

**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. )

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**PETITION OF DUKE ENERGY KENTUCKY, INC.  
FOR CONFIDENTIAL TREATMENT OF INFORMATION CONTAINED  
IN CERTAIN RESPONSES TO COMMISSION STAFF'S  
POST-HEARING 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 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 Post-Hearing Request for Information issued on February 24, 2020, 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. On February 19 and 20, 2020 Duke Energy Kentucky participated in a public hearing before the Commission.

5. In response to Commission Staff's Post-Hearing 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 3, 7, 11, and 27, 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.<sup>1</sup>

7. Request No. 3 of Commission Staff's Post-Hearing Request for Information states as follows:

Provide the final design of the Revert to Owner program and the language Duke Kentucky will include in its tariff once the proposed program is implemented.

8. In its response to Request No. 3, Duke Energy Kentucky is providing company created Customer Connect Program data. The Commission has often correctly held that the disclosure of internal corporate policies and procedures would violate the Open Records Act.<sup>2</sup>

9. Request No. 7 of Commission Staff's Post-Hearing Request for Information states as follows:

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<sup>1</sup> *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).

<sup>2</sup> *See In the Matter of the Application of Nolin Rural Electric Cooperative Corporation for a General Rate Increase*, Order, Case No. 2016-00367 (Ky. P.S.C. Mar. 13, 2019); *In the Matter of the 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); *In the Matter of an Examination of the Application of the Fuel Adjustment Clause of Duke Energy Kentucky, Inc. from May 1, 2015 through October 31, 2015*, Order, Case No. 2016-00005 (Ky. P.S.C. Oct. 4, 2016).

With respect to Duke Kentucky's East Bend generation facility's coal combustion residual landfills, provide the following information and documents:

- a. A breakdown of all costs incurred by Duke Kentucky to acquire fly ash for East Bend from other entities in the last five years, including the cost, if any, of the fly ash itself and any cost for transporting the fly ash to East Bend;
- b. A breakdown of any revenue that Duke Kentucky has received for taking fly ash to its East Bend landfills in the last five years;
- c. A list of the entities that supply or have supplied Duke Kentucky with fly ash for East Bend in the last five years.
- d. The amount of fly ash that has been taken from each such entity in each of the last five years;
- e. An explanation of the amount of fly ash that Duke Kentucky is contractually obligated to take from any entity for placement in East Bend's landfills; and
- f. A copy of the contracts with each such entity related to fly ash taken or to be taken to East Bend.

10. In its response to Request No. 7, Duke Energy Kentucky is filing copies of its vendor contracts. Duke Energy Kentucky seeks confidential protection for the pricing and cost of each individual contract, which is consistent with Commission precedent.<sup>3</sup> Disclosing such information at the detailed level of individual contracts will harm the Company by setting a "floor" in future negotiations with vendors that will make it very difficult for the Company to negotiate the lowest possible cost.

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

Refer to the Direct Testimony of Ash Norton, page 5, in which she indicated that localized load growth on specific circuits has driven capital spending on transmission and distribution projects.

- a. Provide a list of all customers that are contributing to the localized load growth referred to by Ms. Norton, the dates on which each of those customers began receiving service or

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<sup>3</sup> *In the Matter of the Application of Big Rivers Electric Corporation for Approval to Issue Evidences of Indebtedness*, Order, Case No. 2014-00423 (Ky. P.S.C. Jan. 27, 2016) (granting confidential status to pricing terms and performance guarantees).

- on which they are expected to begin receiving service, and the load or anticipated load of those customers.
- b. For each such customer, identify and describe the circuits from which they receive or will receive service from Duke Kentucky; explain how each such circuit was or will be upgraded to serve that customer, explain why the upgrade was or is necessary; and identify the cost of each such upgrade (if a Certificate of Public Convenience and Necessity has been obtained or requested simply refer to and identify the case associated with the customer's load).
  - c. For each such customer, state whether revenue associated with their increased load was included in the forecasted test period; identify the months of the test period for which revenue from their load was included; and describe in detail how Duke Kentucky estimated the revenue from their load in the test period.

12. In its response to Request No. 11, Duke Energy Kentucky is providing sensitive customer information regarding customer projects. This category of information is acknowledged to be confidential and not subject to public disclosure.<sup>4</sup>

13. Request No. 27 of Commission Staff's First Request for Information states as follows:

Refer to Duke Kentucky's response to Staff's Second Request, Item 30, Attachment 11. Explain why the portions of this contract that do not relate to Duke Kentucky are redacted. Provide a completely unredacted copy of this contract.

14. In its response to Request No. 27, Duke Energy Kentucky is filing a copy of one of its vendor contracts. Duke Energy Kentucky seeks confidential protection for the pricing and cost

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<sup>4</sup> See KRS 61.878(1)(c)1.; Ky. OAG 05-ORD-104 (June 1, 2005); *In the Matter of the 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 3, 2018); *In the Matter of the Electronic Application of Duke Energy Kentucky, Inc. for a Certificate of Public Convenience and Necessity Authorizing the Construction of a Gas Pipeline from Walton, Kentucky to Big Bone, Kentucky*, Order, Case No. 2016-00168 (Ky. P.S.C. July 27, 2017); *In the Matter of the Proposed Revision of Rules Regarding the Provision of Wholesale Water Service by the City of Versailles to Northeast Woodford Water District*, Order, Case No. 2011-00419 (Ky. P.S.C. Mar. 14, 2012).

of the contract, which is consistent with Commission precedent.<sup>5</sup> Disclosing such information at the detailed level of individual contracts will harm the Company by setting a “floor” in future negotiations with vendors that will make it very difficult for the Company to negotiate the lowest possible cost. The Company does not seek to protect from disclosure the total sum spent on such vendor contracts, but requests that the detailed information pertaining to each contract remain confidential in light of its extremely valuable commercial nature. Furthermore, this contract contains detailed information of Duke Energy Kentucky’s sister companies which operate in other jurisdictions.

15. Contemporaneous with the filing of this Petition, Duke Energy Kentucky is tendering documentation responsive to the Requests above. 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. Moreover, the Confidential Information is generally recognized as confidential and proprietary in the energy industry and in business generally. Specifically, the Confidential Information contains internal policies, contracts with third party vendors, non-public financial data, project estimates, and sensitive customer information. The Company’s internal 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

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<sup>5</sup> *In the Matter of the Application of Big Rivers Electric Corporation for Approval to Issue Evidences of Indebtedness*, Order, Case No. 2014-00423 (Ky. P.S.C. Jan. 27, 2016) (granting confidential status to pricing terms and performance guarantees).

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, along with its sister companies, 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 and its sister companies 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 and its sister companies would be used against them in other negotiations. For these reasons, this information should also remain confidential.

16. 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 satisfies both the statutory and common law standards for affording confidential treatment.

17. 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.

18. 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.

19. 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.

20. 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 March 6, 2020; 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 2<sup>nd</sup> day delivery to the Commission on the 6th day of March, 2020 and a copy of the filing is also being mailed to the following:

Hon. Justin McNeil  
Hon. Larry Cook  
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