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**VIA TARIFF FILING SYSTEM**

October 24, 2022

Ms. Linda Bridwell  
Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard  
Frankfort, Kentucky 40602-0615

**Re: Tariff Filing ID. TFS2022-\_\_\_\_\_**

Dear Ms. Bridwell:

Enclosed please find the following contract to which Duke Energy Kentucky, Inc. is a party:

- Economic Development Incentive Service Agreement with Diversey, Inc.

In addition, please find Duke Energy Kentucky, Inc.'s Petition for Confidential Treatment. The confidential information will be submitted under seal.

I certify that the electronically filed documents are true and accurate copies of the original documents. The Company will retain the original filing in paper medium as the requirement to file it with the Commission was permanently granted a deviation in Case No. 2020-00085.

Respectfully submitted,

/s/Rocco D'Ascenzo

Rocco D'Ascenzo (92796)  
Deputy General Counsel  
Duke Energy Business Services LLC  
139 East Fourth Street, 1303-Main  
Cincinnati, Ohio 45202  
Phone: (513) 287-4320  
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Email: rocco.d'ascenzo@duke-energy.com  
Counsel for Duke Energy Kentucky, Inc.

Enclosures: As stated

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

DUKE ENERGY KENTUCKY, INC.'S )  
ECONOMIC DEVELOPMENT INCENTIVE ) Tariff Filing ID. TFS2022-\_\_\_\_\_  
SERVICE AGREEMENT WITH )  
DIVERSEY, INC. )

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**PETITION OF DUKE ENERGY KENTUCKY, INC.**  
**FOR CONFIDENTIAL TREATMENT OF INFORMATION**  
**CONTAINED IN ITS AGREEMENT WITH DIVERSEY, INC.**

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Duke Energy Kentucky, Inc. (Duke Energy Kentucky or Company), pursuant to 807 KAR 5:001, Section 13, respectfully requests the Commission to classify and protect certain information provided by Duke Energy Kentucky, specifically the Agreement between Diversey, Inc. (Diversey) (Agreement). The information included in the Agreement for which Duke Energy Kentucky now seeks confidential treatment (Confidential Information), includes customer account information, specific load information, and competitive pricing.

In support of this Petition, Duke Energy Kentucky states:

1. The Kentucky Open Records Act exempts from disclosure certain commercial information. KRS 61.878(1)(c). To qualify for this exemption and, therefore, maintain the confidentiality of the information, a party must establish that disclosure of the commercial information would permit an unfair advantage to competitors of that party. Public disclosure of the information identified herein would, in fact, prompt such a result for the reasons set forth below.

2. The information submitted and for which the Company is seeking confidential protection is customer specific account and load information, including amount of and pricing of

services for a possible facility in the electric territory of Duke Energy Kentucky at 7900 Foundation Drive, Florence, KY. If made public, this information would provide the specific customer account and load information as well as negotiated third party supply information. This information details how the customer operates and uses electric that would give that customer's competitors a distinct advantage.

3. The Confidential Information is distributed within Duke Energy Kentucky, only to those who must have access for business reasons and is generally recognized as confidential and proprietary in the energy industry.

4. The Confidential Information for which Duke Energy Kentucky is seeking confidential treatment is not known outside of Duke Energy Corporation.

5. Duke Energy Kentucky does not object to limited disclosure of the confidential information described herein, pursuant to an acceptable protective agreement, with the Attorney General or other intervenors with a legitimate interest in reviewing the same.

6. This information was, and remains, integral to Duke Energy Kentucky's effective execution of business decisions. And such information is generally regarded as confidential or proprietary. Indeed, as the Kentucky Supreme Court has found, "information concerning the inner workings of a corporation is 'generally accepted as confidential or proprietary.'" *Hoy v. Kentucky Industrial Revitalization Authority*, 904 S.W.2d 766, 768 (Ky. 1995).

7. In accordance with the provisions of 807 KAR 5:001, Section 13(3), the Company is filing one copy of the Confidential Information separately under seal, and one copy without the Confidential Information included.

8. Duke Energy Kentucky respectfully requests that the Confidential Information be withheld from public disclosure for a period of five years. This will assure that the Confidential

Information – if disclosed after that time – will no longer be commercially sensitive so as to likely impair the interests of the Company or its customers if publicly disclosed.

9. To the extent the Confidential information becomes generally available to the public, whether through filings required by other agencies or otherwise, Duke Energy Kentucky will notify the Commission and have its confidential status removed, pursuant to 807 KAR 5:001 Section 13(10)(a).

