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BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION

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**PUBLIC SERVICE
COMMISSION**

Application of Duke Energy Kentucky, Inc.)
for Approval of Energy Efficiency Plan Including)
an Energy Efficiency Rider and Portfolio of)
Energy Efficiency Programs)

Case No. 2008- 00495

PETITION OF DUKE ENERGY KENTUCKY, INC.
FOR CONFIDENTIAL TREATMENT OF INFORMATION
CONTAINED IN ITS APPLICATION FOR APPROVAL OF ENERGY EFFICIENCY
PLAN AND PORTFOLIO OF ENERGY EFFICIENCY PROGRAMS

Duke Energy Kentucky, Inc. (“Duke Energy Kentucky” or the “Company”), pursuant to 807 KAR 5:001, Section 7, respectfully requests the Commission to classify and protect certain information in Confidential Attachment RGS-3, attached to the Direct Testimony of Duke Energy Kentucky Witness Richard G. Stevie and Confidential Attachment DF-1 attached to the Direct Testimony of Company Witness David Freeman. The testimony and aforementioned attachments are submitted in support of Duke Energy Kentucky’s Application for Approval of Energy Efficiency Plan and Portfolio of Energy Efficiency Programs (the “Application”) contemporaneously filed with this Petition.

The information in Confidential Attachment RGS-3 for which Duke Energy Kentucky seeks confidential treatment generally includes: (1) detailed information regarding projected costs; (2) information regarding projected sales and revenue requirements; (3) detailed information on avoided costs; and (4) load impacts for each program in the Application.

Confidential Attachment DF-1 consists of Duke Energy Kentucky's 2008 Integrated Resource Plan ("IRP") filed in Case No 2008-248.¹ Duke Energy Kentucky requests certain information contained in the IRP identified as Confidential Attachment DF-1 be afforded confidential treatment. The portions of the DF-1 which the Company seeks confidential treatment generally include: (1) information related to operations and management ("O&M") costs, projected fuel and environmental compliance costs, power market prices, projected capacity, and resource alternative capital costs; (2) information regarding projected sales and revenue requirements; (3) supply-side screening curves and resource evaluations; (4) third party-owned and licensed modeling tools; and (5) critical transmission system maps. Moreover, Duke Energy Kentucky's transmission system maps show the location of critical infrastructure necessary to deliver safe and reliable electric service to its customers. The public release of this information would create a security risk for both the Company and its customers. The information contained in Confidential Attachment DF-1 was granted confidential protection in Case No. 2008-248.²

The public disclosure of the information described above would place Duke Energy Kentucky at a commercial disadvantage as it negotiates contracts with various suppliers and vendors and potentially harm Duke Energy Kentucky's competitive position in the marketplace, to the detriment of Duke Energy Kentucky and its customers. Moreover, Duke Energy Kentucky's transmission system maps contained in the IRP show the location of critical infrastructure necessary to deliver safe and reliable electric service to its customers.

¹ Duke Energy Kentucky is seeking confidential treatment of the same limited information contained in its IRP that was approved as confidential by the Commission's Letter Dated August 13, 2008 and its September 19, 2008 Order in Case No. 2008-248.

² *Id.*

The public release of this information would create a security risk for both the Company and its customers.

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 contained in Confidential Attachment RGS-3 regarding avoided power production costs that Duke Energy Kentucky wishes to protect from public disclosure -- including projected costs, revenues, avoided costs and load impacts for each program in the Application -- is identified in the filing submitted concurrently herewith. This information was developed internally by Duke Energy Kentucky personnel, is not on file with any public agency, and is not available from any commercial or other source outside Duke Energy Kentucky. The aforementioned information is distributed within Duke Energy Kentucky only to those employees who must have access for business reasons. If publicly disclosed, this information setting forth Duke Energy Kentucky's avoided costs of generation and projected load impacts give the Company's vendors and suppliers an obvious advantage in any contractual negotiations the Company. Any public disclosure would give Duke Energy Kentucky's contractors, vendors and competitors access to Duke Energy Kentucky's cost and operational parameters, as well as insight into its contracting practices. Competitors, suppliers, project bidders or potential equipment vendors would have ready access to Duke

Energy Kentucky's resource cost estimates and operation values given them enough information to determine a floor for any bid or proposed price. No sophisticated vendor would consider making an offer at anything lower than Duke Energy Kentucky's expected cost. Such access would impair Duke Energy Kentucky's ability to negotiate with prospective contractors and vendors, and could harm the Company's competitive position in the power market, ultimately affecting the costs to serve customers.

