

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

In The Matter of:

The Electronic Application of Duke Energy )  
Kentucky, Inc., for: 1) An Adjustment of the )  
Electric Rates; 2) Approval of an ) Case No. 2017-00321  
Environmental Compliance Plan and Surcharge )  
Mechanism; 3) Approval of New Tariffs; 4) )  
Approval of Accounting Practices to Establish )  
Regulatory Assets and Liabilities; and 5) All )  
Other Required Approvals and Relief. )  
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**DUKE ENERGY KENTUCKY, INC.'S**  
**PETITION FOR REHEARING**  
**ON DENIAL OF CERTAIN CONFIDENTIALITY ISSUES**

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Comes now Duke Energy Kentucky, Inc. (Duke Energy Kentucky or Company), by counsel, and respectfully petitions the Commission to grant rehearing on certain items contained in four orders entered by the Commission on May 3-4, 2018 which granted in part and denied in part various motions for confidential treatment filed by the Company (“Orders”). As grounds for this petition Duke Energy Kentucky respectfully states as follows:

**I. Background**

The Commission’s Orders denied requests for confidentiality for the following items:

- Consolidated monthly financial reporting summaries for Duke Kentucky and Duke Ohio, and Duke Kentucky's monthly O&M and capital reports attached to the Application as Tab 36;
- Attachment TS-6 to the testimony of Thomas Silinski, which contain anonymized

and average information as well as information from outside surveys;

- Schedule G-3 filed with the Application or any supplements theretom which include executive officer salary and compenstation;
- Documents produced in response to Staff's Second Request No. 90(b), which contain information regarding the total compensation for lobbyists that perform work for Duke Kentucky;
- Documents regarding employee benefits and compensation produced in response to Staff's First Request Nos. 37 and 66;
- Documents produced in response to AG's First Request No. 74, which includes a 13-page spreadsheet identified as AG-DR-01-074(a) and a three-page spreadsheet identified as AG-DR-01-074(b), which show the costs to implement Duke Kentucky's advanced meters through 2018, ongoing costs through 2031 and the expected cost savings during that period; and
- Documents produced in response to Staff's First Request No. 59, which include the invoices for costs and services incurred in preparation of this rate case.

## **II. Argument**

### **A. Compensation Information**

Duke Energy Kentucky respectfully requests the Commission to grant rehearing to afford confidential protection to five documents having to do with compensation. The Commission's Orders correctly note that certain executive compensation information is publicly disclosed by Duke Energy Corporation in proxy filings with the United States Securities Exchange Commission and the Federal Energy Regulatory Commission (FERC Form 1). However, the information tendered to the Commission in Schedule G-3 of the Application and responses to Staff's First

Request Nos. 37 and 66 is more detailed and broader than that information which is already filed publicly. In other words, the Commission has been given executive compensation data that is not publicly available in any regulatory filing. For instance, Schedule G-3 includes some *projected* compensation for several key executives, not historical compensation. Projected compensation figures are markedly different from historical compensation figures. They reflect what a utility assumes it will pay to an executive at some point in the future, not what sums have already been paid to the executive.

Likewise, information concerning the short-term incentive (STI) target percentages, long-term incentive (LTI) target percentages and number of direct report employees for most of the employees listed in the response to Staff-DR-01-037c is not included within other regulatory filings and certain prior year annual rate and percentage change data included in Response 37c is also non-public based upon the executive holding a less-senior position during the year in question. As such, Schedule G-3 and information provided for Responses to Staff-DR-01-037c and Staff-DR-01-66 are all documents of Duke Energy Corporation. They are confidential, proprietary, held internally on a need-to-know basis and *not* filed publicly. Their disclosure will harm the Company by informing others in the executive labor market what Duke Energy Corporation is likely to pay its senior executives in the future, thereby putting the corporation at a competitive disadvantage.

Attachment TS-6 is a salary increase survey provided by The Conference Board, Inc. (The Conference Board<sup>1</sup>) and was developed under its proprietary processes. Attachment TS-6, if disclosed, would reveal copyrighted information. The Commission has previously held that a third-party's copyrighted information such as this is subject to confidential treatment.<sup>1</sup> That

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<sup>1</sup> See *In the Matter of the Application of Water Service Corporation of Kentucky for a General Adjustment of Rates*, Order, Case No. 2015-00382 (Ky. P.S.C. Apr. 5, 2016).

precedent is supported by the plain language of the Open Records Act, which prohibits disclosure of documents that are otherwise protected from disclosure by federal law,<sup>2</sup> such as documents subject to federal copyright laws,<sup>3</sup> and should continue to apply here. Moreover, if Duke Energy Kentucky is forced to disclose this information, it is quite possible that it will lose the ability to participate in future market compensation surveys conducted by The Conference Board or others. This, of course, would serve to harm the interests of both the Company and customers as the market for exempt employees would be less transparent to Duke Energy Corporation, its senior employees and, ironically, the Commission. Finally, the Commission's denial of confidential status for The Conference Board data is inconsistent with its treatment of the copyrighted pension analysis performed for Duke Energy Corporation by Willis Towers Watson which was recognized as confidential information.<sup>4</sup>

