

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of an Electronic Examination of)
the Application of the Fuel Adjustment)
Clause of Duke Energy Kentucky, Inc. From)
November 1, 2014 Through October 31,)
2016)

Case No. 2017-00005

**PETITION OF DUKE ENERGY KENTUCKY, INC.
FOR CONFIDENTIAL TREATMENT OF INFORMATION
CONTAINED IN ITS RESPONSES TO COMMISSION STAFF'S
FIRST SET OF DATA REQUESTS ISSUED FEBRUARY 6, 2017**

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. 1, 5, 6, 9, and 25, as requested by Commission Staff (Staff) in this case on February 6, 2017. The information that Staff seeks through discovery and for which Duke Energy Kentucky now seeks confidential treatment (Confidential Information), shows: the projected total kilowatt hours (kWh) used to calculate base fuel costs;¹ the Company's projected fuel requirements both in times and dollars;² sales forecasts in both kWh and dollars;³ planned future outages and maintenance schedules by plant;⁴ and written solicitations for coal supplies.⁵

The responses in Data Request Nos. 1, 5, 6, 9, and 25, contain sensitive information, the disclosure of which would injure Duke Energy Kentucky and its

¹ See Data Request No. 1.

² See Data Request No. 5.

³ See Data Request No. 6.

⁴ See Data Request No. 9.

⁵ See Data Request No. 25.

competitive position and business interests. Specifically, Duke Energy Kentucky provides specific total KWH sales projections as part of its answer to Data Request No. 1. The response to No. 5 provides Duke Energy Kentucky's anticipated future fuel requirements and costs. Duke Energy Kentucky's response to No. 6 provides a list of projected sales by customer class, including anticipated revenue. Together, these three responses could provide power marketing competitors and fuel vendors with knowledge regarding Duke Energy Kentucky's operating costs and commodity positions. This would allow them to potentially manipulate the marketplace so as to unnecessarily cause consumers to pay more for electricity than they otherwise would. Similarly, the list of projected outages and costs, as contained in response No. 9, will grant vendors a distinct advantage in that they would be able to anticipate Duke Energy Kentucky's maintenance schedules. If Duke Energy Kentucky's contractors and vendors have access to the number, duration, and causes of outages, it would again give them a distinct advantage in anticipating maintenance schedules. Likewise, response No. 25 includes information describing the Company's written solicitations for coal supplies and responses thereto and its strategies for procuring fuel. If publicly disclosed, this information would give Duke Energy Kentucky's vendors a commercial advantage in responding to future solicitations.

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 Commission's first request is for any proposed changes in base fuel rates. While this information is not confidential, Duke Energy Kentucky's response discloses sensitive and proprietary kWh sales projections for the calendar years 2017 and 2018 (response No. 1). The sales projections should be afforded confidential protections as they are internally-derived figures that would give competitors, marketers and vendors a competitive advantage in any existing or prospective commercial relationship involving Duke Energy Kentucky. Maintaining the confidentiality of the projected kWh sales is necessary to protect the interests of both the Company and its customers. As afforded in similar proceedings, Duke Energy Kentucky is only seeking confidential protection for the information beginning in paragraph two of the response.⁶

3. Public disclosure of projected fuel requirements (response No. 5) would also afford Duke Energy Kentucky's competitors and vendors a distinct competitive advantage in any contractual negotiations. Vendors and competitors would know Duke Energy Kentucky's projected monthly fuel requirements for the next two years. This information could be used against Duke Energy Kentucky as it negotiates to satisfy its projected requirements.

4. Similarly, public disclosure of projected forecast demand and sales revenue (response No. 6) would afford Duke Energy Kentucky's competitors a distinct competitive advantage in bidding for and securing new bulk power loads, and would give

⁶ See *In the Matter of An Examination of the Application of the Fuel Adjustment Clause of Duke Energy Kentucky, Inc. from November 1, 2010 through October 31, 2012*, Case No 2012-00554 (Order) (Ky.P.S.C. August 27, 2013).

an obvious advantage to Duke Energy Kentucky's wholesale power purchasers and sellers in any contractual negotiations.

5. Likewise, public disclosure of information regarding Duke Energy Kentucky's plant maintenance schedules (response No. 9) would provide critical "downtime" information that would necessarily impair Duke Energy Kentucky's ability to negotiate with prospective contractors and vendors. If Duke Energy Kentucky's prospective contractors and vendors have access to the number, duration and timing of such outages, it would give them a distinct advantage in anticipating maintenance schedules and plant condition and operating characteristics. This would very likely impair Duke Energy Kentucky's ability to negotiate with prospective contractors and vendors.

6. Duke Energy Kentucky is also providing a copy of a written solicitation for coal suppliers, that includes a summary of the responses received in the Company selection criteria (response No. 25). The response also includes documentation of the responses selected as part of the solicitation and describes the Company's strategy for procuring fuel. Public disclosure of this information in these two responses would reveal commercially valuable information about the manner in which Duke Energy Kentucky conducted solicitations for coal supplies and would reveal bid data gathered from a high percentage of companies in the coal industry. This information, if disclosed, would have the potential to cause market manipulations in the future and may impair the Company's ability to conduct further solicitations by chilling the response from potential suppliers.

7. The Confidential Information in response Nos. 1, 5, 6, 9, and 25 was 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 of Duke Energy Kentucky. The aforementioned Confidential Information in all seven responses is distributed within Duke Energy Kentucky, only to those who must have access for business reasons, and is generally recognized as confidential and proprietary in the energy industry.

8. The Confidential Information for which Duke Energy Kentucky is seeking confidential treatment is not known outside of Duke Energy Corporation.

9. The Commission has treated the same information described herein as confidential in prior responses to the same data requests provided by Duke Energy Kentucky (Case No. 2012-00554).⁷

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

11. 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*, 904 S.W.2d 766, 768 (Ky. 1995).

12. 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.

⁷ *Id.*

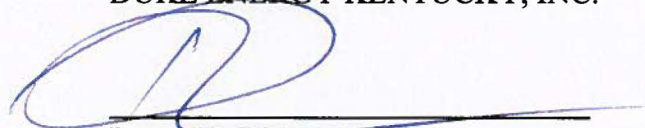
13. Duke Energy Kentucky respectfully requests that the Confidential Information be withheld from public disclosure for a period of ten years. This will assure that the Confidential Information – if disclosed after that time – will no longer be commercially sensitive so as to likely impair the interests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

14. 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.



Rocco G. D'Ascenzo
Associate General Counsel
Amy B. Spiller
Deputy General Counsel
Duke Energy Business Services, LLC
139 East Fourth Street, 1303 Main
Cincinnati, Ohio 45201-0960
Phone: (513) 287-4359
Fax: (513) 287-4385
E-mail: rocco.d'ascenzo@duke-energy.com
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 20th day of February, 2017:

Rebecca W. Goodman
The Office of the Attorney General
Utility Intervention and Rate Division
700 Capital Avenue, Suite 20
Frankfort, Kentucky 40601



Rocco D'Ascenzo