WHEREFORE, Duke Energy Kentucky, Inc., respectfully requests that the Commission classify and protect as confidential the specific information described herein.

Respectfully submitted,

DUKE ENERGY KENTUCKY, INC.

/s/Rocco D'Ascenzo  
Rocco O. D'Ascenzo (92796)  
Deputy General Counsel  
Duke Energy Business Services LLC  
139 East Fourth Street, 1303 Main  
Cincinnati, Ohio 45202  
Phone: (513) 287-4320  
Fax: (513) 370-5720  
rocco.d'ascenzo@duke-energy.com

**CERTIFICATE OF SERVICE**

This is to certify that the foregoing electronic filing is a true and accurate copy of the document in paper medium; that the electronic filing was transmitted to the Commission on October 24, 2022; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that submitting the original filing to the Commission in paper medium is no longer required as it has been granted a permanent deviation.<sup>1</sup>

*/s/Rocco D'Ascenzo* \_\_\_\_\_  
Rocco O. D'Ascenzo

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<sup>1</sup>*In the Matter of Electronic Emergency Docket Related to the Novel Coronavirus COVID-19*, Order, Case No. 2020-00085 (Ky. P.S.C. July 22, 2021).

**ECONOMIC DEVELOPMENT INCENTIVE SERVICE AGREEMENT.**

This Economic Development Incentive Service Agreement ("Agreement"), is entered into and effective this 8<sup>th</sup> day of July, 2022, between Duke Energy Kentucky, Inc., (Duke Energy Kentucky) and Diversey, Inc. "Customer" shall mean Diversey, Inc., located at 1300 Altura Boulevard, Suite 125, Fort Mill, SC 29708. "Duke Energy Kentucky" shall mean Duke Energy Kentucky, Inc. "New Load" shall mean new electric load associated with any of the following; (1) initial permanent service to new establishments, (2) expansion of existing establishments, or (3) new customers in existing establishments. "Commission" shall mean the Kentucky Public Service Commission. Customer and Duke Energy Kentucky shall be referred to individually as a "Party" and collectively as "Parties."

**Witnesseth:**

**WHEREAS**, Customer is considering locating facilities in the electric service territory of Duke Energy Kentucky at 7900 Foundation Drive, Florence, KY the "Project");

**WHEREAS**, if Customer does locate the Project within the electric service territory of Duke Energy Kentucky, Customer expects to qualify under the terms of Duke Energy Kentucky's Development Incentive Rider (Rider DIR) as one of the following:

- 1.) a new non-residential customer load associated with initial permanent service to a new establishment within Duke Energy Kentucky's service area; or

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- 2.) a new customer in an existing establishment making application to Duke Energy Kentucky for service under the economic development program of Rider DIR existing non-residential customer expanding facilities; or
- 3.) an existing Duke Energy Kentucky customer, who but for economic incentives being provided by the Commonwealth of Kentucky, would leave Duke Energy Kentucky's service territory; and

**WHEREAS**, Customer affirms they are not considered a new customer as a result of a change in ownership of an existing establishment nor that customer is seeking renewal of service following service interruption such as equipment failure, plant shutdown, strike or economic conditions;

**WHEREAS**, if Customer locates the Project in Duke Energy Kentucky's service territory, Customer will take service under o Duke Energy Kentucky's non-residential rate schedule DT;

**WHEREAS**, Customer desires to have the terms of Rider DIR applied to Duke Energy Kentucky's non-residential tariff schedules;

**WHEREAS**, Duke Energy Kentucky desires to deliver the electrical energy to satisfy Customer's load requirements;

**WHEREAS**, Customer is considering locating [*-minimum of 1,000 kW-* ] kW of new load at the Project and is considering employing an additional workforce in Duke Energy Kentucky's service territory of at least 25 full time equivalent employees (FTE). Customer's current base of employees is 0 FTE at the project site;

**WHEREAS**, Customer is considering making a capital investment of at least \$1 Million;

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**WHEREAS**, Customer agrees to permit Duke Energy Kentucky to verify compliance with terms and conditions of eligibility for the Rider DIR incentive throughout the term of the incentive; and

**WHEREAS**, Customer also affirms that the availability of this Agreement is a factor in its decision to locate its Project in Duke Energy Kentucky's service area; and

**WHEREAS**, if Customer locates the Project in Duke Energy's service territory, Customer anticipates that it will maintain a minimum monthly peak demand for the Project at [REDACTED] kW demand ("Minimum Peak Demand") and a monthly average load factor of [REDACTED] percent ("Minimum Load Factor").

