



139 East Fourth Street, R. 25 At II
P. O. Box 960
Cincinnati, Ohio 45201-0960
Tel: 513-419-1852
Fax: 513-419-1846
Rocco.D'Ascenzo@duke-energy.com

Rocco O. D'Ascenzo
Senior Counsel

VIA OVERNIGHT DELIVERY

August 29, 2008

RECEIVED

SEP 02 2008

**PUBLIC SERVICE
COMMISSION**

Ms. Stephanie Stumbo
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40602-0615

Re: Case No. 2008-248
In the Matter of Duke Energy Kentucky, Inc's Integrated Resource Plan

Dear Ms. Stumbo:

Enclosed please find an original and twelve copies each of Duke Energy Kentucky, Inc's application for rehearing regarding confidential treatment of information contained in its integrated resource plan and the affidavit of David E. Freeman in the above-referenced case.

Please date-stamp the extra two copies of each document and return to me in the enclosed envelope.

Sincerely,

Rocco O. D'Ascenzo
Senior Counsel

Enclosures
ROD/bsc

cc: Certificate of Service

SEP 02 2008

PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY

BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION

In the Matter of Duke Energy Kentucky, Inc.'s)	Case No. 2008-248
Integrated Resource Plan)	
)	

DUKE ENERGY KENTUCKY, INC.'S APPLICATION FOR REHEARING
REGARDING CONFIDENTIAL TREATMENT OF INFORMATION
CONTAINED IN ITS INTEGRATED RESOURCE PLAN OR, IN
THE ALTERNATIVE, FOR AN EVIDENTIARY HEARING

Pursuant to KRS 278.400, Duke Energy Kentucky, Inc. ("DE-Kentucky" or "Company") respectfully moves the Kentucky Public Service Commission ("Commission") for rehearing of its August 13, 2008 decision denying, in part, confidential protection of certain information described in the Company's Petition for Confidential Treatment of Information Contained in Its Integrated Resource Plan ("Petition").¹ Specifically, DE-Kentucky requests the Commission reconsider the decision that the vertical "y-axis labels" depicted in the screening curves contained in Figures GA-5-4-C through GA-5-14-C are not entitled to confidential protection.² Similarly, DE-Kentucky respectfully requests rehearing on the public release of Page SA-40-C, entitled "Energy Efficiency Avoided Costs." (Figures GA-5-4-C through GA-5-14-C and page SA-40-C are collectively referred to as the "Information").³ The public disclosure of the Information places DE-Kentucky at a commercial disadvantage as it negotiates contracts with various suppliers and vendors. This

¹ See Commission's Letter Dated August 13, 2008.

² The Commission's Letter discusses Figures GA-5-4-C through GA-5-15-C. DE-Kentucky did not include a Figure GA-5-15-C as part of its IRP

³ In its August 13, 2008 letter, the Commission also determined that the interconnections list contained in Table 8(3)(a), excluding the attached maps, should be released. DE-Kentucky is not seeking rehearing on that determination.

disadvantage, in turn, will ultimately harm Kentucky's rate payers who will face higher costs due to the inability of DE-Kentucky to seek and negotiate lower cost supply alternatives.

For the reasons discussed herein and as supported in the Accompanying Affidavit of David E. Freeman, DE-Kentucky respectfully requests the Commission grant rehearing on its denial of the confidential status of the Information as submitted on July 1, 2008. The Commission should find the Information confidential. In the alternative, DE-Kentucky requests the Commission schedule an evidentiary hearing regarding the confidential nature of the aforementioned Information.⁴

I. Introduction:

DE-Kentucky is a Kentucky corporation with its principal office and principal place of business at 1697A Monmouth Street, Newport Shopping Center, Newport, Kentucky 41071. Its mailing address is P.O. Box 960, Cincinnati, Ohio 45201. DE-Kentucky is a utility engaged in the gas and electric business. DE-Kentucky purchases, sells, stores and transports natural gas in Boone, Campbell, Gallatin, Grant, Kenton and Pendleton Counties, Kentucky. DE-Kentucky also generates electricity, which it distributes and sells in Boone, Campbell, Grant, Kenton and Pendleton counties. DE-Kentucky is regulated by the Commission pursuant to KRS Chapter 278, and a certified copy of DE-Kentucky's Articles of Incorporation is on file with this Commission in Case Number 2006-00563 and is incorporated herein by reference pursuant to 807 KAR 5:001, Section 8(3).

