

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
REQUEST FOR INFORMATION

Comes now Duke Energy Kentucky, Inc. (Duke Energy Kentucky or Company), by counsel, pursuant to KRS 61.878, 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 Third Request for Information and Responses to the Attorney General's ("AG") Second Request for Information issued on November 8 and November 12, 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 September 3, 2019 Duke Energy Kentucky filed an Application seeking an adjustment of its electric rates and other approvals.
3. On November 8, 2019 Commission Staff filed its Third Request for Information and on November 12, 2019 each of the intervenors filed their Second Request for Information.
4. In response to Commission Staff's Third Request for Information and the AG's

Second 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 Commission Staff's Requests 24 and 72; and Responses to the AG's Requests 11, 17, 24, and 63; which is referred to herein as the "Confidential Information" and, broadly speaking, includes detailed information pertaining to the requests for bids from outside contractors, pricing and agreements for the sale of accounts receivable, internal capitalization and accounting policies, the fuel inventory management strategy, enterprise Automated Distribution Management System (ADMS) analysis, and other sensitive and proprietary information.

6. Request No. 24 of Commission Staff's Third Request for Information states as follows:

Refer to the Direct Testimony of Thomas Christie, page 11, lines 19-23.

- a. Provide the requests for bids, related documents, and other similar documents that Duke Kentucky provided contractors when it most recently solicited bids for vegetation management and for its hazardous tree program.
- b. Describe how Duke Kentucky distributed the documents to contractors or otherwise informed contractors of the opportunity to submit a bid, whether directly or through advertising or public notices.

7. In its response to Request No. 24, Duke Energy Kentucky is filing copies of its requests for bids for its vegetation management contracts. Duke Energy Kentucky seeks confidential protection for this information since all vegetation management bidding information is contained in a single request for bids and some of the information will be applicable for other regions served by Duke Energy Corporation's operating companies outside the Midwest. Disclosing such information could harm Duke Energy Kentucky's affiliate operating companies by revealing bidding request information that has no application to Kentucky. Faced with the

potential for such disclosures in the future, it is likely that Duke Energy Kentucky would be forced to run separate bidding procedures with a more limited focus and scope. This would in turn serve to limit the number of bids received and the economies of scale that could be achieved by packaging bidding opportunities into larger segments.

8. Request No. 72 of Commission Staff's Third Request for Information states as follows:

Refer to Duke Kentucky's response to Staff's Second Request, Item 53.

- a. Explain why the credit spread for the current Sale of Accounts Receivables is five basis points higher in the instant case than in Case No. 2017-00321. Provide support for this higher credit spread.
- b. Explain why the credit spread for the incremental interest over the 1-month LIBOR is approximately ten basis points higher in the instant case than in Case No. 2017-00321. Provide support for this higher credit spread.

9. In its response to Request No. 72, Duke Energy Kentucky is providing its Third Amended and Restated Fee Letter, dated November 22, 2013, and its Fourth Amended and Restated Fee Letter, dated December 19, 2017. Duke Energy Kentucky is not a party to either of these commercial agreements, which are between Cinergy Receivables Company, LLC, The Bank of Nova Scotia and Fifth Third Bank and Cinergy Receivables Company, LLC, The Bank of Nova Scotia and BNP Paribas, respectively. Both agreements are clearly marked confidential by the signatories thereto and, technically speaking, are not even documents belonging to Duke Energy Kentucky. Production of confidential commercial agreements for which a regulated utility is not a party is beyond the scope of records subject to production in KRS 278.230; however, Duke Energy Kentucky is able and willing to provide copies of these documents so long as they retain their confidential status. The forced disclosure of such an agreement would have a chilling effect upon the ability of regulated utilities to obtain and produce similar documents in future proceedings. Moreover, these commercial agreements are the result of bargained-for consideration

and include commercial terms not generally known to parties other than the signatories. Disclosing such information in this instance would make it more difficult for Duke Energy Kentucky – or its affiliates – to obtain favorable commercial terms in future negotiations. Likewise, the Commission has previously held that lender facility fees – which are akin to the fee which is the basis for this particular request – are confidential under KRS 61.878(1)(c)1.¹ The same protection has been afforded to materials from a third-party.²

10. Request No. 11 of the AG’s Second Request for Information states as follows:

Provide a copy of the Company’s present and most recent prior capitalization and retirement plant accounting policies and procedures.

