

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

ELECTRONIC EXAMINATION OF THE	)	
APPLICATION OF THE FUEL ADJUSTMENT	)	
CLAUSE OF DUKE ENERGY KENTUCKY,	)	Case No. 2021-00296
INC. FROM NOVEMBER 1, 2020 THROUGH	)	
APRIL 30, 2021	)	

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**PETITION OF DUKE ENERGY KENTUCKY, INC.**  
**FOR CONFIDENTIAL TREATMENT OF INFORMATION**  
**CONTAINED IN ITS RESPONSES TO COMMISSION STAFF'S**  
**FIRST SET OF DATA REQUESTS ISSUED AUGUST 18, 2021**

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Duke Energy Kentucky, Inc. (Duke Energy Kentucky or Company), pursuant to 807 KAR 5:001, Section 13, respectfully requests the Commission to classify and protect certain information provided by Duke Energy Kentucky in its responses to Data Request Nos. 4 and 11, as requested by Commission Staff (Staff) in this case on August 18, 2021. The information that Staff seeks through discovery and for which Duke Energy Kentucky now seeks confidential treatment (Confidential Information), includes fuel solicitation proposal evaluation and rankings, and internal fuel procurement policies and procedures.

More specifically, the Confidential Information provided in response to Data Request No. 4 contains sensitive information, the disclosure of which would injure Duke Energy Kentucky and its competitive position and business interests. Duke Energy Corporation's Regulated Fuels Group is responsible for the procurement of fuel and obtaining competitive pricing. Releasing this information would give potential competitors and fuel vendors for Duke Energy Kentucky in the energy markets inside information about Duke Energy Kentucky's fuel procurement strategy, risk mitigation actions, and

tolerances. Releasing this information would harm the Company and its customers in the future as competitors and counterparties would know how Duke Energy Kentucky evaluates its fuel supply and procures fuel for its generating station. If publicly available, competitors could use this information to manipulate the market and financially harm Duke Energy Kentucky's customers by adjusting their bidding strategies and potentially manipulating the price the Company pays for coal.

Similarly, the Company's response to No. 11 includes confidential fuel policies and procedures including, but not limited to, risk tolerances, and the recommended contract term coverage level strategies for Duke Energy Kentucky, Duke Energy Indiana, and the Duke Energy Carolinas. Duke Energy Corporation's Regulated Utilities Group, particularly the Fuels & Systems Optimization and Distributed Energy Resources groups, are responsible for the procurement of coal for the regulated utilities in the Duke Energy Corporate footprint and thus its policies and procedures are all-encompassing. The public disclosure of the information described above would place Duke Energy Kentucky at a commercial disadvantage as it negotiates contracts with various suppliers and vendors and potentially harm Duke Energy Kentucky's competitive position in the marketplace, to the detriment of Duke Energy Kentucky and its customers.

In support of this Petition, Duke Energy Kentucky states:

1. The Kentucky Open Records Act exempts from disclosure certain commercial information. KRS 61.878(1)(c). To qualify for this exemption and, therefore, maintain the confidentiality of the information, a party must establish that disclosure of the commercial information would permit an unfair advantage to competitors of that party. Public disclosure of the information identified herein would, in fact, prompt such a result for the reasons set forth below.

2. The public disclosure of the Confidential Information would provide competitors and potential vendors proprietary information regarding the fuel procurement strategies used by Duke Energy Kentucky, placing it at a commercial disadvantage as it bids into the energy markets or negotiates with various suppliers and vendors. This situation would potentially harm Duke Energy Kentucky's competitive position in the marketplace, to the detriment of Duke Energy Kentucky and its customers undermining its ability to bid on contracts against parties, who do not otherwise have to disclose such information, and who could use that information to their competitive advantage and possibly win contracts that they otherwise couldn't, absent such information

3. Further, disclosure of the aforementioned Confidential Information would damage Duke Energy Kentucky's competitive position and business interests, as well as, create the risk of increased costs to its customers. If the Commission grants public access to the Confidential Information requested, potential counterparties could manipulate markets, costs, and prices to the detriment of Duke Energy Kentucky and its ratepayers by tailoring bids to correspond to and comport with Duke Energy Kentucky's prior actions and risk tolerances.

4. The Confidential Information was developed internally by Duke Energy Corporation and Duke Energy Kentucky personnel, is not on file with any public agency in the manner as is provided in response to these Commission-issued data request. The Confidential Information is not available from any commercial or other source outside of Duke Energy Kentucky. Additionally, the aforementioned Confidential Information is distributed within Duke Energy Kentucky only to those who must have access for business reasons and is generally recognized as confidential and proprietary in the energy industry.

5. The Confidential Information for which Duke Energy Kentucky is seeking confidential treatment is not known outside of Duke Energy Corporation.

6. Duke Energy Kentucky does 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.

7. This information was, and remains, integral to Duke Energy Kentucky's effective execution of business decisions. 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).

8. 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.

9. Duke Energy Kentucky respectfully requests that the Confidential Information be withheld from public disclosure for a period of ten 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 or its customers if publicly disclosed.

10. 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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Rocco O. D'Ascenzo (92796)

Deputy General Counsel

Duke Energy Business Services LLC

139 East Fourth Street, 1303-Main

Cincinnati, Ohio 45201-0960

Phone: (513) 287-4359

Fax: (513) 287-4385

E-mail: [rocco.d'ascenzo@duke-energy.com](mailto:rocco.d'ascenzo@duke-energy.com)

*Counsel for Duke Energy Kentucky, Inc.*

#### **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 1, 2021; and that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding.

*/s/Rocco D'Ascenzo*

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Rocco D'Ascenzo