On July 1, 2008, DE-Kentucky filed its Integrated Resource Plan ("IRP").⁵ With this filing, DE-Kentucky submitted its Petition, requesting the Commission grant confidential

⁴ See *Utility Regulatory Commission v. Kentucky Water Service Company, Inc.*, Ky App., 642 S.W.2d 591, 592-94 (1982).

⁵ DE-Kentucky was required to file its IRP by July 1, 2008, in accordance with the Commission's December 16, 2005 Order in Case No. 2005-0370.

protection to certain information contained in the IRP. The Petition explained the various risks and harm the Company or its customers would experience if certain information was publicly available.⁶ Among other things, the information DE-Kentucky requested be withheld from public disclosure included: (1) a small portion of information depicted on supply side screening curves; and (2) projected avoided cost data for the Company's energy efficiency and demand side management ("DSM") programs through 2023. In the Petition, DE-Kentucky committed to enter into confidentiality agreements with interested stakeholders who wished to review the sensitive information.⁷ This is consistent with prior Commission practice.⁸

By letter dated August 13, 2008, the Commission ruled upon DE-Kentucky's Petition, granting in part, and denying in part, the Company's requests. The Commission's letter stated that the Information denied confidential treatment would be withheld from public inspection for twenty (20) days from the date of the letter, and that if DE-Kentucky disagrees with the Commission's decision, it may seek rehearing pursuant to KRS 278.400.⁹ Accordingly, DE-Kentucky comes now requesting the Commission reconsider its decision to deny confidential protection to certain Information.

II. Law and Argument:

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

⁶ DE-Kentucky's Petition at 2-3.

⁷ *Id.* at 4-5.

⁸ *Id.*

⁹ KRS 278.400 provides in relevant part that "any party to the proceeding may, within twenty (20) days after the *service* of the order apply for rehearing. . . [s]ervice of a Commission of a Commission order is complete three (3) days after the date the order is mailed." Emphasis added

information would permit an unfair advantage to competitors of that party. Public disclosure of the Information at issue here would, in fact, prompt such a result for the reasons set forth below.

KRS 278.400 confers upon a party to a Commission proceeding, the right to seek rehearing within twenty (20) days of a Commission Order.¹⁰ The application must specify the matters for rehearing.¹¹ Upon rehearing, any party may offer additional evidence that could not with reasonable diligence have been offered on the former hearing.¹²

DE-Kentucky respectfully submits that the public interest is served by affording the Information confidential protection. Since DE-Kentucky could not predict the Commission's reasoning that prompted a decision to deny protection to the Information, DE-Kentucky could not reasonably foresee and therefore address the Commission's simple misunderstanding of the sensitive nature of the Information.

A. The Commission Should Protect the Vertical "Y-axis Labels" Depicted in Figures GA-5-4-C through GA-5-14-C.

The supply side screening curves contained in Figures GA-5-4-C through GA-5-14-C ("Figures") include the results of DE-Kentucky's analysis of projected costs of fuel and operating and maintenance ("O&M") expenses, capital costs, projected capacity and present value revenue requirements ("PVR") for various generating alternatives reviewed in the IRP.¹³ Recognizing the delicate balance between the public interest of an open review of a utility's IRP evaluation methods and the need to provide customers with the least cost, most reliable service, DE-Kentucky carefully tailored its July 1, 2008 IRP Petition for confidential treatment. With respect to the screening curves depicted in the Figures, DE-Kentucky is

¹⁰ KRS 278.400

¹¹ *Id.*

¹² *Id.*

¹³ *See* Petition at 2 (July 1, 2008).

merely seeking protection of a fraction of the information. The confidential portion consists only of the vertical “y-axis labels” of the curves, which numerically specify the estimated \$/kW-year costs for the various alternatives DE-Kentucky evaluated. Maintaining the vertical “y-axis labels” under seal and in the current redacted form will not impede interested parties from reviewing and evaluating the information contained in the curves. The comparative economics of each of the alternatives, the intended purpose in these screenings, is still evident in the curves without the “y-axis” values.¹⁴ Interested parties are able to see how the various technologies compare relative to one another without access to the confidential information.

