

**COMMONWEALTH OF KENTUCKY**

**BEFORE THE PUBLIC SERVICE COMMISSION**

In The Matter of:

THE ELECTRONIC APPLICATION OF )  
DUKE ENERGY KENTUCKY, INC., FOR )  
AUTHORITY TO 1) ADJUST NATURAL ) Case No. 2018-00261  
GAS RATES 2) APPROVAL OF A )  
DECOUPLING MECHANISM 3) )  
APPROVAL OF NEW TARIFFS; 4) ALL )  
OTHER REQUIRED APPROVALS, )  
WAIVERS, AND RELIEF )

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**MOTION FOR CONFIDENTIAL TREATMENT OF  
DUKE ENERGY KENTUCKY, INC. FOR CERTAIN RESPONSES  
TO COMMISSION STAFF'S SECOND REQUEST FOR INFORMATION  
AND TO THE KENTUCKY ATTORNEY GENERAL'S OFFICE'S  
FIRST REQUEST FOR INFORMATION**

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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 other law, and respectfully requests the Commission to classify and protect certain information provided by the Company in its Responses to Commission Staff's Second Request for Information issued on October 10, 2018, and the Kentucky Attorney General's Office's First Request for Information issued on October 10, 2018, respectfully stating as follows:

1. On August 1, 2018 Duke Energy Kentucky filed a Notice of Intent to File an Application seeking adjustment of its electric rates and other approvals.
2. On August 31, 2018 Duke Energy Kentucky filed an Application seeking an adjustment of its natural gas rates and other approvals.

3. On October 10, 2018 Commission Staff issued its Second Request for Information to Duke Energy Kentucky.

4. On October 10, 2018 the AG issued its First Request for Information to Duke Energy Kentucky.

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

6. The information for which Duke Energy Kentucky seeks confidential treatment is contained in its Responses to Requests 35, 72, and 86 of Commission Staff's Second Request for Information and Responses to Requests 89, 96, 109, 111, 112, and 115, 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.

7. Request No. 35 of Commission Staff's Second Request for Information states as follows:

Refer to the Morin Testimony, Attachment RAM-2, page 1 of 1.  
b. Provide the most recent ROE and the date of the ROE publication for each utility in the natural gas proxy group.

8. In its response to Request No. 35, Duke Energy Kentucky is providing copies of The Value Line reports for each company. The reports being provided are subject to the copyrights of persons other than Duke Energy Kentucky and are provided pursuant to paid subscriptions of those third parties. Accordingly, the Company has an obligation to use reasonable efforts to protect these copyright interests. Failure to follow the terms of these requirements could both subject the

Company and other involved parties to potential legal actions for breach as well as an inability to use these resources in the future.

9. Request No. 72 of Commission Staff's Second Request for Information states as follows:

Refer to the Direct Testimony of William Don Wathen Jr. (Wathen Testimony), pages 6 and 7, regarding the implementation of advanced metering in its territory.

b. Provide a comparison of the projected cost savings contained in Case No. 2016-00152 and actual cost savings by account number and name, by month, from the beginning of the advanced metering program through the end of the forecasted test year.

10. In its response to Request 72, Duke Energy Kentucky is filing sensitive and detailed information regarding these actual cost savings that was previously granted confidential protection by this Commission. Releasing this information will make it difficult for the Company to achieve these anticipated savings as counterparties and potential vendors will know the Company's business plan and assumptions for costs, including, but not limited to, labor to complete the deployment. Counterparties could use this information to price their services such that the Company would be limited to achieving the anticipated benefits.

11. Request No. 86 of Commission Staff's Second Request for Information states as follows:

Refer to Duke Kentucky's response to Staff's First Request, Item 61. For the forecasted test year, provide the following information as it relates to lobbying activities:

a. For each of the registered lobbyist, the dollar amount and percentage of the lobbyist's salary, fringe benefits, any incentive pay, and expense reports recorded below the line and any lobbying activities costs reflected in Duke Kentucky's proposed cost of service.

12. In its response to Request 86, Duke Energy Kentucky is filing sensitive information regarding salary, fringe benefits, and incentive pay for specific employees that are not otherwise

reported or made public. In the interest of protecting these employees, this information should be treated as sensitive and confidential or else risk being able to recruit and retain qualified individuals out of fear of personal information becoming public.

13. Request No. 89 of the AG's First Request for Information states as follows:

Pension and OPEB Expenses

Provide the two most recent pension and OPEB actuarial reports for Duke Energy, DEO, and the Company.

14. In its response to Request No. 89, Duke Energy Kentucky is providing sensitive information regarding pension and OPEB information. Salary and benefit information is personal and private information and should not be in the public realm. Additionally, public disclosure of the information being provided by the Company 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, or outside vendors, it would be very easy for other utilities to attempt to poach Duke Energy Kentucky's workforce and management, and charge Duke Energy Kentucky a higher rate for outside services. 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 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.<sup>1</sup>

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<sup>1</sup> *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).

15. Request No. 96 of the AG's First Request for Information states as follows:

Provide a copy of DEK's 2016 and 2017 federal income tax returns.

16. In its response to Request No. 96, Duke Energy Kentucky is providing copies of its federal income tax returns. Tax documents are recognized as confidential as a matter of law. *See* KRS 131.190(1).

