

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF DUKE ENERGY)	
KENTUCKY, INC. TO AMEND ITS DEMAND)	Case No. 2022-00251
SIDE MANAGEMENT PROGRAMS)	

**DUKE ENERGY KENTUCKY, INC.’S APPLICATION FOR REHEARING
ON DENIAL OF CONFIDENTIALITY**

Comes now Duke Energy Kentucky, Inc. (Duke Energy Kentucky or Company), by counsel, and respectfully petitions the Kentucky Public Service Commission (Commission), pursuant to KRS 278.400, to grant rehearing on certain items contained in an Order entered by the Commission on August 22, 2023, which granted in part and denied in part various motions for confidential treatment filed by the Company (Confidentiality Order). As grounds for this application, Duke Energy Kentucky respectfully states as follows:

I. Background

The Commission’s Confidentiality Order denied the petitions for confidentiality for the Company’s responses to Staff’s First Request, Item 2 (STAFF-DR-01-002), the Attorney General’s First Request, Items 21 and 22 (AG-DR-01-021 and AG-DR-01-022 respectively), and Staff’s Third Request, Item 1 (STAFF-DR-03-001) (collectively Confidential Information), which consisted of the Peak Time Rebate (PTR) research proposal, Demand Side Management (DSM) modeling inputs, projected avoided costs for 2022-2023, and projected avoided costs for 2019-2021, respectively. In the petitions for confidential treatment filed on September 23, 2022 and November 10, 2022, the Company inadvertently cited KRS 61.878(1)(m) in support of its request, instead of citing the appropriate statutory

provision, KRS 61.878(1)(c)(1), which pertains to commercially sensitive information. In this Application for Rehearing, the Company respectfully requests the Commission reconsider its Confidentiality Order and grant confidential treatment for the Confidential Information enumerated and discussed herein pursuant to KRS 61.878(1)(c)(1).

II. Argument

Duke Energy Kentucky respectfully requests the Commission to grant rehearing to afford confidential protection to four items: the research proposal provided in response to STAFF-DR-01-002, the modeling information provided in response to AG-DR-01-021, the 2022-2023 avoided cost information provided in response to AG-DR-01-022, and the 2019-2021 avoided cost information provided in response to STAFF-DR-03-001. The Commission's Order correctly notes that this material does not consist of information exposing vulnerabilities to public utility critical systems under KRS 61.878(1)(m) and that under 807 KAR 5:001, Section 13(2), a confidential treatment petition requires the movant to establish specific grounds under KRS 61.878 and places the burden of proof on the movant.¹ While the Company mistakenly cited to KRS 61.878(1)(m), all four of these items should be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1), for the reasons given in each subsection below.

KRS 61.878(1)(c)(1) permits confidential treatment of:

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;

¹ Confidentiality Order, pp. 2-3.

Additionally, the Kentucky Supreme Court has found that “information concerning the inner workings of a corporation is ‘generally accepted as confidential or proprietary.’”²

As further detailed for each item below, these four items would, if openly disclosed reveal information integral to Duke Energy Kentucky’s effective execution of business decisions and permit an unfair commercial advantage to competitors of the entity that disclosed the records.

A. Petition for Confidential Treatment Filed on September 23, 2022.

1. The research proposal provided in response to STAFF-DR-01-002.

The attachment for which the Company is seeking confidential protection is a peak-time rebate (PTR) research proposal from vendor ESource (PTR Research Proposal). The proposal was submitted to the Company by ESource, and contains, among other things, the vendor’s proposed approach to PTR programming, specific deliverables, and also project timing and pricing. The vendor marked this document “PROPRIETARY AND CONFIDENTIAL” throughout and stated therein that the Company should not distribute it to third parties without permission.³

Releasing the PTR Research Proposal publicly would give other vendors, including competitors of ESource, access to ESource’s proprietary information, as well as timing and costs, which would act to the detriment of Duke Energy Kentucky and its customers in the future, as other existing and potential vendors would know how ESource prices its services. In the long run, this could hamper Duke Energy Kentucky’s ability to obtain competitively priced services of this type.

