad
Assistant Attorney General
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Minna Sunderman
Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45201

*Debbie Gates
Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45201

*Rocco O D'Ascenzo
Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45201

*John G Horne, II
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45202

*Larisa Vaysman
Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45201

*Larry Cook
Assistant Attorney General
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*J. Michael West
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204