

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)	CASE NO.
TARIFFS; (3) APPROVAL OF ACCOUNTING)	2022-00372
PRACTICES TO ESTABLISH REGULATORY)	
ASSETS AND LIABILITIES; AND (4) ALL OTHER)	
REQUIRED APPROVALS AND RELIEF)	

ORDER

On May 4, 2023, Duke Energy Kentucky, Inc (Duke Kentucky) filed a renewed petition, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential protection for 20 years for several documents it provided in response to Kroger’s First Request for Information (Kroger’s First Request), as more fully discussed below.¹

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.”² Exceptions to the free and open

¹ On January 25, 2023, Duke Kentucky filed a Petition for Confidential Treatment containing requests for confidential treatment for responses to requests for information from Commission Staff, Kroger, Sierra Club, Kentucky Broadband Cable Association, and the Attorney General. On April 5, 2023, the Commission issued an Order denying, in part, and granting, in part, confidential treatment for the petition with specific instructions on how Duke Kentucky should refile the petitions. On May 4, 2023, Duke Kentucky refiled the petition, but they did not file the original documents again. In the refiled petition, Kroger described the documents as originally filed.

² KRS 61.872(1).

examination of public records contained in KRS 61.878 should be strictly construed.³ The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.⁴ 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.”⁵

DUKE KENTUCKY’S RESPONSE TO KROGER’S FIRST REQUEST,
ITEM 1, ATTACHMENT 1

Duke Kentucky requested confidential treatment for its response to Kroger’s First Request, Item 1, Attachment 1. Attachment 1 contained nine separate documents as discussed below, several responses filed in response to other requests as well.⁶

Duke Kentucky provided its Budget Guidelines and Assumptions.⁷ Duke Kentucky argued that this information should be granted confidential treatment under KRS 61.878(1)(c)(1), because the attachment is proprietary and includes labor inflation rates.

Duke Kentucky provided Financial Reporting Summaries (FRS) that included monthly manager reports that contain narrative explanations of variances for the Company and show the financial condition of the Company on a monthly basis.⁸ The

³ See KRS 61.871.

⁴ 807 KAR 5:001, Section 13(2)(c).

⁵ KRS 61.878(1)(c)(1).

⁶ Items will be identified without referencing the original petition. However, each one will have a footnote with a label for cross-reference, if necessary.

⁷ Application, Filing requirement 16(7)(c) (filed Dec. 15, 2023).

⁸ Application, Filing requirement 16(7)(o).

information included its monthly Regulatory O&M and Capital Reports (ROCR) that contain highly detailed variance descriptions and explanations for O&M and capital expenditures, respectively. Duke Kentucky argued that this information should be granted confidential treatment because the Commission afforded similar information confidential treatment in Case No. 2021-00190.⁹

As part of Attachment 1, Duke Kentucky included attachments from the Direct Testimony of Paul Halstead provided in the application, Attachments PLH 2 and PLH 3. Duke Kentucky provided information relating to a model of incremental revenue requirement for the new Clean Energy Connection (CEC) program, as well as a cost benefit analysis of the program. Attachment PLH 2 contains both tax rates, insurance rates, and other tax information, including tax credits. Attachment PLH 3 contains a yearly net program value as well as a cost and cost savings analysis. Duke Kentucky argued that this information should be granted confidential treatment because, if disclosed, there would be a competitive disadvantage to Duke Kentucky, and it would allow competitors access to proprietary information without having to develop and purchase the information themselves.

In addition, Duke Kentucky provided Attachment JJS 3(a) 2022 Short-Term Incentive Plan and Union Employee Incentive Plans, Attachment JJS 3(b) 2022 Short-Term Incentive Scorecard, and Attachment JJS 3(c) 2022 Executive Long-Term Incentive Plan, attachments originally submitted as part of the Direct Testimony of Jake Stewart in the application. Duke Kentucky argued that such information would offer competitors

⁹ Case No. 2021-00190, *In the Matter of: Elec. Application of Duke Kentucky for: 1) an Adjustment of the Nat. Gas Rates; 2) Approval of New Tariffs, & 3) All Other Required Approvals, Waivers, & Relief*, (Ky. PSC Dec. 13, 2021), Order.

insight into the Duke Kentucky's compensation philosophies, policies, and practices. Duke Kentucky argued that, taken together, these documents represent the accumulation of decades of "best practices" in human capital management. The information that would be extremely valuable to the Duke Kentucky's competitors.

