

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF DUKE	)	
ENERGY KENTUCKY, INC., FOR: 1) AN	)	
ADJUSTMENT OF THE NATURAL GAS	)	CASE NO.
RATES; 2) APPROVAL OF NEW TARIFF; AND	)	2021-00190
3) ALL OTHER REQUIRED APPROVALS,	)	
WAIVERS, AND RELIEF	)	

ORDER

This matter arises on the motions for confidential treatment filed by Duke Energy Kentucky, Inc. (Duke Kentucky), pursuant to KRS 61.878 and 807 KAR 5:001, Section 13, on June 18, 2021; August 18, 2021; and August 24, 2021. The motions are described in further detail below.

JUNE 18, 2021 MOTION FOR CONFIDENTIAL TREATMENT

Duke Kentucky requested confidential treatment for 20 years for Duke Kentucky's response to the following items: (1) Commission Staff's First Request for Information (Staff's First Request), Item 6; (2) Staff's First Request, Item 11; (3) Staff's First Request, Item 16; (4) Staff's First Request, Item 39; and (5) Staff's First Request, Items 47(b)–(d).

In support of its motion, Duke Kentucky argued that the response to Staff's First Request, Item 6, contained detailed information related to expenses for professional services. Duke Kentucky asserted this information is both confidential and proprietary in nature. Duke Kentucky stated that release of such information could place Duke Kentucky at a disadvantage in future negotiations with potential professional service providers and in competition.

In support of its motion, Duke Kentucky argued that the response to Staff's First Request, Item 11, contained personal salary information. Although the two employees perform lobbying activities, their salaries were not predicated solely on those responsibilities. As such, release of that information would be intrusive and as such, that information should be confidential pursuant to KRS 61.878(1)(a).

In support of its motion, Duke Kentucky submitted tax records in response to Staff's First Request, Item 16, and stated that tax records are confidential.

In support of its motion, Duke Kentucky argued that the information in Staff's First Request, Item 39, is highly confidential and release of it could damage their ability to compete for qualified individual labor.

Duke Kentucky did not include the response to Item 47 in its filing. However, Duke Kentucky only requested a portion of the response, Items 47(b)–(d), be given confidential treatment. Duke Kentucky argued that all three attachments are confidential because they related to employee compensation.

Having considered the motion and the material at issue, the Commission finds that Duke Kentucky's motion should be granted in part and denied in part. The Commission finds that the designated material contained in the Attachment to Item 6 meets the criteria for confidential treatment and is exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13. The material contains information that may be used by competitors and investors in a way that could adversely affect the

company. The Commission has previously ordered this material be given confidential treatment.<sup>1</sup>

As to Item 11, the Commission finds that the information should not be given confidential treatment. Duke Kentucky listed two positions with two corresponding salaries. Duke Kentucky did not differentiate between the salary apportioned to compensate for lobbying and to compensate for other responsibilities. The portion of the salary for other responsibilities would be held confidential pursuant to both KRS 61.878(1)(c) and KRS 61.878(1)(a). However, the Commission has ordered on numerous occasions that the salary attributable to lobbying does not meet the criteria for confidential treatment. Lobbying expenses, including compensation paid to legislative agents are public record, 807 KAR 5:001, KRS 61.878(1)(a), and KRS 61.878(1)(c). As a result, the information shall be made public.

The Commission finds that all tax records provided as an Attachment to Item 16 shall be given confidential treatment. Tax records are exempt from disclosure under 28 U.S.C Section 6103(a)(a), KRS 61.878(k), and KRS 131.190. The records shall receive confidential treatment indefinitely.

The Commission finds that a portion of the Attachment to Item 39 shall be given confidential treatment. Beginning on page 124 of the Attachment, the Commission orders that the page be redacted beginning with the line item "Ky Jurisdictional Retail Amount" to the bottom of the page. This should be done for each page for Item 39 excepting blank pages. The redacted part contains compensation information for non-executives. No

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<sup>1</sup> Case No. 2019-00271 *Electronic Application of Duke Energy Kentucky, Inc. for 1) An Adjustment of the 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* (Ky. PSC May 4, 2020).

specific names were listed; however, the total amounts distributed to each level of employee would give other companies an advantage in the marketplace and should be treated as confidential under KRS 61.878(1)(c)(1). The information above the delineated line contains executive compensation. The Commission has ordered executive compensation to be public.

First, the Commission notes that the entirety of the response to Item 47 was filed sealed. However, the utility only requested Item 47 Attachments (b)–(d) be given confidential treatment. The Commission orders that the response to Item 47 be treated as follows:

1. Item 47(a) response – No confidential treatment was requested, and the Commission finds that this response should be made public.

2. Item 47(b) response – The Commission notes that it is a one-line response that cites to testimony given by Jake Stewart in his direct testimony. Duke Kentucky did not request confidential treatment for that testimony and as a result, the Commission finds that this response should not receive confidential treatment.

3. Item 47(c) response – The Commission finds that the reports submitted as Attachment (c) should be given confidential treatment pursuant to KRS 61.878(1)(c)(1). The reports contain proprietary third-party information and confidential information developed for the utility and the data contained therein would allow for competitors to gain an unfair advantage.

4. Item 47(d) response – The Commission denies the request for confidential treatment for 47(d). The response contains a reference to a proxy statement. A proxy statement is public information.