In its August 13, 2008 Letter, the Commission stated that releasing Figures GA-5-4-C through GA-5-7-C and Figures GA-5-9-C through GA-5-14-C does not reveal DE-Kentucky’s internal business model if Figure GA-5-8-C remains protected.¹⁵ The Commission has apparently misunderstood the sensitive nature of the Information. The need to protect the screening curves vertical or “y-axis labels” from public disclosure is not due to the releasing of the Company’s business model.¹⁶ Rather, as explained in the attached Affidavit of David E. Freeman, the need for confidential treatment is derived from DE-Kentucky’s ability to maintain a competitive position and ability to contract and provide reliable service to customers at the lowest possible price.¹⁷

Releasing the “y-axis labels” on the aforementioned Figures discloses the value DE-Kentucky’s internal analyses assigned to the various generating technology alternatives. Releasing the values limits and likely prevents any possibility the Company could obtain

¹⁴ Attached Affidavit at 3.

¹⁵ Commission’s Letter Dated August 13, 2008 at paragraph 2.

¹⁶ The Commission is correct in that regard as it pertains to protecting Figure GA- 5-8-C

¹⁷ Attached Affidavit at 4.

such resources at a lower cost through negotiations or through a request for proposal. If project bidders or potential equipment vendors had ready access to DE-Kentucky's resource cost estimates and operation values, these parties would have enough information to determine a floor for any bid or proposed price. No sophisticated vendor would consider making an offer at anything lower than DE-Kentucky's expected cost. By way of example, if a turbine manufacturer already knows what DE-Kentucky estimates it will likely pay for a new combustion turbine, the manufacturer will have no incentive to offer to provide one at any lower cost. Nor would DE-Kentucky have any leverage to negotiate a lesser cost if its own internal estimates are used against DE-Kentucky.

Similarly, purchased power suppliers could use this information in the same way to establish a floor for their bids or price offers, thereby increasing DE-Kentucky's operating costs and ability to secure additional power at reasonable prices to cover operating outages. Such limitations harm DE-Kentucky's competitive position in the marketplace and ability to negotiate for a lower price. Both the Company's costs and its customers' rates will be adversely impacted.

As explained in its Petition, the release of the Figures would afford suppliers and vendors an undue advantage to the extent they could calculate what DE-Kentucky anticipates the various requirements to cost.¹⁸ This information was developed internally by Duke Energy Corporation (Duke Energy) personnel and is not available from any commercial or other source outside of Duke Energy. Duke Energy's affiliated utility operating companies in Indiana and North and South Carolina have filed similar confidential information under seal as part of their own IRPs. This same type of information has been granted confidential

¹⁸ *Id*

protection in those jurisdictions.¹⁹ Moreover, DE-Kentucky submitted this information in redacted form as part of its IRP filed in 2003.²⁰ The confidential nature of the information was not opposed.

The aforementioned information is only distributed within DE-Kentucky and Duke Energy to those employees who must have access for business reasons. DE-Kentucky maintained the information as confidential consistent with KRS 61.878(1)(c). DE-Kentucky thus respectfully requests that the Commission reconsider its decision that the Figures should be released and Order the information remain under seal.

B. The Commission Should Protect the Energy Efficiency Avoided Costs listed on page SA-40-C.

The Commission's August 13, 2008 Letter also denies DE-Kentucky's request for confidential treatment of page SA-40-C titled "Energy Efficiency Avoided Costs." In support of its decision, the Commission reasons that the public disclosure of "total costs" does not impair the Company's ability to negotiate with prospective contractors and vendors and would not harm the Company's competitive position. Once again, for the reasons discussed herein and as supported in the attached Affidavit of David E. Freeman, DE-Kentucky respectfully disagrees with the Commission's reasoning and result.

The note to the schedule on page SA-40-C explains that the values depicted in the redacted chart include DE-Kentucky's estimated avoided generation, transmission and distribution costs. This information, when compared to other information already disclosed

¹⁹ See e.g. *In re Duke Energy Carolinas, LLC- Annual Plan from 2005-Present*, Docket Number 2005-356-E (Public Service Commission of South Carolina, Entry)(December 5, 2007); *In re Commission's Investigation of Integrated Resource Planning in North Carolina* Docket No E-100, Sub 109, (IRP at 73-78) (filed J10/31/2006); *In re Petition of Duke Energy Indiana, Inc for a Determination that Certain Information contained in the 2007 IRP is Confidential*, Cause No 43382, (Order)(April 23, 2008).

