

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF DUKE ENERGY	)	CASE NO.
KENTUCKY, INC. FOR AN ADJUSTMENT TO	)	2023-00413
RIDER NM RATES AND FOR TARIFF APPROVAL	)	

ORDER

This matter arises on eight petitions for confidential treatment filed by Duke Energy Kentucky, Inc (Duke Kentucky). On December 13, 2023; February 2, 2024 (three petitions), March 6, 2024; March 22, 2024; April 10, 2024; and April 17, 2024, Duke Kentucky filed petitions, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for ten years for portions of discovery responses and testimony of: the Direct Testimony of Bruce L. Sailers, Attachment BLS-3; the Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention’s (Attorney General) First Request for Information (Attorney General’s First Request); Kentucky Solar Energy Society (KYSES) and Kentuckians for the Commonwealth’s (KFTC) (jointly, Joint Intervenors) First Request for Information (Joint Intervenors’ First Request); Commission Staff’s First Request for Information (Staff’s First Request); Joint Intervenors’ Second Request for Information (Joint Intervenors Second Request); Commission Staff’s Second Request for Information (Staff’s Second Request); Commission Staff’s Fourth Request for Information (Staff’s Fourth Request); and Rebuttal Testimony of Bruce Sailers, Attachment BLS-1, respectively.

## 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 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)(i) exempts from public disclosure “preliminary drafts, notes, correspondence with private individuals, other than correspondence which is intended to give notice of final action of a public agency.”<sup>5</sup> KRS 61.878(1)(j) exempts from public disclosure “preliminary recommendations, and preliminary memoranda in which opinions are expressed or policies formulated or recommended.”<sup>6</sup>

## DECEMBER 11, 2023 PETITION

Duke Kentucky requested that Bruce Sailors' Attachment BLS-3 which contained information related to O&M costs, projected fuel and environmental compliance

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

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

<sup>3</sup> 807 KAR 5:001, Section 12(2)(c).

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

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

<sup>6</sup> KRS 61.878(1)(j).

forecasted costs, power market prices, projected capacity and resource alternative capital costs, data licenses and produced from third parties, and license modeling, be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1).<sup>7</sup> Duke Kentucky argued that disclosure of the information would place Duke Kentucky at a commercial disadvantage as it negotiates contracts with various suppliers and vendors and could potentially harm Duke Kentucky's competitive position in the marketplace, to the detriment of Duke Kentucky and its customers.<sup>8</sup> Duke Kentucky stated that the information was developed internally by Duke Kentucky and is only distributed within Duke Kentucky to those employees who must have access for business reasons.<sup>9</sup> Duke Kentucky stated that if publicly disclosed, the information could give competitors an advantage in bidding for and securing new resources.<sup>10</sup> Duke Kentucky argued that public disclosure, particularly as it relates to supply-side alternatives, would reveal the business model Duke Kentucky uses, the procedure it follows, and the factors and inputs it considers in evaluating the economic viability of various generation related projects.<sup>11</sup> Duke Kentucky stated it used confidential and proprietary data consisting of information belonging to third parties who take reasonable steps to protect the information, such as only releasing such information

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<sup>7</sup> All the requested information can be found in Direct Testimony of Bruce Sailors, Attachment BLS-3.

<sup>8</sup> Petition of Duke Kentucky for Confidential Treatment of Information Contained In Its Application (filed Dec. 11, 2023) at 1.

<sup>9</sup> Petition of Duke Kentucky for Confidential Treatment of Information Contained In Its Application (filed Dec. 11, 2023) at 2.

<sup>10</sup> Petition of Duke Kentucky for Confidential Treatment of Information Contained In Its Application (filed Dec. 11, 2023) at 2.

<sup>11</sup> Petition of Duke Kentucky for Confidential Treatment of Information Contained In Its Application (filed Dec. 11, 2023) at 3.

subject to confidentiality agreements.<sup>12</sup> Duke Kentucky stated that the information is deserving of protection to protect its customers, such as the information putting Duke Kentucky at an unfair advantage in negotiating future emission allowance or emission control equipment sales.<sup>13</sup> Duke Kentucky cited that the Kentucky Supreme Court has found information concerning the inner workings of a corporation is generally accepted as confidential or proprietary.<sup>14</sup>

Having considered the petition and the material at issue, the Commission finds that the Direct Testimony of Bruce Sailors, Attachment BLS-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)(c)(1). The Commission is not bound by third party non-disclosure agreements. However, disclosure of the information included would result in a competitive disadvantage to Duke Kentucky in the marketplace. The Commission has previously granted similar information confidential treatment.<sup>15</sup>

DUKE KENTUCKY'S FEBURARY 2, 2024 PETITION-  
ATTORNEY GENERAL'S FIRST REQUEST RESPONSES

Duke Kentucky requested confidential treatment pursuant to KRS 61.878(1)(c)(1) for its response to Attorney General's First Request, Item 4, which included average cost

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<sup>12</sup> Petition of Duke Kentucky for Confidential Treatment of Information Contained In Its Application (filed Dec. 11, 2023) at 3.

