



DUKE ENERGY CORPORATION

139 East Fourth Street
P.O. Box 960
Cincinnati, OH 45201-0960
Telephone: (513) 419-1805
Facsimile: (513) 419-1846

Kristen Cocanougher
Sr. Paralegal
E-mail: Kristen.cocanougher@duke-energy.com

VIA OVERNIGHT DELIVERY

September 27, 2010

Mr. Jeff Derouen
Executive Director
Kentucky Public Service Commission
211 Sower Blvd
Frankfort, KY 40601

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SEP 28 2010

**PUBLIC SERVICE
COMMISSION**

Re: Case No. 2010-00203

Dear Mr. Derouen:

Enclosed please find an original and twelve copies of Duke Energy Kentucky Inc.'s Public supplemental response to MISO-DR-02-007(c) in Midwest ISO's Second Set of Data Requests and Petition for Confidential Treatment in the above captioned case. Also enclosed in the white envelope is one set of the confidential response to MISO-DR-02-007(c) being filed under seal.

Please date-stamp the two copies of the letter, the Data Request and the Petition and return to me in the enclosed envelope.

Sincerely,

Kristen Cocanougher

cc: Parties of record

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**PUBLIC SERVICE
COMMISSION**

**BEFORE THE
KENTUCKY PUBLIC SERVICE COMMISSION**

In The Matter of:

Duke Energy Kentucky, Inc.'s Application for Approval) Case No. 2010-203
To Transfer Functional Control of its Transmission Assets)
From the Midwest Independent Transmission System)
Operator to the PJM Interconnection Regional Transmission)
Organization And Request for Expedited Treatment)

**PETITION OF DUKE ENERGY KENTUCKY, INC.
FOR CONFIDENTIAL TREATMENT OF INFORMATION CONTAINED IN
ITS SUPPLEMENTAL RESPONSE TO MIDWEST ISO'S SECOND SET OF
DATA REQUESTS**

Duke Energy Kentucky, Inc. (Duke Energy Kentucky or Company), pursuant to 807 KAR 5:001, Section 7, respectfully requests the Commission to classify and protect certain information provided by Duke Energy Kentucky in its supplemental response to data request No. 7(c) in Midwest ISO's data requests, as requested by Midwest Independent Transmission System Operator (Midwest ISO) in this case on August 13, 2010. This request specifically asks:

(c) Other than those provided in subpart (b), provide all written or documented analyses by or on behalf of DEK about realigning with PJM, not realigning if Duke Energy Ohio realigns, or the effects of either action.

With respect to the non-privileged information that is responsive to the aforementioned request, Duke Energy Kentucky objected to Midwest ISO's request based upon the confidential nature of the information contained in the request. On September 17th, 2010, Duke Energy Kentucky and the Midwest ISO executed a Confidentiality Agreement

whereby the Midwest ISO and Duke Energy Kentucky agreed to the treatment of confidential information exchanged between the parties.

The information for which the Midwest ISO sought through discovery and that Duke Energy Kentucky now seeks confidential treatment (Confidential Information) pertains to the Company's proprietary analysis of its generation portfolio including capacity valuation in PJM Interconnection, as well as assumptions of forward markets for both capacity and energy.

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). Significantly, this rule applies to those records that are generally recognized as confidential or proprietary. And provided the records at issue satisfy this general characterization, they are subject to protection where the disclosure of such information would otherwise result in an unfair advantage to competitors of the party seeking non-disclosure. Public disclosure of the information identified herein would, in fact, prompt such a result for the reasons set forth below.

2. The information for which Duke Energy Kentucky seeks protection concerns its review and assessment of financial projections and forecasts related to future capacity markets. Furthermore, the Confidential Information at issue herein also relates to Duke Energy Kentucky's analysis of its generation portfolio, including future capacity positions. 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*, Ky., 904 S.W.2d 766, 768.

3. Disclosure of the Confidential Information, which includes individual factors underlying Duke Energy Kentucky’s analysis of its generation portfolio and forecasts related to future capacity value in PJM Interconnection, would damage Duke Energy Kentucky’s position and business interests. This information reveals the Company’s proprietary analysis of its generation portfolio, including load and capacity positions for many years in to the future which were used to value its generation portfolio, as well as assumptions for market prices for capacity for many years into the future. If the Commission grants public access to the Confidential Information contained in supplemental data request No. 7, potential parties to future bilateral capacity agreements could gain insight into Duke Energy Kentucky’s valuation of its own capacity position as well as its view of the PJM Interconnection and Midwest ISO markets, thereby putting the Company at a disadvantage in negotiations. Moreover, release of the Company’s analysis and assumptions could give potential competitors for similar products insight into Duke Energy Kentucky’s own valuation thereby creating the potential to manipulate market pricing or undermine Duke Energy Kentucky’s ability to secure reasonable cost products in the market.

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

5. On September 10, 2010, the Commission ordered similar information filed with the Commission as confidential in Duke Energy Kentucky’s response to Staff’s Data Request No. 9. That information related to the results of the analysis of potential

generation capacity valuation in different regional transmission organizations forecasted over a 10 year period. The analysis that the Company seeks confidential treatment in this filing contains the underlying data and calculations that support the information already deemed confidential by the Commission.