**THEREFORE**, in consideration of providing and receiving service under a non-residential tariff schedule, the parties specifically agree as follows:

**TERMS AND CONDITIONS:**

1. **Customer Location:** This Agreement is effective only to Customer for the Project.
2. **Minimum Demand and Usage:** Following the effective date of this Agreement, Customer agrees that its monthly electric peak demand as measured by Duke Energy Kentucky's meters shall be the Minimum Peak Demand and maintain a minimum monthly average load factor of Minimum Load Factor. Failure to do so will result in the termination of this Agreement and no incentive for the billing period.
3. **Compliance with Rider DIR, Development Incentive Rider:** Customer represents and warrants that it shall qualify under the terms of Duke Energy Kentucky's Rider DIR, Economic Development Rider, including without limitation the following provisions:
  - a. Customer's New Load shall be a minimum of 1,000 kW;



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- b. Customer has applied for and received economic assistance from the Commonwealth of Kentucky or a local government or other public agency;
- c. Customer shall employ an additional workforce in at the Project of a minimum of twenty-five (25) full-time equivalent (FTE) employees per 1,000 kW of New Load; and
- d. Customer's Project shall result in capital investment of one million dollars (\$1,000,000) per 1,000 kW of New Load.

If Customer fails to meet any of the provisions of Rider DIR, the incentive shall not be applied to Customer's bill, and Customer will be billed at the full applicable tariff rate(s).

4. Tariffed Electric Service: The Customer shall comply with all terms of Duke Energy Kentucky's standard tariff rate under which Customer qualifies to take service, except that pursuant to the terms and conditions of Rider DIR, Customer's monthly bill for the electric service shall be reduced by ■ percent ■ for a period of twelve (12) consecutive months. All subsequent billings shall be at the appropriate full standard service tariff rate.

Customer shall continue to take service from Duke Energy Kentucky at the Minimum Peak Demand and Minimum Load Factor for a period of at least two (2) years following the twelve-month incentive period. Customer agrees to be billed monthly for two (2) years following the twelve month incentive period based on the greater of: (a) its actual monthly demand and usage levels' or (b) its average demand and usage levels during the twelve (12) month incentive period. Customer understands that any applicable rate adjustment rider amounts, as listed in the Applicable Riders section of the applicable

standard service tariff (Riders), are excluded from the Rider DIR reduction. Should any change in the rates or discounts referenced herein be ordered by the Commission, payments by Customer to Duke Energy Kentucky for service as provided for herein shall thereafter be made upon the basis of such new rates and discounts as changed and/ or approved by the Commission.

5. Term: The term for service under this Agreement for is for thirty-six (36) consecutive months beginning no later than July 1, 2023. Customer shall provide Duke Energy Kentucky with thirty (30) days' notice to begin receiving the [REDACTED] % reduction described above. All prior and subsequent billings shall be at the appropriate full standard service tariff rate.

This Agreement shall not be renewable. If Customer's demand or load factor falls below the Minimum Peak Demand or Minimum Load Factor, respectively, in any given billing period, Customer understands that there will be no incentive for that billing period and the term of the of the incentive will not be extended beyond the original 12 consecutive month period.

6. Changes in Facilities: Duke Energy Kentucky is not obligated to extend, expand or rearrange its facilities if Duke Energy Kentucky, in its sole discretion, determines that existing distribution/ transmission facilities are of adequate capacity to serve customer's total load. Any changes in facilitates deemed necessary by Duke Energy Kentucky will be installed and subject to Duke Energy's filed electric tariff and may result in additional costs to Customer that are not included or subject to the Rider DIR incentive.

7. Condition Precedent: The provisions of paragraph 2 through 5 are contingent on Customer locating the Project in Duke Energy Kentucky's electric service territory.

8. Entire Agreement: This Agreement constitutes the entire agreement between the Parties related to the subject matter hereof and supersedes all prior or contemporaneous understandings, statements or agreements between the Parties on such subject matter. If, however, a Supplemental Service Agreement is necessary due to complicated installations of electric facilities, any terms of the Supplemental Service Agreement that conflict with this Agreement shall supersede and control this Agreement. Each Party acknowledges and agrees that no employee, officer, agent or representative of the other Party has the authority to make any representation, statements or promises in addition to or in any way different that those contained in the Agreements, and that it is not entering into the Agreements in reliance upon any representation, statements or promises in addition to or in any way different than those contained in the Agreements, and that it is not entering into the Agreements in reliance upon any representation, statement or promise of the other party except as expressly stated in the Agreements.

