

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of an Examination of the )  
Application of the Fuel Adjustment Clause of ) Case No. 2016-00005  
Duke Energy Kentucky, Inc. From May 1, )  
2015 Through October 31, 2015 )

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**PETITION OF DUKE ENERGY KENTUCKY, INC.**  
**FOR CONFIDENTIAL TREATMENT OF INFORMATION**  
**CONTAINED IN ITS RESPONSES TO COMMISSION STAFF'S**  
**REQUESTS IN THE APPENDIX TO ORDER**  
**DATED FEBRUARY 5, 2016**

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Duke Energy Kentucky, Inc. (Duke Energy Kentucky or Company), pursuant to 807 KAR 5:001, Section 13, respectfully requests the Commission to classify and protect certain information provided by Duke Energy Kentucky in its responses to Data Request Nos. 15, 19, 20, and 27 as requested by Commission Staff (Staff) in this case on February 5, 2016. The information that Staff seeks through discovery and for which Duke Energy Kentucky now seeks confidential treatment (Confidential Information) includes Duke Energy Kentucky's Confidential Fuel Procurement Policies, bid tabulation information that was done in response to coal solicitations and analysis of purchased power cost vs. the Company's highest cost generation.

More specifically, the responses contained in the Confidential Attachments to Data Request Nos. 15, 19, 20, and 27 contain sensitive information, the disclosure of which would injure Duke Energy Kentucky and its competitive position and business interest. The sensitive information contained in attachments to Data Request 15 include confidential fuel policies and procedures including, but not limited to, risk tolerances, and the recommended contract term coverage level strategies, for Duke Energy Kentucky, Duke Energy Indiana, and Duke Energy

Carolinas. Duke Energy Corporation's Regulated Fuels Group is responsible for the procurement of coal for the regulated utilities in the Duke Energy Corporate footprint and thus its policies and procedures are all-encompassing. The public disclosure of the information described above would place Duke Energy Kentucky at a commercial disadvantage as it negotiates contracts with various suppliers and vendors and potentially harm Duke Energy Kentucky's competitive position in the marketplace, to the detriment of Duke Energy Kentucky and its customers. The sensitive information contained in responses to Data Request Nos. 19 and 20 include bid tabulations for several coal vendors that responded to written and verbal coal solicitations, respectively. Releasing this information would give other coal suppliers access to each-other's costs which would act to the detriment of Duke Energy Kentucky and its customers in the future as vendors would know how competing suppliers price their commodities. The sensitive information contained in Data Request No. 27 includes calculations and data for determining the amount of power purchases in excess of its highest-cost unit available for dispatch. Releasing this information will give potential counterparties who may sell power to Duke Energy Kentucky access to Duke Energy Kentucky's own pricing valuation of its generating assets for purposes of making procurement decisions.

In support of this Petition, Duke Energy Kentucky states:

1. The Kentucky Open Records Act exempts from disclosure certain commercial information. KRS 61.878(1)(c). To qualify for this exemption and, therefore, maintain the confidentiality of the information, a party must establish that disclosure of the commercial information would permit an unfair advantage to competitors of that party. Public disclosure of the information identified herein would, in fact, prompt such a result for the reasons set forth below.

2. The public disclosure of the information described in No. 15 would make public the coal procurement strategies for all of Duke Energy Corporation's regulated utility operations, and would place Duke Energy Kentucky and its sister utilities at a commercial disadvantage as it negotiates contracts with various suppliers and vendors and potentially harm Duke Energy Kentucky's competitive position in the marketplace, to the detriment of Duke Energy Kentucky and its customers.

3. Disclosure of the factors underlying Duke Energy Kentucky's bid analysis/selection process (Confidential Information) would damage Duke Energy Kentucky's competitive position and business interests. If the Commission grants public access to the information requested in Data Request Nos. 19, 20, and 27 Confidential Attachments, potential bidders could manipulate the bid solicitation process to the detriment of Duke Energy Kentucky and its ratepayers by tailoring bids to correspond to and comport with Duke Energy Kentucky's bidding criteria and process. Potential future coal suppliers could tailor their bids in the future having knowledge of how their competitors are pricing similar product thereby manipulating the market and undermining the Company's ability to manage costs. Similarly potential future power suppliers would have access to Duke Energy Kentucky's valuation of its own generation pricing thereby manipulating the market and undermining Duke Energy Kentucky's ability to manage its costs. Moreover, competitors to potential power sale agreements would have access to Duke Energy Kentucky's pricing information thereby placing the Company at a commercial disadvantage in winning such bids.

4. The information in responses to Data Request Nos. 15, 19, 20, and 27 were developed internally by Duke Energy Corporation and Duke Energy Kentucky personnel, is

not on file with any public agency, and is not available from any commercial or other source outside Duke Energy Kentucky. The aforementioned information is distributed within Duke Energy Kentucky only to those employees who must have access for business reasons, and is generally recognized as confidential and proprietary in the energy industry.

5. The Commission has treated the similar information described herein as confidential in other utilities' responses to the same data requests such as Louisville Gas and Electric Company Case No. 2008-521<sup>1</sup> and Kentucky Utilities Case 2008-520<sup>2</sup> and for Duke Energy Kentucky in Case No. 2008-00522<sup>3</sup> and 2011-00249.

6. Duke Energy Kentucky does not object to limited disclosure of the confidential information described herein, pursuant to an acceptable protective agreement, the Staff or other intervenors with a legitimate interest in reviewing the same for the purpose of participating in this case.

7. This information was, and remains, integral to Duke Energy Kentucky's effective execution of business decisions. And such information is generally regarded as confidential or proprietary. Indeed, as the Kentucky Supreme Court has found, "information concerning the inner workings of a corporation is 'generally accepted as confidential or proprietary.'" *Hoy v. Kentucky Industrial Revitalization Authority*, Ky., 904 S.W.2d 766, 768 (Ky. 1995).

8. 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.

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<sup>1</sup> Case No. 2008-521, Letter granting Confidential treatment, March 20, 2009.

<sup>2</sup> Case No. 2008-520, Letter granting Confidential treatment, March 20, 2009.

<sup>3</sup> Case No. 2008-522, Letter granting Confidential treatment, March 20, 2009.

9. 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.

10. 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).

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.



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*Counsel for Duke Energy Kentucky, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing filing was served on the following via  
overnight mail, this 19<sup>th</sup> day of February, 2016:

Larry Cook  
The Office of the Attorney General  
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