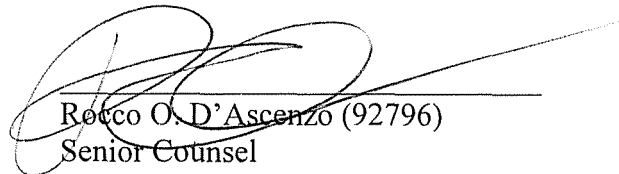
6. Duke Energy Kentucky and Midwest ISO executed a Confidentiality Agreement on September 17, 2010 to govern the disclosure and use of confidential information in this case.

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

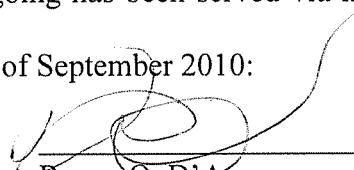
DUKE ENERGY KENTUCKY, INC.



Rocco O. D'Ascenzo (92796)
Senior Counsel
Amy B. Spiller (85309)
Associate General Counsel
Duke Energy Business Services, LLC
139 East Fourth Street, Rm 25 AT II
Cincinnati, Ohio 45201-0960
Phone: (513) 419-1852
Fax: (513) 419-1846
e-mail: rocco.d'ascenzo@duke-energy.com

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been served via hand delivery to the following party on this 27th day of September 2010:



Rocco Q. D'Ascenzo

Hon. Dennis Howard Office of the Attorney General Utility Intervention and Rate Division 1024 Capital Center Drive Frankfort, Kentucky 40601	Katherine K Yunker John B. Park Yunker & Park, PLC P.O. Box 21784 Lexington, KY 40522-1784
Keith Beall Esquire P.O. Box 4202 Carmel, Indiana 46082-4202	Honorable Jason R Bentley Attorney at Law McBrayer, McGinnis, Leslie & Kirkland PLLC 305 Ann Street Suite 308 Frankfort, KY 40601

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MISO-DR-02-007

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COMMISSION

REQUEST:

In its responses to the Midwest ISO and Commission Staff data requests, DEK (a) claims that it is DEK's choice or "business decision" to realign with PJM, *see, e.g.*, MISO-DR-01-020, -021; and (b) states that it "believes" or "anticipates" that moving to PJM (relative to remaining in the Midwest ISO) will or has the potential to be beneficial, *see, e.g.*, MISO-DR-01-013(a), STAFF-DR-01-009; but (c) has not performed various analyses or made determinations about the risks, costs, or other effects of that move, *see, e.g.*, MISO-DR-01-013(b), STAFF-DR-01-010.

- a. Did DEK make an independent decision to realign on its own analysis that realignment was in its best interest? If so, identify the person(s) within DEK whose decision it was. If not, who made the decision and on consideration of whose interests?
- b. There is a reference in MISO-DR-01-021 to "Duke Energy Kentucky's analysis of the situation." Provide any writing or document constituting, memorializing, or reflecting DEK's "analysis of the situation" — whether a study, calculations, memo, summary of results, or description of an analysis made. As to each unwritten or undocumented analysis, identify by whom and when performed and describe the analysis.
- c. Other than those provided in subpart (b), provide all written or documented analyses by or on behalf of DEK about realigning with PJM, not realigning if Duke Energy Ohio realigns, or the effects of either action.
- d. Other than those provided in subparts (b) and (c), provide all written or documented analyses that consider DEK's realigning with PJM, not realigning if Duke Energy Ohio realigns, or the effects of either action — even if the analysis is not specific to DEK.

RESPONSE:

- a. Duke Energy Kentucky's decision to realign its RTO affiliation was based on the interests of Duke Energy Kentucky. This decision was made by the Duke Energy executive management team.

- b. The reference in MISO-DR-01-021 regarding an “analysis of the situation” refers to Duke Energy Ohio’s decision to realign creating an opportunity for Duke Energy Kentucky to realign as well in order to maintain operational efficiencies. Duke Energy Kentucky’s reasons to realign with Duke Energy Ohio, *i.e.*, “analysis of the situation,” as referenced in MISO-DR-01-21, is described in the direct testimony of John D. Swez, James B. Gainer, and William Don Wathen Jr.
- c. Objection. This request is overbroad and unduly burdensome given the lack of time parameters for which the information is requested. The request further seeks confidential proprietary trade secret information that describes Duke Energy Kentucky’s assumptions of the market and its business strategy as well as privileged information protected by attorney client privilege and attorney work product. Without waiving said objections, please see response to Staff DR 02-09.
- d. Objection. This request is overbroad and unduly burdensome given the lack of time parameters for which the information is requested. To the extent it seeks information not specific to Duke Energy Kentucky, this Document Request seeks information that is irrelevant to this Kentucky proceeding and not likely to lead to the discovery of admissible evidence. The request is further objectionable in that it seeks confidential proprietary trade secret information that describe Duke Energy Kentucky’s assumptions of the market and its business strategy as well as privileged information protected by attorney client privilege and attorney work product.

PERSON RESPONSIBLE: (a, b) - James B. Gainer
As to Objection (c, d) – Legal