The last four items were attachments to the Direct Testimony of Bruce Sailors provided as part of the Application. In Attachment BLS-3, Duke Kentucky provided the monthly rate for LED Equipment, new LED Equipment, useful life price breakdowns including labor costs, fixtures costs, and pole and bracket expenses based on information from vendors. In Attachment BLS-4, Duke Kentucky provided information that contains the LEG workpapers for the LED maintenance calculations. For both items, Duke Kentucky argued that vendors' pricing of certain equipment, services, and labor is confidential, as gaining access to this information would be extremely valuable to the both the Duke Kentucky's competitors and its vendors' competitors. Duke Kentucky also argued that releasing this information would put it at a competitive disadvantage and potentially limit Duke Kentucky in negotiations with other business partners in the future.

In Attachment BLS-6, Duke Kentucky provided workpapers for the calculation of a remote reconnection fee. In Attachment BLS-8, Duke Kentucky provided the workpapers for the rate design for rate EVSE. For both items, Duke Kentucky argued that releasing the information would put Duke Kentucky at a competitive disadvantage and potentially limit Duke Kentucky and its vendors in negotiations with other business partners in the future.

Having considered the petition and the material provided in Duke Kentucky's Response to Kroger's First Request, Item 1, Attachment 1, 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 Duke Kentucky's Budget Guidelines and Assumptions, FRS monthly managerial reports and its monthly Regulatory O&M and Capital Reports, Direct Testimony of Paul Halstead Attachments PLH 2 and PLH 3, Direct Testimony of Jake Stewart Attachments JSS 3(a) and 3(b), and Direct Testimony of Bruce Sailors Attachments BLS-3, BLS-4, BLS-6, and BLS-8 are records that meet the criteria for confidential treatment and should be exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13.

FRS monthly managerial reports and its monthly Regulatory O&M and Capital Reports, which related to FRS monthly manager reports, should be granted confidential treatment in accordance with prior precedent.¹⁰ FRS contains the assets, revenues, and expenses, on a monthly basis, for the company that could be used to adversely affect the company by competitors and investors.

The Direct Testimony of Paul Halstead, Attachments PLH 2 and PLH-3, which related to the model incremental revenue requirement for the proposed CEC program as well as a cost benefit analysis of the program, should be granted confidential treatment because the information contained includes tax information that would garner confidential treatment in and of itself. The attachments contain insight into how Duke Kentucky values certain aspects of the program as well as the possibility of program savings. Public disclosure of the valuations contained in the attachments would disadvantage Duke Kentucky in the marketplace.

¹⁰ Case No. 2021-00190, Dec. 31, 2021 Order.

The Direct Testimony of Jake Stewart Attachment JJS 3(a) 2022 Short-Term Incentive Plan and Union Employee Incentive Plans should be granted confidential protection because it contains information related to union and non-union employees' incentives, which were similarly granted confidential treatment in the past.¹¹ Additionally, this information does not contain any reference to executive salary incentive, for which generally the Commission does not grant confidential treatment.

The Direct Testimony of Jake Stewart Attachment JJS 3(b) 2022 Short-Term Incentive Scorecard should be granted confidential treatment because this information is proprietary to Duke Kentucky and disclosure of such information would disadvantage Duke Kentucky in the labor market should competitors use this information to lure employees away.