- a. Identify and describe any changes, particularly with respect to the accounting for maintenance and/or repairs on production plant that previously were accounted for as maintenance expense, but now are subject to interim retirement, followed by refurbishment/repair and return to inventory, and then capitalization to CWIP/plant when returned to service. If none, then so state.
- b. If there were such changes identified in response to part (a) of this question, then describe what effect each such change in plant accounting has on the timing and magnitude of interim retirements (Iowa curve selection) and on increasing the depreciation rate compared to the prior accounting.
- c. Provide a copy of all internal and external correspondence, including, but not limited to, Mr. Spanos, wherein such accounting changes were addressed, if any, particularly with respect to the effects on depreciation expense.

11. In its response to Request No. 11, Duke Energy Kentucky is providing its 2018 and 2019 Capitalization Guidelines. These documents are highly proprietary and sensitive

¹ See *In the Matter of the Application of East Kentucky Power Cooperative, Inc. for Approval of the Amendment and Extension or Refinancing of an Unsecured Revolving Credit Agreement in an Amount up to \$800,000,000 of Which up to \$100,000,000 May be in the Form of an Unsecured Renewable Term Loan and \$200,000,000 of Which Will be in the Form of a Future Increase Option*, Order, Case No. 2016-00116 (Ky. P.S.C. April 12, 2016).

² See *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).

information. Indeed, a utility's approach to capitalization is fundamental to its core business strategy and significantly impacts its ability to attract capital. Duke Energy Kentucky's capitalization plan and retirement plant accounting policy, if publicly disclosed, would give other utilities and other participants in the capital market significant and valuable insight into the Company's business strategy both in terms of attracting capital and managing its legacy plant obligations. This would translate into a disadvantage in competing for capital, to the ultimate detriment of Duke Energy Kentucky's customers. Here again, Commission precedent demonstrates that such accounting policies are confidential under Kentucky law.³

12. Request No. 17 of the AG's Second Request for Information states as follows:

Provide a complete description of the fuel inventory level policies used for planning purposes by DEK.

13. In its response to Request No. 17, Duke Energy Kentucky is providing its fuel inventory policies. 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 fuel procurements in the future. In a dwindling market of coal suppliers, information such as that contained in this policy would greatly assist coal brokers and sellers in setting prices based upon Duke Energy Kentucky's precise inventory needs more so than the overall market for fuel. Indeed, the Commission has previously recognized that fuel strategies and authorizations are confidential.⁴

14. Request No. 24 of the AG's Second Request for Information states as follows:

³ See *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).

⁴ See *In the Matter of an Examination of the Application of the Fuel Adjustment Clause of East Kentucky Power Cooperative, Inc. from November 1, 2015 Through April 30, 2016*, Order, Case No. 2016-00231 (Ky. P.S.C. Jan. 3, 2019); *In the Matter of an Examination of the Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation from November 1, 2012 Through October 31, 2014*, Order, Case No. 2014-00455 (Ky. P.S.C. Jan. 28, 2019).

Provide a copy of the Company accounts receivable agreement with its receivables affiliate.

15. In its response to Request No. 24, Duke Energy Kentucky is providing a copy of its Second Amended and Restated Purchase and Sale Agreement between Duke Energy Ohio, Inc., Duke Energy Indiana, Inc., Duke Energy Kentucky, Inc. and Cinergy Receivables Company, LLC, dated November 5, 2010 and a First Amendment to said agreement, dated December 18, 2015. Both agreements are designated as “confidential” on their face. Moreover, these two agreements include proprietary commercial terms concerning two other Duke Energy operating companies. How a corporation handles and manages its receivables is clearly proprietary information and a trade secret not available to its customers, competitors and vendors. The forced disclosure of these documents would publicly advertise Duke Energy Kentucky’s specific approach to managing its receivables in violation of the protections widely afforded to such trade secrets. In Duke Energy Kentucky’s last electric base rate case, information pertaining to the Company’s management of receivables was granted confidential treatment.⁵

16. Request No. 63 of the AG’s Second Request for Information states as follows:

Refer to the response to AG 1-126.

