

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF DUKE ENERGY )  
KENTUCKY, INC. FOR (1) AN ADJUSTMENT OF )  
ELECTRIC RATES; (2) APPROVAL OF NEW )  
TARIFFS; (3) APPROVAL OF ACCOUNTING )  
PRACTICES TO ESTABLISH REGULATORY )  
ASSETS AND LIABILITIES; AND (4) ALL OTHER )  
REQUIRED APPROVALS AND RELIEF )

CASE NO.  
2022-00372

ORDER

On December 15, 2022, Duke Energy Kentucky, Inc. (Duke Kentucky) filed a petition for confidential protection, pursuant to 807 KAR 5:001E, Section 13, and KRS 61.878, requesting that the Commission grant confidential protection for 20 years for certain information it provided in response to Commission Staff's First Request for Information (Staff's First Request), Items 6, 13, 14(b), 18, 30, 41, 43, 45, 46, 49(b)(c), and the attachments provided in response to Item 56, BLS-3, BLS-4, BLS-6, and BLS-8.

LEGAL STANDARD

The Commission is a public agency subject to the Kentucky Open Records Act,<sup>1</sup> which requires that all public records "be open for inspection by any person, except as otherwise provided by KRS 61.870 to KRS 61.884."<sup>2</sup> The exceptions to the free and open examination of public records should be strictly construed.<sup>3</sup> The party requesting that the

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<sup>1</sup> KRS 61.870 through 61.884.

<sup>2</sup> KRS 61.872(1).

<sup>3</sup> KRS 61.878.

materials be granted confidential protection has the burden of establishing that one of the exemptions is applicable.<sup>4</sup> KRS 61.878(1)(a) grants confidential protection of information that if disclosed would create an invasion of personal privacy.<sup>5</sup> KRS 61.878(1)(c)(1) provides an exception to the requirement for public disclosure of records that are “generally recognized as confidential and proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.”

### DUKE KENTUCKY’S ARGUMENT

Duke Kentucky requested confidential treatment for its response to Staff’s First Request, Item 6 which required Duke Kentucky to provide detailed pricing information related to professional services. Duke Kentucky argued that this information should be held confidential because disclosure of this information could place Duke Kentucky at a competitive disadvantage in future negotiations with professional service providers.

Duke Kentucky requested confidential treatment for its response to Staff’s First Request, Item 13. This response included the salaries of two employees that conduct lobbying on behalf of Duke Kentucky. Duke Kentucky acknowledged the portion of the salaries for lobbying are not confidential, but requested the remaining portion be granted confidential protection because the disclosure of the salaries would be an unwarranted invasion of personal privacy.

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<sup>4</sup> 807 KAR 5:001E, Section 13(2)(c).

<sup>5</sup> KRS 61.878(1)(a).

Duke Kentucky asserted it was not providing information in response to Staff's First Request, Item 14(b) for certain rate case expenses because the information is protected by attorney client privilege.

The response to Staff's First Request, Item 18 required Duke Kentucky to provide its federal and state tax returns. Duke Kentucky argued that tax returns are exempt from disclosure pursuant to 28 U.S.C Section 6103(a)(a), KRS 61.878(k), and KRS 131.190 and should be granted confidential protection in this case.

The response to Staff's First Request, Item 30 required Duke Kentucky to provide any updates to its policy and procedures manual. Duke Kentucky argued the policies and procedures are proprietary in nature, are not publicly available, and contain information regarding how Duke Kentucky and Duke Energy Corporation evaluates risks, conducts hedging activities, accounts for various business transactions, capitalizes its electric and natural gas businesses and otherwise manages its business operations and finances. Duke Kentucky argued that, if this information is made publicly available, competitors, potential vendors, and transaction counterparties would have access to information regarding its operations that would place Duke Kentucky at a significant disadvantage in its operations as it competes for business or negotiates contracts.

Duke Kentucky requested confidential protection of its response to Staff's First Request, Item 41. This response required Duke Kentucky to provide salaries, overtime pay, bonus pay, incentives, insurance costs, and the amount paid into a 401k by the utility for its employees. Duke Kentucky argued this information should be granted confidential protection because Duke Kentucky competes for employees with other regional utilities and the benefits provided are instrumental in recruiting and retaining highly qualified

employees and if competitors had access to this information, it could be used to place Duke Kentucky at a disadvantage in recruiting and retaining employees.

