

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 Natural Gas Rates; 2)) Case No. 2021-00190
Approval of New Tariffs; and 3) All)
Other Required Approvals and Relief.)

**PETITION OF DUKE ENERGY KENTUCKY, INC.
FOR CONFIDENTIAL TREATMENT OF INFORMATION
CONTAINED IN ITS APPLICATION REGARDING AN
ADJUSTMENT OF NATURAL GAS RATES**

Comes now Duke Energy Kentucky, Inc. (Duke Energy Kentucky or Company), by counsel, pursuant to 807 KAR 5:001, Section 13, and respectfully requests the Commission to classify and protect certain information provided by the Company in its Application for an adjustment of its natural gas rates, respectfully stating as follows:

1. The information for which Duke Energy Kentucky seeks confidential treatment is contained in: (a) the Confidential Attachments to Filing Requirement 807 KAR 5:001, Section 16(7)(o) [Tab 35]; (b) the Confidential Attachment to the Direct Testimony of Amy B. Spiller (ABS-2); and (c) the Confidential Attachments to the Direct Testimony of Jake J. Stewart (JJS-4(a) - (c)). Collectively, these documents are referred to herein as the “Confidential Information” and, broadly speaking, include detailed operations and maintenance (O&M) and Capital expenses incurred by the Company on a monthly basis, financial projections, a customer satisfaction overview, and information relating to the compensation of non-senior executive employees and shared employees of the Company.

2. With regard to the Confidential Attachments provided in FR 807 KAR 5:001, Section 16(7)(o) [Tab 35], Duke Energy Kentucky is providing its Financial Reporting Summaries (FRS) monthly managerial reports. These FRS reports contain narrative explanations of variances for the Company and show the financial condition of the Company on a monthly basis. In addition, the Company is including its monthly Regulatory O&M and Capital Reports (ROCR) that contain highly detailed variance descriptions and explanations for O&M and capital expenditures, respectively.

3. The foregoing information relating to the Company's detailed monthly capital and O&M expenses as well as Duke Energy Kentucky's monthly financial positions and drivers are self-evidently confidential and proprietary in nature. Individually, any of these documents would provide competitors with tremendous insight into the Company's financial condition, capital and O&M philosophies, policies, practices, and expenses. Gaining access to this information would be extremely valuable to the Company's competitors and vendors. If released, this information would put the Company at a competitive disadvantage in future negotiations with potential vendors and even potentially inhibit the Company's ability to properly manage its costs.

4. With regard to Confidential Attachment ABS-2, Duke Energy Kentucky is providing Duke Energy Kentucky's April 2021 Gas Customer Satisfaction Overview. This document provides a summary of current customer satisfaction performance measures through a combination of internal, proprietary studies, as well as the annual J.D. Power Natural Gas Utility Residential Customer Satisfaction Study. This document contains results of proprietary studies that were developed for Duke Energy Kentucky and if this information were to be released it could release sensitive information

regarding Duke Energy Kentucky's inner workings to its competitors. It also would allow trade secret information developed and paid for by Duke Energy Kentucky to be available to Duke Energy Kentucky's competitors without them having to develop and purchase the information. Since this document contains proprietary and trade secret information it should be afforded confidential treatment.

5. With regard to Confidential Attachments JJS-4(a) and (b), Duke Energy Kentucky is providing Duke Energy's: (a) 2021 Short-Term Incentive Plan and Union Employee Incentive Plans, and (b) 2021 Restricted Stock Award Plan. These documents provide intimate details on the nature, function, scope, and operation of the Company's incentive compensation plans.

6. With regard to Confidential Attachment JJS-4(c), Duke Energy Kentucky is providing Duke Energy's 2021 Executive Long Term Incentive Plan. In Case No. 2019-00271, per Order dated May 4, 2020¹, the Commission determined that the 2019 Executive Long-Term Incentive Plan brochure included as Confidential Attachment RHM-5(c) was information that is not generally recognized as confidential, and therefore does not meet the criteria for confidential treatment and is not exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5-001, Section 13. In that instance, the data contained in the 2019 Executive Long-Term Incentive Plan brochure was publicly disclosed in the annual 2019 Duke Energy Proxy Statement filed in 2020 before the Commission order was exercised. Therefore, Duke Energy Kentucky did not dispute the confidentiality of the data. However, the EPS targets contained in the 2021

¹ *In the Matter of Electronic Application of Duke Energy Kentucky, Inc. for 1) An Adjustment of the Electric Rates; 2) Approval of New Tariffs; 3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; and 4) All Other Required Approvals and Relief*, Order, Case No. 2019-00271 (Ky. P.S.C. May 4, 2020).

Executive Long-Term Incentive Plan brochure included as Confidential Attachment JJS-4(c) to the testimony of Jake J. Stewart have not been publicly disclosed. The three-year EPS performance levels under the Long-Term Incentive Plan typically have been disclosed for the first time in the annual proxy statement that is filed approximately one year after the Long-Term Incentive Plan is approved. As a result, Duke Energy is planning to disclose the EPS performance levels under the 2021 Long-Term Incentive plan in March 2022 in connection with the 2022 proxy statement, which provides the appropriate background and context for the 2021 Long-Term Incentive plan. Finally, since these details will not be publicly available until March 2022, it should be afforded confidential treatment.

7. The foregoing information relating to employee compensation and benefits is self-evidently confidential and proprietary in nature. Individually, any of these documents would provide competitors with tremendous insight into the Company's compensation philosophies, policies and practices. Taken together, these documents represent the accumulation of decades of "best practices" in human capital management. Gaining access to this information would be extremely valuable to the Company's competitors who might desire to poach from Duke Energy Kentucky's talent pool. Moreover, it would impose a significant and material obstacle to the Company's efforts to continue to recruit and retain a skilled labor force.

8. The Kentucky Open Records Act exempts from disclosure 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.² The Confidential Information was, and remains, integral to Duke Energy Kentucky's

² See KRS 61.878(1)(c)1.

effective execution of business decisions. Indeed, as the Kentucky Supreme Court has found, “information concerning the inner workings of a corporation is ‘generally accepted as confidential or proprietary.’”³

9. 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.

10. 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.

11. 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. Due to the pervasive nature of the Confidential Information within each of the Confidential Attachments and FR, Duke Energy Kentucky is requesting confidential treatment for the Confidential Information in totality.

12. 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

³ *Hoy v. Kentucky Industrial Revitalization Authority*, Ky., 904 S.W.2d 766, 768 (Ky. 1995).

commercially sensitive so as to likely impair the interests of the Company or its employees if publicly disclosed.

13. 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,

Duke Energy Kentucky, Inc.

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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 June 1, 2021; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; the original filing in paper medium will be delivered to the Commission pending further instruction from Case No. 2020-00085;⁴ and that a copy of the filing in paper medium is also being overnighted to the following:

John G. Horne, II
The Office of the Attorney General
Utility Intervention and Rate Division
700 Capital Avenue, Ste 118
Frankfort, Kentucky 40601

/s/Rocco D'Ascenzo

Rocco O. D'Ascenzo

⁴ *In the Matter of Electronic Emergency Docket Related to the Novel Coronavirus COVID-19*, Order, Case No. 2020-00085 (Ky. P.S.C. March 16, 2020).