<sup>13</sup> Petition of Duke Kentucky for Confidential Treatment of Information Contained In Its Application (filed Dec. 11, 2023) at 3.

<sup>14</sup> Duke Kentucky citing *Hoy v. Kentucky Industrial Revitalization Authority, Ky., 904 S.W.2d 766, 768 (Ky. 1995)*.

<sup>15</sup> See Case No. 2018-00195, *Electronic 2018 Integrated Resource Plan of Duke Energy Kentucky, Inc* (Ky. PSC Sept. 3, 2019), Order.

of distribution and transmission additions, average cost of transmission and distribution O&M, peak load forecast, and avoided projected capacity cost data. In support of its petition, Duke Kentucky made the same arguments as in its December 11, 2023 petition.<sup>16</sup>

Having considered the petition and the material at issue, the Commission finds that response to Attorney General's First Request, Item 4, 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)(c)(1). Disclosure of the information would result in a competitive disadvantage to Duke Kentucky in the marketplace. Disclosure of the projected avoided cost values would reveal proprietary information related to energy costs and disclosure would allow competitors to have a commercial advantage. The Commission has previously found that projected avoided costs should be afforded confidential treatment.<sup>17</sup>

DUKE KENTUCKY'S FEBRUARY 2, 2024 PETITION-  
RESPONSES TO JOINT INTERVENORS' FIRST REQUEST

Duke Kentucky requested that its response to Joint Intervenors' First Request, Item 4 Attachment, (avoided costs and data related to ancillary services), and its response to Joint Intervenors' First Request, Item 4(b), Attachment (third party information, such as power market data and fuel forecast prices), be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1). Duke Kentucky made the same arguments as its December 11,

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<sup>16</sup> See *above* arguments citing Petition of Duke Kentucky for Confidential Treatment of Information Contained in its Application (filed Dec. 11, 2023) at 1-3.

<sup>17</sup> See Case No. 2022-00251, *Electronic Application of Duke Energy Kentucky, INC to Amend its Demand Side Management Programs* (Ky. PSC Sept. 21, 2023), Order.

2023 petition.<sup>18</sup> Duke Kentucky also argued that if vendors knew its costs and/or forecasted costs, such brokers and vendors would have an unfair advantage in negotiating future contracts, possibly to the detriment of Duke Kentucky and its customers.<sup>19</sup>

Having considered the petition and the material at issue, the Commission finds that Duke Kentucky's responses to Joint Intervenors' First Request, Items 4 and 4(b), Attachments 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). The Commission has previously granted confidential treatment for fuel price forecasts that used data collected by third parties.<sup>20</sup>

DUKE KENTUCKY'S FEBRUARY 2, 2024 PETITION-  
RESPONSES TO STAFF'S FIRST REQUEST

Duke Kentucky requested that its response to Staff's First Request, Items 7, 8, 9, and Item 9, Attachment, be granted confidential treatment pursuant to KRS 61.878(1)(c)(1).<sup>21</sup> Each of these items contained additional explanations and supporting data and calculations for Direct Testimony of Bruce Sailors, Attachment BLS-

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<sup>18</sup> See above arguments citing Petition of Duke Kentucky for Confidential Treatment of Information Contained in its Application (filed Dec. 11, 2023) at 1-3.

<sup>19</sup> Petition for Confidential Treatment of Duke Kentucky for Certain Responses to Joint Intervenors' January 19, 2024 First Request for Information (filed Feb. 2, 2024) at 4.

<sup>20</sup> See Case No. 2020-00350, *Electronic Application of Kentucky Utilities Co. for an Adjustment of Its Electric Rates, A Certificate of Public Convenience & Necessity to Deploy Advanced Metering Infrastructure, Approval of Certain Regulatory & Accounting Treatments, & Establishment of A One-Year Surcredit Elec. Application of Louisville Gas & Elec. Co. for an Adjustment of Its Electric & Gas Rates, A Certificate of Public Convenience & Necessity* (Ky. PSC Dec. 6, 2022), Order

<sup>21</sup> Petition for Confidential Treatment of Duke Kentucky for Certain Responses to Commission Staff's January 19, 2024 First Request for Information (filed Feb. 2, 2024) at 2.

