

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

|                                         |            |
|-----------------------------------------|------------|
| ELECTRONIC APPLICATION OF DUKE ENERGY ) |            |
| KENTUCKY, INC. FOR A CERTIFICATE OF )   |            |
| PUBLIC CONVENIENCE AND NECESSITY TO )   | CASE NO.   |
| CONSTRUCT A 138-KV TRANSMISSION LINE )  | 2022-00364 |
| AND ASSOCIATED FACILITIES IN BOONE )    |            |
| COUNTY, KENTUCKY )                      |            |

ORDER

On May 2, 2023,<sup>1</sup> and May 15, 2023, Duke Energy Kentucky, Inc. (Duke Kentucky) filed petitions, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential protection for several documents, as more fully discussed below, for a period so long as the facilities are in use.

LEGAL STANDARD

The Commission is a public agency subject to Kentucky Open Records Act,<sup>2</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>3</sup> The exceptions to the free and open examination of public records should be strictly construed.<sup>4</sup> The party requesting that the materials be granted confidential protection has the burden of establishing that one of the

---

<sup>1</sup> The petition and accompanying response was originally filed on May 1, 2023, but then requested to be removed by Duke Kentucky due to the inadvertent filing of confidential material. Duke Kentucky re-filed the petition and accompanying response on May 2, 2023.

<sup>2</sup> KRS 61.870 through 61.884.

<sup>3</sup> KRS 61.872(1).

<sup>4</sup> KRS 61.878.

exemptions is applicable.<sup>5</sup> KRS 61.878(1)(a) grants confidential protection of information that if disclosed would create an invasion of personal privacy.<sup>6</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.”

KRS 61.878(1)(d) provides that

[p]ublic records pertaining to a prospective location of a business or industry where no previous public disclosure has been made of the business' or industry's interest in locating in, relocating within or expanding within the Commonwealth. This exemption shall not include those records pertaining to application to agencies for permits or licenses necessary to do business or to expand business operations within the state, except as provided in paragraph (c) of this subsection;

KRS 61.878(1)(m)(1) - Public records the disclosure of which would have a reasonable likelihood of threatening the public safety by exposing a vulnerability in preventing, protecting against, mitigating, or responding to a terrorist act and limited to....

As it relates to confidential filings, 807 KAR Section 13(2)(a)(1) requires that “[a] request for confidential treatment of material shall be made by petition that: (1) Establishes specific grounds pursuant to KRS 61.878 for classification of that material as confidential. In addition, 807 KAR Section 13(2)(a)(3)(b) If confidential treatment is sought for an entire document, written notification that the entire document is confidential may be filed with the document in lieu of the required highlighting.

---

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

<sup>6</sup> KRS 61.878(1)(a).

## MAY 2, 2023 PETITION FOR CONFIDENTIAL TREATMENT

Duke Kentucky requested confidential treatment for its responses to Commission Staff's Second Request for Information, Confidential Attachments 1 and 2, filed in response to Item 11(b) and Confidential Attachment provided in response to Item 15(a). As to Item 11(b) Attachment 1, pages 1-2 contain project updates from a meeting held in 2021 and the remaining pages starting at the bottom of pages 2-30 contain press releases. Item 11(b) Attachment 2 contains maps depicting feeder areas, substations and connections in relation to customers and new developments. Item 15(a)'s Attachment depicts modeling of feeders and load and the effects of this project on the load in the area.

In support of its petition, Duke Kentucky argued that that all of the confidential attachments warranted confidential treatment pursuant to KRS 61.878(1)(m)(1). According to the petition, this information would provide details regarding utility infrastructure that, in the wrong hands, could be exploited and used in ways that could create security and potential public safety risks. Duke Kentucky went on to argue that the information was distributed within Duke Kentucky, only to those who must have access for business reasons and is generally recognized as confidential and proprietary in the energy industry; however, Duke Kentucky did not cite to KRS 61.878(1)(c)(1).