5. Item 47(e) – No confidential treatment was requested, and the Commission finds this response should be made public.

#### AUGUST 18, 2021 MOTION FOR CONFIDENTIAL TREATMENT

On August 18, 2021, Duke Kentucky requested that the Commission grant confidential treatment for 20 years for the following item, Attachment A to the response to the Attorney General's Second Request for Information, Request No. 19. Duke Kentucky argued that the capitalization policies and guidelines were proprietary and confidential. The policies were developed, used internally, and are not filed with any public agency.

The Commission finds that Attachment A in response to Request No. 19 shall be given confidential treatment pursuant to KRS 61.878(1)(c)(1). The information contained is proprietary and confidential. Granting the motion will be consistent with the Commission's Order in a prior Duke Kentucky case.<sup>2</sup>

#### AUGUST 24, 2021 MOTION FOR CONFIDENTIAL TREATMENT

On August 24, 2021, Duke Kentucky requested that the Commission grant confidential treatment for 20 years for the following items: (1) Attachment 1 to the supplemental response to the Attorney General's Second Request for Information, Request No. 15; and (2) Attachment to the supplemental response to the Attorney General's Second Request for Information Request No. 19.

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<sup>2</sup> Case No. 2016-00159 *Application of Duke Energy Kentucky, Inc. for Approval to Establish a Regulatory Asset* (Ky. PSC March 5, 2019), Order.

In support of its motion, Duke Kentucky argued that the Actuarial Valuation Report prepared by Willis Towers Watson is both confidential and proprietary. Duke Kentucky signed a confidentiality agreement. Any release of this report must be agreed to by Willis Towers Watson, and without that, Duke Kentucky would be in violation of that agreement. The report contains confidential information related to benefit obligations and a release of this information would disadvantage the utility. As to the Attachment in response to Request No. 19, Duke Kentucky argued that the information, policies, and procedures related to the Abandonment of Facilities was proprietary. The utility claimed that the information was only distributed on a “need-to-know” basis.

The Commission finds that the report from Willis Towers Watson should be granted confidential treatment. There is a confidentiality agreement in place. This information was created by a third party for the sole use of Duke Kentucky and is confidential and proprietary pursuant to KRS 61.878(1)(c)(1).

The Commission finds that the information in supplemental response to Attorney General’s Second Request No. 19 should be granted confidential treatment. The policies, guidelines, and procedures regarding Abandonment of Facilities are proprietary. Within the document, there are also confidential calculations with regard to cost and cost allocation.

IT IS THEREFORE ORDERED that:

1. Duke Kentucky’s June 18, 2021 motion for confidential treatment is granted in part and denied in part.
2. Duke Kentucky’s request for confidential treatment for the designated material in Item 6 and Item 16 is granted.

3. Duke Kentucky's request for confidential treatment for Item 11, is denied.

4. Duke Kentucky's request for confidential treatment for the designated material in Item 39 is granted pursuant to the specified redactions.

5. The redactions specified in this Order shall begin on page 124 of Item 39, the Commission orders that the page be redacted beginning with the line item "Ky Jurisdictional Retail Amount" to the bottom of the page. This should be done for each page for the response to Item 39; the Attachment contains mostly blank pages as well.

6. Duke Kentucky's request for confidential treatment for the designated materials in Item 47, Attachments (b)–(d), is granted in part and denied in part as follows:

(a) Duke Kentucky's request for confidential treatment for the designated materials in Attachment (b) in response to Item 47 to Staff's First Request is denied.

(b) Duke Kentucky's request for confidential treatment for the designated materials in Attachment (c) in response Item 47 to Staff's First Request is granted.

(c) Duke Kentucky's request for confidential treatment for the designated materials in Attachment (d) in response to Item 47 is denied.

7. The designated material—Item 6, Item 39 with specified redactions, and Item 47, Attachment (c)—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.

8. The designated material in Item 16 granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for an indefinite period or until further Order of this Commission.

9. Duke Kentucky's August 18, 2021, motion for confidential treatment is granted.

10. Duke Kentucky's request for confidential treatment for Attachment A to the response for the Attorney General's Second Request for Information, Request No. 19, is granted.

11. The designated material Attachment A to the response for the Attorney General's Second Request for Information, Request No. 19 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.

12. Duke Kentucky's August 24, 2021 motion for confidential treatment is granted.

13. Duke Kentucky's request for confidential treatment for Attachment 1 to the supplemental response to the Attorney General's Second Request for Information, Request No. 15, and Attachment to the supplemental response to the Attorney General's Second Request for Information, Request No. 19, is granted.

14. The designated material contained in Attachment 1 to the supplemental response to the Attorney General's Second Request for Information, Request No. 15, and Attachment to the supplemental response to the Attorney General's Second Request for Information, Request No. 19 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.

15. 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).

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

17. 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.

18. 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.

19. The designated material denied confidential treatment by this Order or no confidential treatment was actually requested is not exempt from public disclosure and shall be placed in the public record and made available for public inspection.

20. 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.

21. 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 file publicly all the material for which no confidential treatment was requested.

22. 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.

By the Commission

ENTERED  
FEB 25 2022 <sup>rCS</sup>  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
Executive Director

Case No. 2021-00190

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