

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.)

MOTION OF DUKE ENERGY KENTUCKY, INC.
FOR RESPONSES TO COMMISSION STAFF'S
FIRST REQUEST FOR INFORMATION

Comes now Duke Energy Kentucky, Inc. (Duke Energy Kentucky or Company), by counsel, pursuant to 807 KAR 5:001, Section 13 and other law, and respectfully requests the Commission to classify and protect certain information provided by the Company in its Responses to Commission Staff's First Request for Information issued on August 25, 2017, respectfully stating as follows:

1. On August 2, 2017 Duke Energy Kentucky filed a Notice of Intent to File an Application seeking adjustment of its electric rates and other approvals.
2. On September 1, 2017 Duke Energy Kentucky filed an Application seeking an adjustment of its electric rates and other approvals.
3. On August 25, 2017 Commission Staff issued its First Request for Information to Duke Energy Kentucky.

4. In response to Commission Staff's First Request for Information, Duke Energy Kentucky is providing certain information for which it requests confidential treatment.

5. The information for which Duke Energy Kentucky seeks confidential treatment is contained in its Responses to Requests 8, 37, 48a(9), 50, 51, 54, 59, 66, 68, 69 and 70, which is referred to herein as the "Confidential Information" and, broadly speaking, includes detailed information pertaining to the internal policies and procedures, personal compensation information of Duke Energy Kentucky employees, contracts with outside vendors and other information.

6. Request No. 8 of Commission Staff's First Request for Information states as follows:

Provide the utility's internal accounting manuals, directives, and policies and procedures.

7. In its response to Request No. 8, Duke Energy Kentucky is providing copies of its internal accounting policies and procedures. This information is proprietary to Duke Energy Corp. and Duke Energy Kentucky in that it provides detailed insight into the inner workings, policies, procedures, and operations of the Company.

8. Request No. 37 of Commission Staff's First Request for Information states as follows:

Provide a schedule reflecting the salaries and other compensation of each executive officer for the base period and three most recent calendar years. Include the percentage annual increase and the effective date of each increase, the job title, duty and responsibility of each officer, the number of employees who report to each officer, and to whom each officer reports. For employees elected to executive officer status since the test year in the utility's most recent rate case, provide the salaries for the persons they replaced.

9. In its response to Request No. 37, Duke Energy is providing compensation information for these employees. While some of this information is reported publicly, much of

the information that is responsive to this request is considered to be confidential. Duke Energy Kentucky is submitting information responsive to this request that contains salary and compensation information beyond what is otherwise publicly reported. Duke Energy Kentucky is only seeking confidential protection of the information that is not otherwise reported as part of either its FERC Form 1, or in a proxy statement. This information, if publicly available, would disclose key compensation information that would place the Company at a competitive disadvantage in its efforts to recruit and retain highly trained and competent employees and executives.

10. Request No. 48.a.(9) of Commission Staff's First Request for Information states as follows:

Provide the following tax data for the most recent calendar year:

a. Income taxes:

(9) A copy of federal and state income tax returns for the most recent tax year, including supporting schedules.

11. In its response to Request No. 48a(9), Duke Energy Kentucky is providing copies of both its state and federal tax returns. This information is highly confidential and proprietary to the Company, and includes its Federal Tax Identification information. This information is historically considered confidential by the Commission.

12. Request No. 50 of Commission Staff's First Request for Information states as follows:

Provide the utility's written policies on the compensation of outside attorneys, auditors, consultants, and all other professional service providers. Include a schedule of fees, per diems, and other compensation in effect during the base period. Include all agreements, contracts, memoranda of understanding, and any other documentation that explains the nature and type of reimbursement paid for professional services. Indicate if any changes have

occurred since the test year of the utility's last base rate case, the effective date of these changes, and the reason for these changes.

13. In response to Request No. 50, Duke Energy Kentucky is providing copies of contracts with outside vendors, internal policies and procedures as well as templates. This information is considered highly confidential by the Company and contains, among other things, the standard terms and conditions for services, and actual negotiated terms and compensation for services that the Company either insists of or negotiates with its vendors, which, if made publicly available would place the Company at a competitive disadvantage as it negotiates contracts in the future. The numerous contracts provided in this response include specific projects and scopes of work and the vendor pricing for providing these services. If this information was made publicly available, it would also place these vendors at a competitive disadvantage as they bid on and negotiate future work as their competitors would have insight into pricing for services that they otherwise would not have access too.

14. Request No. 51 of Commission Staff's First Request for Information states as follows:

Provide a detailed analysis of expenses for professional services during the most recent 12-month period for which information is available at the time the application is filed, as shown in Schedule 51, and all work papers supporting the analysis. At a minimum, the work papers should show the payee, dollar amount, reference (i.e., voucher no., etc.), account charged, hourly rates and time charged to the company according to each invoice, and a description of the services provided.

15. In its response to Request 51, Duke Energy Kentucky is filing sensitive vendor information. This information includes the type of work that has been provided to the Company by its professional service providers, including the pricing for this work. If made publicly available, the Company would be placed at a competitive disadvantage as negotiates future fees and charges for such professional services. Such vendors may be unwilling to provide such

services to the Company in the future, or at higher costs, if their own pricing information is at risk for public disclosure. Moreover, the competitors of these service providers would have keen insight into the pricing structure of these vendors as they compete for future business.