Finally, Duke Energy Kentucky requests the Commission to grant rehearing and afford confidential treatment to the base salary, benefit and incentive compensation for two of its employees who engage in lobbying activities. The data in question references the two employees by name and is not anonymous in nature. Moreover, neither of the two employees are senior executives within Duke Energy Corporation so as to require the public disclosure of their compensation in federal regulatory filings. While the Commission's Order states that "whether lobbyist pay included in the cost of service would ever be something that is generally considered to be confidential..." the question overlooks a critical distinction. Neither employee engages in lobbying activities 100% of their working hours. Therefore, public disclosure of their entire base salary, benefits and incentives would encompass work performed by these employees that is not

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<sup>2</sup> See KRS 61.878(1)(k).

<sup>3</sup> See 17 U.S.C. § 101, *et seq.*

<sup>4</sup> See Order, Case No. 2017-00321 (Ky. P.S.C. May 3, 2018).

attributed to lobbying activities. To the extent that anyone might question the amount of expense incurred by Duke Energy Kentucky or Duke Energy Corporation in lobbying activities, the Kentucky General Assembly has required such disclosures to be made in public filings with the Kentucky Executive Branch Ethics Commission and the Kentucky Legislative Branch Ethics Commission. However, compensation not associated with lobbying activities is not required to be disclosed by any statute and the Commission's unilateral requirement to disclose such figures in this context would be unprecedented, unreasonable and inconsistent with KRS 61.878(1)(a) and the interpretation of the Open Records Act handed down by Kentucky's highest courts over recent years. The Kentucky Court of Appeals has stated, "information such as . . . wage rate . . . [is] generally accepted by society as [a] detail in which an individual has at least some expectation of privacy."<sup>5</sup> Additionally, the Kentucky Supreme Court has characterized personal income as being information of a private nature.<sup>6</sup> Accordingly, the Commission should grant rehearing and afford the compensation information pertaining to the Company's lobbyists confidential treatment.

### **B. AMI Information**

Duke Energy Kentucky also seeks rehearing on the Commission's denial of confidential treatment for information provided in response to the AG's First Request No. 74, which includes a 13-page spreadsheet identified as AG-DR-01-074(a) and a three-page spreadsheet identified as AG-DR-01-074(b). As noted in the Company's original motion for confidential treatment, the information provided in this response was a duplication of confidential information previously provided to the Commission in Case No. 2016-00152, or a derivative of such confidential

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<sup>5</sup> *Zink v. Department of Workers' Claims, Labor Cabinet*, 902 S.W.2d 825, 828 (Ky. Ct. App. 1994).

<sup>6</sup> *See Cape Pub 'ns, Inc. v. Univ. of Louisville Found., Inc.*, 260 S.W.3d 818, 822 (Ky. 2008).

information.<sup>7</sup> The Company's motion for confidential proceeding in this nature noted that the information being tendered in response to AG-DR-01-074 was already subject to a pending motion for confidential treatment, which is what was required by 807 KAR 5:001, Section 13(9). Moreover, the motion for confidential treatment in Case No. 2016-00152 does not appear to have been ruled upon and, therefore, the underlying information (including that which is filed in in this case) is deemed confidential as a matter of law per 807 KAR 5:001, Section 13(4). Furthermore, the fundamental reasons for which the Company sought confidential treatment in Case No. 2016-00152 continue to apply in this proceeding. The information in question concerns anticipated savings. Underlying the data, however, are certain assumptions regarding pricing for various goods and services. While the Company has begun the deployment process, it is not complete and, if the Commission grants public access to the information provided in response to the AG's data requests, it would be more difficult to achieve the anticipated savings in the future. Suppliers could potentially manipulate the market and undermine Duke Energy Kentucky's ability to manage its costs. The Commission is therefore requested to grant rehearing and afford the information provided in response to AG-DR-01-074 confidential status.

WHEREFORE, on the basis of the foregoing, Duke Energy Kentucky respectfully petitions the Commission to issue an Order granting rehearing and awarding the relief requested herein.

This 23<sup>rd</sup> day of May, 2018.

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<sup>7</sup> See *In the Matter of the Application of Duke Energy Kentucky, Inc. for (1) A Certificate of Public Convenience and Necessity Authorizing the Construction of an Advanced Metering Infrastructure; (2) Request for Accounting Treatment; and (3) All Other Necessary Waivers, Approvals and Relief*, Petition for Confidential Treatment (filed Apr. 25, 2016) (seeking confidential treatment of Exhibit DLS-4).

Respectfully submitted,

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and

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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 May 23, 2018; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that a copy of the filing in paper medium is being hand delivered to the Commission within two business days.

  
Counsel for Duke Energy Kentucky, Inc.