The information provided in Attachment 1 as it relates to the Direct Testimony of Bruce Sailors, Attachments BLS-3, BLS-4, BLS-6, and BLS-8, should be granted confidential treatment because the same information, provided in response to Staff's First Request Item 56, was previously granted confidential treatment.¹²

The Commission finds that the request for confidential treatment should be denied for the Budget Guideline and Assumptions and for the Direct Testimony of Jake Stewart Attachment JJS 3(c). In the Budget Guidelines and Assumptions, Duke Kentucky failed to provide specific grounds for why the entire document should be granted confidential treatment. Therefore, the Budget Guideline and Assumptions do not meet the criteria for

¹¹ Case No. 2021-00190, Dec. 31, 2021, Order.

¹² Case No. 2022-00372, *In the Matter of: Electronic Application of Duke Kentucky for (1) 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*, (Ky. PSC February 10, 2023), Order at 6.

confidential treatment and should not be exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13. The Direct Testimony of Jake Stewart, Attachment JJS 3(c), which was the 2022 Executive Long-Term Incentive Plan, was generally published at the annual shareholders' meeting in March 2023; therefore, Direct Testimony of Jake Stewart, Attachment JJS 3(c), does not meet the criteria for confidential treatment and should not be exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13.

KROGER'S FIRST REQUEST ITEM 1, ATTACHMENT 2

In support of its petition, Duke Kentucky argued that the information contained in its response to Kroger's First Request, Item 1, Attachment 2, should be granted confidential treatment under KRS 61.878(1)(c)(1), in accordance with a previous Commission order.¹³ Attachment 2 consisted of several items Duke Kentucky filed in its application or in response to a Commission Staff request described as follows¹⁴: employee information including names and salaries;¹⁵ Monthly Rate for LED Equipment, new LED Equipment, useful life price breakdowns including labor costs, fixtures costs, pole and bracket expenses based on information from vendors;¹⁶ and workpapers for the calculation of remote reconnection fee¹⁷.

¹³ Case No. 2022-00372, February 10, 2023, Order.

¹⁴ Duke Kentucky also asked for confidential treatment for Duke Kentucky's Response to Staff's First Request, Item No. 56, Attachment BLS-5 (filed December 15, 2022), but no confidential attachments were made.

¹⁵ Duke Kentucky's Response to Staff's First's Request Item No. 41 (filed December 15, 2022).

¹⁶ Duke Kentucky's response to Staff's First Request, Item No. 56, Attachment BLS-3 (filed Dec. 15, 2022).

¹⁷ Duke Kentucky's response to Staff's First Request, Item No. 56, Attachment BLS-6 (filed Dec. 15, 2022).

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 employee information including names and salaries; monthly Rate for LED Equipment, new LED Equipment, useful life price breakdowns including labor costs, fixtures costs, pole and bracket expenses based on information from vendors; and workpapers for the calculation of remote reconnection fee are records that meet the criteria for confidential treatment and should be exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13. The Commission has previously granted confidential protection to this information.¹⁸

The Commission further finds that the request for confidential treatment should be denied for Duke Kentucky's response to Staff's First Request Item 56, Attachment BLS-5. The Commission did not grant confidential treatment to the attachment in its February 10, 2023 Order, as asserted by Duke Kentucky. Duke Kentucky did not provide any additional arguments to support its assertion that Attachment BLS-5 be confidential and did not meet its burden of proof. Therefore, the attachment to Duke Kentucky's response to Staff's First Request Item No.56 Attachment BLS-5 does not meet the criteria for confidential treatment and should not be exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13.

KROGER'S FIRST REQUEST ITEM 2(C), ATTACHMENT

In support of its petition, Duke Kentucky argued that the information contained in its response to Kroger's First Request 2(c), Attachment, which contained forecasted maintenance expenses for East Bend, be afforded confidential treatment under KRS

¹⁸Case No. 2022-00372, February 10, 2023, Order.

61.878 1(c)(1), because the information, not publicly available, contains work product that, if released, would put Duke Kentucky at a commercial disadvantage.

Having considered the petition and the material at issue, the Commission finds that Duke Kentucky's petition should be denied, with leave to refile a corrected motion. There were no confidential filings made for Kroger's First Request 2(c).

