

**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 )  
Electric Rates; 2) Approval of New Tariffs; ) Case No. 2022-00372  
3) Approval of Accounting Practices to )  
Establish Regulatory Assets and Liabilities; )  
and 4) All Other Required Approvals and )  
Relief. )

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**PETITION OF DUKE ENERGY KENTUCKY, INC.  
FOR CONFIDENTIAL TREATMENT OF INFORMATION  
CONTAINED IN ITS APPLICATION REGARDING AN  
ADJUSTMENT OF ELECTRIC RATES**

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Duke Energy Kentucky, Inc. (Duke Energy Kentucky or the Company), by counsel, pursuant to 807 KAR 5:001, Section 13, respectfully requests the Commission to classify and protect certain information provided by the Company in its Application for an adjustment of its electric rates, respectfully stating as follows:

1. The information for which Duke Energy Kentucky seeks confidential treatment is contained in: (a) the Confidential Attachments to Filing Requirement 807 KAR 5:001, Section 16(7)(c); (b) the Confidential Attachments to Filing Requirement 807 KAR 5:001, Section 16(7)(o); (c) the Confidential Attachments to the Direct Testimony of Amy B. Spiller (ABS-1 and ABS-3); (d) the Confidential Attachments to the Direct Testimony of Jake J. Stewart (JJS-3(a)–(c)); (e) the Confidential Attachments to the Direct Testimony of Paul L. Halstead (PLH-2 and PLH-3); and (f) the Confidential Attachments to the Direct Testimony of Bruce L. Sailors (BLS-3, BLS-4, BLS-6, and BLS-8). Collectively, these documents are referred to herein as the “Confidential Information” and, broadly speaking, include detailed operations and maintenance

(O&M) and capital expenses incurred by the Company on a monthly and yearly basis, budget guidelines and assumptions, financial projections, customer satisfaction overviews, information relating to the compensation of non-senior executive employees and shared employees of the Company, financial cost-benefit analyses of a new program and tariff proposed by the Company, and extensive vendor pricing and cost information.

2. In the Confidential Attachments provided in Filing Requirement 807 KAR 5:001, Section 16(7)(c), Duke Energy Kentucky is providing its 2022-23 Budget Guidelines and Assumptions, which include labor inflation rates and non-labor loading rates. If this information was to be released, it would provide sensitive information regarding Duke Energy Kentucky's inner workings.

3. With regard to the Confidential Attachments provided in Filing Requirement 807 KAR 5:001, Section 16(7)(o), Duke Energy Kentucky is providing its Financial Reporting Summaries (FRS) monthly managerial reports. These FRS reports contain narrative explanations of variances for the Company and show the financial condition of the Company on a monthly basis. In addition, the Company is including its monthly Regulatory O&M and Capital Reports (ROCR) that contain highly detailed variance descriptions and explanations for O&M and capital expenditures, respectively. The Commission afforded similar information confidential treatment in Case No. 2021-00190, per Order dated December 13, 2021.<sup>1</sup>

4. The foregoing information relating to the Company's detailed yearly capital construction expenditures, monthly capital and O&M expenses, and monthly financial positions and drivers is self-evidently confidential and proprietary in nature. Any of these documents would

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<sup>1</sup> *In the Matter of Electronic Application of Duke Energy Kentucky, Inc. for 1) An Adjustment of the Natural Gas Rates; 2) Approval of New Tariffs; and 3) All Other Required Approvals, Waivers, and Relief*, Order, Case No. 2021-00190 (Ky. P.S.C. December 13, 2021).

provide competitors with tremendous insight into the Company's financial condition, capital and O&M philosophies, policies, practices, and expenses. Gaining access to this information would be extremely valuable to the Company's competitors and vendors. If released, this information would put the Company at a competitive disadvantage in future negotiations with potential vendors and potentially inhibit the Company's ability to properly manage its costs.

5. With regard to Confidential Attachment ABS-1, Duke Energy Kentucky is providing Duke Energy Kentucky's Electric Residential Customer Experience Monitor (CX Monitor) customer sentiment results from 2018 through 2021. This document provides a summary of customer satisfaction performance measures during that timeframe on a net basis by comparing the share of Promoters (customers providing a score of '9' or '10' on a '0-10' scale) to the share of Detractors (customers providing a score of '0-6' on a '0-10' scale).

