

February 7, 2022

***VIA EMAIL AND
ELECTRONIC FILING SYSTEM***

Ms. Linda Bridwell, P.E.
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, KY 40601

RE: Open Records Request; PSC ORR Log # 2022-0004

Dear Ms. Bridwell,

Thank you for your correspondence of January 18, 2022 regarding the above-reference open records request received by the Commission from Mr. Daniel A. Hunt, pursuant to KRS 61.870, *et seq.*, and 807 KAR 5:001, Section 13. On behalf of Duke Energy Kentucky, Inc. (Duke Energy Kentucky or the Company), we understand that Mr. Hunt has requested records supplied to the Commission by the Company in Case No. 2019-00361¹ and Case No. 2019-00251.² Specifically, Mr. Hunt has requested:

- Any and all documents in the KPSC's possession including but not limited to: submissions, affidavits, updates, plans; specifications; reports; schematics; design; placement; construction; drawings; estimates; studies and/or in any other way relating to Duke Energy Kentucky, Inc., KPSC Case No. 2019-00361.
- Any and all documents in the KPSC's possession including but not limited to: written correspondence (including but not limited to email correspondence), and/or any other forms of written electronic communications which relate to,

¹ *In the Matter of the Electronic Application of Duke Energy Kentucky, Inc. for a Certificate of Public Convenience and Necessity to Construct a 138 kV Transmission Line and Associated Facilities in Boone County, Kentucky (Woodspoint to Aero Transmission Line Project)*, Order, Case No. 2019-00361 (Ky. P.S.C. Feb. 27, 2020).

² *In the Matter of the Electronic Application of Duke Energy Kentucky, Inc. for a Certificate of Public Convenience and Necessity to Construct a 138 kV Transmission Line and Associated Facilities in Boone County, Kentucky (Oakbrook to Aero Transmission Line Project)*, Order, Case No. 2019-00251 (Ky. P.S.C. Jan. 21, 2020).

discuss or otherwise relates to Duke Energy Kentucky, Inc., KPSC Case No. 2019-00361.

- Any and all documents in the KPSC's possession including but not limited to: submissions, affidavits, updates, plans; specifications; reports; schematics; design; placement; construction; drawings; estimates; studies and/or in any other way relating to Duke Energy Kentucky, Inc., KPSC Case No. 2019-00251.
- Any and all documents in the KPSC's possession including but not limited to: written correspondence (including but not limited to email correspondence), and/or any other forms of written electronic communications which relate to, discuss or otherwise relates to Duke Energy Kentucky, Inc., KPSC Case No. 2019-00251.

Upon receipt of your January 18, 2022 correspondence, Duke Energy Kentucky has reviewed the confidential records which it submitted in both Case No. 2019-00361 and Case No. 2019-00251. Based upon our review, we believe that the provisions of KRS 81.878(1)(m)(1) and 807 KAR 5:001, Section 13 continue to apply and, therefore, the requested documents are exempt from disclosure under the Kentucky Open Records Act. In further support of this position, Duke Energy Kentucky respectfully offers the following:

Case No. 2019-00361

Case No. 2019-00361 involved the filing of an application for a Certificate of Public Convenience and Necessity (CPCN) to construct an approximately 2-mile, 138-kV electric transmission line and associated facilities in Boone County Kentucky. Under 807 KAR 5:001, Section 15(2)(d)1. and 2., Duke Energy Kentucky was required to file copies of “maps to suitable scale showing the location or route of the proposed construction or extension, as well as the location to scale of like facilities owned by others located anywhere within the map area with adequate identification as to the ownership of the other facilities; and [p]lans and specifications and drawings of the proposed plant, equipment, and facilities” for the proposed transmission line as part of its initial application. But for this regulatory filing requirement, Duke Energy Kentucky would not have tendered the confidential records to the Commission as part of its initial application.

In order to preserve the confidential nature of these records, Duke Energy Kentucky filed a petition for confidential treatment along with its application. The petition specifically sought confidential treatment for Exhibit 2 and pages 31 – 33 of Exhibit 4 of the application. Exhibit 2 comprised the Company’s 138-kV Transmission Line Standards and Exhibit 4 was the Siting Study prepared for the project. In support of its petition, the Company described the extent to which Exhibit 2 and Exhibit 4 included detailed descriptions, schematic drawings and maps of utility infrastructure. Duke Energy Kentucky further stated that the disclosure of such utility infrastructure information could be exploited and used to create security and public safety risks. The Company also explained that, even internally, the information was retained on a need-to-know basis and was not freely available.