Having considered the petition and the material at issue, the Commission finds that Duke Kentucky's petition should be granted in part and denied in part. The Commission finds that the designated material contained in Duke Kentucky's Item 11(b), Attachment 2 and Item 15(a)'s Confidential Attachment should be granted confidential treatment pursuant to KRS 61.878(1)(m) and 807 KAR 5:001E, Section 13 indefinitely or until such

time as the depicted items are no longer in use by the utility. The drawings and maps depict critical infrastructure and the impact of removing or affecting one item might have a negative effect on the Duke Kentucky transmission system.

The Commission further finds that the request for confidential treatment should be denied for Duke Kentucky's Item 11(b), Attachment 1, in its entirety. The first portion of the attachment contains project updates from approximately two years ago. Duke Kentucky did not meet its burden in demonstrating that that information is still relevant, accurate, and warrants confidential protection. In fact, Duke Kentucky provided an update in a subsequent response to a data request. The remainder of the pages are publicly available press releases. Therefore, the information does not meet the criteria for confidential treatment and should not be exempted from public disclosure pursuant to KRS 61.878(1)(m)(1) and 807 KAR 5:001, Section 13.

#### MAY 15, 2023 PETITION FOR CONFIDENTIAL TREATMENT

Duke Kentucky filed a petition for confidential treatment for a response to Commission Staff's Third Request for Information, Item 5, Confidential Attachment. The response was an update to the response provided on May 2, 2023, Item 11(b), Attachment 1. The attachment contained project statuses and included two pending economic development requests, including load requirement and location but not company name.

In support of its petition, Duke Kentucky argued that that the confidential attachment warranted confidential treatment pursuant to KRS 61.878(1)(m)(1) as well as KRS 61.878(1)(d). According to the petition, Duke Kentucky stated that the information disclosed prospective locations of business or industry as well as potential utility

infrastructure to serve such locations as contemplated under KRS 61.878(1)(m)(1). Duke Kentucky argued that, if publicly released, this information would provide details regarding potential business expansion in the Commonwealth and utility infrastructure that, in the wrong hands, could be exploited and used in ways that could create competitive advantages and security and potential public safety risks. Duke Kentucky also stated that some of the information included was subject to non-disclosure agreements but did not specify what information.

Having considered the petition and the material at issue, the Commission finds that Duke Kentucky's petition should be granted in part and denied in part. The Commission finds that any project listed as completed should not be given confidential treatment. However, all projects listed as pending or expected as well as all economic development proposals should be given confidential treatment pursuant to KRS 61.878(1)(d) and 807 KAR 5:001, Section 13. The Commission notes that public disclosure of economic development project information may adversely affect Duke Kentucky in negotiations with each company.

IT IS THEREFORE ORDERED that:

1. Duke Kentucky's petition for confidential treatment filed on May 2, 2023, is granted in part and denied in part.
2. Duke Kentucky's petition for confidential treatment for Item 11(b), Attachment 2 and Item 15(a)'s Confidential Attachment is granted.
3. Duke Kentucky's petition for confidential treatment for Item 11(b), Attachment 1 is denied.

4. Duke Kentucky's petition for confidential treatment filed on May 15, 2023, is granted in part and denied in part.

5. Duke Kentucky shall file redactions to Item 5 in accordance with this Order.

6. The designated material granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection until such time the facilities or structures are no longer in use by the utility or until further order of this Commission.

7. 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).

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

9. 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.

10. 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.


11. 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.

12. 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.

13. 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.

14. 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.

PUBLIC SERVICE COMMISSION

  
\_\_\_\_\_  
Chairman

  
\_\_\_\_\_  
Vice Chairman

  
\_\_\_\_\_  
Commissioner

ENTERED  
AUG 15 2023 rcs  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
\_\_\_\_\_  
Executive Director



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

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

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

\*Minna Sunderman  
Duke Energy Kentucky, Inc.  
139 East Fourth Street  
Cincinnati, OH 45201

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