- a. Explain whether ADMS is being deployed on a circuit-by-circuit basis, as “part of the normal extension of existing systems and replacements.” If not, provide a complete explanation of the basis on which ADMS is being deployed.
- b. DEK failed to answer subpart (b) of this question. Provide an answer to the question.
- c. DEK failed to answer subpart (d) of this question. Provide an answer to the question. DEK failed to answer subpart (e) of this question. Provide an answer to the question.
- d. Provide any and all cost-benefit analyses DEK or its affiliates may have conducted regarding the use of ADMS.

⁵ See *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).

17. In its response to Request No. 63, Duke Energy Kentucky is providing an enterprise-wide ADMS analysis performed in May 2017. By its nature, the attached analysis has a scope far broader than narrowly focusing on Duke Energy Kentucky. To the extent that the analysis includes information and analysis about Duke Energy Kentucky's affiliates, its disclosure would taint the ability of those affiliates to seek the most favorable terms and conditions for procuring and implementing ADMS. Moreover, as set forth above, the fact that much of the information in the report itself applies to non-jurisdictional entities, the duty to protect such information from public disclosure is heightened. Clearly, the enterprise ADMS analysis is confidential, proprietary and a corporate trade secret, and the Commission has previously held that a utility's assessment of its infrastructure is confidential under KRS 61.878(1)(m).⁶

18. Contemporaneous with the filing of this Petition, Duke Energy Kentucky is tendering documentation responsive to the Requests listed 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, the Board, Senior Management and employees who must have access for business reasons. Duke Energy Kentucky's procedures were developed over years of operation and implementation of best practices gleaned from various corporate mergers and acquisitions and decades of experiences. Its internal processes, procedures, and policies should not be made public. Moreover, the Confidential Information is generally recognized as confidential and proprietary in the energy and utility industry and in business generally.

⁶ See *In the Matter of the Application of Duke Energy Kentucky, Inc. for an Order Approving the Establishment of a Regulatory Asset for the Liabilities Associated with Ash Pond Asset Retirement Obligations*, Order, Case No. 2015-00187 (Ky. P.S.C. Jan. 12, 2016).

19. Furthermore, 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.

20. The Kentucky Open Records Act and applicable precedent exempts the Confidential Information from disclosure. *See* KRS 61.878(1)(a), (c)1. and (m); *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.

21. 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. Duke Energy Kentucky objects to producing the Confidential Information to any intervenor who stands to gain a competitive advantage over another customer via receipt of the Confidential Information.

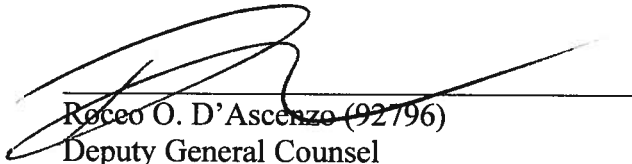
22. In accordance with the provisions of 807 KAR 5:001, Section 13(2)(e), the Company is filing one copy of the Confidential Information separately under seal, and the appropriate number of copies with the Confidential Information redacted.

23. 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.

24. 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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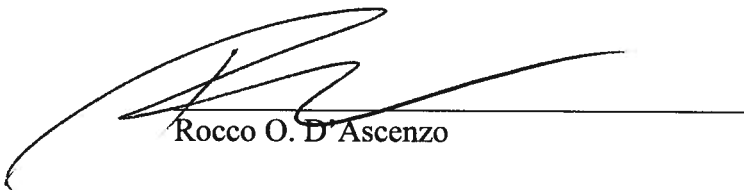
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CERTIFICATE OF SERVICE

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 November 26, 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 26th day of November, 2019.


Rocco O. D'Ascenzo