

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF DUKE ENERGY )  
KENTUCKY, INC. FOR (1) AN ADJUSTMENT OF )  
ELECTRIC RATES; (2) APPROVAL OF NEW )  
TARIFFS; (3) APPROVAL OF ACCOUNTING )  
PRACTICES TO ESTABLISH REGULATORY )  
ASSETS AND LIABILITIES; AND (4) ALL OTHER )  
REQUIRED APPROVALS AND RELIEF )

CASE NO.  
2022-00372

ORDER

On May 26, 2023, Duke Energy Kentucky, Inc (Duke Kentucky) filed two petitions, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for the Attachment to Duke Kentucky's Response to Commission Staff's Post-Hearing Request for Information (Staff's Post-Hearing Request), Item 15, for 10 years and Attachment 3 to its response to Kentucky Broadband and Cable Association's (KBCA) Post-Hearing Request for Information (KBCA's Post-Hearing Request), Item 1 for 20 years.

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> Exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.<sup>2</sup> The

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

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

party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.<sup>3</sup> KRS 61.878(1)(c)(1) provides an exception to the requirement for public disclosure of records that are “generally recognized as confidential and proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.”<sup>4</sup> KRS 61.878(1)(m) permits an exception for records that if disclosed would have a reasonable likelihood of threatening the public safety by exposing a vulnerability in preventing, protecting against, mitigating, or responding to a terrorist act.<sup>5</sup> The exemption is limited to certain types of records, including:

(f) Infrastructure records that expose a vulnerability referred to in this subparagraph through the disclosure of the location, configuration, or security of critical systems, including public utility critical systems. These critical systems shall include but not be limited to information technology, communication, electrical, fire suppression, ventilation, water, wastewater, sewage, and gas systems.<sup>6</sup>

(g) the following records when their disclosure will expose a vulnerability referred to in this subparagraph: detailed drawings, schematics, maps or specifications of structural elements . . . of any building or facility owned, occupied, leased, or maintained by a public agency.<sup>7</sup>

A terrorist act is defined as including a criminal act intended to “[d]isrupt a system” identified in the above.<sup>8</sup>

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

<sup>4</sup> KRS 61.878(1)(c)(1).

<sup>5</sup> KRS 61.878(1)(m)(1).

<sup>6</sup> KRS 61.878(1)(m)(1)(f).

<sup>7</sup> KRS 61.878 (1)(m)(1)(g).

<sup>8</sup> KRS 61.878(1)(m)(2)(b).

## DUKE KENTUCKY'S PETITIONS

In Duke Kentucky's May 26, 2023 petition regarding its Response to Staff's Post-Hearing Request, Item 15, Duke Kentucky argued that the attachment should be granted confidential treatment under KRS 61.878(1)(c)(1) because it contained a video of Duke Kentucky's time-of-use rate calculator that contained customer information, including customers' names and account numbers. Specifically, Duke Kentucky argued that the information is not publicly available, is only distributed within Duke Kentucky for business purposes, and that disclosing customer's personal information could invite criminal activity.

Having considered the petition and the material at issue, the Commission finds that the video of Duke Kentucky's time-of-use rate calculator is generally recognized as confidential or proprietary; the information therefore meets the criteria for confidential treatment and should be exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1), for 10 years. Disclosure of Duke Kentucky's time-of-use could provide competitors with a commercial advantage by having the ability to view Duke's internal processes.

In Duke Kentucky's May 26, 2023 petition regarding its Response to Staff's Post-Hearing Request, KBCA's Post-Hearing Request, Item 1, Duke Kentucky argued that the attachment should be granted confidential treatment under KRS 61.878(1)(m)(1)(f) and (1)(g). Duke Kentucky stated these attachments contain detailed engineering drawings showing pole construction standards. Duke Kentucky argued that the drawings contain critical utility infrastructure and that the release of such of information could be exploited in a way that threatens the safety of the general public.

Having considered the petition and the material at issue, the Commission finds that the engineering drawings showing pole construction standards in Attachment 3 are generally recognized as confidential or proprietary; and therefore the documents meets the criteria for confidential treatment and should be exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.8781(m)(1)(f) and (1)(g), for 20 years. The schematic drawings related to pole construction standards constitute critical infrastructure that, if compromised, could disrupt electric service and threaten public safety.

IT IS THEREFORE ORDERED that:

1. Duke Kentucky's May 26, 2023 petitions for confidential treatment are granted.
2. The Attachment to Duke Kentucky's Response to Staff's Post-Hearing Request, Item 15 granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for 10 years or until further Order of this Commission.
3. The Attachment 3, provided in response to KBCA's Post-Hearing Request Item 1, 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.
4. 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).

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

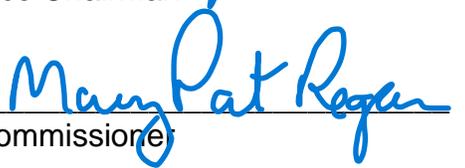
6. If a nonparty to this proceeding requests to inspect the material granted confidential treatment by this Order and the period during which the material has been granted confidential treatment has not expired, Duke Kentucky shall have 30 days from receipt of written notice of the request to demonstrate 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.

7. The Commission shall not make the requested material 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 15 2023 rcs  
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SERVICE COMMISSION

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