Duke Kentucky requested confidential protection for its response to Staff's First Request, Item 43 that required Duke Kentucky to provide a listing of all health care plan categories, dental plan categories, and vision plan categories available to corporate officers. Duke Kentucky requested confidential treatment for its response to Staff's First Request, Item 45 which required it to provide all the life insurance options for corporate officers. Duke Kentucky also requested confidential treatment of its response to Staff's First Request, Item 46 that required Duke Kentucky to provide a list of all retirement plans available to corporate officers. Duke Kentucky argued that each of these responses should be given confidential treatment because the information is personal, and it would affect Duke Kentucky's ability to recruit and retain employees if competitors knew the compensation amounts paid to corporate officers.

Duke Kentucky requested confidential treatment of its responses to Staff's First Request, Items 49(b) and 49(c). These responses required Duke Kentucky to provide its employee compensation policy and the reasons for the policy. Duke Kentucky argued this information should be granted confidential protection because Duke Kentucky competes for employees with other regional utilities, and the benefits provided are instrumental in recruiting and retaining highly qualified employees. If competitors had ready access to this information, it could place Duke Kentucky at a disadvantage in recruiting and retaining employees.

Duke Kentucky requested confidential treatment of Duke Attachments BLS-3, BLS-4, BLS-6, and BLS-8 provided in response to Staff's First Request, Item 56. Duke

Kentucky argued these attachments contain information about the pricing of certain equipment, services, and labor. Duke Kentucky stated that, if this information was disclosed, it could impact Duke Kentucky's negotiations in the future for these services and labor.

### FINDINGS

Having considered the petition and the material at issue, the Commission finds that Duke Kentucky's petition is granted in part and denied in part. The Commission finds that the designated material contained in Duke Kentucky's responses to Staff's First Request, Items 13, 18, 30, 49(b), 49(c), and the attachments in the response to Item 56 are records that meet the criteria for confidential treatment and are exempted from public disclosure pursuant to KRS 61.878(1)(a), KRS 61.878(1)(c)(1), and KRS 61.878(1)(k) and 807 KAR 5:001E, Section 13.

The salaries not associated with lobbying provided in response to Staff's First Request, Item 13 are granted confidential protection pursuant to KRS 61.878(1)(a) because the Commission has long held that non-executive employees are entitled to confidential protection of their salary information. To allow disclosure would be an unwarranted invasion of personal privacy. The federal and state tax returns provided in response to Staff's First Request, Item 18 are granted confidential protection pursuant to KRS 61.878(1)(k) as the documents are specifically exempt from disclosure. The compensation manuals provided in response to Staff's First Request, Items 49(b) and 49(c) are granted confidential protection pursuant to KRS 61.878(1)(c)(1) because allowing competitors access to this information could result in an unfair competitive advantage in hiring employees. The attachments provided in response to Staff's First

Request, Item 56 are granted confidential protection pursuant to KRS 61.878(1)(c)(1) because allowing disclosure of the pricing of certain equipment and labor could lead to an unfair advantage to competitors. Others would know the prices Duke Kentucky pays for these items and could use the information to harm Duke Kentucky's position.

The Commission finds that the request for confidential treatment is denied for the response to Staff's First Request, Item 6. The costs Duke Kentucky provided in response to Staff's First Request, Item 6 are at least six months old, possibly up to 18 months old and are used in Duke Kentucky's proposed revenue requirement. The Commission has previously held expenses the utility proposes to recover from customers in rates should not receive confidential protection. Therefore, the costs for professional services provided in the response to Commission Staff's First Request, Item 6 do not meet the criteria for confidential treatment and are not exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001E, Section 13.

The Commission finds that the request for confidential treatment is denied for the responses to Staff's First Request, Items 43, 45, and 46. The Commission has previously held that executive officers' compensation is not entitled to confidential protection because of the public interest in disclosure. Therefore, the responses to Staff's First Request, Items 43, 45, and 46 do not meet the criteria for confidential treatment and are not exempted from public disclosure pursuant to KRS 61.878(1)(a) or 61.878(1)(c)(1) nor 807 KAR 5:001E, Section 13.