3. Duke Kentucky made the same arguments as contained in its December 11, 2023 motion.<sup>22</sup>

Having considered the petition and the material at issue, the Commission finds that Duke Kentucky's responses to Joint Intervenors' First Request, Items 4 and 4(b), Attachments 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 the information included would result in a competitive disadvantage to Duke Kentucky in the marketplace. The Commission has previously granted similar information confidential treatment.<sup>23</sup>

#### MARCH 6, 2024 PETITION

Duke Kentucky requested that its response to the Joint Intervenors' Second Request, Item 14 (historical and present total available generation, load, and load plus reserve margin for Duke Kentucky's final 1-year FRR plan); Item 15, Attachment (avoided cost projects and supporting data); and Item 24, Attachment (avoided cost projections and supporting data) be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1).<sup>24</sup> Duke Kentucky made some of the same arguments as contained in its December 11, 2023 motion.<sup>25</sup> Duke Kentucky also argued that if this information

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<sup>22</sup> See above arguments citing Petition of Duke Kentucky for Confidential Treatment of Information Contained in its Application (filed Dec. 11, 2023) at 1-3.

<sup>23</sup> See Case No. 2018-00195, *Electronic 2018 Integrated Resource Plan of Duke Energy Kentucky, Inc* (Ky. PSC Sept. 3, 2019).

<sup>24</sup> Petition for Confidential Treatment of Duke Kentucky for Certain Responses to Joint Intervenors' February 21, 2024 Second Request for Information (filed Mar. 6, 2024) at 2.

<sup>25</sup> See above arguments citing Petition of Duke Kentucky for Confidential Treatment of Information Contained in its Application (filed Dec. 11, 2023) at 1-3

was available publicly, it would reveal Duke Kentucky's position with regards to capacity in PJM and could negatively impact Duke Kentucky's ability to procure additional generation capacity at the best possible price, which would be to the potential detriment of Duke Kentucky's customers.<sup>26</sup> Duke Kentucky argued that the avoided cost projects and its supporting data include or incorporate third-party price forecasts and proprietary information, disclosure of which would injure Duke Kentucky and its competitive position and business interests.<sup>27</sup>

Having considered the petition and the material at issue, the Commission finds that Duke Kentucky's responses to Joint Intervenors' Second Request, Items 7, 8, 9, and Item 9, Attachment, 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 the information for Duke Kentucky's FRR plan could impact Duke Kentucky's ability to operate within PJM markets. The Commission has previously held that similar information should be afforded confidential treatment.<sup>28</sup> For avoided cost projections as well as the supporting data disclosure of the information included would result in a competitive disadvantage to Duke Kentucky in the marketplace, as well as bidding and

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<sup>26</sup> Petition for Confidential Treatment of Duke Kentucky for Certain Responses to Joint Intervenors' February 21, 2024 Second Request for Information (filed Mar. 6, 2024) at 2.

<sup>27</sup> Petition for Confidential Treatment of Duke Kentucky for Certain Responses to Joint Intervenors' February 21, 2024 Second Request for Information (filed Mar. 6, 2024) at 3.

<sup>28</sup> See Case. No 2021-00271, *Electronic Application of Duke Energy Kentucky, Inc. For 1) Adjustment of the 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 May 4, 2020), Order at 6.

securing resources. The Commission has previously granted similar information confidential treatment.<sup>29</sup>

### MARCH 22, 2024 PETITION

Duke Kentucky requested that its response to Staff's Third Request, Item 2, Attachment (data and energy inputs from modeling with the encompass power planning software) be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1).<sup>30</sup> Duke Kentucky argued that disclosure of the information described would place Duke Kentucky at a commercial disadvantage as it negotiates contracts with various suppliers and vendors and could potentially harm Duke Kentucky's competitive position in the marketplace, to the detriment of Duke Kentucky and its customers.<sup>31</sup> Duke Kentucky stated that it used the third-party capacity expansion model to determine the optimized least cost mix of resources for the entire Eastern Interconnection based on the inputs in the database; it uses the third-party production cost model to dispatch the optimized mix of resources on an hourly basis.<sup>32</sup> Duke Kentucky stated that the attachment contains confidential and proprietary information provided confidentially by a third-party vendor who take reasonable steps to protect its confidential information, such as only releasing such information subject to confidentiality agreements.<sup>33</sup> Duke Kentucky is contractually

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<sup>29</sup> See Case No. 2018-00195, Electronic 2018 Integrated Resource Plan of Duke Energy Kentucky, Inc (Ky. PSC Sept. 3, 2019).

<sup>30</sup> Petition for Confidential Treatment of Duke Kentucky for Certain Responses to Staff's March 12, 2024 Third Request (filed Mar. 22, 2024) at 1.

<sup>31</sup> Petition for Confidential Treatment of Duke Kentucky for Certain Responses to Staff's March 12, 2024 Third Request (filed Mar. 22, 2024) at 1.

<sup>32</sup> Petition for Confidential Treatment of Duke Kentucky for Certain Responses to Staff's March 12, 2024 Third Request (filed Mar. 22, 2024) at 2.

