

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOSEPH J. OKA)	
)	
COMPLAINANT)	
)	CASE NO.
V.)	2021-00324
)	
DUKE ENERGY KENTUCKY, INC.)	
)	
DEFENDANT)	

ORDER

On February 23, 2022, Duke Energy Kentucky, Inc. (Duke Kentucky) filed a petition, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for an indefinite period for redacted information provided in response to Commission Staff's Second Request for Information (Staff's Second Request), Item 3.

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."¹ In support of its petition, Duke Kentucky argued for the application of two provisions of KRS 61.878. KRS 61.878(1)(a) exempts from public disclosure "[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." KRS 61.878(1)(c)(1) exempts "[r]ecords confidentially disclosed to an agency

¹ KRS 61.872(1).

or required by an agency to be disclosed to it, 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.” Exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.² The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.³

Duke Kentucky sought confidential treatment for redacted figures from responses and a series of nine spreadsheets that were provided in response to Staff’s Second Request requiring production of documentation showing how Mr. Oka’s bills were calculated for several months. Duke Kentucky argued that Mr. Oka’s customer account information, including account numbers, should be protected under KRS 61.878(1)(a). Duke Kentucky also argued that the remaining information regarding bill calculation consists of proprietary internal workings of the company protected by KRS 61.878(1)(c)(1).

Having considered the petition and the material at issue, the Commission finds that Duke Kentucky’s petition is denied. Normally, customer-specific billing information would be held confidential pursuant to KRS 61.878(1)(a).⁴ However, Mr. Oka has already filed

² See KRS 61.871.

³ 807 KAR 5:001, Section 13(2)(c).

⁴ See Case No. 2017-00321, *Electronic Application of Duke Energy Kentucky, Inc. for: 1) An Adjustment of the Electric Rates; 2) Approval of an Environmental Compliance Plan and Surcharge Mechanism; 3) Approval of New Tariffs; 4) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities and 5) All Other Required Approvals and Relief* (Ky. PSC May 3, 2018), Order at 3, 8.

his bills publicly,⁵ so billing or usage amounts are already public.⁶ Mr. Oka did redact his account number, which is required to be redacted pursuant to 807 KAR 5:001, Section 4(10)(a)(3), so Duke Kentucky should keep his account number redacted. Duke Kentucky's argument that bill calculations are generally recognized as proprietary is not supported by Commission precedent. The billing spreadsheets demonstrate how bills are calculated and are therefore an extension of Duke Kentucky's publicly filed tariff. Keeping this information confidential would run contrary to the need for transparency that the tariff system is intended to support. The public has a strong interest in knowing how publicly filed tariff information translates into bills received, which is not outweighed by Duke Kentucky's stated interests. Duke Kentucky has not met its burden to demonstrate that its billing calculations are generally considered proprietary or that its competitors would receive an unfair advantage as a result of disclosure. The designated material does not meet the criteria for confidential treatment and is not exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(a) or (1)(c)(1).

IT IS THEREFORE ORDERED that:

1. Duke Kentucky's petition for confidential treatment is denied.
2. 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.

⁵ Complaint, Exhibits 1, 3–7; Joseph J. Oka Follow-Up to Formal Complaint, Attachment.

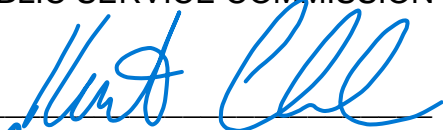
⁶ The spreadsheets provided by Duke Kentucky include billing information from months for which Mr. Oka has not publicly filed bills. However, the Commission finds that Mr. Oka's filing of other bills indicates an intent for all his contested bills to be publicly filed, absent a request otherwise.

3. 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 should be granted confidential treatment.

4. 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. Duke Kentucky shall keep Mr. Oka's account number redacted.

5. 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 in order to allow Duke Kentucky to seek a remedy afforded by law.

PUBLIC SERVICE COMMISSION



Chairman



Vice Chairman

Commissioner



ATTEST:



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