

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF DUKE ENERGY )	
KENTUCKY, INC. FOR (1) AN ADJUSTMENT OF )	
ELECTRIC RATES; (2) APPROVAL OF NEW )	CASE NO.
TARIFFS; (3) APPROVAL OF ACCOUNTING )	2022-00372
PRACTICES TO ESTABLISH REGULATORY )	
ASSETS AND LIABILITIES; AND (4) ALL OTHER )	
REQUIRED APPROVALS AND RELIEF )	

ORDER

On March 2, 2023, 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 20 years for its responses to Sierra Club’s Second Request for Information (Sierra Club’s Second Request), except Item 12, Attachment, which Duke Kentucky requests to remain confidential indefinitely; responses to Attorney General’s Second Request for Information (Attorney General’s Second Request); and responses to Commission Staff’s Third Request for Information (Staff’s Third Request). The petition is described in further detail below.

LEGAL STANDARD

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.”<sup>1</sup> Exceptions to the free and open

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

examination of public records contained in KRS 61.878 should be strictly construed.<sup>2</sup> The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.<sup>3</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.”<sup>4</sup> KRS 61.878(1)(m) permits an exception for records that if disclosed 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.<sup>5</sup> The exemption is limited to certain types of records, including:

(f) Infrastructure records that expose a vulnerability referred to in this subparagraph through the disclosure of the location, configuration, or security of critical systems, including public utility critical systems. These critical systems shall include but not be limited to information technology, communication, electrical, fire suppression, ventilation, water, wastewater, sewage, and gas systems.<sup>6</sup>

(g) the following records when their disclosure will expose a vulnerability referred to in this subparagraph: detailed drawings, schematics, maps or specifications of structural elements . . . of any building or facility owned, occupied, leased, or maintained by a public agency.<sup>7</sup>

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<sup>2</sup> See KRS 61.871.

<sup>3</sup> 807 KAR 5:001, Section 12(2)(c).

<sup>4</sup> KRS 61.878(1)(c)(1).

<sup>5</sup> KRS 61.878(1)(m)(1).

<sup>6</sup> KRS 61.878(1)(m)(1)(f).

<sup>7</sup> KRS 61.878(1)(m)(1)(g).

A terrorist act is defined as including a criminal act intended to “[d]isrupt a system” identified in the above.<sup>8</sup>

## DISCUSSION

### RESPONSE TO SIERRA CLUB’S SECOND REQUEST, ITEM. NO. 1

In response to Sierra Club’s Second Request, Item 1, Duke Kentucky provided forecasted energy revenues for East Bend. In support of its petition, Duke Kentucky argued that the information contained within its response is proprietary and disclosure would put Duke Kentucky at a commercial disadvantage. Duke Kentucky argued that the information would provide insight into the company’s forecasts and revenues and could put it at a disadvantage when negotiating with future vendors.

### RESPONSE TO SIERRA CLUB’S SECOND REQUEST, ITEM 2, ATTACHMENTS 1-7

Duke Kentucky provided modeling results for the preferred portfolio in six scenarios, that has information related to operating costs, capital expenditures, and revenues in response to Sierra Club’s Second Request, Item. No. 2, Attachments 1-7. Duke Kentucky argued that the proprietary information would provide competitors with insight into the Company’s internal operating and financial conditions, as well as disclose their market forecasts. If disclosed, this type of information would arguably put Duke Kentucky at a commercial disadvantage with future vendors and hurt Duke Kentucky’s ability to manage its costs.

### RESPONSE TO SIERRA CLUB’S SECOND REQUEST, ITEM 5C

Duke Kentucky provided information about a bilateral firm capacity contract between Duke Kentucky and a third party in response to Sierra Club’s Second Request

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<sup>8</sup> KRS 61.878(1)(m)(2)(b).

Item 5c. Duke Kentucky argued that the information contains proprietary capacity information, that if disclosed, would disadvantage Duke Kentucky in future negotiations with potential vendors.