16. Request No. 54 of Commission Staff's First Request for Information states as follows:

Regarding the utility's employee compensation policy:

- a. Provide the utility's written compensation policy as approved by the Board of Directors.
- b. Provide a narrative description of the compensation policy, including the reasons for establishing the policy and the utility's objectives for the policy.
- c. Explain whether the compensation policy was developed with the assistance of an outside consultant. If the compensation policy was developed or reviewed by a consultant, provide any study or report provided by the consultant.
- d. Explain when the utility's compensation policy was last reviewed or given consideration by the Board of Directors.

17. In its response to Request No. 54, Duke Energy Kentucky is providing a copy of its internal presentation made to its Compensation Committee. This presentation is highly confidential and contains the independent consultant's evaluation of the Company's compensation programs, comparison to and advice on market trends and impacts of potential changes in laws. This information is considered to be highly confidential to the Company as it shows detailed analysis of the Company's consideration of and potential market changes and concerns. If publicly released, the Company's competitors would have invaluable insight into the strategies of Duke Energy Corp. and its view of changes in the market. Releasing this information would place the Company at a competitive disadvantage as it seeks to retain and recruit highly trained and qualified employees.

18. Request No. 59 of Commission Staff's First Request for Information states as follows:

Provide the following information concerning the costs for the preparation of this case:

- a. A detailed schedule of expenses incurred to date for the following categories:
 - (1) Accounting;
 - (2) Engineering;
 - (3) Legal
 - (4) Consultants; and
 - (5) Other Expenses (Identify separately).

For each category, the schedule should include the date of each transaction, check number or other document reference, the vendor, the hours worked, the rates per hour, amount, a description of the services performed, and the account number in which the expenditure was recorded. Provide copies of contracts or other documentation that support charges incurred in the preparation of this case. Identify any costs incurred for this case that occurred during the base period.

19. In its response to Request No. 59, Duke Energy Kentucky is providing invoices and engagement letters/contracts related to the expenses for the preparation of this case. These invoices and contracts are pursuant to negotiated rates and fees charged by its vendors, consultants, and experts. Releasing this information would place both the Company and its vendors at a competitive disadvantage. In the future, such vendors may be unwilling to offer the same pricing levels out of concern competitors would have access to such information.

20. Request No. 66 of Commission Staff's First Request for Information states as follows:

Provide the information requested in Schedule 67 for yearly salary and benefit information for each corporate officer and as a group in total by category of Directors, Managers, Supervisors, Exempt, Non-Expect, Union, and Non-Union Hourly for the years 2013 through 2016 and the base period (in gross dollars – not hourly or monthly rates). Commission Staff will provide Schedule 67 in Excel format by electronic mail to Counsel for all parties.

- a. Regular salary or pay.

- b. Overtime pay.
- c. Excess vacation payout.
- d. Standby/Dispatch pay.
- e. Bonus and incentive pay.
- f. Any other forms of incentives (may include stock options or forms of deferred compensation).
- g. Other amounts paid and reported on the employees' W-2 (specify).
- h. Healthcare benefit cost for employees.
 - (1) Amount paid by employer.
 - (2) Amount paid by employee.
- i. Dental benefits cost for employees.
 - (1) Amount paid by employer.
 - (2) Amount paid by employee.
- j. Vision benefits cost for employees.
 - (1) Amount paid by employer.
 - (2) Amount paid by employee.
- k. Life insurance cost for employees.
 - (1) Amount paid by employer.
 - (2) Amount paid by employee.
- l. Accidental death and disability benefits.
 - (1) Amount paid by employer.
 - (2) Amount paid by employee.
- m. Defined Contribution – 401(k) or similar plan cost for employees. Provide the amount paid by employer.
- n. Defined Benefit Retirement cost for employees.
 - (1) Amount paid by employer.
 - (2) Amount paid by employee.
- o. Cost of any other benefit available to an employee (specify).

21. In its response to Request No. 66, Duke Energy Kentucky is providing sensitive compensation and benefit information for its employees. This information is considered highly confidential as its current employees and potential employees consider the value of its compensation information as part of their employment status decisions. Duke Energy Kentucky and Duke Energy Corp compete for employees among a robust pool of employers, including other regional utilities. The level of benefits provided by the companies is instrumental in recruiting and retaining highly qualified employees. If competitors had ready access to this

information, they could use it to place Duke Energy Corp and Duke Energy Kentucky at a disadvantage in recruiting and retaining employees.

22. Request No. 68 of Commission Staff's First Request for Information states as follows:

Provide a listing of all health care plan categories, dental plan categories, and vision plan categories available to corporate officers individually, and to groups defined as Directors, Managers, Supervisors, Exempt, Non-Exempt, Union, and Non-Union Hourly employees (i.e., single, married no dependents, single parent with dependents, family, etc.) Include the associated employee contribution rates and employer contribution rates of the total premium cost for each category and each plan's deductible(s) amount.

