

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC INVESTIGATION OF THE)	
RELIABILITY MEASURES OF KENTUCKY'S)	CASE NO.
JURISDICTIONAL ELECTRIC DISTRIBUTION)	2011-00450
UTILITIES)	

ORDER

On May 1, 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 an indefinite time for portions of Duke Kentucky's annual reliability report and vegetation management plan update, which contains the physical location of critical utility infrastructure, including substations and circuits.

LEGAL STANDARD

Commission regulation 807 KAR 5:001, Section 13(2)(a)(1) states that a request for confidential treatment of material submitted in a case is made by petition that establishes specific grounds pursuant to KRS 61.878 for classification of that material as confidential. Additionally, 807 KAR 5:001, Section 13(2)(c) states that the burden of proof to show that the material falls within the exclusions established in KRS 61.878.

KRS 61.878(1)(c)(1) exempts from public disclosure material that is confidential and proprietary that, if publicly disclosed, would permit an unfair commercial advantage to competitors of the entity that disclosed the records.

KRS 61.878(1)(m) exempts from public disclosure information pertaining to critical energy infrastructure that, if publicly disclosed, would have a reasonable likelihood of

threatening the public safety by exposing a vulnerability in preventing, protecting against, and mitigating a terrorist act.

PETITION FOR CONFIDENTIAL TREATMENT

In support of its petition, Duke Kentucky argued that public disclosure of the designated material would present a risk of theft, destruction, and vandalism of critical infrastructure, and a significant security and reliability risk. Duke Kentucky requested confidential treatment under KRS 61.878(1)(c)(1), which exempts from open records laws confidential information that, if publicly disclosed, could result in commercial advantage to competitors. However, Duke Kentucky did not provide any information to support its assertion that the designated material falls within the exclusions of KRS 61.878(1)(c)(1).

DISCUSSION AND FINDINGS

Having considered the petition and the material at issue, the Commission finds that the designated material does not meet the criteria for confidential treatment and should not be exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1). This is because Duke Kentucky provided no support that the designated material falls within the exclusions of KRS 61.868(1)(c)(1). Instead, Duke Kentucky set forth reasons more akin to a request for confidential treatment under KRS 61.878(1)(m), which exempts from open records laws information pertaining to critical energy infrastructure that, if publicly disclosed, would have a reasonable likelihood of threatening the public safety by exposing a vulnerability in preventing, protecting against, and mitigating a terrorist act. This is because Duke Kentucky described the designated material as containing the physical location of critical utility infrastructure,

including substations and circuits, and that, if publicly disclosed, a security issue could arise, resulting in Duke Kentucky's distribution system and grid being adversely impacted.

The Commission notes that, in the past, Duke Kentucky filed a similar petition requesting confidential treatment for the same type of material under KRS 61.878(1)(c)(1) and the Commission, on its own, determined that the material fell under KRS 61.878(1)(m).¹ However, Duke Kentucky did not take notice of this correction and, instead, refiled the same petition with only a few changes. Because Duke Kentucky must state with specificity the grounds for requesting confidential treatment under KRS 61.878 and because Duke Kentucky bears the burden of proof to show that the designated material falls within the cited exclusion, the Commission finds that Duke Kentucky's petition should be denied for failing to satisfy the burden of proof that the designated material should be exempt from public disclosure under KRS 61.878(1)(c)(1).

IT IS THEREFORE ORDERED that:

1. Duke Kentucky's May 1, 2023 petition for confidential treatment is denied.
2. 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.
3. 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 should be granted confidential treatment.

¹ See Order (Ky. PSC Aug. 23, 2022).

4. 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.