RESPONSE TO SIERRA CLUB'S SECOND REQUEST, ITEM 12, ATTACHMENT

Duke Kentucky provided Critical Energy Infrastructure Information (CEII) related to Duke Kentucky's substations and feeders in its response to Sierra Club's Second Request, Item 12, Attachment. Duke Kentucky argued that the proprietary information concerns CEII. Duke Kentucky further argued that the Commission has previously granted confidential treatment to such information<sup>9</sup> and release of information would provide a security risk to the company.

RESPONSE TO ATTORNEY GENERAL'S SECOND REQUEST, ITEM 13, ATTACHMENT

Duke Kentucky provided modelling and forecasting results related to six portfolios that were optimized for six scenarios as well as financial and fuel pricing information in its response to Attorney General's Second Request, Item 13, Attachment. Duke Kentucky argued that disclosure of proprietary information would give competitors an advantage because they would gain insight into Duke Kentucky's financial condition. Duke Kentucky also argued that disclosure would also disadvantage the company in the marketplace as it seeks to sell its excess energy as well as in future negotiations.

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<sup>9</sup> See, Case No. 2015-00267, *Application of East Kentucky Power Cooperative, Inc. for Approval of the Acquisition of Existing Combustion Turbine Facilities from Bluegrass Generating Company, LLC at the Bluegrass Generating Station in LaGrange, Oldham County, Kentucky and for Approval of the Assumption of Certain Evidences of Indebtedness*, (Ky. PSC Nov. 24, 2015), Order.

#### RESPONSE TO ATTORNEY GENERAL'S SECOND REQUEST, ITEM 34A

Duke Kentucky provided a concept paper that was submitted to the Department of Energy to apply for grid resilience grants in response to Attorney General's Second Request Item 34a. Duke Kentucky argued that the concept paper is proprietary and would give competitors insight into Duke Kentucky's business strategies that could disadvantage Duke Kentucky's business prospects in Kentucky. Duke Kentucky further argued that, although not binding on the Commission, the paper is treated as confidential by the Department of Energy.

#### RESPONSE TO ATTORNEY GENERAL'S SECOND REQUEST ITEM 37

Duke Kentucky provided information related to capacity planning and forecasting for a future period as well as the company's costs in response to Attorney General's response Second Request, Item 37. Duke Kentucky argued that the information is proprietary in nature and would provide insight into the Duke Kentucky's business strategies, plans, and financial condition. Duke Kentucky further argued that the information would be valuable to competitors and vendors and could put Duke Kentucky at a competitive disadvantage in future negotiations.

#### RESPONSE TO ATTORNEY GENERAL'S SECOND REQUEST ITEM 46, ATTACHMENT

Duke Kentucky provided information obtained from third party subscription services and information related to Duke Kentucky's forecasted long-term debt service. Duke Kentucky argued that the information is proprietary and would be valuable to Duke Kentucky's competitors and competitors. Duke Kentucky further argued that releasing third party information could put Duke Kentucky in violation of the terms of the subscription services. Duke Kentucky argued that disclosure could put Duke Kentucky at a

disadvantage for negotiations with vendors and could hinder Duke Kentucky's ability to manage costs and access data.

RESPONSE TO ATTORNEY GENERAL'S SECOND REQUEST, ITEM 52,  
ATTACHMENTS 1-2

Duke Kentucky provided rating information on Duke Kentucky from Moody's and S&P's Global Ratings in its response to Attorney General's Second Request, Item 52, Attachments 1-2. Duke Kentucky argued that the information is paid through a subscription and is proprietary. Duke Kentucky argued that disclosure would cause Duke Kentucky to be in breach of the services contract. Lastly, Duke Kentucky argued that this information would put Duke Kentucky at a competitive disadvantage in future negotiations.