The Commission finds that the request for confidential treatment is granted in part and denied for the response to Staff's First Request, Item 41. The Commission finds the names and titles of the employees should be given confidential treatment because

disclosure would be an invasion of their personal privacy. However, the amount of the compensation should be disclosed because it is used in the calculation of the proposed base rate. Therefore, the amount of compensation provided in response to Staff's First Request, Item 41 does not meet the criteria for confidential treatment and is not exempted from public disclosure pursuant to KRS 61.878(1)(a) or 61.878(1)(c)(1) nor 807 KAR 5:001E, Section 13.

IT IS THEREFORE ORDERED that:

1. Duke Kentucky's petition for confidential treatment for the responses to Staff's First Request, Items 13, 18, 30, 49(b), 49(c), and the attachments provided in response to Staff's First Request, Item 56 is granted.

2. Duke Kentucky's petition for confidential treatment for the responses to Staff's First Request, Items 6, 43, 45, and 46 is denied.

3. Duke Kentucky's petition for confidential treatment for the response to Staff's First Request, Item 41 is granted for the names and titles of the employees.

4. Duke Kentucky's Petition for confidential treatment for the response to Staff's First Request, Item 41 for the salary of employees is denied.

5. The designated material granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for 20 years or until further order of this Commission.

6. 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).

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

8. 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.

9. 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.

10. 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.

11. 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.

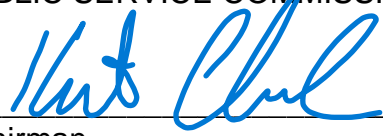


12. Within 30 days of the date of service of this Order, Duke Kentucky shall file a revised version of the designated material for which confidential treatment was denied, reflecting as unredacted the information that has been denied confidential treatment.

13. 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.

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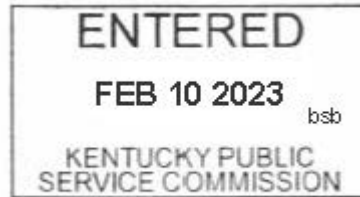


Chairman

Vice Chairman



Commissioner



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

\*John G Horne, II  
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

\*Carrie H Grundmann  
Spilman Thomas & Battle, PLLC  
110 Oakwood Drive, Suite 500  
Winston-Salem, NORTH CAROLINA 27103

\*Joshua Smith  
Sierra Club  
2101  
Webster St. , Suite 1300  
Oakland, CALIFORNIA 94612

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

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

\*Honorable Kurt J Boehm  
Attorney at Law  
Boehm, Kurtz & Lowry  
36 East Seventh Street  
Suite 1510  
Cincinnati, OHIO 45202

\*Rebecca C. Price  
Sturgill, Turner, Barker & Moloney  
155 East Main Street  
Lexington, KENTUCKY 40507

\*Elizabeth Brama  
Taft Stettinius & Hollister LLP  
1717 Dixie Highway, Suite 340  
Covington, KENTUCKY 41011-4707

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

\*Sarah Lawler  
Duke Energy Kentucky, Inc.  
139 East Fourth Street  
Cincinnati, OH 45201

\*James W Gardner  
Sturgill, Turner, Barker & Moloney, PLLC  
333 West Vine Street  
Suite 1400  
Lexington, KENTUCKY 40507

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

\*Steven W Lee  
Spilman Thomas & Battle, PLLC  
1100 Brent Creek Blvd., Suite 101  
Mechanicsburg, PENNSYLVANIA 17050

\*Jody Kyler Cohn  
Boehm, Kurtz & Lowry  
36 East Seventh Street  
Suite 1510  
Cincinnati, OHIO 45202

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

\*M. Todd Osterloh  
Sturgill, Turner, Barker & Moloney, PLLC  
333 West Vine Street  
Suite 1400  
Lexington, KENTUCKY 40507

\*Joe F. Childers  
Childers & Baxter PLLC  
300 Lexington Building, 201 West Sho  
Lexington, KENTUCKY 40507

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

\*Valerie T. Herring  
Attorney  
Taft Stettinius & Hollister LLP  
2200 IDS Center  
80 South 8th Street  
Minneapolis, MINNESOTA 55402-215