

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF DUKE ENERGY)	CASE NO.
KENTUCKY, INC. TO AMEND ITS DEMAND SIDE)	2022-00251
MANAGEMENT PROGRAMS)	

ORDER

This matter arises on two petitions for confidential treatment filed by Duke Energy Kentucky, Inc. (Duke Kentucky). On September 23, 2022, 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 ten years for its responses to Commission Staff's First Request for Information (Staff's First Request), Item 2, and the Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention (Attorney General) First Request for Information (Attorney General's First Request), Items 21 and 22.

On November 10, 2022, 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 ten years for its responses to Commission Staff's Third Request for Information (Staff's Third Request), Item 1.

These two petitions were previously denied pursuant to 807 KAR 5:001, Section 13(2), which requires a confidential treatment petition to establish specific grounds under KRS 61.878 and places the burden of proof on movant. Duke Kentucky cited a statutory provision that clearly did not apply to the facts. Duke Kentucky

subsequently filed a new application seeking confidential treatment and citing a different statutory provision.

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.”¹ Exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.² The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.³

In support of its new application, Duke argued the application of KRS 61.878(1)(c)(1), which provides an exception to the requirement for public disclosure for records that are “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.”

SEPTEMBER 23, 2022 PETITION

Duke Kentucky’s response to Staff’s First Request, Item 2, consists of the Peak Time Rebate (PTR) research proposal. Duke Kentucky’s response to Attorney General’s First Request, Items 21 and 22, are Demand-Side Management (DSM) modeling inputs and projected avoided costs.

¹ KRS 61.872(1).

² See KRS 61.871.

³ 807 KAR 5:001, Section 13(2)(c).

Duke Kentucky argued that releasing the research proposal publicly would give other vendors, including competitors of the third party that generated the proposal, access to proprietary information, as well as timing and costs, which would act to the detriment of Duke Kentucky, as other existing and potential vendors would know how the third-party prices its services.

Duke Kentucky asserted that KRS 61.878(1)(c)(1) exempted projected avoided cost information from disclosure because it incorporates third-party price forecasts and Duke Kentucky's proprietary information, the disclosure of which would injure Duke Kentucky and its competitive position and business interests.

Having considered the petition and the material at issue, the Commission finds that Duke Kentucky's petition should be granted. The research proposal should remain confidential because public disclosure could jeopardize Duke Kentucky's ability to obtain this type of information from third parties in the future and might represent a copyright law violation.⁴ Projected avoided costs should remain confidential under KRS 61.878(1)(c)(1) because the estimated energy costs used to calculate this information are proprietary and if disclosed would allow competitors to unfairly compete in a number of ways, including competing for Economic Development Rate (EDR) special contract partners and using cost data in place of paying for their own such data.⁵ The designated material therefore

⁴ See Case No. 2021-00407 *Electronic Application of South Kentucky Rural Electric Cooperative Corporation for a General Adjustment of Rates, Approval of Depreciation Study, and Other General Relief* (Ky. PSC Mar. 28, 2022), Order at 3.

⁵ See Case No. 2020-00016, *Electronic Application of Louisville Gas and Electric Company and Kentucky Utilities Company for Approval of a Solar Power Contract and Two Renewable Power Agreements to Satisfy Customer Requests for a Renewable Energy Source Under Green Tariff Option #3* (Ky. PSC May 8, 2020), Order at 8.

meets the criteria for confidential treatment and should be exempted from public disclosure for ten years pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

NOVEMBER 10, 2022 PETITION

Duke Kentucky's response to Staff's Third Request, Item 1, consists of projected avoided costs. Duke Kentucky asserted that KRS 61.878(1)(c)(1) exempted this information from disclosure because it incorporates third-party price forecasts and Duke Kentucky's proprietary information, the disclosure of which would injure Duke Kentucky and its competitive position and business interests.

Having considered the petition and the material at issue, the Commission finds that Duke Kentucky's petition should be granted. Projected avoided costs should remain confidential under KRS 61.878(1)(c)(1) because the estimated energy costs used to calculate this information are proprietary and if disclosed would allow competitors to unfairly compete in a number of ways, including competing for Economic Development Rate (EDR) special contract partners and using cost data in place of paying for their own such data.⁶ The designated material therefore meets the criteria for confidential treatment and should be exempted from public disclosure for ten years pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

IT IS THEREFORE ORDERED that:

1. Duke Kentucky's application for rehearing its September 23, 2022 and November 10, 2022 petitions for confidential treatment is granted.

⁶ See Case No. 2020-00016, *Electronic Application of Louisville Gas and Electric Company and Kentucky Utilities Company for Approval of a Solar Power Contract and Two Renewable Power Agreements to Satisfy Customer Requests for a Renewable Energy Source Under Green Tariff Option #3* (Ky. PSC May 8, 2020), Order at 8.

2. The designated material 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.

3. 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).

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

5. 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.

6. 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.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ENTERED
SEP 21 2023 rcs
KENTUCKY PUBLIC
SERVICE COMMISSION

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