<sup>33</sup> Petition for Confidential Treatment of Duke Kentucky for Certain Responses to Staff's March 12, 2024 Third Request (filed Mar. 22, 2024) at 2-3.

bound to maintain such information as confidential.<sup>34</sup> Duke Kentucky argued that it would be placed at a competitive disadvantage if such information is released publicly as it would allow the competitors and potential counterparties and vendors for Duke Kentucky to make decisions regarding pricing they otherwise would not have done, thereby making Duke Kentucky, and in turn its customers pay more than they otherwise would absent such information.<sup>35</sup>

Having considered the petition and the material at issue, the Commission finds that Duke Kentucky's response to Staff's Third Request, Item 2, Attachment, 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). The Commission is not bound by non-disclosure agreements between the utility and a third party. However, disclosure of information would put Duke Kentucky at a competitive disadvantage in the marketplace and could harm Duke Kentucky's ability to negotiate contracts in the future. The Commission has previously granted information that could give competitors insight into modeling process and data input sources confidential treatment.<sup>36</sup>

#### APRIL 10, 2024 PETITION

Duke Kentucky requested that its response to Staff's Fourth Request, Item 8, Attachment (information related to Duke Kentucky's upcoming IRP that is still in

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<sup>34</sup> Petition for Confidential Treatment of Duke Kentucky for Certain Responses to Staff's March 12, 2024 Third Request (filed Mar. 22, 2024) at 3.

<sup>35</sup> Petition for Confidential Treatment of Duke Kentucky for Certain Responses to Staff's March 12, 2024 Third Request (filed Mar. 22, 2024) at 3.

<sup>36</sup> See Case No. 2019-00096, *Integrated Resource Plan of Eastern Kentucky Power Cooperative, Inc.*, (Ky. PSC July 30, 2020).

development that includes increase to reserve margin and peak load forecast) be afforded confidential treatment pursuant to KRS 61.878(1)(i) and KRS 61.878(1)(j).<sup>37</sup> Duke Kentucky argued that the public disclosure of the information would reveal a preliminary draft and/or preliminary memorandum interim forecast, which will be subject to further validation and change, and may differ from what is ultimately submitted in the next IRP proceeding.<sup>38</sup> Duke Kentucky argued that this information is integral to Duke Kentucky's effective execution of business decisions.<sup>39</sup>

Having considered the petition and the material at issue, the Commission finds that Duke Kentucky's response to Staff's Fourth Request, Item 8, 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)(i) and (1)(j). The information is related to Duke Kentucky's next IRP filing, is still preliminary, and not finalized at this time.

#### APRIL 17, 2024 PETITION

Duke Kentucky requested that the Rebuttal Testimony of Bruce Sailors, Attachment BLS-1 (information related to O&M costs, projected fuel and environmental compliance forecasted costs, power market prices, projected capacity and alternative capital costs, data license and produced from third party owned and license modeling

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<sup>37</sup> Petition for Confidential Treatment of Duke Kentucky for Certain Responses to Commission Staff's March 28, 2024 Fourth Request (filed Apr. 10, 2024) at 1-2.

<sup>38</sup> Petition for Confidential Treatment of Duke Kentucky for Certain Responses to Commission Staff's March 28, 2024 Fourth Request (filed Apr. 10, 2024) at 2.

<sup>39</sup> Petition for Confidential Treatment of Duke Kentucky for Certain Responses to Commission Staff's March 28, 2024 Fourth Request (filed Apr. 10, 2024) at 3.

tools) be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1). Duke Kentucky made the same arguments as contained in its March 13, 2023 motion.<sup>40</sup>

Having considered the petition and the material at issue, the Commission finds that Rebuttal Testimony of Bruce Sailors, Attachment BLS-1 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)(c)(1). Disclosure of the information included would result in a competitive disadvantage to Duke Kentucky in bidding and securing new resources. The Commission has previously granted similar information confidential treatment.<sup>41</sup>

IT IS THEREFORE ORDERED that:

1. Duke Kentucky's December 11, 2023; March 6, 2024; March 22, 2024; April 10, 2024; April 14, 2024 petitions; and the three petitions from February 2, 2024 for confidential treatment are 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. If the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment, Duke

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<sup>40</sup> See above arguments citing Petition of Duke Kentucky for Confidential Treatment of Information Contained in its Application (filed Dec. 11, 2023) at 1-3.

<sup>41</sup> See Case No. 2018-00195, *Electronic 2018 Integrated Resource Plan of Duke Energy Kentucky, Inc* (Ky. PSC Sept. 3, 2019).

Kentucky shall inform the Commission and file with the Commission an unredacted copy of the designated material.

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  
MAY 17 2024 bsb  
KENTUCKY PUBLIC  
SERVICE COMMISSION

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