

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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**MOTION OF DUKE ENERGY KENTUCKY, INC.  
 FOR THE CONFIDENTIAL TREATMENT OF INFORMATION  
 CONTAINED IN ITS APPLICATION REGARDING AN  
 ADJUSTMENT OF ELECTRIC RATES**

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Comes now Duke Energy Kentucky, Inc. (Duke Energy Kentucky or Company), by counsel, pursuant to 807 KAR 5:001, Section 13, and respectfully requests the Commission to classify and protect certain information provided by the Company in its Application for an adjustment of its electric rates, respectfully stating as follows:

1. The information for which Duke Energy Kentucky seeks confidential treatment is contained in: (a) the Confidential Attachment to the Direct Testimony of William Don Wathen, Jr. (WDW-2); (b) Schedule G-3 in response to the Filing Requirements (FR) 807 KAR 5:001, Section 16(8)(g); and (c) the Confidential Attachments to the Direct Testimony of Thomas Silinski (TS-1(a) - (g), TS-6, TS-8(a) - (c), and TS-11). Collectively, these documents are referred to herein as the "Confidential Information" and, broadly speaking, include copyrighted materials provided to the

Company as part of a subscription-only service as well as information relating to the compensation of non-senior executive employees and shared employees of the Company.

2. With regard to Confidential Attachment WDW-2, Duke Energy Kentucky is providing a survey compiled by Regulatory Research Associates (RRA) summarizing cost recovery mechanisms for utilities across the country. Because the information is subject to copyright laws and is the intellectual property of RRA, Duke Energy Kentucky could only provide the information to the Commission with the express consent of RRA and subject to the Company's agreement to tender the information under seal and subject to a motion for confidential treatment. By acquiring the information set forth in the RRA survey pursuant to a subscription service, Confidential Attachment WDW-2 has become the proprietary and confidential information of Duke Energy Kentucky as well.

3. Duke Energy Kentucky believes the information in the RRA survey is directly relevant to its request to establish cost recovery mechanism as requested in its Application.. However, if the Commission were to deny the Company's Motion for Confidential Treatment, it is very likely that RRA would refuse requests to tender such information to the Commission in the future. Thus, denying the Company's Motion would serve to have a "chilling-effect" on willingness of third-party subject matter experts to allow their intellectual property to be filed as part of the record in Commission proceedings.

4. With regard to FR 807 KAR 5:001, Schedule G-3 in response to Section 16(8)(g) and Confidential Attachments TS-1(a) – (g), TS-6, TS-8(a) – (c) and TS-11, all of such information arises from and relates to the personal compensation figures and policies of the Company, the Company's employees, and shared employees. For

instance, the Application provides Schedule G-3 showing, *inter alia*, “executive compensation by title” to satisfy the FR in Section 16(8)(g).<sup>1</sup> Confidential Attachment TS-1(a) – (g) includes the library of Duke Energy Corporation (Duke Energy) Compensation Policies, including its: (a) 2017 Compensation Guidelines and Administration Policy; (b) Change of Schedule; (c) ECA Guidelines; (d) Exempt Supplemental Pay Policy; (e) Higher Class Premium Pay; (f) Shift Differential Policy; and (g) Rotating Shift Guideline. Confidential Attachment TS-6 is Duke’s Total Cash Compensation vs. Market for Exempt Positions document, which is a comparison of the average base and total compensation for several Duke Energy exempt positions to those of similar companies, based on applicable external survey data. Confidential Attachment TS-8(a) – (c) includes Duke Energy’s: (a) 2017 Short-Term Incentive Plan and Union Employee Incentive Plans; (b) 2017 Restricted Stock Award Plan; and (c) 2017 Executive Long-Term Incentive Plan. These documents provide intimate details on the nature, function, scope and operation of the Company’s incentive compensation plans. Confidential Attachment TS-11 includes Duke Energy’s Benefit Plan Design and Employee Cost Summary Grid – 2017, which provides a detailed summary of the key benefits available to Duke Energy’s employees.

5. The foregoing information relating to employee compensation and benefits is self-evidently confidential and proprietary in nature. Individually, any of these documents would provide competitors with tremendous insight into the Company’s compensation philosophies, policies and practices. Taken together, these documents represent the accumulation of decades of “best practices” in human capital management.

