

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

RULING ON CONFIDENTIAL )  
MATERIALS SUBMITTED BY ) CASE NO.  
DUKE ENERGY KENTUCKY, INC. ) 2018-00108

ORDER

On January 9, 2018, Duke Energy Kentucky, Inc. (“Duke Kentucky”) submitted an agreement with Crouse Corporation (“Crouse Agreement”) using the Commission’s process for submitting fuel and transportation contracts. Contained in the submission was a petition for confidential treatment of certain provisions of the Crouse contract. In the petition, Duke Kentucky states that the Kentucky Open Records Act exempts from disclosure certain commercial information that, if disclosed, would permit an unfair advantage to competitors of that party. Duke Kentucky states that disclosing the information in the Crouse Agreement “would place Duke Energy Kentucky at a commercial disadvantage as they collectively negotiate contracts with various customers and could potentially harm Duke Energy Kentucky’s competitive position in the marketplace, to the detriment of Duke Energy Kentucky and its customers.”<sup>1</sup> Duke Kentucky further states that “the public disclosure of this information would put customers at a competitive disadvantage in that it would allow their direct competitors to have access to pricing and terms and conditions that were negotiated with Duke Energy Kentucky.”<sup>2</sup>

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<sup>1</sup> Petition at 2.

<sup>2</sup> *Id.*

## Discussion

All fuel and fuel transportation contracts have been subject to public disclosure since 1978 when 807 KAR 5:056 established the uniform Fuel Adjustment Clause (“FAC”). While the FAC provides an optional mechanism for the automatic pass-through of changes in fuel prices, it imposes mandatory filing requirements upon those utilities that adopt an FAC. Specifically, the utilities must:

[s]ubmit copies of each fossil fuel purchase contract not otherwise on file with the Commission and all other agreements, options or similar such documents, and all amendments and modifications thereof related to the procurement of fuel supply and purchased power.<sup>3</sup>

In addition, any new contracts and agreements must be filed when executed.<sup>4</sup>

The Commission has previously ruled that contracts entered into between utilities and barging companies are not exempt under the Kentucky Open Records Act.<sup>5</sup>

The Commission notes that all of Duke Kentucky’s previous fuel and transportation contracts are public record, and to date, Duke Kentucky has not informed the Commission of a single instance in which Duke Kentucky has been harmed by the disclosure of its fuel and transportation contracts. Furthermore, Duke has not stated with specificity how the disclosure of the information in the Crouse Agreement will cause harm to Duke Kentucky or its customers.

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<sup>3</sup> 807 KAR 5:056 Section 1(7).

<sup>4</sup> *Id.*

<sup>5</sup> See, Case No. 97-197, *Petition of Kentucky Utilities Company for Confidential Protection of Certain Information Contained in Barge Transportation and Coal Purchase Contracts*. (Ky. PSC Mar. 18, 1988) and Case No. 89-216, *Petition for Confidentiality of Kentucky Utilities Company*, (Ky. PSC Nov. 7, 1989).

IT IS THEREFORE ORDERED that:

1. Duke Kentucky's petition for confidential treatment is denied.
2. Within 10 days of the date of entry of this Order, Duke Kentucky shall file an unredacted copy of the Crouse Agreement using the Commission's process for submitting fuel and transportation contracts. Duke Kentucky shall reference this case number when submitting the Crouse Agreement.
3. The unredacted copy of the Crouse Agreement shall be held confidentially for a period of 30 days from the date of entry of this Order. At the end of this period, the Crouse Agreement shall be placed in the public record without further notice.

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By the Commission



ATTEST:

  
Executive Director

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