

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 April 14, 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 a period of ten years for Attachments 2 and 3 provided in its Rebuttal Testimony of Christopher R. Bauer (Bauer Rebuttal Testimony).

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 KRS 61.878(1)(c)(1) provides an exception to

¹ KRS 61.872(1).

² See KRS 61.871.

³ 807 KAR 5:001, Section 12(2)(c).

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.”⁴

Duke Kentucky provided the Credit Opinion of Moody’s Investor Service from January 23, 2023 at Attachment 2 to the Bauer Rebuttal Testimony. Duke Kentucky also provided Moody’s Investor Service In-Depth Article from November 3, 2022, as Attachment 3 to the Bauer Rebuttal Testimony. In support of its motion, Duke Kentucky argued that it is contractually obligated to keep the report confidential and this information is only available to Moody’s paid subscribers. Duke Kentucky also argued that pursuant to KRS 61.878(1)(c)(1), the information is not publicly available; the article and report are trade secrets; and disclosure would violate Duke Kentucky’s contractual agreement with Moody’s Investor Service, which could put Duke Kentucky at a commercial disadvantage if barred from future services from Moody’s.

Having considered the petition and the material at issue, the Commission finds that Attachment 2 and 3 provided in the Bauer Rebuttal Testimony are generally recognized as confidential or proprietary; it 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). Disclosure of such information would put Duke Kentucky at a commercial disadvantage and, although not binding on the Commission, the disclosure could violate the contractual obligations with Moody’s. The Commission has previously held that credit opinions of Moody’s Investor Service should be granted confidential

⁴ KRS 61.878(1)(c)(1).

treatment.⁵ Additionally, the Commission has previously found that information that is created and exclusive to third parties and only available on a subscription basis should be granted confidentiality because disclosure of such information could result in public harm.⁶

IT IS THEREFORE ORDERED that:

1. Duke Kentucky's April 14, 2023 petition for confidential treatment is granted.
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 10 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 by this Order 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

⁵ See Case No. 2021-00481 *In the Matter of: Elec. Joint Application of Am. Elec. Power Co., Inc., Kentucky Power Co., & Liberty Utilities Co. for Approval of the Transfer of Ownership & Control of Kentucky Power Co.* (Ky. PSC Mar. 29, 2022) Order at 1.

⁶ See Case No. 2020-00349 and 2020-00350, *In the Matters of: Elec. Application of Kentucky Utilities Co. for an Adjustment of Its Elec. Rates, A Certificate of Pub. Convenience & Necessity to Deploy Advanced Metering Infrastructure, Approval of Certain Regul. & Acct. Treatments, & Establishment of A One-Year Surcredit and Electronic Application of Louisville Gas and Electric Company for an Adjustment of Its Electric and Gas Rates, A Certificate of Public Convenience and Necessity to Deploy Advanced Metering Infrastructure, Approval of Certain Regulatory and Accounting Treatments, and Establishment of a One-Year Surcredit* (Ky. PSC Dec. 7, 2021), Order at 1.

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 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.

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Chairman


Vice Chairman


Commissioner

ENTERED
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