

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

**PETITION OF DUKE ENERGY KENTUCKY, INC. FOR
CONFIDENTIAL TREATMENT OF INFORMATION CONTAINED IN ITS
RESPONSES TO COMMISSION STAFF’S POST HEARING SET OF
INFORMATION REQUESTS**

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 response to Commission Staff’s (Staff) Post Hearing Requests for Information, Item 2 and Item 3, issued on April 4, 2023. The information that Staff seeks through discovery and for which Duke Energy Kentucky now seeks confidential treatment (Confidential Information), generally includes third-party price forecasts, Company proprietary information, and preliminary drafts and memoranda.

In support of this Petition, Duke Energy Kentucky states:

1. The Kentucky Open Records Act exempts from disclosure certain records per KRS 61.878(1)(c)(1). To qualify for this exemption and, therefore, maintain the confidentiality of the information, a party must establish that disclosure of the record would “permit an unfair commercial advantage to competitors of the entity that disclosed the records.” Public disclosure of STAFF-PHDR-01-003 Confidential Attachment, provided

in response to Staff's Post Hearing Requests for Information, Item 3, would, in fact, prompt such a result for the reasons set forth below.

2. The attachment, STAFF-PHDR-01-003 Confidential Attachment, for which the Company is seeking confidential protection includes or incorporates third-party price forecasts and Company proprietary information, the disclosure of which would injure Duke Energy Kentucky and its competitive position and business interests. Releasing this information would give others access to this pricing information, which would act to the detriment of Duke Energy Kentucky and its customers in the future.

3. Furthermore, the information in STAFF-PHDR-01-003 Confidential Attachment, 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. For all of the above reasons, the information in STAFF-PHDR-01-003 Confidential Attachment is exempt from public disclosure under KRS 61.878(1)(c)(1).

4. Additionally, the Kentucky Open Records Act exempts from disclosure certain records per KRS 61.878(1)(j). To qualify for the exemption in KRS 61.878(1)(j), and therefore, maintain the confidentiality of the information, a party must establish that the record is a “[p]reliminary recommendation[]... preliminary memoranda in which opinions are expressed or policies formulated or recommended.” Public disclosure of

STAFF-PHDR-01-002(b) Confidential Attachment, provided in response to Staff's Post Hearing Requests for Information, Item 2, would, in fact, qualify for these exemptions for the reasons set forth below.

5. The attachment, STAFF-PHDR-01-002(b) Confidential Attachment, for which the Company is seeking confidential protection, is a preliminary memorandum, the opinions in which are subject to further validation and possible change. It would be prejudicial to disclose such a preliminary memorandum, especially in light of the forthcoming final EM&V report. For these reasons, the information in STAFF-PHDR-01-002(b) Confidential Attachment is exempt from public disclosure under KRS 61.878(1)(j).

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,

/s/ Larisa M. Vaysman

Larisa M. Vaysman (98944)

Senior Counsel

Duke Energy Business Services LLC

139 East Fourth Street, 1303-Main

Cincinnati, Ohio 45202

Phone: (513) 287-4010

Fax: (513) 370-5720

E-mail: larisa.vaysman@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 in paper medium; that the electronic filing was transmitted to the Commission on April 14, 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.¹

John G. Horne, II
The Office of the Attorney General
Utility Intervention and Rate Division
700 Capital Avenue, Ste 118
Frankfort, Kentucky 40601
John.Horne@ky.gov

Catrena Bowman-Thomas
Northern Kentucky Community Action Commission
P.O. Box 193
Covington, Kentucky 41012
cbowman-thomas@nkcac.org

Peter Nienaber
Northern Kentucky Legal Aid, Inc.
302 Greenup
Covington, Kentucky 41011
pnienaber@lablaw.org

/s/ Larisa M. Vaysman

Larisa M. Vaysman

¹*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).