

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.)

**MOTION FOR CONFIDENTIAL TREATMENT OF
DUKE ENERGY KENTUCKY, INC. FOR CERTAIN
RESPONSES TO COMMISSION STAFF’S SECOND REQUEST
FOR INFORMATION AND THE ATTORNEY GENERAL’S
FIRST REQUEST FOR INFORMATION**

Comes now Duke Energy Kentucky, Inc. (Duke Energy Kentucky or Company), by counsel, pursuant to 807 KAR 5:001, Section 13 and other law, and respectfully requests the Commission to classify and protect certain information provided by the Company in its Responses to Commission Staff’s Second Request for Information issued on June 29, 2021, and the Kentucky Attorney General’s Office’s First Request for Information issued on July 1, 2021, respectfully stating as follows:

1. On April 30, 2021 Duke Energy Kentucky filed a Notice of Intent to File an Application seeking adjustment of its electric rates and other approvals.
2. On June 1, 2021 Duke Energy Kentucky filed an Application seeking an adjustment of its natural gas rates and other approvals.
3. On June 29, 2021 Commission Staff issued its Second Request for Information to Duke Energy Kentucky.
4. On June 30, 2021 the AG issued its First Request for Information to Duke Energy

Kentucky.

5. In response to Commission Staff's Second Request for Information and the AG's First 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 6, 15, 19 and 44 of Commission Staff's Second Request for Information and Responses to Requests 19(d), 39, 40, 43 and 57 of the Attorney General's First Request for Information, 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, sensitive credit rating information and other information.

7. Request No. 6 of Commission Staff's Second Request for Information states as follows:

Refer to the Application, Schedule L-2.2, page 73 of 92, Bad Check Charge. Provide detailed cost support for the Bad Check Charge.

8. In its response to Request No. 6, Duke Energy Kentucky is providing detailed cost information regarding charges Duke Energy Kentucky is charged when a check is returned. Duke Energy Kentucky has signed a nondisclosure agreement regarding these fees since they are contracted fees and may differ from what other customers are charged.

9. Request No. 15 of Commission Staff's Second Request for Information states as follows:

Refer to the Direct Testimony of Chris Bauer (Bauer Testimony) and Duke Kentucky's response to Commission Staff's First Request for Information (Staff's First Request), Item 54, STAFF-DR-01-054_Attachment_-_KPSC_GAS_SFRs-2021.xlsx.

- a. Refer to page 14 of the Bauer Testimony, lines 1-9 and tax SCH_J2-Forecast of the Excel Spreadsheet.
 - (1) Provide the supporting calculation for the 1.3405 percent interest rate for the Sale of Accounts Receivable.
 - (2) Provide the supporting calculation for the 0.2905 percent for the Notes Payable to Associated Companies and the \$89,577,642 balance.
 - (3) Explain what the Current Maturities of \$5,769,231 represents.
- b. Refer to page 14, lines 10-13, and Tab SCH_J3- Forecast of the Excel spreadsheet. Provide the one-month LIBOR as of February 2021 and supporting calculation of the LT Commercial Paper interest rate of 0.0541 percent.
- c. Refer to page 14, lines 13-20, and Tab SCH_J3-Forecast of the Excel spreadsheet. Provide the supporting calculations for the future \$50.0 million debt issuance of 3.686 percent and \$70.0 million debt issuance of 3.896 percent.

10. In its response to Request 15, Duke Energy Kentucky is filing sensitive information regarding these supporting calculations.

11. Request No. 19 of Commission Staff's Second Request for Information states as follows:

Refer to D'Ascendis Testimony, page 12, lines 1-15.
Provide the Standard & Poor's (S&P) and Moody's rating reports for Duke Kentucky for the last two years.

12. In its response to Request No. 19, Duke Energy Kentucky is providing sensitive credit rating information. Information provided to credit rating agencies is confidential in nature and describes the inner workings of the Company. The Commission has previously recognized that such information is confidential in nature.¹ If said information was made available to the public, it could be used to the detriment of Duke Energy Kentucky.