6. With regard to Confidential Attachment ABS-3, Duke Energy Kentucky is providing the Company's results of Fastrack, a proprietary post-transaction customer satisfaction measurement program implemented by the Company. Fastrack measures customer satisfaction with recent interactions customers have had with the Company and was designed to complement the CX Monitor. In tandem, the two customer satisfaction measures provide greater insight into customer experiences in near real time to the Company's customer-facing employees.

7. The foregoing Attachments ABS-1 and ABS-3 contain the results of proprietary studies that were developed by and for Duke Energy Kentucky. If this information were to be released, it would provide sensitive information regarding Duke Energy Kentucky's inner workings and its customers' experiences with the Company to the Company's competitors. It also would allow trade secret information developed and paid for by Duke Energy Kentucky to be available to Duke Energy Kentucky's competitors without them having to develop and purchase

that information themselves. Since these Attachments contain proprietary and trade secret information, they should be afforded confidential treatment.

8. With regard to Confidential Attachments JJS-3(a) and (b), Duke Energy Kentucky is providing, respectively, the Company's: (a) 2022 Short-Term Incentive Plan and Union Employee Incentive Plans, and (b) 2022 Short-Term Incentive Scorecard, which summarizes corporate short-term incentive metrics. These documents provide intimate details on the nature, function, scope, and operation of the Company's incentive compensation plans and strategies.

9. With regard to Confidential Attachment JJS-3(c), Duke Energy Kentucky is providing Duke Energy's 2022 Executive Long-Term Incentive Plan. The 2022 Executive Long-Term Incentive Plan contains information related to compensation and financial incentive packages for some of Duke Energy's most senior leaders, information which competitors could use and exploit in trying to poach those leaders from Duke Energy. In Case No. 2019-00271, per Order dated May 4, 2020,<sup>2</sup> the Commission determined that the 2019 Executive Long-Term Incentive Plan brochure included as Confidential Attachment RHM-5(c) was information that is not generally recognized as confidential, and therefore does not meet the criteria for confidential treatment and is not exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5-001, Section 13. In that instance, the data contained in the 2019 Executive Long-Term Incentive Plan brochure was publicly disclosed in the annual 2019 Duke Energy Proxy Statement filed in 2020 before the Commission order was exercised. Therefore, Duke Energy Kentucky did not dispute the confidentiality of the data. However, the targets contained in the 2022 Executive Long-Term Incentive Plan brochure included as Confidential Attachment JJS-3(c) to the testimony

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<sup>2</sup> *In the Matter of Electronic Application of Duke Energy Kentucky, Inc. for 1) An Adjustment of the Electric Rates; 2) Approval of New Tariffs; 3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; and 4) All Other Required Approvals and Relief*, Order, Case No. 2019-00271 (Ky. P.S.C. May 4, 2020).

of Jake J. Stewart have not been publicly disclosed. The three-year performance levels under the Long-Term Incentive Plan typically have been disclosed for the first time in the annual proxy statement that is filed approximately one year after the Long-Term Incentive Plan is approved. As a result, Duke Energy is planning to disclose the performance levels under the 2022 Long-Term Incentive Plan in March 2023 in connection with the 2023 proxy statement, which provides the appropriate background and context for the 2022 Long-Term Incentive Plan. Since these details will not be publicly available until March 2023, this Attachment should be afforded confidential treatment. The Commission afforded similar information confidential treatment in Case No. 2021-00190, per Order dated December 13, 2021.<sup>3</sup>

10. The foregoing Attachments JJS-3(a), (b), and (c) relating to employee compensation and benefits are self-evidently confidential and proprietary in nature. Individually, any of these documents would provide competitors with tremendous insight into the Company's compensation philosophies, policies, and practices. Taken together, these documents represent the accumulation of decades of "best practices" in human capital management. Gaining access to this information would be extremely valuable to the Company's competitors who might desire to poach from Duke Energy Kentucky's talent pool. Moreover, it would impose a significant and material obstacle to the Company's efforts to continue to recruit and retain a skilled labor force.

