

**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. )

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**MOTION FOR CONFIDENTIAL TREATMENT OF  
DUKE ENERGY KENTUCKY, INC. FOR CERTAIN  
RESPONSES TO COMMISSION STAFF'S  
FOURTH REQUEST FOR INFORMATION**

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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 Fourth Request for Information issued on August 31, 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 August 31, 2021 Commission Staff issued its Fourth Request for Information to Duke Energy Kentucky.
4. In response to Commission Staff's Fourth 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 Requests 2, 7, and 9 of Commission Staff's Fourth Request for Information, which is referred to herein as the "Confidential Information" and, broadly speaking, includes internal committee meeting minutes and detailed cost information pertaining to internal policies and procedures.

6. Request No. 2 of Commission Staff's Fourth Request for Information states as follows:

Refer to Duke Kentucky's response to Staff's Third Request, Items 21 and 22. The responses provided do not answer the requests, or the subparts. Specifically, the responses do not explain in enough detail the criteria used to determine whether a weighted portion of the STI is awarded or not.

a. Provide all formal documentation management relies upon to determine whether each metric on the scorecard is met.

b. Provide all documentation or correspondence between Duke Kentucky employees, directors, or external parties that explains how the percentage weights on the scorecard were selected.

7. The Confidential Information provided is highly confidential committee meeting minutes of Duke Energy Kentucky and is retained by the Company on a "need-to-know" basis. The Confidential Information is not publicly available and is distributed within Duke Energy Kentucky only to those who must have access for business reasons, and it is generally recognized as confidential and proprietary in the energy industry and in business generally. The meeting minutes contain highly sensitive information regarding the internal workings and decision making process of Duke Energy Kentucky and could cause competitive harm to Duke Energy Kentucky if it were released. Furthermore, the information redacted from the confidential version filed under seal with the Commission relates to sensitive compensation information that provides details not publicly released and relates to the overall compensation for all Duke Energy jurisdictions not just the portion allocated to Duke Energy Kentucky. Since this detailed information is not allocated to

Duke Energy Kentucky it is not contained in the revenue requirement for this proceeding and is therefore not relevant.

8. Request No. 7 of Commission Staff’s Fourth Request for Information states as follows:

Refer to the Attachment to Duke Kentucky’s response to Commission Staff’s Second Request for Information (Staff’s Second Request), Item 37(b). Provide detailed support for the amount listed as “Contracted Rate for Gas Reconnection (Seasonal).”

9. In its response to Request No. 7, Duke Energy Kentucky is providing detailed cost information regarding charges Duke Energy Kentucky is charged when gas service is reconnected. 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. This information is sensitive vendor information that could cause competitive harm to both the vendor and Duke Energy Kentucky if it were publicly released. Also, disclosing this information could constitute a breach of the non-disclosure agreement.

10. Request No. 9 of Commission Staff’s Fourth Request for Information states as follows:

Refer to Duke Kentucky’s Response to Staff’s Third Request, Item 5, in which Duke Kentucky states that its bad check charge is not solely based on costs, explaining that while the charge is intended to cover the costs associated with bank assessed fees, it is also intended to deter customers from making payments that utilize accounts with insufficient funds.

a. Explain how this complies with 807 KAR 5:006, Section 9(2), which states in part “[a] charge shall relate directly to the service performed or action taken and shall yield only enough revenue to pay the expenses incurred in rendering the service.”

b. Provide the amount of bank fees attributed to bad checks by year for the past 4 calendar years and 2021 to date.

c. Provide the number of bad checks Duke Kentucky has received by year for the past 4 calendar years and 2021 to date.

11. In its response to Request No. 9, 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. This information is sensitive vendor pricing information that could cause competitive harm to the vendor and Duke Energy Kentucky if publicly released. Release of this information could also constitute a breach of the non-disclosure agreement.

12. 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 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. The Confidential Information also constitutes a trade secret under Kentucky law. For these reasons, the Confidential Information satisfies both the statutory and common law standards for affording confidential treatment. 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.<sup>1</sup>

13. 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.

14. 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.

15. 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.

16. 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.

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<sup>1</sup> *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).

17. 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 September 13, 2021; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that submitting the original filing to the Commission in paper medium is no longer required as it has been granted a permanent deviation.<sup>2</sup>

/s/Rocco D'Ascenzo

Rocco O. D'Ascenzo

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<sup>2</sup>*In the Matter of Electronic Emergency Docket Related to the Novel Coronavirus COVID-19*, Order, Case No. 2020-00085 (Ky. P.S.C. July 22, 2021).