¹ *In the Matter of the Application of Louisville Gas & Electric Company for Certificates of Public Convenience and Necessity and Approval of its 2011 Compliance Plan for Recovery by Environmental Surcharge*, Letter from Jeff Derouen, Case No. 2011-00162 (Ky. P.S.C. Nov. 29, 2011).

13. Request No. 44 of Commission Staff's Second Request for Information states as follows:

Refer to the Direct Testimony of Benjamin Walter Bohdan Passty, PhD. (Passty Testimony), page 7, lines 3-4. Provide the survey data that indicates that many large utilities utilize an approach consistent with Duke Kentucky's load forecasting methodology.

14. In its response to Request No. 44, Duke Energy Kentucky is providing sensitive information which includes title and supporting slide from the ITRON annual survey of forecasting utilities.

15. Request No. 19(d) of the Attorney General's First Request for Information states as follows:

Refer to the Direct Testimony of Ms. Spiller at page 23 related to the new CIS system planned to be placed into service by the spring of 2022. Refer also to the Direct Testimony of Ms. Hunsicker for a more detailed description of the project.

d. Provide the estimated life span of the new CIS system and all support for this life span.

16. In its response to Request No. 19(d) Duke Energy Kentucky is providing an attachment which is an internal Company memorandum containing sensitive and proprietary information regarding Duke Energy Kentucky's CIS system.

17. Request No. 39 of the Attorney General's First Request for Information states as follows:

Provide the two most recent pension and OPEB actuarial reports for Duke Energy, DEO and DEK.

18. In its response to Request No. 39, Duke Energy Kentucky is providing information regarding pension and OPEB information. Salary and benefit information is personal and private information and should not be in the public realm. Additionally, public disclosure of the information being provided by the Company would unnecessarily provide interested parties and

Duke Energy Kentucky's competitors with access to exclusive information regarding employee compensation. By knowing what Duke Energy Kentucky compensates each of its employees, or outside vendors, it would be very easy for other utilities to attempt to poach Duke Energy Kentucky's workforce and management, and charge Duke Energy Kentucky a higher rate for outside services. Such public disclosure could unfairly harm Duke Energy Kentucky's competitive position in the marketplace for utility management and a skilled workforce, to the detriment of Duke Energy Kentucky and its customers. For these reasons, the Confidential Information satisfies both the statutory and common law standards for affording confidential treatment. Indeed, the Commission has already recognized the confidential nature of the Confidential Information and has afforded confidential treatment to similar compensation and wage documents in prior proceedings.²

19. Request No. 40 of the Attorney General's First Request for Information states as follows:

Provide the pension and OPEB actuarial reports for Duke Energy, DEO, and DEK and/or other support for the test year pension expense and OPEB expense included in the test year.

20. In its response to Request No. 40, Duke Energy Kentucky is providing information regarding pension and OPEB information. Salary and benefit information is personal and private information and should not be in the public realm. Additionally, public disclosure of the information being provided by the Company would unnecessarily provide interested parties and Duke Energy Kentucky's competitors with access to exclusive information regarding employee compensation. By knowing what Duke Energy Kentucky compensates each of its employees, or outside vendors, it would be very easy for other utilities to attempt to poach Duke Energy

² *Id.*, See also, *In the Matter of the Application of Kentucky Utilities Company for an Adjustment of its Electric Rates*, Order, Case No. 2014-00371 (Ky. P.S.C., Jan. 29, 2016).

Kentucky's workforce and management, and charge Duke Energy Kentucky a higher rate for outside services. Such public disclosure could unfairly harm Duke Energy Kentucky's competitive position in the marketplace for utility management and a skilled workforce, to the detriment of Duke Energy Kentucky and its customers. For these reasons, the Confidential Information satisfies both the statutory and common law standards for affording confidential treatment. Indeed, the Commission has already recognized the confidential nature of the Confidential Information and has afforded confidential treatment to similar compensation and wage documents in prior proceedings.³

21. Request No. 43 of the Attorney General's First Request for Information states as follows:

Provide a schedule in electronic spreadsheet format showing the Company's average daily and end of month borrowings from the Duke Energy Money Pool for each month in 2019, 2020 and 2021 to date and projected for each month thereafter through the end of the test year. In addition, provide the interest rates applicable to those borrowings on a daily basis and on average for each month. Provide a copy of all source documents relied on for the projected cost of short-term debt during the test year.

