

**COMMONWEALTH OF KENTUCKY**

**BEFORE THE PUBLIC SERVICE COMMISSION**

A REVIEW OF THE ADEQUACY OF ) ADMIN  
KENTUCKY’S GENERATION CAPACITY ) CASE NO. 387  
AND TRANSMISSION SYSTEM )

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**DUKE ENERGY KENTUCKY, INC.’S  
PETITION FOR THE CONFIDENTIAL TREATMENT OF INFORMATION  
FILED FOR CALENDAR YEAR 2024**

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Duke Energy Kentucky, Inc. (Duke Energy Kentucky or Company), by counsel, pursuant to 807 KAR 5:001, Section 13(2), KRS 61.878(1)(c), and other applicable law, moves the Public Service Commission of Kentucky (Commission) for an Order granting confidential treatment to the following response to Data Request No. 11, as requested by Commission Staff (Staff). Specifically, Duke Energy Kentucky seeks confidential treatment of information referred to herein as the “Confidential Information,” which, broadly speaking, includes planned outage and retirement schedules by plant.

**I. MOTION FOR CONFIDENTIAL TREATMENT**

**a. Statutory Standard**

Administrative Regulation 807 KAR 5:110, Section 5 sets forth the procedure by which certain information filed with the Commission shall be treated as confidential. Specifically, the party seeking confidential treatment must establish “each basis upon which the petitioner believes the material should be classified as confidential” in accordance with the Kentucky Open Records Act, KRS 61.878. *See* 807 KAR 5:110 Section 5(2)(a)(1).

The Kentucky Open Records Act exempts certain records from the requirement of public inspection. *See* KRS 61.878. In particular, KRS 61.878(1)(c)(1) excludes from the Open Records Act:

Records confidentially disclosed to an agency or required by an agency to be disclosed to it, 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[.]

This exception “is aimed at protecting records of private entities which, by virtue of involvement in public affairs, must disclose confidential or proprietary records to a public agency, if disclosure of those records would place the private entities at a competitive disadvantage.” Ky. OAG 97-ORD-66 at 10 (Apr. 17, 1997).

KRS 61.878(1)(c)(1) requires the Commission to consider three criteria in determining confidentiality: (1) whether the record is confidentially disclosed to an agency or required by an agency to be disclosed to it; (2) whether the record is generally recognized as confidential or proprietary; and (3) whether the record, if openly disclosed, would present an unfair commercial advantage to competitors of the entity that disclosed the records. The Confidential Information for which Duke Energy Kentucky is seeking confidential treatment, each of which is described in further detail below, satisfies each of these three statutory criteria.

**b. Response for Which Confidential Treatment is Sought**

Data Request No. 11 states as follows:

A list that identifies scheduled outages or retirements of generating capacity during the current year and the following four years.

In response to Data Request No. 11, the Company provides a table depicting a list of projected outages, forecasted four years into the future. If publicly available, this table

will grant vendors a distinct advantage in that they would be able to anticipate Duke Energy Kentucky's generating unit maintenance schedules and replacement power needs. Further, Duke Energy Kentucky submits that the following information, if openly disclosed, could give its competitors access to competitively sensitive, confidential information, which in turn could cause energy prices to consumers to be above competitive rates, and would permit competitors of Duke Energy Kentucky to gain an unfair competitive advantage in the marketplace. Moreover, this information would provide operational limitations including when the Company anticipates its generating assets to come offline for maintenance activities, which could be exploited by terrorist actors who wish to compromise the Company's electric system to harm customers.

The Company requests that this Attachment be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1). The confidential data is not publicly available, thus satisfying the first element of the statutory standard for confidentiality of a proprietary record. In *Hoy v. Kentucky Indus. Revitalization Auth.*, 907 S.W.2d 766, 768 (Ky. 1995), the Kentucky Supreme Court held that documents detailing the "inner workings of a corporation (are) 'generally recognized as confidential or proprietary.'" The confidential data includes planned future generating unit outage durations and schedules and thus satisfies this standard as it represents the inner workings of a corporation and, therefore, meets the second element of the statutory standard. The confidential data also satisfies the third element, as it contains commercially sensitive information related to the Company's financial and operational projections and disclosure of this information would result in a commercial disadvantage for Duke Energy Kentucky as competitors would gain invaluable insight into the Company's operations and replacement power needs. The

information for which Duke Energy Kentucky is seeking confidential treatment is not known outside of Duke Energy Corporation. Duke Energy Kentucky does not object to limited disclosure of the confidential information described herein, pursuant to an acceptable protective agreement, to the Attorney General or other intervenors with a legitimate interest in reviewing the same for the purpose of participating in this case.

In accordance with the provisions of 807 KAR 5:001, Section 13(3), the Company is filing one copy of the Confidential Information separately under seal, and one copy without the confidential information included.

Duke Energy Kentucky respectfully requests that the Confidential Information be withheld from public disclosure for a period of ten years. This will assure that the Confidential Information – if disclosed after that time – will no longer be commercially sensitive so as to likely impair the interests of the Company or its customers if publicly disclosed.

To the extent the Confidential information becomes generally available to the public, whether through filings required by other agencies or otherwise, Duke Energy Kentucky will notify the Commission and have its confidential status removed, pursuant to 807 KAR 5:001 Section 13(10)(a).

## **II. CONCLUSION**

WHEREFORE, Duke Energy Kentucky, Inc., respectfully requests that the Commission classify and protect as confidential the specific information described herein.

Respectfully submitted,

DUKE ENERGY KENTUCKY, INC.

/s/Rocco D'Ascenzo

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**CERTIFICATE OF SERVICE**

This is to certify that the foregoing electronic filing is a true and accurate copy of the document being filed in paper medium; that the electronic filing was transmitted to the Commission on March 31, 2025; and there are currently no parties that the Commission has excused from participation by electronic means in this proceeding.

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