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<sup>1</sup> Section 16(8)(g) requires an application seeking a general adjustment of rates supported by a forecasted test period to include: “Analyses of payroll costs including schedules for wages and salaries, employee benefits, payroll taxes, straight time and overtime hours, and executive compensation by title.”

Gaining access to this information would be extremely valuable to the Company's competitors who might desire to poach from Duke Energy Kentucky's talent pool. Moreover, it would impose a significant and material obstacle to the Company's efforts to continue to recruit and retain a skilled labor force. Moreover, to the extent that any of the compensation and benefit information could be used to identify the compensations and benefits paid to any individual employee, it would constitute an improper invasion of the employee's reasonable expectation of privacy.<sup>2</sup>

6. The Kentucky Open Records Act exempts from disclosure information that, due to its confidential and proprietary nature, would permit "an unfair commercial advantage to competitors of the entity that disclosed the records" if openly disclosed.<sup>3</sup> Moreover, the Open Records Act prohibits the disclosure of "Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy."<sup>4</sup> 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 information of a private nature.<sup>6</sup> In addition, the Open Records Act prohibits disclosure of documents that are otherwise protected from disclosure by federal law,<sup>7</sup> such as documents subject to federal copyright laws. The Confidential Information was, and remains, integral to Duke Energy Kentucky's effective execution of business decisions. Indeed, as the Kentucky Supreme

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<sup>2</sup> Because the complete salary and other compensation data for the Company's chief executive officer is publicly disclosed each year in filings with the Securities and Exchange Commission; Duke Energy Kentucky is not requesting protection from public disclosure of that information.

<sup>3</sup> See KRS 61.878(1)(c)1.

<sup>4</sup> KRS 61.878(1)(a).

<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).

<sup>7</sup> See KRS 61.878(1)(k).

Court has found, “information concerning the inner workings of a corporation is ‘generally accepted as confidential or proprietary.’”<sup>8</sup> The Commission has previously granted similar motions for confidential treatment of employee compensation and benefit information,<sup>9</sup> as well as materials that are protected by copyright laws.<sup>10</sup>

7. The information for which Duke Energy Kentucky is seeking confidential treatment was either developed internally, or acquired on a proprietary basis, by Duke Energy Corporation and Duke Energy Kentucky personnel, is not on file publicly with any public agency, and is not publicly available from any commercial or other source. 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 utility industry.

8. Duke Energy Kentucky does not object to limited disclosure of the Confidential Information described herein, pursuant to an acceptable protective agreement entered into with any intervenors with a legitimate interest in reviewing the same for the sole purpose of participating in this case.

9. In accordance with the provisions of 807 KAR 5:001, Section 13(2)(e), the Company is filing one copy of the Confidential Information separately under seal, and the appropriate number of copies with the Confidential Information redacted. Due to the pervasive nature of the Confidential Information within each of the Confidential Attachments and FR, Duke Energy Kentucky is requesting confidential treatment for the Confidential Information in totality.

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<sup>8</sup> *Hoy v. Kentucky Industrial Revitalization Authority*, Ky., 904 S.W.2d 766, 768 (Ky. 1995).

<sup>9</sup> See e.g. *In the Matter of the Application of Kentucky Utilities Company for an Adjustment of its Electric Rates*, Order, Case No. 2014-00371 (Ky. P.S.C. Jan. 19, 2016); *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).

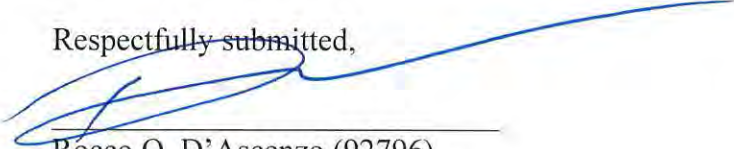
<sup>10</sup> See *id.*

10. Duke Energy Kentucky respectfully requests that the Confidential Information be withheld from public disclosure for a period of twenty 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 employees if publicly disclosed.

11. 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,



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*Counsel for Duke Energy Kentucky, Inc.*

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing Motion of Duke Energy Kentucky, Inc. has been served via hand delivery to the following party on this 1<sup>st</sup> day of September, 2017.

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



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Rocco O. D'Ascenzo