

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN ELECTRONIC EXAMINATION OF THE)	
APPLICATION OF THE FUEL ADJUSTMENT)	CASE NO.
CLAUSE OF DUKE ENERGY KENTUCKY, INC.)	2021-00057
FROM NOVEMBER 1, 2018 THROUGH)	
OCTOBER 31, 2020)	

ORDER

This matter arises on two petitions for confidential treatment filed by Duke Energy Kentucky, Inc. (Duke Kentucky). On March 22, 2021, Duke Kentucky filed a petition, pursuant to 807 KAR 5:001, Section 13 and KRS 61.878(1)(c), requesting that the Commission grant confidential treatment for information redacted from its responses to Commission Staff's First Request for Information (Staff's First Request).¹ Duke Kentucky sought confidential treatment for ten years for information redacted from its responses to Staff's First Request, Items 11, 30, 31, and 32.

On May 27, 2021, Duke Kentucky filed a petition, pursuant to 807 KAR 5:001, Section 13 and KRS 61.878(1)(c), requesting that the Commission grant confidential treatment for information redacted from its responses to Commission Staff's Post-Hearing Request for Information (Staff's Post-Hearing Request).² Duke Kentucky sought confidential treatment for ten years for information redacted from its responses to Staff's Post-Hearing Request, Item 2.

¹ Order (Ky. PSC Mar. 4, 2021), Appendix B.

² Staff's Post-Hearing Request (Ky. PSC May 20, 2021).

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.”³ In support of its petitions, Duke Kentucky argued the application of KRS 61.878(1)(c). KRS 61.878(1)(c)(1) provides an exception to the requirement for public disclosure for records that are “generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.” Exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.⁴ The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.⁵

MARCH 22, 2021 PETITION

Duke Kentucky sought confidential treatment for ten years for redactions from information it supplied in response to Staff’s First Request, Items 11, 30, 31, and 32.

Duke Kentucky’s response to Item 11 included an attachment containing confidential fuel policies and procedures, including strategies for fuel procurement in other states. Duke Kentucky argued that the disclosure of this information would place it at a commercial disadvantage when negotiating contracts with suppliers and vendors and potentially harm Duke Kentucky’s competitive position in the marketplace.

³ KRS 61.872(1).

⁴ See KRS 61.871.

⁵ 807 KAR 5:001, Section 13(2)(c).

The attachments to Duke Kentucky's responses to Items 30 and 31 included its forecast of projected fuel consumption for 2021 and 2022 as well as its internal sales projections for those same years. Duke Kentucky argued that, in combination, these responses would provide competitors with knowledge of Duke Kentucky's operating costs, commodity positions, and potentially allow competitors to manipulate the marketplace.

The attachment included with Duke Kentucky's response to Item 32 included information related to Duke Kentucky's outages and costs, thereby allowing contractors and vendors to have knowledge of planned maintenance schedules hindering Duke Kentucky's ability to negotiate with prospective contractors and vendors.

Having considered the petition and the material at issue, the Commission finds that Duke Kentucky's March 22, 2021 petition should be granted. The Commission has previously granted confidential treatment to similar motions in prior cases.⁶ The designated material is generally recognized as confidential or proprietary; it therefore meets the criteria for confidential treatment and is exempted from public disclosure pursuant to 807 KAR 5:001, Section 13 and KRS 61.878(1)(c)(1).

MAY 27, 2021 PETITION

Duke Kentucky sought confidential treatment for information it redacted in its response to Staff's Post-Hearing Request, Item 2. In an attachment included with its response to Item 2, Duke Kentucky provided a document containing its internal

⁶ See Case No. 2019-00006, *Electronic Examination of the Application of the Fuel Adjustment Clause of Duke Energy Kentucky, Inc. from November 1, 2016 through October 31, 2018* (Ky. PSC Jan. 8, 2020); Case No. 2020-00220, *Electronic Examination of the Application of the Fuel Adjustment Clause of Duke Energy Kentucky, Inc. from November 1, 2017 through April 30, 2018* (Ky. PSC Oct. 16, 2018).

calculations to support using March 2020 for its base fuel rate.⁷ Duke Kentucky argued that the disclosure of such information, which included its projected forecast demand and sales revenue, would give competitors an advantage in bidding for bulk power loads and provide an advantage to Duke Kentucky's wholesale power purchasers and sellers in future contract negotiations.⁸

Having considered the petition and the material at issue, the Commission finds that Duke Kentucky's May 27, 2021 petition should be granted. The designated material is generally recognized as confidential or proprietary; it therefore meets the criteria for confidential treatment and is exempted from public disclosure pursuant to 807 KAR 5:001, Section 13 and KRS 61.878(1)(c)(1).

IT IS THEREFORE ORDERED that:

1. Duke Kentucky's petitions 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 ten 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 5:001E, 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.

⁷ Staff's Post-Hearing Request (Ky. PSC May 20, 2021) at 2.

⁸ Petition of Duke Energy Kentucky, Inc. for Confidential Treatment of Information Contained in its Responses to Commission Staff's Post-Hearing Request for Information Issued on May 20, 2021 (Ky. PSC filed May 27, 2021) at 2, paragraph 2.

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



ATTEST:



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