

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.)

**PETITION FOR CONFIDENTIAL TREATMENT OF DUKE ENERGY
KENTUCKY, INC. FOR CERTAIN RESPONSES TO COMMISSION STAFF'S
FOURTH REQUEST FOR INFORMATION**

Comes now Duke Energy Kentucky, Inc. (Duke Energy Kentucky or Company), by counsel, pursuant to KRS 61.878, 807 KAR 5:001, Section 13 and other law, and respectfully requests the Commission to classify and protect certain information provided by the Company in its Response to Commission Staff's (Staff) Fourth Request for Information issued on March 30, 2023; respectfully stating as follows:

1. On November 1, 2022, Duke Energy Kentucky filed a Notice of Intent to File an Application seeking adjustment of its electric rates and other approvals.
2. On December 1, 2022, Duke Energy Kentucky filed an Application seeking an adjustment of its electric rates and other approvals.
3. On March 30, 2023, Commission Staff issued its Fourth Request for Information to Duke Energy Kentucky.
4. In response to Commission Staff's Fourth Request for Information, Duke Energy Kentucky is providing certain information for which it requests confidential treatment.

5. The information for which Duke Energy Kentucky seeks confidential treatment is contained in its Response to Commission Staff Request 14, which is referred to herein as the “Confidential Information” and, broadly speaking, includes Critical Energy Infrastructure Information.

6. Request No. 14 of Commission Staff’s Fourth Set of Requests for Information states as follows:

Provide Duke Kentucky’s current distribution system engineering and planning manual(s) and any relevant guides, requirements, and standards. If Duke Kentucky’s current distribution planning manual criteria and processes were updated in the last 5 years, provide the analysis that was used to update the criteria and processes.

7. In its response to Request No. 14, Duke Energy Kentucky is providing STAFF-DR-04-014 Confidential Attachment 3 containing proprietary and detailed information relating to the design and configuration and construction of the Company’s substations and feeders. This attachment is confidential as it concerns Critical Energy Infrastructure Information (CEII), which has been granted confidential treatment in the past. Duke Energy Kentucky takes all reasonable steps in order to protect CEII, including, but not limited to, only sharing such information internally on a need-to-know basis. This information needs to be kept confidential in order to provide for the safety of the public, and protect against potential terrorist acts, and otherwise continue to provide delivery of safe and reliable electric service to Duke Energy Kentucky customers. Furthermore, the release of this information would provide a security risk for the Company and its customers and it is, therefore, broadly recognized as confidential under Kentucky law. *See* KRS 61.878(1)(m). Again, the Commission has previously agreed that such CEII is confidential.¹

¹ *See, e.g., In the Matter of the Application of East Kentucky Power Cooperative, Inc. for Approval of the Acquisition of Existing Combustion Turbine Facilities from Bluegrass Generating Company, LLC at the Bluegrass Generating Station in LaGrange, Oldham County, Kentucky and for Approval of the Assumption of Certain Evidences of Indebtedness*, Order, Case No. 2015-00267 (Ky. P.S.C. Nov. 24, 2015).

8. The Kentucky Open Records Act and applicable precedent exempts the Confidential Information from disclosure. *See* KRS 61.878(1)(a); KRS 61.878(1)(c)(1); *Zink v. Department of Workers Claims, Labor Cabinet*, 902 S.W.2d 825 (Ky. App. 1994); *Hoy v. Kentucky Industrial Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995). The public disclosure of the information that Duke Energy Kentucky seeks protection would damage Duke Energy Kentucky's competitive position and business interests. If the Commission grants public access to the information, it will provide competitors and vendors with a competitive advantage that would prevent the Company from having the ability to manage its costs as counterparties would have access to how the Company designs its facilities and determine the critical parts the Company needs. It would also allow such competitors and vendors to make decisions regarding pricing they otherwise would not have done, thereby making Duke Energy Kentucky and, in turn, its customers pay more than they otherwise would absent such information. For these reasons, the Confidential Information satisfies both the statutory and common law standards for affording confidential treatment. Indeed, the Commission has already recognized the confidential nature of the Confidential Information and has afforded confidential treatment to similar information in prior proceedings.²

9. Furthermore, some of 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 provides detailed explanations of business and financial operations for Duke Energy

² *Id.*; *see also In the Matter of the Application of Duke Energy Kentucky, Inc. For (1) a Certificate of Public Convenience and Necessity Authorizing the Construction of an Advanced Metering Infrastructure; (2) Request for Accounting Treatment; and (3) All Other Necessary Waivers, Approvals, and Relief*, Order, Case No. 2016-00152 (Ky. P.S.C. Jan. 2, 2019).

Kentucky and Duke Energy Corporation's family of utility businesses and is distributed only to those employees who must have access for business reasons and is generally recognized as confidential and proprietary in the utility industry. Disclosure of this information will place the company and its parent at a disadvantage in competing for business, financing, and in negotiations with future vendors and service providers.

10. 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. However, until such time as it is known who is authorized to intervene in this case, Duke Energy Kentucky reserves the right to object to sharing the Confidential Information with any intervenor who may be able to use the Confidential Information for an improper purpose.

11. 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.

12. Duke Energy Kentucky respectfully requests that the Confidential Information be withheld indefinitely as it's CEII. This will assure that the Confidential Information will not become available to the general public.

13. 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.

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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 April 12, 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.³

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³In 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).