RESPONSE TO ATTORNEY GENERAL'S SECOND REQUEST, ITEM 56, PORTIONS  
OF THE RESPONSE, AND ATTACHMENT 1 AND 3

Duke Kentucky provided information relating to the planned outage O&M expense that includes pricing information in its response to Attorney General's Second Request, Item 56. Duke Kentucky argued that disclosure would provide insight into the negotiated prices of certain products that could put Duke Kentucky at a competitive disadvantage in negotiations with potential vendors.

RESPONSE TO ATTORNEY GENERAL'S SECOND REQUEST, ITEM 58

In response to Attorney General's Second Request, Item 58, Duke Kentucky provided descriptions and data used for variables listed for the resident class in the Excel Spreadsheet originally provided in Duke Kentucky's response to the Attorney General's First Request, Item 154a. This response also includes information about forecasted customer usage and sales. Duke Kentucky argued that this proprietary information would

put Duke Kentucky at a competitive disadvantage in future negotiations and would provide insight into Duke Kentucky's financial condition.

RESPONSE TO ATTORNEY GENERAL'S SECOND REQUEST, ITEM 60

Duke Kentucky provided information, including calculations about the test-year pension and other post-employment benefits (OPEB) cost and expenses created by a third party. Duke Kentucky argued that the information is proprietary and would give insight into Duke Energy, Duke Energy Ohio, and Duke Kentucky's financial condition, and could all companies at the competitive disadvantage in negotiations with potential vendors. Duke Kentucky further argued that disclosure could also inhibit the companies' ability to properly manage costs.

RESPONSE TO STAFF'S THIRD REQUEST, ITEM 1, ATTACHMENT 3

Duke Kentucky provided information relating to Duke Kentucky's costs in its response to Staff's Third Request, Item 1, Attachment 3. Duke Kentucky argued that the Commission had previously granted confidential treatment to this information.<sup>10</sup>

RESPONSE TO STAFF'S THIRD REQUEST, ITEM 9, ATTACHMENT B

Duke Kentucky provided information relating to calculations of capacity purchase rates that include vendor pricing and cost information in response to Staff's Third Request, Item 9, Attachment b. Duke Kentucky argued that the information is proprietary and if disclosed would provide insight into the business plans, vendor pricing, costs, and strategies of Duke Kentucky. Duke Kentucky further argued that if disclosed, the

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<sup>10</sup> Case No. 2016-00152, *Application of Duke Energy Kentucky, Inc. For (1) a Certificate of Public Convenience and Necessity Authorizing the Construction of an Advanced Metering Infrastructure; (2) Request for Accounting Treatment; and (3) All Other Necessary Waivers, Approvals, and Relief*, (Ky. PSC Jan. 2, 2019), Order.

information could impact future negotiations with vendors and inhibit Duke Kentucky's ability to manage its costs.

## FINDINGS

Having considered the petition and the material at issue, the Commission finds that Duke Kentucky's petition should be granted. The Commission has previously found that forecasted revenues, like the ones provided in response to Sierra Club's Second Request, Item 1, be afforded confidential treatment.<sup>11</sup> The Commission has previously granted confidential treatment to the information related to operating costs, capital expenditures, and revenues contained in response to Sierra Club's Second Request, Item 2, Attachments 1-7.<sup>12</sup> Disclosing information about the bilateral firm capacity contract between Duke Kentucky and a third party provided in response to Sierra Club's Second Request Item 5c could limit Duke Kentucky's ability to negotiate contracts in the future. The Commission has previously granted confidential treatment for bilateral capacity contracts.<sup>13</sup> Therefore, the Commission finds the responses to Sierra Club's Second Request, Item 1; Item 2, Attachments 1-7; and Item 5c are generally recognized as confidential or proprietary and therefore meet the criteria for confidential treatment and should be exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878 (1)(c)(1).

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<sup>11</sup> See Case No. 2014-00453, *An Examination of the Application of the Fuel Adjustment Clause of Louisville Gas & Electric Company from November 1, 2012 Through October 31, 2014* (Ky. PSC Jan. 24, 2019), Order.