²⁰ See *In re ULH&P's 2003 Integrated Resource Plan*, Case No 2004-14(IRP filed)(April 2, 2003).

in the IRP, could be easily used to determine the Company's own cost/ kWh.²¹ As explained in the attached Affidavit of David E. Freeman, comparing the information on page SA-40-C to the Company's total load, residential load, and non-residential load depicted on page 4-39 of the IRP, could easily be used to the advantage of merchant generators (including possible renewable portfolio operators) to determine DE-Kentucky's avoided cost of generation. Similar to the reasons discussed above, this simple analysis would provide the potential renewable generators or other power bidders with a price floor to their proposals, ultimately harming DE-Kentucky and its customers. No bidder would offer a price below DE-Kentucky's own expectations of avoided cost of generation. DE-Kentucky could then only secure resources at or above its own cost estimates.

Like the Figures discussed above, the estimated avoided cost information was developed internally by DE-Kentucky personnel, is not publicly filed with any public agency, and is not available from any commercial or other source outside DE-Kentucky. The aforementioned information is distributed within DE-Kentucky only to those employees who must have access for business reasons. DE-Kentucky maintained the information as confidential consistent with KRS 61.878(1)(c). The Commission should reconsider its decision that the Page SA-40-C should be released and Order the information remain under seal.

III. Conclusion:

For the reasons discussed above, DE-Kentucky respectfully requests the Commission reconsider its decision denying confidential protection to the information contained in the vertical "y-axis labels" in Figures GA-5-7-C and Figures GA-5-9-C through GA-5-14-C and Page SA-40-C. If the Commission disagrees, however, it should hold an evidentiary hearing

²¹ Affidavit at 4-5.

to protect the due process rights of the Company and supply the Commission with a complete record to enable it to reach a decision with regard to this matter.²²

Respectfully submitted,

DUKE ENERGY KENTUCKY, INC.

Amy B. Spiller (85309)
Associate General Counsel
139 East Fourth Street, Room 25 AT II
Cincinnati, OH 45202
Phone: (513) 419-1810
Fax: (513) 419-1846
e-mail: amy.spiller@duke-energy.com

²² *Utility Regulatory Commission v. Kentucky Water Service Company, Inc.*, Ky. App., 642 S.W.2d 591, 592-94 (1982).

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of Duke Energy Kentucky, Inc.'s Application for Rehearing Regarding Confidential Treatment of Information Contained in Duke Energy Kentucky, Inc.'s 2008 Integrated Resource Plan was served on the following by overnight mail, this ___ day of August 2008.

Amy B. Spiller

Honorable Dennis G. Howard, II
Honorable David E. Spenard
Assistant Attorneys General
1024 Capital Center Drive, Suite 200
Frankfort, Kentucky 40601

COMMONWEALTH OF KENTUCKY

BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION

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Integrated Resource Plan)
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protection in those jurisdictions.¹⁹ Moreover, DE-Kentucky submitted this information in redacted form as part of its IRP filed in 2003.²⁰ The confidential nature of the information was not opposed.

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B. The Commission Should Protect the Energy Efficiency Avoided Costs listed on page SA-40-C.

The Commission's August 13, 2008 Letter also denies DE-Kentucky's request for confidential treatment of page SA-40-C titled "Energy Efficiency Avoided Costs." In support of its decision, the Commission reasons that the public disclosure of "total costs" does not impair the Company's ability to negotiate with prospective contractors and vendors and would not harm the Company's competitive position. Once again, for the reasons discussed herein and as supported in the attached Affidavit of David E. Freeman, DE-Kentucky respectfully disagrees with the Commission's reasoning and result.

The note to the schedule on page SA-40-C explains that the values depicted in the redacted chart include DE-Kentucky's estimated avoided generation, transmission and distribution costs. This information, when compared to other information already disclosed

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in the IRP, could be easily used to determine the Company's own cost/ kWh.²¹ As explained in the attached Affidavit of David E. Freeman, comparing the information on page SA-40-C to the Company's total load, residential load, and non-residential load depicted on page 4-39 of the IRP, could easily be used to the advantage of merchant generators (including possible renewable portfolio operators) to determine DE-Kentucky's avoided cost of generation. Similar to the reasons discussed above, this simple analysis would provide the potential renewable generators or other power bidders with a price floor to their proposals, ultimately harming DE-Kentucky and its customers. No bidder would offer a price below DE-Kentucky's own expectations of avoided cost of generation. DE-Kentucky could then only secure resources at or above its own cost estimates.