KROGER'S FIRST REQUEST ITEM 3(C), ATTACHMENT

Duke requested confidential treatment for its response to Kroger's First Request Item 3(c), Attachment, which contained Forecasted Capital Expenditures for East Bend through 2026. Duke Kentucky argued that this information is not publicly available; the projected capital investments represent inner workings of a corporation; and disclosure would result in a commercial disadvantage.

Having considered the petition and the material at issue, the Commission finds that Duke Kentucky's petition should be granted. The Commission finds that the designated material contained in Duke Kentucky's Response to Kroger's First Request Item 3(c), Attachment, are records that meet the criteria for confidential treatment and should be exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13. The Commission has previously held that this type of information should be granted confidential treatment.¹⁹ The Commission finds that disclosure of such information would permit an unfair commercial advantage to its competitors.

¹⁹ See Case No. 2021-00198, *Electronic Tariff Filing of East Kentucky Power Cooperative, Inc. and Its Member Distribution Cooperatives for Approval of Proposed Changes to Their Qualified Cogeneration and Small Power Production Facilities Tariffs* (Ky. PSC June 7, 2022), Order; Case No. 2015-00267, *Application of East Kentucky Power Cooperative, Inc. For Approval of the Acquisition of Existing Combustion Turbine Facilities from Bluegrass Generation 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 November 24, 2015), Order; Case No. 2014-00201, *Application of Duke Kentucky For (1) A Certificate of Public Convenience and Necessity Authorizing the Acquisition of the Dayton Power & Light Company's 31% Interest in the East Bend Generating Station (2) Approval of Duke*

KROGER'S FIRST REQUEST ITEM 4(C), ATTACHMENT

Duke Kentucky requested confidential treatment for its response to Kroger's First Request Item 4(c), Attachment, which contains Forecasted Maintenance Expenses for Woodsdale through 2026. Duke Kentucky argued this information is not publicly available; the projected capital investments represent inner workings of a corporation; and disclosure would result in a commercial disadvantage.

Having considered the petition and the material at issue, the Commission finds that Duke Kentucky's petition should be granted. The Commission finds that the designated material contained in Duke Kentucky's response to Kroger's First Request Item 4(c), Attachment, are records that meet the criteria for confidential treatment and should be exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13. The Commission has previously held that this type of information should be granted confidential treatment.²⁰ The Commission finds that disclosure of such information would permit an unfair commercial advantage to its competitors.

KROGER'S FIRST REQUEST ITEM 4(G), ATTACHMENT

In support of its petition, Duke Kentucky argued that the information contained in their response to Kroger's First Request Item 4(g), Attachment, which contained forecasted capital expenses for Woodsale through 2026, be afforded confidential treatment under KRS 61.878(1)(c)(1), because the information contains information that

Kentucky's Assumption of Certain Liabilities in Connection with the Acquisition (3) Deferral of Costs Incurred as Part of the Acquisition and (4) All Other Necessary Waivers, Approval, and Relief, (Ky. PSC July 15, 2019), Order.

²⁰ See Case No. 2021-00198, June 7, 2022, Order; Case No. 2015-00267, November 24, 2015, Order; Case No. 2014-00201, July 15, 2019, Order.

is not publicly available; the projected capital investments represent inner workings of a corporation; and disclosure would result in a commercial disadvantage.

Having considered the petition and the material at issue, the Commission finds that Duke Kentucky's petition should be granted. The Commission finds that the designated material contained in Kroger's First Request Item 4(c), Attachment, are records that meet the criteria for confidential treatment and should be exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13. The Commission has previously held that this type of information should be granted confidential treatment.²¹ The Commission finds that disclosure of such information would permit an unfair commercial advantage to its competitors.