<sup>12</sup> See Case No. 2019-00443, *Electronic 2019 Integrated Resource Planning Report of Kentucky Power Company*, (Ky. PSC Mar. 3, 2020) Order.

<sup>13</sup> See Case No. 2023-00159, *Electronic Application of Kentucky Power Company for (1) A General Adjustment of Its Rates for Electric Service; (2) Approval of Tariffs and Riders; (3) Approval of Accounting Practices. to Establish Regulatory Assets and Liabilities; (4) A Securitization Financing Order; and (5) All Other Required Approvals and Relief*, (Ky. PSC Sept. 12, 2023), Order at 4.



The Commission has previously granted confidential treatment to CEII in the past.<sup>14</sup> Therefore, the Commission finds the response to Sierra Club's Second Request, Item 12 is generally recognized as confidential or proprietary; it therefore meets the criteria for confidential treatment and should be exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878 (1)(m).

Disclosure of modeling results provided in response to Attorney General's Second Request, Item 13, Attachment, would give competitors insight into much of Duke Kentucky's financial information and could put the company at a competitive disadvantage. The Commission has previously granted confidential treatment to financial models as well as projections of coal and fuel prices, operating costs, capital project costs, and projected revenue amounts.<sup>15</sup>

Disclosure of the concept paper provided in response to Attorney General's Second Request Item 34a, could result in a competitive disadvantage to Duke Kentucky. Although not binding on the Commission, the paper is treated as confidential by the Department of Energy.

Disclosure of the information related to capacity planning and forecasting for future periods as well as Duke Kentucky's costs provided in response to Attorney General's

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<sup>14</sup> See Case No. 2018-00195, *Electronic 2018 Integrated Resource Plan of Duke Energy Kentucky, Inc.* (Ky. PSC Sept. 3, 2019), Order. Case No. 2018-00287, *Electronic Application of Kentucky Power Co. for 1) Authority Under KRS 278.2207(2) and KRS 278.2219 to the Extent Required to Enable the Company to Pay Fees and Costs Imposed by the Grid Assurance, LLC Subscription Agreement; 2) the Grant of All Other Required Approvals and Relief* (Ky. PSC Oct. 16, 2018), Order.

<sup>15</sup> See Case No. 2018-00146, *In the Matter of: Application of Big Rivers Electric Corporation for Termination of Contracts and A Declaratory Order and for Authority to Establish A Regulatory Asset* (Ky. PSC Sept. 17, 2019), Order.

Second Request, Item 37, could put Duke Kentucky at a commercial disadvantage by providing insight into Duke Kentucky's business plans.

Disclosing the information obtained from third party subscription services and information related to Duke Kentucky's forecasted long-term debt issuance provided in response to Attorney General's Second Request, Item 46, Attachment, could put Duke Kentucky at a commercial disadvantage and disadvantage their relationship with third party subscription services. The Commission has previously granted confidential treatment for information relating to Duke Kentucky's historical capital structure, which includes long term-debt.<sup>16</sup>

Disclosure of the ratings information on Duke Kentucky from Moody's Investor Service and S&P Global Ratings provided in response to Attorney General's Second Request, Item 52, Attachments 1-2 would put Duke Kentucky at a commercial disadvantage and violate their contractual obligations. The Commission has previously held that reports and credit opinions from subscription-based rating services such as Moody's and S&P Global Ratings should be granted confidential treatment.<sup>17</sup>

Disclosure of the description and data of variables used to forecast future customer usage and sales provided in response to Attorney General's Second Request, Item 58,

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<sup>16</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), Order at 8 and 11 (granting Duke Kentucky's October 28, 2019 petition for confidential treatment).

