

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC TARIFF FILING OF DUKE)	
ENERGY KENTUCKY, INC. FOR APPROVAL OF)	CASE NO.
AN ECONOMIC DEVELOPMENT INCENTIVE)	2022-00394
SERVICE AGREEMENT WITH DIVERSEY, INC.)	

ORDER

This matter arises on two petitions for confidential treatment filed by Duke Energy Kentucky, Inc. (Duke Kentucky), pursuant to 807 KAR 5:001E, Section 13, and KRS 61.878, on December 21, 2022, and January 27, 2023. The petitions are described in further detail below.

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 KRS 61.878(1)(c)(1) provides an exception to the requirement for public disclosure of records that are “generally recognized as

¹ KRS 61.872(1).

² See KRS 61.871.

³ 807 KAR 5:001E, Section 13(2)(c)

confidential and proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.”

DECEMBER 21, 2022 PETITION FOR CONFIDENTIAL TREATMENT

Duke Kentucky requested confidential treatment for ten years for Attachments 1 and 2 in its response to Commission Staff’s First Request for Information (Staff’s First Request), Request No. 2.

In support of its petition, Duke Kentucky argued that the response to Staff’s First Request, Attachment 1, contained proprietary modeling forecasts and assumptions of future market prices in PJM and forecasted hourly locational marginal pricing for the next five years. Duke Kentucky asserted this information is both confidential and proprietary in nature. Duke Kentucky stated that release of such information would give competitors and potential vendors a distinct advantage in competing for business or negotiating contracts. It also stated that the information is integral to its effective execution of business decisions and is generally regarded as confidential or proprietary.

In support of its petition, Duke Kentucky argued that the response to Staff’s First Request, Attachment 2, contained projected bills which contain customer specific account, load information, and operating characteristics for the next two years. Duke Kentucky further stated that the information provides specific customer account and load information as well as insight into its operations and assumptions for dispatching generation and meeting load obligations. Duke Kentucky asserted this information is both confidential and proprietary in nature. Duke Kentucky stated that release of such information would give competitors and potential vendors a distinct advantage in competing for business or negotiating contracts. It also stated that the information is

integral to its effective execution of business decisions and is generally regarded as confidential or proprietary.

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 designated material contained in Duke Kentucky's response to Staff's First Request, Request No. 2, Attachment 1 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 5:001E, Section 13.

The Commission further finds that the request for confidential treatment should be denied for response to Staff's First Request, Request No. 2, Attachment 2. Duke Kentucky asserted that the information in Attachment 2 provided specific customer account and load information, however, it only breaks down to the specific customer level classes and does not identify specific customers projected bills or load information and therefore, is not entitled to confidential protection. Therefore, response to Staff's First Request, Request No. 2, Attachment 2 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 5:001E, Section 13.

JANUARY 27, 2023 PETITION FOR CONFIDENTIAL TREATMENT

Duke Kentucky requested confidential treatment for ten years for the Confidential Attachment provided in its response to Commission Staff's Second Request for Information (Staff's Second Request), Request No. 1.

In support of its petition, Duke Kentucky argued that the Confidential Attachment contained proprietary modeling forecasts and assumptions of future market prices in PJM,

forecasted hourly locational marginal pricing for the next several years, and projected bills which contain customer specific account, load information, and operating characteristics for the next three years. Duke Kentucky asserted this information is both confidential and proprietary in nature. Duke Kentucky stated that release of such information would give competitors and potential vendors a distinct advantage in competing for business or negotiating contracts. It also stated that the information is integral to its effective execution of business decisions and is generally regarded as confidential or proprietary.

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 Staff's Second Request, Request No. 1, Confidential Attachment are records that meet the criteria for confidential treatment and should be exempted from public disclosure pursuant to KRS 61.878(1)(c) and 807 KAR 5:001E, Section 13.

IT IS THEREFORE ORDERED that:

1. Duke Kentucky's December 21, 2022 petition for confidential treatment is granted in part and denied in part.
2. Duke Kentucky's petition for confidential treatment for Staff's First Request, Request 2, Attachment 1 is granted.
3. Duke Kentucky's petition for confidential treatment for Staff's First Request, Request 2, Attachment 2 is denied.
4. Duke Kentucky's January 27, 2023 petition for confidential treatment is granted.

5. Duke Kentucky's petition for confidential treatment for Staff's Second Request, Request 1, is granted.

6. 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.

7. Use of the designated material granted confidential treatment by this Order in any Commission proceeding shall comply with 807 KAR 5:001E, Section 13(9).

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

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

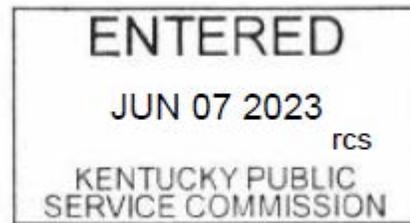
14. The designated material for which Duke Kentucky's request for confidential treatment has been denied shall neither be placed in the public record nor made available for inspection for 30 days from the date of service of this Order to allow Duke Kentucky to seek a remedy afforded by law.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner



ATTEST:


Executive Director

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