

**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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**DUKE ENERGY KENTUCKY, INC.'S**  
**MOTION FOR REHEARING**  
**ON DENIAL OF CERTAIN CONFIDENTIALITY ISSUES**

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Comes now Duke Energy Kentucky, Inc. (Duke Energy Kentucky or Company), by counsel, and respectfully petitions the Commission to grant rehearing on certain items contained in an Order entered by the Commission on April 29, 2020 which granted in part and denied in part various motions for confidential treatment filed by the Company (“Confidentiality Order”). As grounds for this motion Duke Energy Kentucky respectfully states as follows:

**I. Background**

The Commission’s Confidentiality Order denied the request for confidentiality for the Company’s response to Staff DR 01-013 which contained the annual salary for two employees who are engaged as lobbyists. Staff DR 01-013 requests 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.

In response to Staff DR 01-013 the Company provided the requested information, including the salaries of the two employees.

## **II. Argument**

### **A. Compensation Information**

Duke Energy Kentucky respectfully requests the Commission to grant rehearing to afford confidential protection to the salary information provided in response to Staff DR 01-013. The Commission's Order correctly notes that certain executive compensation information is publicly disclosed by Duke Energy Corporation in other required filings (proxy filings with the United States Securities Exchange Commission (SEC) and the Federal Energy Regulatory Commission (FERC Form 1)). However, the information tendered to the Commission in response to Staff DR 01-013 is sensitive compensation information for two employees of Duke Energy Business Services LLC (DEBS), namely Patrick Keal and Chuck Session, who are registered lobbyists with the Kentucky Legislative Ethics Commission. Mr. Keal is also a registered lobbyist with the Kentucky Executive Branch Ethics Commission. The compensation of these two employees is not included in the required SEC and FERC filings. The Company requested that their personal compensation information be afforded confidential treatment, consistent with judicial and administrative precedent.<sup>1</sup> The Company maintains that this information should be afforded confidential treatment because of its unmistakably-personal nature, because these employees have a reasonable expectation of privacy with regard to this information and its disclosure will have no public benefit.

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<sup>1</sup> See Duke Energy Kentucky's Motion for Confidential Treatment for Certain Responses to requests for Information (filed September 18, 2019); see also *infra*, n. 4 and accompanying text.

Individuals generally enjoy a reasonable expectation of privacy with regard to their compensation information. While this expectation may not apply to senior-level utility executives in light of required filings with federal agencies, neither of the aforementioned individuals hold a position that requires federal disclosure of their information and neither of them is an officer of DEBS. While Mr. Session is an executive of Duke Energy Kentucky, he is not an executive of Duke Energy Corporation and his salary information is not reported publicly. Mr. Keal is neither. Moreover, the public's interest in the lobbying of public officials, and particularly the amounts paid by or to a particular employer or agent related to lobbying activities, is already satisfied by required disclosures of such information in public filings with the Kentucky Executive Branch Ethics Commission and the Kentucky Legislative Branch Ethics. To the extent the public has any valid interest in the detailed compensation amounts paid to Mr. Keal and Mr. Session for activities not related to lobbying (which amounts are contained in or easily deduced from the Company's Response to Staff DR 01-013), such an interest is woefully insufficient to warrant the invasion of personal privacy that necessarily results from the public disclosure of employee-specific compensation information.

Neither employee engages in lobbying activities 100% of their working hours. Therefore, public disclosure of their entire base salary, benefits and incentives would encompass work performed by these employees that is not attributed to lobbying activities. To the extent that anyone might question the amount of expense incurred by Duke Energy Kentucky in lobbying activities, the Kentucky General Assembly has already extensively provided for the documentation and disclosure of such information. However, compensation not associated with lobbying activities is not required to be disclosed by any statute and the Commission's unilateral requirement to disclose such figures in this context would be unreasonable and inconsistent with KRS 61.878(1)(a) and

the interpretation of the Open Records Act handed down by Kentucky's highest courts over recent years. The Kentucky Court of Appeals has stated, "information such as . . . wage rate . . . [is] generally accepted by society as [a] detail in which an individual has at least some expectation of privacy."<sup>2</sup> Additionally, the Kentucky Supreme Court has characterized personal income as being information of a private nature.<sup>3</sup> Accordingly, the Commission should grant rehearing and afford the compensation information pertaining to the Company's lobbyists confidential treatment.

Duke Energy Kentucky's electric business is allocated labor expense for these employees based on the amount of time they devote to Duke Energy Kentucky electric-related matters, which includes non-lobbying job responsibilities so only a portion of their Duke Energy electric time is charged to lobbying activities. In addition, Duke Energy Kentucky has also retained third party consultants to provide lobbying activities on its behalf. Any charge related to lobbying activities is recorded to Duke Energy Kentucky's below-the-line expense and therefore is not included in the forecasted test period in this case.

The Kentucky Open Records Act prohibits the disclosure of "[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy."<sup>4</sup> The Kentucky Open Records Act also contains an exemption that restricts dissemination of information that, due to its confidential and proprietary nature, would permit "an unfair commercial advantage to competitors of the entity that disclosed the records" if openly disclosed. Should specific compensation information related to identified members of Duke Energy Kentucky's skilled labor force be made readily available to the Company's competitors, the Company will likely face increased challenges with respect to the

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<sup>2</sup> *Zink v. Department of Workers' Claims, Labor Cabinet*, 902 S.W.2d 825, 828 (Ky. Ct. App. 1994).

<sup>3</sup> *See Cape Pub'ns, Inc. v. Univ. of Louisville Found., Inc.*, 260 S.W.3d 818, 822 (Ky. 2008).

<sup>4</sup> KRS 61.878(1)(a).

retention of existing employees and negotiating with potential new team members in the future. Additionally, the public disclosure of the relevant compensation information (and the resulting challenges faced by the Company) will inevitably inure to the benefit of the Company's competitors, which gain valuable, non-public information about the Company's business practices and compensation records.

As recognized by the Commission, "[i]n determining whether materials should be exempt from disclosure, the Commission must balance the harm from disclosure with 'the effect of protecting a given document from scrutiny by the public and potential intervenors.'" In the case of the Company's Response to Staff DR 01-013, the palpable damage that will result from the public dissemination of private employee compensation information far outweighs any justification that could be provided in support of disclosure. Based on the foregoing, Duke Energy Kentucky respectfully seeks confidential protection for the information submitted in Response to Staff DR 01-013, as provided herewith.

WHEREFORE, on the basis of the foregoing, Duke Energy Kentucky respectfully moves the Commission to issue an Order granting rehearing and granting confidential treatment to the compensation information described above.

This 18<sup>th</sup> day of May, 2020.

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 May 18, 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 will be filed with the Commission within thirty days of the current state of emergency for COVID-19 being lifted.



*Counsel for Duke Energy Kentucky, Inc.*