23. In its response to Request No. 68, Duke Energy Kentucky is providing sensitive benefit information for its employees. This information includes employee contribution rates and detailed summaries of the Company's benefits. The level of benefits provided by the companies is instrumental in recruiting and retaining highly qualified employees. If competitors had ready access to this information, they could use it to place Duke Energy Corp and Duke Energy Kentucky at a disadvantage in recruiting and retaining employees.

24. Request No. 69 of Commission Staff's First Request for Information states as follows:

Provide a listing of all life insurance plan categories available to corporate officers individually, and to groups defined as Directors, Managers, Supervisors, Exempt, Non-Exempt, Union, and Non-Union Hourly employees. Include the associated employee contribution rates and employer contribution rates of the total premium cost for each plan category.

25. In its response to Request No. 69, Duke Energy Kentucky is providing sensitive benefit information for its employees. This information includes employee contribution rates and detailed summaries of the Company's benefit plans. The types and level of benefits provided by

the companies is instrumental in recruiting and retaining highly qualified employees. If competitors had ready access to this information, they could use it to place Duke Energy Corp and Duke Energy Kentucky at a disadvantage in recruiting and retaining employees.

26. Request No. 70 of Commission Staff's First Request for Information states as follows:

Provide a listing of all retirement plans categories available to corporate officers individually, and to groups defined as Directors, Managers, Supervisors, Exempt, Non-Exempt, Union, and Non-Union Hourly employees. Include the associated employee contribution rates and employer contribution rates of the total premium cost for each plan category.

27. In its response to Request No. 70, Duke Energy Kentucky is providing sensitive benefit information for its employees. This information includes retired employee contribution rates and detailed summaries of the Company's benefit plans. The types and level of benefits provided by the companies is instrumental in recruiting and retaining highly qualified employees. If competitors had ready access to this information, they could use it to place Duke Energy Corp and Duke Energy Kentucky at a disadvantage in recruiting and retaining employees.

28. Contemporaneous with the filing of this Motion, Duke Energy Kentucky is tendering documentation responsive to Commission Staff's Request Nos. 8, 37, 48a(9), 50, 51, 54, 59, 66, 68, 69 and 70. The Confidential Information provided is proprietary information that is retained by Duke Energy Kentucky on a "need-to-know" basis. The Confidential Information is distributed within Duke Energy Kentucky or Duke Energy Corp only to the Chief Executive Officer, Senior Management and the Board, who must have access for business reasons, and it is generally recognized as confidential and proprietary in the energy industry and in business generally. Specifically, the Confidential Information contains internal accounting policies,

compensation and benefit information for Duke Energy Kentucky employees along with and studies provided by third party vendors and used by Duke Energy Kentucky to determine compensation and benefit offerings, internal presentations regarding compensation and benefit offerings, federal and state tax returns, and invoices from third party vendors.

29. The Kentucky Open Records Act and applicable precedent exempts the Confidential Information from disclosure. *See* KRS 61.878(1)(a); KRS 61.878(1)(c)(1); *Zink v. Department of Workers Claims, Labor Cabinet*, 902 S.W.2d 825 (Ky. App. 1994); *Hoy v. Kentucky Industrial Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995). The Confidential Information includes information regarding job titles and historical compensation amounts for years other than the test year for Duke Energy Kentucky employees. Salary and benefit information is personal and private information and should not be in the public realm. Furthermore, the surveys, studies and presentations used by Duke Energy Kentucky to determine compensation and benefit offerings are highly confidential and subject to proprietary protection of third party vendors. The Commission has previously granted confidential protection to these types of surveys, studies, etc.¹ Additionally, public disclosure of these sensitive documents would unnecessarily provide interested parties and Duke Energy Kentucky's competitors with access to exclusive information regarding employee compensation. By knowing what Duke Energy Kentucky compensates each of its employees, it would be very easy for other utilities to attempt to poach Duke Energy Kentucky's workforce and management. Such public disclosure could unfairly harm Duke Energy Kentucky's competitive position in the marketplace for utility management and a skilled workforce, to the detriment of Duke Energy Kentucky and its customers. For these reasons, the Confidential Information satisfies both the statutory and

¹ *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).

common law standards for affording confidential treatment. Indeed, the Commission has already recognized the confidential nature of the Confidential Information and has afforded confidential treatment to similar compensation and wage documents in prior proceedings.²

30. Furthermore, some of 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.

31. 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.

32. 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.

33. 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 if publicly disclosed.

² *Id.* See also, *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. 29, 2016).

34. 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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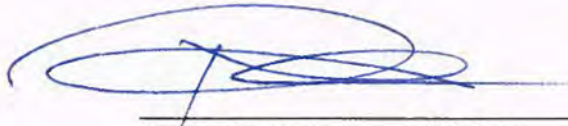
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CERTIFICATE OF SERVICE

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 September 15, 2017; 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 on the 15 day of September, 2017 and a copy of the filing is also being emailed to the following:

Hon. Rebecca W. Goodman
Hon. Larry Cook
Hon. Kent Chandler



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Counsel for Duke Energy Kentucky, Inc.