Like the Figures discussed above, the estimated avoided cost information was developed internally by DE-Kentucky personnel, is not publicly filed with any public agency, and is not available from any commercial or other source outside DE-Kentucky. The aforementioned information is distributed within DE-Kentucky only to those employees who must have access for business reasons. DE-Kentucky maintained the information as confidential consistent with KRS 61.878(1)(c). The Commission should reconsider its decision that the Page SA-40-C should be released and Order the information remain under seal.

III. Conclusion:

For the reasons discussed above, DE-Kentucky respectfully requests the Commission reconsider its decision denying confidential protection to the information contained in the vertical "y-axis labels" in Figures GA-5-7-C and Figures GA-5-9-C through GA-5-14-C and Page SA-40-C. If the Commission disagrees, however, it should hold an evidentiary hearing

²¹ Affidavit at 4-5.

to protect the due process rights of the Company and supply the Commission with a complete record to enable it to reach a decision with regard to this matter.²²

Respectfully submitted,

DUKE ENERGY KENTUCKY, INC.



Amy B. Spiller (85309)

Associate General Counsel

139 East Fourth Street, Room 25 AT II

Cincinnati, OH 45202

Phone: (513) 419-1810

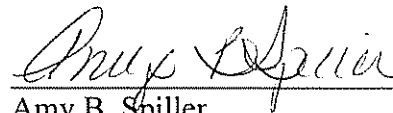
Fax: (513) 419-1846

e-mail: amy.spiller@duke-energy.com

²² *Utility Regulatory Commission v Kentucky Water Service Company, Inc.*, Ky. App., 642 S.W.2d 591, 592-94 (1982).

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of Duke Energy Kentucky, Inc.'s Application for Rehearing Regarding Confidential Treatment of Information Contained in Duke Energy Kentucky, Inc.'s 2008 Integrated Resource Plan was served on the following by overnight mail, this 29th day of August 2008.



Amy B. Spiller

Honorable Dennis G. Howard, II
Honorable David E. Spenard
Assistant Attorneys General
1024 Capital Center Drive, Suite 200
Frankfort, Kentucky 40601

COMMONWEALTH OF KENTUCKY

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)

AFFIDAVIT OF DAVID E. FREEMAN

STATE OF OHIO)
COUNTY OF HAMILTON)

Comes the affiant, David E Freeman, after being duly sworn, states as follows:

1. I am employed by Duke Energy Business Services as Midwest Integrated Resource Planning Director for Duke Energy Corporation's Midwest regulated utility operating companies, including Duke Energy Kentucky, Inc ("DE-Kentucky").
2. I have approximately thirty years experience in the utility industry. I have been employed by Duke Energy Business Services, since the merger between Duke Energy and Cinergy Corp in 2006. Prior to that I worked for Cinergy Corp and the Cincinnati Gas & Electric Company. I was appointed to my current position as Midwest Integrated Resource Planning Director on July 1, 2008. Throughout my thirty years of experience, I have held many positions of increasing responsibility with the Company. Most recently, I have held positions in Global Risk Management from January 2005 through June 2008. Prior to that I was a Senior Engineer in PACE, AFIC and Performance Analytics from October 2000 through December 2004. From October 1998

through October 2000, I held various trading positions related to power, natural gas, and transmission markets in Cinergy Marketing and Trading and Cinergy Power Marketing and Trading. I was an Analyst/ Strategist in the Cinergy Power Marketing and Trading Group from August 1997 through September 1998. I was a Supervisor in Resource Planning from January 1995 through July of 1997.

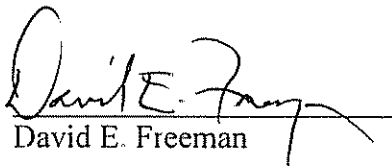
3. As Midwest Integrated Resource Planning Director, I am responsible for planning for the long-term capacity needs of Duke Energy Indiana, Inc, and DE-Kentucky systems by minimizing the long-run cost of providing reliable, economic, and efficient electrical services to meet the forecasted needs of our customers. My responsibilities include preparing and filing Integrated Resource Plans (“IRPs”) in accordance with state regulations. Accordingly, I am familiar with the information contained in DE-Kentucky’s IRP submitted in this proceeding.
4. The IRP process involves taking a myriad of resource options, and, through screening and analysis, methodically funneling down to reach an optimal combination of feasible and economic alternatives that will reliably meet the anticipated future customer loads. Much of this information is competitively sensitive and confidential in nature because it necessarily involves internal assumptions and comparison of cost projections to determine the most reasonable and least cost alternatives. This information was developed internally by Duke Energy personnel and is not available from any commercial or other source outside of Duke Energy.