11. With regard to Confidential Attachments PLH-2 and PLH-3, Duke Energy Kentucky is providing, respectively: (a) an exemplar incremental revenue requirement calculation for a solar project used under the Company's new proposed Clean Energy Connection program and tariff (CEC Program) and (b) a cost-benefit analysis of the CEC Program using the exemplar

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<sup>3</sup> *In the Matter of Electronic Application of Duke Energy Kentucky, Inc. for 1) An Adjustment of the Natural Gas Rates; 2) Approval of New Tariffs; and 3) All Other Required Approvals, Waivers, and Relief*, Order, Case No. 2021-00190 (Ky. P.S.C. December 13, 2021).

revenue requirement calculation. Individually, each Attachment contains calculations and information related to the Company's new proposed CEC Program, and gaining access to this information would be extremely valuable to the Company's competitors. Together, these Attachments also provide extensive insight into the potential costs and benefits of a program like the CEC Program, analyses which the Company has performed for its own use and at its own expense. Allowing others to access these analyses would both put the Company at a competitive disadvantage and allow competitors to access proprietary information without having to develop and purchase that information themselves. These Attachments should therefore be afforded confidential treatment.

12. With regard to Confidential Attachments BLS-3 and BLS-4, Duke Energy Kentucky is providing, respectively, the Company's calculation of: (a) equipment charges for the Company's Rate LED, and (b) maintenance charges for the Company's Rate LED. These Attachments contain information from vendors related to the costs of fixtures, poles, and other equipment categories, as well as labor rates related to maintenance of that equipment.

13. With regard to Confidential Attachments BLS-6 and BLS-8, Duke Energy Kentucky is providing, respectively, the Company's calculation of: (a) the remote reconnection fee under Reconnection of Service, Sheet No. 91, and (b) the Rate EVSE charges. These Attachments each contain sensitive vendor pricing and cost information.

14. The foregoing Attachments BLS-3, BLS-4, BLS-6, and BLS-8 related to the Company's vendors' pricing of certain equipment, services, and labor is confidential, as gaining access to this information would be extremely valuable to the both the Company's competitors and its vendors' competitors. Releasing this information would put the Company and its current vendors at a competitive disadvantage and potentially limit the Company and these vendors in

negotiations with other business partners in the future. The information in these Attachments should therefore be treated as confidential and protected accordingly.

15. The Kentucky Open Records Act exempts from disclosure information that, due to its confidential and proprietary nature, would permit “an unfair commercial advantage to competitors of the entity that disclosed the records” if openly disclosed.<sup>4</sup> The Confidential Information was, and remains, integral to Duke Energy Kentucky’s effective execution of business decisions. Indeed, as the Kentucky Supreme Court has found, “information concerning the inner workings of a corporation is ‘generally accepted as confidential or proprietary.’”<sup>5</sup>

16. 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.

17. 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.

18. 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. Due to the pervasive nature of the Confidential Information within each of the Confidential Attachments and Filing

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<sup>4</sup> See KRS 61.878(1)(c)1.

<sup>5</sup> *Hoy v. Kentucky Industrial Revitalization Authority*, Ky., 904 S.W.2d 766, 768 (Ky. 1995).

Requirements, Duke Energy Kentucky is requesting confidential treatment for the Confidential Information in totality.

19. 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 or its employees if publicly disclosed.

20. 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

Larisa Vaysman (98944)

Senior Counsel

Duke Energy Business Services LLC

139 East Fourth Street

Cincinnati, OH 45202

Phone: (513) 287-4320

Fax: (513) 370-5720

Rocco.D'Ascenzo@duke-energy.com

Larisa.Vaysman@duke-energy.com

And

Elizabeth M. Brama, *Pro Hac Vice*

Valerie T. Herring (99361)

TAFT STETTINIUS & HOLLISTER LLP

2200 IDS Center

80 South Eighth Street

Minneapolis, MN 55402

Phone: (612) 977-8400

Fax: (612) 977-8650

*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 December 1, 2022; 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>6</sup>

Hon. John Horne  
The Office of Attorney General  
Utility Intervention and Rate Division  
700 Capital Ave., Ste 20  
Frankfort, Kentucky 40601

/s/Rocco D'Ascenzo  
*Counsel for Duke Energy Kentucky, Inc.*

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<sup>6</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).