IT IS THEREFORE ORDERED that:

1. Duke Kentucky's petition for confidential treatment from May 4, 2023, is granted in part and denied in part.

2. Duke Kentucky's petition for confidential treatment for FRS monthly managerial reports, Direct Testimony of Paul Halstead Attachments PLH 2 and PLH 3, Direct Testimony of Jake Steward Attachment JJS 3(a) and (b), Direct Testimony of Bruce Sailors Attachments BLS-3, BLS-4, BLS-6, and BLS-8, employee information including names and salaries; monthly Rate for LED Equipment, new LED Equipment, useful life price breakdowns including labor costs, fixtures costs, pole and bracket expenses based on information from vendors; and workpapers for the calculation of remote reconnection

²¹ See Case No. 2021-00198, June 7, 2022, Order; Case No. 2015-00267, November 24, 2015, Order; Case No. 2014-00201, July 15, 2019, Order.

fee, Kroger's First Request, Item 3(c), Attachment, Kroger's First Request, Item 4(c), Attachment, Kroger's First Request, Item 4(g), Attachment, is granted.

3. Duke Kentucky's petition for confidential treatment for Duke Kentucky's budget and assumptions, Direct Testimony of Jake Stewart Attachment JJS 3(c), Staff's First Request, Item No. 56, Attachment BLS-5, and Kroger's First Request, Item 2(c) is denied. Duke Kentucky has leave to refile its motion for Kroger's First Request, Item 2(c).

4. The designated material 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
OCT 24 2023
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KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

*Angela M Goad
Assistant Attorney General
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Joe F. Childers
Childers & Baxter PLLC
300 Lexington Building, 201 West Sho
Lexington, KENTUCKY 40507

*Larisa Vaysman
Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45201

*Carrie H Grundmann
Spilman Thomas & Battle, PLLC
110 Oakwood Drive, Suite 500
Winston-Salem, NORTH CAROLINA 27103

*John G Horne, II
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Larry Cook
Assistant Attorney General
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Debbie Gates
Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45201

*Joshua Smith
Sierra Club
2101
Webster St. , Suite 1300
Oakland, CALIFORNIA 94612

*Maria-Laura Coltre
Sheppard Mullin Richter & Hampton LLP
2099 Pennsylvania Avenue NW, Suite 1
Washington, DISTRICT OF COLUMBIA 20006

*Elizabeth Brama
Taft Stettinius & Hollister LLP
1717 Dixie Highway, Suite 340
Covington, KENTUCKY 41011-4707

*Kate Huddleston
Sierra Club Environmental Law Program
2101 Webster Street
Suite 1300
Oakland, CALIFORNIA 94612

*J. Michael West
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Hannah Wigger
Sheppard Mullin Richter & Hampton LLP
2099 Pennsylvania Avenue NW, Suite 1
Washington, DISTRICT OF COLUMBIA 20006

*Honorable Kurt J Boehm
Attorney at Law
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OHIO 45202

*Minna Sunderman
Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45201

*James W Gardner
Sturgill, Turner, Barker & Moloney, PLLC
333 West Vine Street
Suite 1400
Lexington, KENTUCKY 40507

*Kristin Henry
Staff Attorney
Sierra Club Environmental Law Program
2101 Webster Street
Suite 1300
Oakland, CALIFORNIA 94612

*Paul Werner
Sheppard Mullin Richter & Hampton LLP
2099 Pennsylvania Avenue NW, Suite 1
Washington, DISTRICT OF COLUMBIA 20006

*Jody Kyler Cohn
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OHIO 45202

*Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45202

*Rocco O D'Ascenzo
Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45201

*Rebecca C. Price
Sturgill, Turner, Barker & Moloney
155 East Main Street
Lexington, KENTUCKY 40507

*Sarah Lawler
Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45201

*Steven W Lee
Spilman Thomas & Battle, PLLC
1100 Brent Creek Blvd., Suite 101
Mechanicsburg, PENNSYLVANIA 17050

*M. Todd Osterloh
Sturgill, Turner, Barker & Moloney, PLLC
333 West Vine Street
Suite 1400
Lexington, KENTUCKY 40507

*Valerie T. Herring
Attorney
Taft Stettinius & Hollister LLP
2200 IDS Center
80 South 8th Street
Minneapolis, MINNESOTA 55402-215