17. Request No. 109 of the AG's First Request for Information states as follows:

Provide all work papers and supporting documentation used and relied upon by Dr. Morin in the preparation of his Direct Testimony and exhibits, which have not already been provided. Provide all spreadsheets in Excel format with cell formulas intact.

18. In its response to Request No. 109, Duke Energy Kentucky is providing copies of The Value Line reports for each company. The reports being provided are subject to the copyrights of persons other than Duke Energy Kentucky. Accordingly, the Company has an obligation to use reasonable efforts to protect these copyright interests. Failure to follow the terms of these requirements could both subject the Company and other involved parties to potential legal actions for breach as well as an inability to use these resources in the future.

19. Request No. 111 of the AG's First Request for Information states as follows:

Provide all bond rating agency reports (Standard and Poor's, Moody's Fitch) on Duke Energy from 2014 through the most recent month in 2018.

20. In its response to Request No. 111, Duke Energy Kentucky is providing sensitive credit rating information. Information provided to credit rating agencies is confidential in nature and describes the inner workings of the Company. The Commission has previously recognized that such information is confidential in nature.<sup>2</sup> If said information was made available to the public, it could be used to the detriment of Duke Energy Kentucky.

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<sup>2</sup> *In the Matter of the Application of Louisville Gas & Electric Company for Certificates of Public Convenience and*

21. Request No. 112 of the AG's First Request for Information states as follows:

Provide copies of all articles and publications cited by Dr. Morin in his Direct Testimony.

22. In its response to Request No. 112, Duke Energy Kentucky is providing AG-DR-01-112 Confidential Attachment 1 which includes, between pages 670 through 721, an issue of The Value Line Investment Survey. This material is subject to the copyrights of persons other than Duke Energy Kentucky. Accordingly, the Company has an obligation to use reasonable efforts to protect these copyright interests. Failure to follow the terms of these requirements could both subject the Company and other involved parties to potential legal actions for breach as well as an inability to use these resources in the future.

23. Request No. 115 of the AG's First Request for Information states as follows:

Provide a schedule in electronic spreadsheet format showing the Company's average daily and end of month borrowings from the Duke Energy Money Pool for each month in 2016, 2017 and 2018 to date and projected for each month thereafter through the end of the test year. In addition, provide the interest rates applicable to those borrowings on a daily basis and on average for each month. Provide a copy of all source documents relied on for the projected cost of short-term debt during the test year.

24. In its response to Request No. 115, Duke Energy Kentucky is providing sensitive information regarding the credit spread on the current Sale of Accounts Receivables. The information being disclosed herewith is not publicly known and documents the borrowing and lending actions of the Company and other affiliates that are part of the Duke Energy Money Pool. This information is highly-confidential and should not be disclosed. Information pertaining to similar agreements has previously been recognized to be confidential.<sup>3</sup>

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*Necessity and Approval of its 2011 Compliance Plan for Recovery by Environmental Surcharge*, Letter from Jeff Derouen, Case No. 2011-00162 (Ky. P.S.C. Nov. 29, 2011).

<sup>3</sup> *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) (granting motion for confidential treatment for affiliate lending

25. Contemporaneous with the filing of this Motion, Duke Energy Kentucky is tendering documentation responsive to Commission Staff's Request Nos. 35, 72, and 86 and to AG's Request Nos. 89, 96, 109, 111, 112, and 115. 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 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.

26. 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 benefit amounts for Duke Energy Kentucky employees. 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.<sup>4</sup> Additionally, public disclosure of these sensitive documents would unnecessarily provide interested parties and Duke Energy Kentucky's competitors with

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agreement).

<sup>4</sup> *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). *In the Matter of: Electronic Application of Duke Energy Kentucky, Inc. for: 1) An Adjustment of the Electric Rates; 2: Approval of an 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*, Order, Case No. 2017-00321 (Ky. P.S.C. May 4, 2018).

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 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.<sup>5</sup>

27. 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.

28. 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.

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<sup>5</sup> *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).



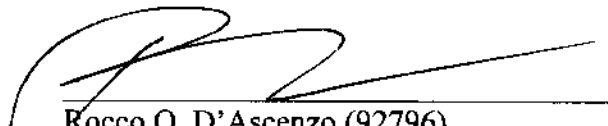
29. In accordance with the provisions of 807 KAR 5:001, Section 13(2)(e), the Company is filing one copy of the Confidential Information separately under seal, and the appropriate number of copies with the Confidential Information redacted.

30. 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.

31. 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,



Rocco O. D'Ascenzo (92796)  
Deputy General Counsel  
Duke Energy Business Services, LLC  
139 East Fourth Street, 1313 Main  
Cincinnati, Ohio 45201  
Phone: (513) 287-4320  
Fax: (513) 287-4385  
E-mail: rocco.d'ascenzo@duke-energy.com

and

David S. Samford  
L. Allyson Honaker  
GOSS SAMFORD, PLLC  
2365 Harrodsburg Road, Suite B-325  
Lexington, KY 40504  
(859) 368-7740  
Email: David@gosssamfordlaw.com  
Email: Allyson@gosssamfordlaw.com

*Counsel for Duke Energy Kentucky, Inc.*

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 October 24, 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 will be delivered to the Commission within two business days and a copy of the filing is also being emailed to the following:

Hon. Rebecca W. Goodman

Hon. Larry Cook

Hon. Kent Chandler



*Counsel for Duke Energy Kentucky, Inc.*