22. In its response to Request No. 43, Duke Energy Kentucky is providing sensitive information regarding the credit spread on the current Sale of Accounts Receivables. The information being disclosed herewith is not publicly known and documents the borrowing and lending actions of the Company and other affiliates that are part of the Duke Energy Money Pool. This information is highly-confidential and should not be disclosed. Information pertaining to similar agreements has previously been recognized to be confidential.⁴

³ *Id.*, See also, *In the Matter of the Application of Kentucky Utilities Company for an Adjustment of its Electric Rates*, Order, Case No. 2014-00371 (Ky. P.S.C., Jan. 29, 2016).

⁴ *In the Matter of the Application of Water Service Corporation of Kentucky for a General Adjustment of Rates*, Order, Case No. 2015-00382 (Ky. P.S.C. Apr. 5, 2016) (granting motion for confidential treatment for affiliate lending agreement).

23. Request No. 57 of the Attorney General's First Request for Information states as follows:

Provide all bond rating agency reports (Standard and Poor's, Moody's, Fitch) on Duke Energy and Duke Energy Kentucky from 2019 through the most recent month in 2021.

24. In its response to Request No. 57, Duke Energy Kentucky is providing sensitive credit rating information. Information provided to credit rating agencies is confidential in nature and describes the inner workings of the Company. The Commission has previously recognized that such information is confidential in nature.⁵ If said information was made available to the public, it could be used to the detriment of Duke Energy Kentucky.

25. Contemporaneous with the filing of this Motion, Duke Energy Kentucky is tendering documentation responsive to Commission Staff's Request Nos. 6, 15, 19 and 44 and to the Attorney General's Request Nos. 39, 40, 43 and 57. 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.

26. 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). Public disclosure of these

⁵ *In the Matter of the Application of Louisville Gas & Electric Company for Certificates of Public Convenience and Necessity and Approval of its 2011 Compliance Plan for Recovery by Environmental Surcharge*, Letter from Jeff Derouen, Case No. 2011-00162 (Ky. P.S.C. Nov. 29, 2011).

sensitive documents would unnecessarily provide interested parties and Duke Energy Kentucky's competitors with access to exclusive information regarding the inner-business workings and decisions of Duke Energy Kentucky. Furthermore, the information being provided contains personal and sensitive information regarding employee benefits and compensation. By knowing what Duke Energy Kentucky compensates each of its employees, it would be very easy for other utilities to attempt to poach Duke Energy Kentucky's workforce and management. Such public disclosure could unfairly harm Duke Energy Kentucky's competitive position in the marketplace for utility management and a skilled workforce, to the detriment of Duke Energy Kentucky and its customers. For these reasons, the Confidential Information satisfies both the statutory and common law standards for affording confidential treatment. Indeed, the Commission has already recognized the confidential nature of the Confidential Information and has afforded confidential treatment to similar compensation and wage documents in prior proceedings.⁶

27. Furthermore, some of 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.

28. Duke Energy Kentucky does not object to limited disclosure of the Confidential Information described herein, pursuant to an acceptable protective agreement entered into with

⁶ *Id.*, See also, *In the Matter of the Application of Kentucky Utilities Company for an Adjustment of its Electric Rates*, Order, Case No. 2014-00371 (Ky. P.S.C., Jan. 29, 2016).

any intervenors with a legitimate interest in reviewing the same for the sole purpose of participating in this case.

29. 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.

30. 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.

31. 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,

/s/Rocco D'Ascenzo

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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 July 14, 2021; 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 delivered to the Commission within thirty days of the state of emergency for COVID-19 being lifted.

/s/Rocco D'Ascenzo

Rocco O. D'Ascenzo