

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF DUKE ENERGY )	
KENTUCKY, INC. FOR AN ORDER DECLARING )	
THE CONSTRUCTION OF SOLAR FACILITIES IS )	CASE NO.
AN ORDINARY EXTENSION OF EXISTING )	2020-00385
SYSTEMS IN THE USUAL COURSE OF )	
BUSINESS )	

ORDER

This matter arises from two motions filed by Duke Energy Kentucky, Inc. (Duke Kentucky) on December 11, 2020, and February 15, 2021, respectively. Duke Kentucky requested confidential treatment for ten years for the designated material under KRS 61.878(1)(c)(1), which prohibits public disclosure of information that is confidential or proprietary, and public disclosure would result in a competitive disadvantage.

DECEMBER 11, 2020 MOTION

Duke Kentucky requested confidential treatment for ten years for negotiated lease terms that set forth how the lease payment is calculated regarding renewable energy credits (RECs) and details of estimated costs of construction pursuant to KRS 61.878(1)(c)(1).

In support of its motion, Duke Kentucky asserted that public disclosure of the lease pricing could place Duke Kentucky at a competitive disadvantage in negotiating future contracts because third parties could use the information to adjust their negotiation strategy and manipulate prices. Duke Kentucky further asserted that the estimated costs of construction of the proposed project should be afforded confidential protection because

the project had not yet been bid out and public disclosure could allow vendors to adjust their negotiation strategy, placing Duke Kentucky at a competitive disadvantage.

#### FEBRUARY 15, 2021 MOTION

Duke Kentucky requested confidential treatment for ten years for negotiated terms regarding the lease amount and treatment of RECs, market forecasts for projected REC pricing for 2021 and 2022, vendor internal procedures regarding contract management, and specific customer account information that identifies the customer by name and provides the customer usage information.

Duke Kentucky requested confidential treatment under KRS 61.878(1)(c)(1), which protects information generally recognized as confidential or proprietary that, if publicly disclosed, would permit an unfair commercial advantage to competitors.

In support of its motion, Duke Kentucky asserted that public disclosure of the lease amount, market forecasts, treatment of RECs, and vendor internal procedures could place Duke Kentucky at a competitive disadvantage in negotiating future contracts because third parties could use the information to adjust their negotiation strategy and manipulate prices. Duke Kentucky further asserted that portions of the designated material were exempt from public disclosure because the contract between Duke Kentucky and a third party included a provision to keep certain lease information confidential.

#### DISCUSSION AND FINDINGS

Based upon the motion and case record, and being otherwise sufficiently advised, the Commission finds that the December 11, 2020 motion should be granted in part and denied in part. The Commission finds that the designated material contained in Duke

Kentucky's negotiated lease pricing is generally recognized as confidential or proprietary and that public disclosure could ultimately result in a competitive disadvantage to Duke Kentucky. This is because public disclosure of the designated material could hinder Duke Kentucky's ability to negotiate future lease terms that are most favorable to Duke Kentucky. For this reason, the Commission finds that the designated material meets the criteria for confidential treatment and should be exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13.

The Commission further finds that the December 11, 2020 request for confidential treatment should be denied for the estimated costs of construction. The facility was constructed and placed into service on March 22, 2023. Thus, the basis for keeping the information confidential prior to issuing a request for bids is now moot. Therefore, the estimated costs of construction do not meet the criteria for confidential treatment and should not be exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13.

The Commission further finds that the February 15, 2021, motion should be granted in part and denied in part. The Commission finds that the designated material contained in Duke Kentucky's negotiated terms regarding the lease amount and treatment of RECs, vendor internal procedures, and specific customer account information that identifies the customer by name and provides the customer usage information are generally recognized as confidential or proprietary because public disclosure could ultimately result in a competitive disadvantage to Duke Kentucky. This is because public disclosure of the lease terms could hinder Duke Kentucky's ability to negotiate future lease terms that are most favorable to Duke Kentucky. Regarding the vendor internal

procedures, Duke Kentucky cannot contract away statutory requirements regarding open records laws; thus, the Commission cannot grant confidential treatment on this basis. However, because the vendor internal procedures are proprietary to the vendor, public disclosure of this material could cause competitive harm because vendors could be less willing to contract with Duke Kentucky if information that is proprietary to the vendor were publicly disclosed. Similarly, public disclosure of customer-specific usage information could allow the customer's competitors to gain specific information regarding the customer's costs and business plans, which could result in customers being hesitant to locate in Duke Kentucky's service territory, and therefore result in harm to Duke Kentucky. For these reasons, the Commission finds that these records meet the criteria for confidential treatment and should be exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13.

The Commission further finds that the request for confidential treatment should be denied for market forecasts for projected REC pricing for 2021 and 2022. The treatment of the RECs was discussed in the final order and was not redacted, thus is available to the public.<sup>1</sup> In addition, the projected REC prices are for 2021 and 2022 and, because that time has passed, the REC prices are now publicly available. Therefore, the market forecasts for projected REC pricing for 2021 and 2022 do not meet the criteria for confidential treatment and should not be exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13.

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<sup>1</sup> Order (Ky. PSC Mar. 1, 2021).

IT IS THEREFORE ORDERED that:

1. Duke Kentucky's December 11, 2020 and February 15, 2021 motions for confidential treatment are granted in part and denied in part.
2. Duke Kentucky's December 11, 2020 motion for confidential treatment for negotiated lease pricing is granted.
3. Duke Kentucky's December 11, 2020, motion for confidential treatment for estimated construction costs is denied.
4. Duke Kentucky's February 15, 2021, motion for confidential treatment for negotiated lease amounts, third-party contract management procedures, and customer-specific information is granted.
5. Duke Kentucky's February 15, 2021, motion for confidential treatment for market forecasts of RECs in 2021 and 2022 is denied.
6. The designated material contained in the December 11, 2020 and February 15, 2021 motions that was granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for ten years or until further order of this Commission.
7. 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).
8. Duke Kentucky shall inform the Commission if the designated material granted confidential treatment becomes publicly available or no longer qualifies for confidential treatment.
9. 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 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.

10. The Commission shall not make the requested material for which confidential treatment was granted 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.

11. The designated material contained in the December 11, 2020 and February 15, 2021 motions that was 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.

12. 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 shall be granted confidential treatment.

13. 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.

14. 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 to allow Duke Kentucky to seek a remedy afforded by law.

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PUBLIC SERVICE COMMISSION

*[Handwritten Signature]*  
Chairman

*made  
5:00  
with  
permission*

*[Handwritten Signature]*  
Vice Chairman

*[Handwritten Signature]*  
Commissioner

ENTERED  
AUG 08 2023 bsb  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

*[Handwritten Signature]*  
Executive Director

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