3. The information contained in Confidential Attachment DF-1 that Duke Energy Kentucky wishes to protect from public disclosure has already been given confidential protection in another proceeding.³ Duke Energy Kentucky is merely requesting to continue this same protection here. The confidential information contained in Confidential Attachment DF-1 includes the vertical "Y-axis labels" of its supply side screening curves, projected costs of fuel and O&M expenses, capital costs, power market prices, projected capacity and present value revenue requirements ("PVRR"). This confidential IRP information was developed internally by Duke Energy Kentucky personnel or pursuant to third party contracts and is only available to those employees who must have access for business reasons. This information is not publicly on file with any agency, and is not available from any commercial or other source outside Duke Energy Kentucky. If publicly disclosed, this information could give competitors an advantage in bidding for and securing new resources. Similarly, disclosure would afford an undue advantage to Duke Energy Kentucky's vendors and suppliers as they would enjoy an obvious advantage in any contractual negotiations to the extent they could calculate Duke Energy Kentucky's requirements and what Duke Energy Kentucky anticipates those requirements to cost. Finally, public disclosure of this information, particularly as it relates to supply-side

³ *Id.*

alternatives, would reveal the business model Duke Energy Kentucky uses -- the procedure it follows and the factors and inputs it considers -- in evaluating the economic viability of various generation related projects. Public disclosure would give Duke Energy Kentucky's contractors, vendors and competitors access to Duke Energy Kentucky's cost and operational parameters, as well as insight into its contracting practices. Such access would impair Duke Energy Kentucky's ability to negotiate with prospective contractors and vendors, and could harm the Duke Energy Kentucky's competitive position in the power market, ultimately affecting the costs to serve customers.

4. In developing the 2008 IRP contained in Confidential Attachment DF-1, Duke Energy Kentucky used certain confidential and proprietary data modeling belonging to third parties who take reasonable steps to protect their confidential information. Duke Energy Kentucky used forecasts of various commodities and inputs such as SO₂ emission allowances prices, NO_x emission allowance prices, mercury emission allowance prices, power market prices, coal prices, gas prices, and oil prices developed by an independent third party, Ventyx Energy, LLC, subject to confidentiality restrictions. Duke Energy Kentucky is contractually bound to maintain such information confidential and it is in the best interests of customers to maintain it as such. If allowance brokers or equipment vendors knew Duke Energy Kentucky's forecasted emissions and fuel prices, by station or otherwise, such brokers or vendors would have an unfair advantage in negotiating future emission allowance or emission control equipment sales, to the detriment of Duke Energy Kentucky and its customers.

5. Finally, Duke Energy Kentucky requests confidential treatment for the transmission system maps included in the IRP contained in Confidential Attachment DF-1.

These maps show the location of Critical Energy Infrastructure Information (“CEII”), which has been granted confidential treatment in the past. Duke Energy Kentucky takes all reasonable steps in order to protect the CEII, including, but not limited to, only sharing such information internally on a need to know basis. The reliability entities with access to such data, such as Midwest Independent System Operator (“MISO”) also take appropriate precautions to protect such data. This information needs to be kept confidential in order to continue to provide delivery of safe and reliable electric service to Duke Energy Kentucky customers. The release of this information would provide a security risk for the Company and its customers.

5. The information for which Duke Energy Kentucky is seeking confidential treatment is not known outside of Duke Energy Kentucky.

6. The information that Duke Energy Kentucky seeks confidential treatment herein demonstrates on its face that it merits confidential protection. If the Commission disagrees, however, it must hold an evidentiary hearing to protect the due process rights of the Company and supply the Commission with a complete record to enable it to reach a decision with regard to this matter. *Utility Regulatory Commission v. Kentucky Water Service Company, Inc.*, Ky. App., 642 S.W.2d 591, 592-94 (1982).

7. Duke Energy Kentucky does not object to limited disclosure of the confidential information described herein, pursuant to an acceptable protective agreement, to the Attorney General or other intervenors with a legitimate interest in reviewing the same for the purposes of participating in the above-styled proceeding.

8. In accordance with the provisions of 807 KAR 5:001 Section 7, the Company is filing with the Commission one copy of the confidential portions of Confidential

Attachment RGS-3 and Confidential Attachment DF-1 under seal and ten (10) copies without the confidential information.

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.



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of Duke Energy Kentucky, Inc.'s Petition for Confidential Treatment of Information Contained in Duke Energy Kentucky, Inc.'s Application was served on the following by overnight mail, this 1st day of December 2008.



Rocco O. D'Ascenzo

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