9. Assignment: This Agreement is for the exclusive benefit of the Parties and shall apply to successors and assigns of Customer as well as Duke Energy Kentucky provided, as to Customer, it continues to display substantially similar load and usage characteristics as those that presently exist as set forth herein and as required pursuant to Duke Energy Kentucky's Rider DIR. The Parties shall not assign their rights or obligations under this agreement without the written consent of the non-assigning party and such written consent shall not be unreasonably withheld.

10. Termination: This Agreement shall automatically and immediately terminate if at any time during the twelve-month period of service under Rider DIR, Customer fails to comply with the terms and conditions of Duke Energy Kentucky's Rider DIR and/ or

fails to maintain the minimum demand and usage levels as defined above. Customer may terminate this Agreement at any time by providing at least 30 days' notice to Duke Energy Kentucky. In the event that Customer, its successors or assigns terminate this Agreement prior to the expiration of this Agreement's term, Customer, its successors or assigns will thereafter be ineligible to take service under Rider DIR at the location specified above.

11. Severability: If any provision under this Agreement shall be invalid or unenforceable with respect to either Party, the remainder of this Agreement shall not be affected and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. To the extent of any conflict between the terms of this Agreement and the terms of any other agreement between Duke Energy Kentucky and Customer regarding the rendering of electric service, this Agreement shall prevail. The terms of such electric service agreement or agreements shall otherwise remain unaffected by this Agreement, and upon termination or expiration of this Agreement, this Agreement shall no longer prevail over any previously conflicting terms of such agreement or agreements.

12. No Waiver of Rights: A failure or delay of either Party to exercise any right or remedy under this Agreement shall not operate to impair, limit, preclude, cancel, waive or otherwise affect such right or remedy

13. Regulatory Approvals: The supplying of, and billing for, service and all conditions applying thereto, are subject to the jurisdiction of the Commission, and to Duke Energy Kentucky's Service Regulations currently in effect, as may be amended from time to time, as approved by the Commission. To enable Duke Energy Kentucky to

report to the Commission specific information that may be required by the Commission, Customer shall provide to Duke Energy Kentucky by June 30 and December 31 of the year following the implementation date of this Agreement the number of jobs created by Customer as a result of its operations at the location specified above.

14. Governing Law: This Agreement, the construction of this Agreement, all rights and obligations between the Parties to this Agreement, and any and all claims arising out of or relating to the subject matter of this Agreement (including tort claims), shall be governed by and construed in accordance with the substantive laws of the Commonwealth of Kentucky without giving any effect to any conflict of law doctrine. The terms of this Agreement are subject to, and incorporate by reference, the terms of the applicable non-residential tariff schedule(s), Duke Energy Kentucky's Electric Service Regulations on file with the Commission and all rules, regulations and orders of the Commission and other governmental bodies having jurisdiction over this Agreement. In the event of any official action by such governmental body that would require action by Duke Energy Kentucky or Customer inconsistent with one or more terms of this Agreement or unacceptable regulatory action as determined by Duke Energy Kentucky, the parties may agree to waive or modify such term or terms. If any agreement to waive or modify is not achieved within a reasonable time, either party may elect to terminate this Agreement upon written notice to the other.

15. Amendments: No modification, amendment, supplement to or waiver of this Agreement or any of its provisions shall be binding unless made in writing and duly signed by the Party to be obligated by, or to perform, such modification.

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16. Indemnification: Duke Energy Kentucky and Customer shall defend, indemnify, and hold harmless the non-breaching party from any and all claims by third parties including the government regarding the enforcement or breach of this Agreement, including but not limited to, property damages, environmental damages, contract damages, fines, or penalties arising from or in connection with the provision or acceptance of competitive retail electric service arising from or in connection with the performance of this Agreement.

17. Notices: All notices, demands, and statements to be given hereunder shall be given in writing to the parties at the addresses appearing herein below and will be effective upon actual receipt:

To Customer:

Diversey, Inc.  
1300 Altura Boulevard, Suite 125  
Fort Mill, SC 29708  
Attn: Procurement

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With a copy to Legal Department (same address)

To Duke Energy Kentucky:

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

or such other address as is provided in writing by the recipient from time to time. Payments shall be made by check or cash to the account designated by the payee from time to time.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their authorized representatives as of the 8<sup>th</sup> day of July, 2022.

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DUKE ENERGY KENTUCKY, INC.

By: Greg Belpate

Title: President, Duke Energy Kentucky

DIVERSEY, INC

By: R.P. McComi

Title: Assistant Treasurer + V.P. Taxes