

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF DUKE ENERGY )	
KENTUCKY, INC. FOR: 1) AN ADJUSTMENT OF )	CASE NO.
THE NATURAL GAS RATES; 2) APPROVAL OF )	2021-00190
NEW TARIFFS, AND 3) ALL OTHER REQUIRED )	
APPROVALS, WAIVERS, AND RELIEF )	

ORDER

On October 15, 2021, 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 protection for 20 years for the following items: (1) Application, Volume 3, Tab 35 (Tab 35); (2) Direct Testimony of Amy B. Spiller (Spiller Testimony), Exhibit ABS-2; and (3) Direct Testimony of Jake J. Stewart (Stewart Testimony), Exhibit JJS-4(a)–(c).

In support of its petition, Duke Kentucky argued that the designated material in Tab 35 contains detailed capital and operations and maintenance expenses as well as Duke Kentucky’s monthly financial position. Duke Kentucky asserted this information is both confidential and proprietary in nature. Duke Kentucky stated that release of such information could place Duke Kentucky at a disadvantage in future negotiations with potential vendors and in competition.

Duke Kentucky argued that the designated material in Spiller Testimony, Exhibit ABS-2, is the result of a proprietary study developed by JD Power for Duke Kentucky.

Duke Kentucky argued that release of the study would allow competitors to gain the trade secret information in the survey without paying for or developing the study.

Duke Kentucky claimed that the designated material in Stewart Testimony, Exhibit JJS-4(a)–(c), is “self-evidently confidential and proprietary in nature.” Together, Duke Kentucky claimed that all items represent the accumulation of best practices in human capital management.

### LEGAL STANDARD

The Commission is a public agency subject to Kentucky's Open Records Act, which requires that all public records “be open for inspection by any person, except as otherwise provided by KRS 61.870 to 61.884.”<sup>1</sup> In support of its motion, Duke Kentucky argued for the application of KRS 61.878(1)(c)(1), which exempts from disclosure “[r]ecords confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.” KRS 61.878(1)(a) was also found to be applicable, which exempts from public disclosure “records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.” Exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.<sup>2</sup> The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.<sup>3</sup>

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<sup>1</sup> KRS 61.872(1).

<sup>2</sup> See KRS 61.871.

<sup>3</sup> 807 KAR 5:001, Section 13(2)(c).

Having considered the petition and the material at issue, the Commission finds that Duke Kentucky's petition should be granted in part and denied in part. The Commission finds that the designated material contained in Tab 35 meets the criteria for confidential treatment and is exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13. The material contains information that may be used by competitors and investors in a way that could adversely affect the company.

The Commission further finds that the designated material in Spiller Testimony, Exhibit ABS-2, meets the criteria for confidential treatment and is exempted from public disclosure pursuant to KRS 61.878(1)(c)(1), KRS 61.878(1)(a), and 807 KAR 5:001, Section 13. This is because the designated material contains both identifiable customer information as well as third-party proprietary information.

The Commission also finds that the designated material in Stewart Testimony Exhibit JJS-4(a) meets the criteria for confidential treatment and is exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:0001, Section 13. Stewart Testimony Exhibit JJS-4(a) contains incentive information for both union and non-union employees.

The Commission further finds that the request for confidential treatment should be denied for Stewart Testimony, Exhibits JJS-4(b) and JJS-4(c). Stewart Testimony Exhibit JJS-4(c) provides information regarding executive incentives that Duke Kentucky planned to hold confidential until March 2022, when it was to be made public in a 2022 proxy statement provided to shareholders. As the relevant date to make the information public has passed, the reason for keeping it confidential is no longer applicable. Concerning JJS-4(b), the Item contains only general guidance, and does not contain any confidential

or proprietary information. Therefore, Stewart Testimony Exhibits JJS-4(b) and JJS-4(c) do not meet the criteria for confidential treatment and are not exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13.

IT IS THEREFORE ORDERED that:

1. Duke Kentucky's October 15, 2021 petition for confidential treatment is granted in part and denied in part.

2. Duke Kentucky's request for confidential treatment for the designated material in Tab 35; Spiller Testimony, Exhibit ABS-2; and Stewart Testimony, Exhibit JJS-4(a), is granted.

3. Duke Kentucky's request for confidential treatment for Stewart Testimony, Exhibit JJS-4(b) and (c), is denied.

4. The designated material contained in Tab 35; Spiller Testimony, Exhibit ABS-2; and Stewart Testimony, Exhibit JJS-4(a), that is granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for 20 years or until further Order of this Commission.

5. 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).

6. Duke Kentucky shall inform the Commission if the designated material granted confidential treatment becomes publicly available or no longer qualifies for confidential treatment.

7. 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, 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ENTERED  
DEC 15 2023  
KENTUCKY PUBLIC SERVICE COMMISSION <sup>rCS</sup>

ATTEST:

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