² *Hoy v. Kentucky Industrial Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995).

³ STAFF-DR-01-002 CONF Attachment, p. 1.

The PTR Research Proposal was 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 PTR Research Proposal 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.

For these reasons, and pursuant to KRS 61.878(1)(c)(1), Duke Energy Kentucky respectfully requests that the Commission grant rehearing and classify and protect as confidential the PTR Research Proposal, *i.e.*, the attachment provided in response to STAFF-DR-01-002.

2. *The DSMore modeling information provided in response to AG-DR-01-021.*

The attachment provided by the Company in response to AG-DR-01-021 contains a series of spreadsheets comprising the confidential and proprietary DSMore modeling inputs and formulas (DSMore model), a third-party modeling tool, the disclosure of which would injure Duke Energy Kentucky and its competitive position and business interests. Releasing this model would give other vendors access to the proprietary DSMore methodology and thereby give them an unfair competitive advantage. Also, this would act to the detriment of Duke Energy Kentucky and its customers in the future, by making vendors unwilling to provide Duke Energy Kentucky with confidential and proprietary models and modeling resources in the future, and thereby hamper the Company's ability to conduct meaningful research and analysis on existing and potential programs.

The confidential and proprietary DSMore model for which Duke Energy Kentucky is seeking confidential treatment was 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 DSMore model 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.

For these reasons, and pursuant to KRS 61.878(1)(c)(1), Duke Energy Kentucky respectfully requests that the Commission grant rehearing and classify and protect as confidential the DSMore model, *i.e.*, the attachment provided in response to AG-DR-01-021.

3. The 2022 and 2023 avoided cost data provided in response to AG-DR-01-022.

The attachment provided by the Company in response to AG-DR-01-022 contains a projected avoided cost data for 2022 and 2023 (projected 2022-2023 Avoided Costs), the disclosure of which would injure Duke Energy Kentucky and its competitive position and business interests.

The disclosure of the projected 2022-2023 Avoided Costs would injure Duke Energy Kentucky and its competitive position and business interests because this information could potentially be used by existing and potential DSM program vendors to adjust bid amounts upward without failing cost-effectiveness testing, which would act to the detriment of Duke Energy Kentucky and its customers in the future, as it would likely lead to a trend of higher bids and therefore higher program costs. Disclosing this information to competing vendors would provide them an unfair commercial advantage.

Furthermore, the information for which Duke Energy Kentucky is seeking confidential treatment was developed internally 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.

For these reasons, and pursuant to KRS 61.878(1)(c)(1), Duke Energy Kentucky respectfully requests that the Commission grant rehearing and classify and protect as confidential the projected 2022-2023 Avoided Costs, *i.e.*, the attachment provided in response to AG-DR-01-022.

B. Petition for Confidential Treatment Filed November 10, 2022.

1. The 2019-2021 avoided cost data provided in response to STAFF-DR-03-001

The attachment provided by the Company in response to STAFF-DR-03-001 contains avoided cost data for 2019-2021 (2019-2021 Avoided Costs), the disclosure of which would injure Duke Energy Kentucky and its competitive position and business interests. This is essentially the same type of avoided cost data that was provided for 2022-2023 in response to AG-DR-01-022, except it is for the 2019-2021 years.

For substantially the same reasons as those given above in Section II.A.3, and pursuant to KRS 61.878(1)(c)(1), Duke Energy Kentucky respectfully requests that the Commission grant rehearing and classify and protect as confidential the 2019-2021 Avoided Costs, *i.e.*, the attachment provided in response to STAFF-DR-03-001.

III. Conclusion

Duke Energy Kentucky respectfully requests that the Commission grant this application for rehearing and classify and protect as confidential the Confidential Information described herein.

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.

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.

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, on the basis of the foregoing, Duke Energy Kentucky respectfully moves the Commission to issue an Order granting rehearing and granting confidential treatment to the Confidential Information described above.

Respectfully submitted,

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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 in paper medium; that the electronic filing was transmitted to the Commission on September 1, 2023; 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.⁴

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⁴*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).