

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 New Tariffs; 3)) Case No. 2019-00271
Approval of Accounting Practices to Establish)
Regulatory Assets and Liabilities; and 4) All)
Other Required Approvals and Relief.)

PETITION OF DUKE ENERGY KENTUCKY, INC.
FOR CONFIDENTIAL TREATMENT OF INFORMATION CONTAINED
IN CERTAIN 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 applicable law, and respectfully requests the Commission to classify as confidential and protect certain information provided by the Company in its Responses to Commission Staff's First Request for Information issued on August 28, 2019, respectfully stating as follows:

1. On August 1, 2019 Duke Energy Kentucky filed a Notice of Intent to File an Application seeking an adjustment of its electric rates and other approvals.
2. On August 28, 2019 Commission Staff issued its First Request for Information to Duke Energy Kentucky.
3. On September 3, 2019 Duke Energy Kentucky filed an Application seeking an adjustment of its electric rates and other approvals.
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 6, 13, 18, 30, 41, 43, 45, 46, and 49, 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 similar information which the Commission has previously granted confidential protection to.¹

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

Provide a detailed analysis of expenses for professional services during the 12 months preceding the base period, as shown in Schedule B, 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.

7. In its response to Request No. 6, Duke Energy Kentucky is filing sensitive vendor information.

8. Request No. 13 of Commission Staff’s First Request for Information states as follows:

Describe the utility’s lobbying activities and provide a schedule showing the name, salary, and job title of each individual whose job function involves lobbying on the local, state, or national level.

9. In its response to Request No. 13, Duke Energy Kentucky is providing sensitive salary information for its employees.

¹ *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).

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

Provide 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. 18, 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. 30 of Commission Staff's First Request for Information states as follows:

State whether any changes have been made to the utility's internal accounting manuals, directives, and policies and procedures since the utility's most recent rate case. If so, provide each item that was changed and identify the changes.

13. In its response to Request No. 30, Duke Energy Kentucky is providing a copy of its internal accounting policies and procedures. This information is considered highly confidential by the Company, which, if made publicly available would place the Company at a competitive disadvantage as it negotiates contracts in the future.

14. Request No. 41 of Commission Staff's First Request for Information states as follows:

Provide, in the format provided in Schedule K, the following information for the utility's compensation and benefits, for the three most recent calendar years and the base period. Provide the information individually for each corporate officer and by category for Directors, Managers, Supervisors, Exempt, Non-Exempt, Union, and Non-Union Hourly. Provide the amounts, in gross dollars, separately for total company operations and jurisdictional operations.

- a. Regular salary or wages.
- b. Overtime pay.

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

15. In its response to Request No. 41, 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 decision. 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.

16. Request No. 43 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, family). Include the associated employee contribution rates and employer contribution rates of the total premium cost for each category, and each plan's deductible(s) amounts.

17. In its response to Request No. 43, Duke Energy Kentucky is providing sensitive benefit information for its employees.

18. Request No. 45 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.

19. In its response to Request No. 45, Duke Energy Kentucky is providing sensitive benefit information for its employees.

20. Request No. 46 of Commission Staff's First Request for Information states as follows:

Provide a listing of all retirement plans 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, if any, and employer contribution rates of the total cost for each plan category.

21. In its response to Request No. 46, Duke Energy Kentucky is providing sensitive benefit information for its employees.

22. Request No. 49 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.
- e. Explain whether the utility's expenses for wages, salaries, benefits, and other compensation included in the base period and any adjustments to the base period. Are compliant with the Board of Director's compensation policy.

23. In its response to Request No. 49, Duke Energy Kentucky is providing a copy of its internal presentation made to its Compensation Committee.

24. Contemporaneous with the filing of this Petition, Duke Energy Kentucky is tendering documentation responsive to Commission Staff's Request Nos. 6, 13, 18, 30, 41, 43, 45, 46, and 49. 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. Specifically, the Confidential Information contains internal accounting policies, compensation and benefit information for Duke

Energy Kentucky employees along with surveys and studies provided by third party vendors under agreements for use and is used by Duke Energy Kentucky to determine compensation and benefit offerings, internal presentations regarding compensation and benefit offerings, and invoices from third party vendors. The Company's internal accounting procedures are considered proprietary and trade secret information as they contain sensitive business operations procedures, which if made available, would potentially harm Duke Energy Corp. and Duke Energy Kentucky. If released publicly, Competitors would have insight into the internal operations of Duke Energy Corp., which they could then use and incorporate into their own business strategies, to the detriment of Duke Energy and its customers. Duke Energy's procedures were developed over years of operation and its internal processes, procedures, and they should not be made public. Similarly, the information obtained from third party vendors was provided in accordance with licensing agreements or other contracts that should be protected. This information has value to these vendors and if publicly released would place Duke Energy Kentucky at a disadvantage in being able to procure such services in the future. Vendors may be unwilling to provide such services to Duke Energy Kentucky at the same or lower costs if it is known that such costs would be made public. Releasing such vendor information will hinder their ability to provide similar services as their costs to Duke Energy Kentucky would be used against them in other negotiations. For these reasons, this information should also remain confidential.

25. 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 compensation and benefit amounts for Duke Energy

Kentucky employees. Compensation 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.² 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 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.³

26. 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

² *Id.*, See also, *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).

³ *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).

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.

27. 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.

28. 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.

29. 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.

30. 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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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 18, 2019; 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 delivered via 2nd day delivery to the Commission on the 18th day of September, 2019 and a copy of the filing is also being mailed to the following:

Hon. Rebecca W. Goodman
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Hon. Kurt J. Boehm
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