In an Order entered on March 25, 2020, the Commission granted Duke Energy Kentucky's petition for confidential treatment and held that the confidential records should "not be subject to public inspection for until such time as the facilities therein are no longer in service." The holding of the Commission's March 25, 2020 Order is still correct. Information regarding the details of a high-voltage electric transmission line are specifically and expressly recognized as exempt from public disclosure in KRS 61.878(1)(m)1.f. and g.. These provisions in the Open Records Act exempt from public disclosure:

- f. Infrastructure records that expose a vulnerability referred to in this subparagraph through the disclosure of the location, configuration, or security of critical systems, including public utility critical systems. These critical systems shall include but not be limited to information technology, communication, electrical, fire suppression, ventilation, water, wastewater, sewage, and gas systems;
- g. The following records when their disclosure will expose a vulnerability referred to in this subparagraph: detailed drawings, schematics, maps, or specifications of structural elements, floor plans, and operating, utility, or security systems of any building or facility owned, occupied, leased, or maintained by a public agency; and

The transmission line which was the subject of consideration in Case No. 2019-00361 is clearly within the definition of a critical system and the confidential information is equally plainly the type of information for which confidential treatment is assured. Moreover, the transmission line has not reached the point where it is no longer in service,³ which means that the significance of the confidential information continues to be relevant and useful to those who might intend to use it to disrupt Duke Energy Kentucky's electric transmission system.⁴ Based upon the wording of Mr. Hunt's request, it is obvious that he seeks records that are expressly prohibited from release under the Open Records Act. Accordingly, we respectfully request the Commission to deny his request to disclose records deemed confidential in Case No. 2019-00361.

Case No. 2019-00251

Case No. 2019-00251 also involved the filing of an application for a CPCN to construct an approximately 1.1 mile 138-kV electric transmission line in Boone County, Kentucky. Duke Energy Kentucky again filed the information required by 807 KAR 5:001, Section 15(2)(d)1. and 2. along with a petition for confidential treatment. This petition covered records provided as Exhibit 2, Exhibit 3, Exhibit 4 and Exhibit 6 to the application. Exhibits 2 and 3 provided detailed

³ Mr. Hunt is counsel for the only landowner to have appealed the Circuit Court's determination in favor of Duke Energy Kentucky, Inc. that it has a right to condemn a portion of its property to construction the transmission line. *See Duke Energy Kentucky, Inc. v. Florence Owner 1, LLC, et al.*, Boone County Circuit Court, Case No. 21-CI-00119.

⁴ KRS 61.878(1)(m)2.f. defines a "terrorist act" as "a criminal act intended to ... disrupt a system identifies in subparagraph 1.f. of this paragraph." KRS 61.878(1)(m)1.f. states that "critical systems shall include ... electrical ... systems."

information concerning the layout and design of the Oakbrook and Aero substations. Exhibit 4 included the Company's 138-kV Transmission Line Standards and Exhibit 6 included documents from the Siting Study. In addition, Duke Energy Kentucky sought confidential treatment for certain responses to the Commission's Staff's Second Set of Data Requests. The Response to Request No.2 included detailed depictions, locations, schematic drawings, and maps of confidential utility infrastructure and the Response to Request No. 5(b) and (c) included specific customer account information, including the names, contact information, addresses, and an email address of customers of Duke Energy Kentucky.⁵

In an Order entered on January 21, 2020, the Commission granted Duke Energy Kentucky's petition for confidential treatment with regard to the confidential records tendered along with the application. In a subsequent Order entered on March 18, 2020, the Commission also granted Duke Energy Kentucky's petition for confidential information for records tendered in responding to the Staff's Second Set of Data Requests. In both Orders, the Commission found that the records relating to the transmission line were exempt from discovery under the Open Records Act due to the fact that they were critical infrastructure records under KRS 61.878(1)(m)1.

As was the situation in Case No. 2019-00361, the transmission line which was the subject of consideration in Case No. 2019-00251 has not reached the point where it is no longer in service, which means that the significance of the confidential information continues to be relevant and useful to those who might intend to use it to disrupt Duke Energy Kentucky's electric transmission system. Based upon the wording of Mr. Hunt's request, it is obvious that he seeks records which are expressly prohibited from release under the Open Records Act. Accordingly, we respectfully request the Commission to deny his request for records deemed confidential in Case No. 2019-00251 as well.

In the event the Commission elects to preserve the confidential nature of these infrastructure records and denies Mr. Hunt's request, we respectfully request that you please forward a copy of such denial to the Kentucky Office of Homeland Security and the Office of the Attorney General, as required by KRS 61.878(1)(m)3. In the event that the Commission determines to release the requested confidential records to Mr. Hunt, we respectfully request that the Company be notified and given an opportunity to seek an appropriate remedy in the Franklin Circuit Court prior to such disclosure. On behalf of Duke Energy Kentucky, thank you for the opportunity to provide this response.

Sincerely,



David S. Samford

cc: Mr. J.E.B. Pinney
Mr. Daniel A. Hunt

⁵ See Duke Energy Kentucky, Inc.'s Response to Staff's Second Set of Data Requests, No. 2 and No. 5(b)-(c) (Oct. 31, 2019).