5. 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 in order to allow Duke Kentucky to seek a remedy afforded by law.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

PUBLIC SERVICE COMMISSION



Chairman



Vice Chairman



Commissioner

ENTERED
AUG 01 2023 rcs
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

Donald R Schaefer
Jackson Energy Cooperative Corporation
115 Jackson Energy Lane
McKee, KY 40447

*Chris Perry
President and CEO
Fleming-Mason Energy Cooperative, Inc.
1449 Elizaville Road
P. O. Box 328
Flemingsburg, KY 41041

*Gregory J Starheim
President and CEO
Kenergy Corp.
6402 Old Corydon Road
P. O. Box 18
Henderson, KY 42419

Michael Williams
Senior Vice President
Blue Grass Energy Cooperative Corp.
1201 Lexington Road
P. O. Box 990
Nicholasville, KY 40340-0990

*David S Samford
Goss Samford, PLLC
2365 Harrodsburg Road, Suite B325
Lexington, KENTUCKY 40504

*Lonnie Bellar
Vice President, State Regulation & Rates
LG&E and KU Services Company
220 West Main Street
Louisville, KENTUCKY 40202

*Allen Anderson
President & CEO
South Kentucky R.E.C.C.
200 Electric Avenue
Somerset, KY 42501

*Debbie Martin
Shelby Energy Cooperative, Inc.
620 Old Finchville Road
Shelbyville, KY 40065

*Michael L Miller
President & CEO
Nolin R.E.C.C.
411 Ring Road
Elizabethtown, KY 42701-6767

*Honorable Allyson K Sturgeon
Managing Senior Counsel - Regulatory &
LG&E and KU Energy LLC
220 West Main Street
Louisville, KENTUCKY 40202

*Mr. David Estep
President & General Manager
Big Sandy R.E.C.C.
504 11th Street
Paintsville, KY 41240

*Honorable Mark R Overstreet
Attorney at Law
Stites & Harbison
421 West Main Street
P. O. Box 634
Frankfort, KENTUCKY 40602-0634

*Burns E Mercer
Manager
Meade County R.E.C.C.
P. O. Box 489
Brandenburg, KY 40108-0489

*William T Prather
President & CEO
Farmers R.E.C.C.
504 South Broadway
P. O. Box 1298
Glasgow, KY 42141-1298

*Melissa D Yates
Attorney
Denton & Keuler, LLP
555 Jefferson Street
P. O. Box 929
Paducah, KENTUCKY 42002-0929

*Barry L Myers
Manager
Taylor County R.E.C.C.
625 West Main Street
P. O. Box 100
Campbellsville, KY 42719

*James L Jacobus
President/CEO
Inter-County Energy Cooperative Corporation
1009 Hustonville Road
P. O. Box 87
Danville, KY 40423-0087

*Paul G Embs
Clark Energy Cooperative, Inc.
2640 Ironworks Road
P. O. Box 748
Winchester, KY 40392-0748

*Carol Hall Fraley
President & CEO
Grayson R.E.C.C.
109 Bagby Park
Grayson, KY 41143

*Kerry K Howard
President & CEO
Licking Valley R.E.C.C.
P. O. Box 605
271 Main Street
West Liberty, KY 41472

*Mark Stallons
President
Owen Electric Cooperative, Inc.
P. O. Box 400
Owenton, KY 40359

*Ranie Wohnhas
Managing Director
Kentucky Power Company
855 Central Avenue Suite 200
Ashland, KENTUCKY 41101

*Ted Hampton
General Manager
Cumberland Valley Electric, Inc.
Highway 25E
P. O. Box 440
Gray, KY 40734

*Robert Conroy
Vice President, State Regulation and Rates
LG&E and KU Energy LLC
220 West Main Street
Louisville, KENTUCKY 40202

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

*Larry Hicks
President and CEO
Salt River Electric Cooperative Corp.
111 West Brashear Avenue
P. O. Box 609
Bardstown, KY 40004

*Kentucky Utilities Company
Kentucky Utilities Company
220 W. Main Street
P. O. Box 32010
Louisville, KY 40232-2010

*Louisville Gas and Electric Company
Louisville Gas and Electric Company
220 W. Main Street
P. O. Box 32010
Louisville, KY 40232-2010

*Honorable Thomas C Brite
Attorney At Law
Brite & Hopkins, PLLC
83 Ballpark Road
P.O. Box 309
Hardinsburg, KENTUCKY 40143