5. This affidavit relates to DE-Kentucky's requests made in this proceeding for confidential treatment of the vertical "y-axis labels" depicted in Figures GA-5-4-C through GA-5-14-C and the avoided cost information contained on page SA-40-C.
6. The supply side screening curves contained in Figures GA-5-4-C through GA-5-14-C ("Figures") include the results of DE-Kentucky's analysis of projected costs of fuel and operating and maintenance ("O&M") expenses, capital costs, projected capacity and present value revenue requirements ("PVRR") for various generating alternatives reviewed in the IRP. DE-Kentucky seeks protection of a fraction of the information in the Figures, consisting only of the vertical "y-axis labels" of the curves. The vertical "y-axis label" depicts the results of Duke Energy's internal analysis \$/ kW-year costs for the various alternatives evaluated in the IRP. The comparative economics of each of the alternatives, the intended purpose in these screenings, is still evident in the curves even with the redacted labels. The technologies are distinguished and identified in the curves. Interested parties are able to see how the various technologies compare relative to one another without access to the confidential information.
7. DE-Kentucky relies upon this information as it negotiates with potential suppliers and vendors for such resources in order to determine whether better prices can be obtained.

8. Releasing the values shown in the vertical “y-axis labels” would limit and likely prevent DE-Kentucky’s ability to obtain such resources at a lower cost through negotiations or through a request for proposal. If bidders or potential vendors had access to DE-Kentucky’s resource acquisition and operation assumptions, these parties would be provided a floor for any bid or proposal price. Similarly, purchased power suppliers could use this information to establish a floor for their bids, thereby increasing DE-Kentucky’s operating costs and ability to secure additional power at a reasonable price for planned outages.
9. The Commission should also keep confidential Page SA-40-C titled “Energy Efficiency Avoided Costs.” This information depicts the results of the Company’s internal analysis. The values depicted in the redacted chart include DE-Kentucky’s aggregate avoided generation, transmission and distribution cost projections through 2023. This information, when compared to other information already disclosed in the IRP, could be easily used to determine the Company’s own cost/ kWh. Releasing this information presents several problems for DE-Kentucky and dramatically affects the company’s ability to achieve supply alternatives at the lowest possible cost for years into the future. If publicly released, potential power suppliers could use the information on SA-40-C, along with the Company’s load information depicted on page 4-39 of the IRP, including total load, residential load, and non-residential load, to determine DE-Kentucky’s avoided cost of generation. Potential suppliers and even wholesale market competitors could use this

information to manipulate their prices, thereby creating a price floor to offer their resources.

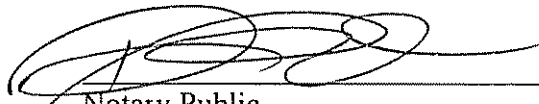
10. DE-Kentucky does compete in the wholesale power market and also has occasion to purchase back-up supplies for both forced and unforced facility outages. As its costs rise due to rising power prices, the company does become less competitive.
11. Duke Energy's affiliated utility operating companies in Indiana and North and South Carolina have filed similar confidential information under seal as part of their own IRPs. The Commissions in North Carolina, South Carolina and Indiana have afforded this information confidential protection in Docket Nos. E-100, Sub 109; 2005-356-E; and Cause No. 43382 respectively. DE-Kentucky (then Union Light Heat and Power Company) filed the same information in a redacted form as part of its 2003 IRP.


David E. Freeman

SUBSCRIBED AND SWORN TO BEFORE ME BY DAVID E. FREEMAN ON THIS 29th DAY OF AUGUST, 2008.



ROCCO O. D'ASCENZO
ATTORNEY AT LAW
Notary Public, State of Ohio
My Commission Has No Expiration
Section 147.03 R.C.


Notary Public

My Commission Expires: No EXPIRATION