

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

Duke Energy Kentucky, Inc.’s Application for)	
Approval of a Special Contract and for Waiver)	Case No. 2021-00192
of 807 KAR 5:041, Section 6(2)(c))	

**PETITION OF DUKE ENERGY KENTUCKY, INC. FOR
CONFIDENTIAL TREATMENT OF INFORMATION CONTAINED
IN THE FINAL REPORT OF DUKE ENERGY KENTUCKY, INC., AND NORTHERN
KENTUCKY WATER DISTRICT**

Duke Energy Kentucky, Inc. (Duke Energy Kentucky or Company), pursuant to 807 KAR 5:001, Section 13 and other law, respectfully requests the Commission to classify and protect as confidential certain information provided in the Final Report (Report) of Duke Energy Kentucky, Inc., (Duke Energy Kentucky) and Northern Kentucky Water District (NKWD) (collectively the Parties). The information that Duke Energy Kentucky and NKWD now seeks confidential treatment (Confidential Information) includes Confidential Attachments 1, 2 (pages 3 through 19, 22 through 23, and 148 through 202), and 3 to the Report which contain detailed operational analysis of the Parties, including potential engineering strategies, analysis, and estimated costs for solutions to the voltage fluctuations of NKWD’s pumps and its detailed load characteristics.

In support of this Petition, the Parties state:

1. Administrative Regulation 807 KAR 5:110, Section 5 sets forth the procedure by which certain information filed with the Commission shall be treated as confidential. Specifically, the party seeking confidential treatment must establish “each basis upon which the petitioner believes the material should be classified as confidential” in accordance with the Kentucky Open Records Act, KRS 61.878. *See* 807 KAR 5:110 Section 5(2)(a)(1).

2. The Kentucky Open Records Act exempts certain records from the requirement of public inspection. *See* KRS 61.878. In particular, KRS 61.878(1)(c)(1) excludes from the Open Records Act:

Records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records[.]

3. This exception “is aimed at protecting records of private entities which, by virtue of involvement in public affairs, must disclose confidential or proprietary records to a public agency, if disclosure of those records would place the private entities at a competitive disadvantage.” Ky. OAG 97-ORD-66 at 10 (Apr. 17, 1997).

4. KRS 61.878(1)(c)(1) requires the Commission to consider three criteria in determining confidentiality: (1) whether the record is confidentially disclosed to an agency or required by an agency to be disclosed to it; (2) whether the record is generally recognized as confidential or proprietary; and (3) whether the record, if openly disclosed, would present an unfair commercial advantage to competitors of the entity that disclosed the records. The documents for which Duke Energy Kentucky is seeking confidential treatment, each of which is described in further detail below, satisfies each of these three statutory criteria.

5. The Confidential Information contained in Confidential Attachments 1, 2, and 3 were prepared as part of an analysis, monitoring, and report required in response to the Commission’s March 4, 2022 Opinion and Order in the above-styled proceedings. Specifically, Attachment 1 is the third-party report performed by McGill Power S&E Inc (McGill Report) that was jointly commissioned by Duke Energy Kentucky and NKWD. The McGill Report includes the detailed analysis that was directed be performed by the Commission and contains customer-

specific electric load information, modeling assumptions, and proprietary operational characteristics, including potential engineering solutions that could mitigate the voltage impacts to Duke Energy Kentucky's electric delivery system on the Wilder 46 circuit serving NKWD and surrounding customers. This information is generally recognized as confidential in the utility industry. If this information were made public, potential vendors and competitors of NKWD could use the information to manipulate prices submitted in response to requests for proposals. Moreover, publicly releasing NKWD's the exact operational characteristics of NKWD's pumping equipment could create a safety and security risk for NKWD and customers/ To protect the customer's operational characteristics identified in this report, the Parties recommends this information be considered confidential.

6. The confidential information contained in Attachment 2, specifically pages 3 through 19, 22 through 23, and 148 through 202¹ consists of a Technical Memorandum that was prepared solely by NKWD to evaluate estimated costs and feasibility of construction of Variable Frequency Drive (VFD)/Drive Sync Transfer Scheme (DSTS), one of the recommended solutions in the McGill Report. This Technical Memorandum includes a detailed description of NKWD's operations and the feasibility of VFD on NKWD's pumps as recommended in the McGill Report. It includes s detailed description of how Duke Energy Kentucky delivers service to NKWD, how NKWD attempts to manage its energy consumption under Duke Energy Kentucky's rate structures, schematics and operational characteristics of the technologies evaluated and descriptions of sensitive utility infrastructure that if made public, could create a risk to customers that could be exploited by potential terrorist acts.

¹ The remaining pages are cover pages and information filed in the underlying proceeding. The parties are not seeking confidential treatment of those pages.

7. Similarly, the Confidential Information contained in Attachment 3 contains detailed power quality information on Duke Energy Kentucky's Wilder 46 Circuit that depicts NKWD's pump operations during a representative one-week period, including hour-by hour pump operations and the voltage impacts during pump start-up. This information is generally recognized as confidential in the energy industry. To protect NKWD operational characteristics identified in this report, and the safety of NKWD's operations in delivering safe drinking water to Northern Kentucky, the Parties recommend this information be considered confidential.

8. Additionally, the information contained in Confidential Attachments 1, 2 and 3 should be afforded confidential treatment pursuant to 61.878(1)(m) as the disclosure of information contained therein, as it relates to operational characteristics of NKWD's critical water systems, and Duke Energy Kentucky's electric delivery system would threaten public safety.

9. The Confidential Information contained in Attachments 1, 2 and 3 was disclosed only to those who must have access for business reasons.

10. The Confidential Information for which the Parties are seeking confidential treatment is not known outside of Duke Energy Kentucky or NKWD. Publicly disclosing this information could give customers' competitors a distinct advantage, to the detriment of Duke Energy Kentucky and NKWD and their respective customers.

11. The Parties do not object to limited disclosure of the Confidential Information described herein, pursuant to an acceptable protective agreement, with the Attorney General or other intervenors with a legitimate interest in reviewing the same for the purpose of participating in this case.

12. This information was, and remains, integral to Duke Energy Kentucky's and NKWD's effective execution of business decisions and safety of systems. And such information is generally regarded as confidential or proprietary. Indeed, as the Kentucky Supreme Court has

found, “information concerning the inner workings of a corporation is ‘generally accepted as confidential or proprietary.’” *Hoy v. Kentucky Industrial Revitalization Authority*, 904 S.W.2d 766, 768 (Ky. 1995).

13. In accordance with the provisions of 807 KAR 5:001, Section 13(3), the Company is filing one copy of the Confidential Information separately under seal, and one copy without the confidential information included.

14. Duke Energy Kentucky respectfully requests that the Confidential Information be withheld from public disclosure for an indefinite period to preserve the confidential information and protect the critical utility infrastructure described therein.

15. 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.

/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 March 4, 2024; and that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding.

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/s/Rocco D'Ascenzo

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