<sup>17</sup> See Case No. 2021-00190, *Electronic Application of Duke Energy Kentucky, Inc. for: 1) an Adjustment of the Natural Gas Rates; 2) Approval of New Tariffs, and 3) All Other Required Approvals, Waivers, and Relief* (Ky. PSC Apr. 14, 2022), Order; and Case No. 2021-00481, *Electronic Joint Application of American Electric Power Company, Inc., Kentucky Power Company., and Liberty Utilities Company for Approval of the Transfer of Ownership & Control of Kentucky Power Co.* (Ky. PSC Mar. 29, 2022), Order.

could put Duke Kentucky at a competitive disadvantage by providing insight into future planning.

Disclosure of the information, including calculations, about the test-year pension and OPEB cost and expense created by a third party provided in response to Attorney General's Second Request Item 60, Attachment, could put Duke Kentucky at a commercial disadvantage with vendors in the future. The Commission has previously found that reports with information about pension computations and compensation created by third parties should be granted confidential treatment.<sup>18</sup>

Therefore, the Commission finds the responses to Attorney General's Second Request, Item 12 Attachment; Item 12, Attachment; Item 34a, Attachment; Item 37; Item 46 Attachment; Item 52, Attachments 1-2; Item 56, portions of the response, Attachments 1 and 3; Item 58; and Item 60, Attachment, are generally recognized as confidential or proprietary and therefore meets the criteria for confidential treatment and should be exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878 (1)(c)(1).

The Commission previously held that the information related to Duke Kentucky's costs provided in response to Staff's Third Request Item 1, Attachment 3, should be granted confidential treatment.<sup>19</sup> Information similar to the information relating to calculations of capacity purchase rates that include vendor pricing and cost information

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<sup>18</sup> See Case No. 2021-00190, *Electronic Application of Duke Energy Kentucky, Inc. for: 1) an Adjustment of the Nat. Gas Rates; 2) Approval of New Tariffs, and 3) All Other Required Approvals, Waivers, and Relief* (Ky. PSC Apr. 14, 2022), Order at 4.

<sup>19</sup> Case No. 2016-00152, *Application of Duke Energy Kentucky, Inc. For (1) a Certificate of Public Convenience and Necessity Authorizing the Construction of an Advanced Metering Infrastructure; (2) Request for Accounting Treatment; and (3) All Other Necessary Waivers, Approvals, and Relief*, (Ky. PSC Jan. 2, 2019), Order.

provided in response to Staff's Third Request, Item 9, Attachment b, have previously been found to be afforded confidential treatment by the Commission.<sup>20</sup> Therefore, the Commission finds the responses to Staff's Third Request Item 1, Attachment 3, and Item 9, Attachment b, are generally recognized as confidential or proprietary and therefore meet the criteria for confidential treatment and should be exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878 (1)(c)(1).

IT IS THEREFORE ORDERED that:

1. Duke Kentucky's petition for confidential treatment is granted.
2. The designated material granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for 20 years except Duke Kentucky's response to Sierra Club's Second Request, Item 12, Attachment, which will not be placed in the public record or made available for public inspection confidential for an indefinite period.
3. 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).
4. Duke Kentucky shall inform the Commission if the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment.
5. 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

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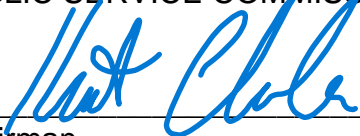
<sup>20</sup> See, Case No. 2015-00194, *Investigation of Kentucky Utilities Company's and Louisville Gas and Electric Company's Respective Need for and Cost of Multiphase Landfills at the Trimble County and Ghent Generating Stations* (Ky. PSC Jan. 27, 2016), Order at 1.

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.

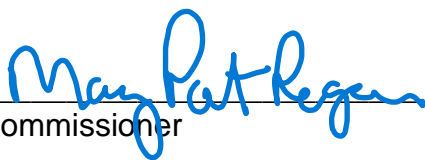
6. The Commission shall not make the requested material available for inspection for 30 days from the date of service of an Order finding that the material no longer qualifies for confidential treatment in order to allow Duke Kentucky to seek a remedy afforded by law.

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Chairman

  
Vice Chairman

  
Commissioner

ENTERED  
OCT 30 2023  
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