

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 12, 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 an indefinite period for its response to Commission Staff's Fourth Request for Information (Staff's Fourth Request), Item 14, Attachment 3, a retail substation design guide that includes detailed drawings and information relating to the configuration and construction of Duke Kentucky's substations and subfeeders.

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

¹ KRS 61.872(1).

² See KRS 61.871.

that one of the exceptions is applicable.³ 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.⁴ 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.⁵

(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.⁶

A terrorist act is defined as including a criminal act intended to “[d]isrupt a system” identified in the above.⁷

In support of its petition, Duke Kentucky argued that the retail substation design guide is proprietary and only shared on a need-to-know basis. Further, Duke Kentucky argued that critical energy infrastructure information (CEII), has been granted confidential

³ 807 KAR 5:001, Section 12(2)(c).

⁴ KRS 61.878(1)(m)(1).

⁵ KRS 61.878(1)(m)(1)(f).

⁶ KRS 61.878(1)(m)(1)(g).

⁷ KRS 61.878(1)(m)(2)(b).

treatment in the past by the Commission.⁸ Finally, Duke Kentucky argued that disclosure could create a security risk to Duke Kentucky and its customers.

Having considered the petition and the material at issue, the Commission finds that Duke Kentucky's Response to Staff's Fourth Request, Item 14, Attachment 3, is 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)(m). The substation design guide would be considered critical infrastructure information and disclosing such information would create a risk to public safety. The Commission has previously granted confidential treatment to CEII in the past.⁹

IT IS THEREFORE ORDERED that:

1. Duke Kentucky's 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 an indefinite period 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).

⁸ Duke Kentucky's Petition for Confidential Treatment (filed Apr. 12, 2023) at 2. Case No. 2015-00267, *Application of East Kentucky Power Cooperative, Inc. for Approval of the Acquisition of Existing Combustion Turbine Facilities from Bluegrass Generating Company, LLC at the Bluegrass Generating Station in LaGrange, Oldham County, Kentucky and for Approval of the Assumption of Certain Evidences of Indebtedness* (Ky. PSC Nov. 24, 2015), Order.

⁹ See Case No. 2018-00195, *Elec. 2018 Integrated Res. Plan of Duke Energy Kentucky, Inc.* (Ky. PSC Sept. 3, 2019), Order at 1. Case No. 2018-00287, *Elec. Application of Kentucky Power Co. for 1) Auth. Under KRS 278.2207(2) & KRS 278.2219 to the Extent Required to Enable the Co. to Pay Fees & Costs Imposed by the Grid Assurance, LLC Subscription Agreement; 2) the Grant of All Other Required Approvals & Relief* (Ky. PSC Oct. 16, 2018), Order at 2.

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 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.

PUBLIC SERVICE COMMISSION



Chairman



Vice Chairman



Commissioner

ENTERED
SEP 27 2023 rcs
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



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