

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
FIRST 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 Responses to Commission Staff's First Request for Information issued on November 10, 2022, 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 November 10, 2022, Commission Staff issued its First Request for Information to Duke Energy Kentucky.
4. In response to Commission Staff's First 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 Responses to Requests 6, 13, 14(b), 18, 30, 41, 43, 45, 46, 49(b) – (c), and 56, which is referred to herein as the “Confidential Information” and, broadly speaking, includes detailed information pertaining to the internal policies and procedures, personal compensation information of Duke Energy Kentucky employees, contracts with outside vendors, financial cost-benefit analyses of a new program and tariff proposed by the Company, and other information.

6. Request No. 6 of Commission Staff’s First Request for Information states as follows:

Provide a detailed analysis of expenses for professional services during the 12-months preceding the base period, as shown in Schedule B, and all work papers supporting the analysis. At a minimum, the work papers should show the payee, dollar amount, reference (i.e., voucher no., etc.), account charged, hourly rates and time charged to the company according to each invoice, and a description of the services provided.

7. In its response to Request No. 6, Duke Energy Kentucky is filing sensitive vendor information. This information is confidential insofar as it contains proprietary pricing information regarding what Duke Energy Kentucky pays for services which has been negotiated. If this information is publicly released, it will place the Company at a disadvantage with future such negotiations as potential vendors would have access to what the Company currently pays or expects to pay for such services.

8. Request No. 13 of Commission Staff’s First Request for Information states as follows:

Describe the utility’s lobbying activities and provide a schedule showing the name, salary, and job title of each individual whose job function involves lobbying on the local, state or national level.

9. In its response to Request No. 13, Duke Energy Kentucky is providing sensitive salary information for its employees, including their name, title, and salary information. This employee information is not publicly reported, and Duke Energy Kentucky is not required to do so. Neither employee engages in lobbying as their exclusive work responsibility and their entire compensation level should not be released publicly. Portions of salary that are related to lobbying activities are excluded from the Company's test year. Moreover, Mr. Gentil has supervisory responsibilities for jurisdictions other than Kentucky and his total salary is allocated accordingly. The Company has provided as part of its public response, the amounts that is allocated towards lobbying. The Commission has previously granted confidential treatment of this information in prior proceedings.¹

10. Request No. 14(b) of Commission Staff's First Request for Information states as follows:

Provide the following information concerning the costs for the preparation of this case:

b. For each category identified in Item 14.a., the schedule should include the date of each transaction, check number or other document reference, the vendor, the hours worked, the rates per hour, amount, a description of the services performed, and the account number in which the expenditure was recorded. Provide copies of contracts or other documentation that support charges incurred in the preparation of this case. Identify any costs incurred for this case that occurred during the base period.

11. In its response to Request No. 14(b), Duke Energy Kentucky is redacting information in regarding scope of work for one of its expert witnesses that is protected under the doctrine of attorney client privilege. This expert was retained by counsel and prepared work at

¹ *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; 3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; and 4) All Other Required Approvals and Relief* Case No. 2019-00271 pg. 11, (Ky.P.S.C. Oct. 16, 2020).

counsel's direction in preparation of legal advice. This information is thus protected and privileged and is being redacted entirely.

12. Request No. 18 of Commission Staff's First Request for Information states as follows:

Provide a copy of federal and state income tax returns for the most recent tax year, including supporting schedules.

13. In its response to Request No. 18, Duke Energy Kentucky is providing copies of both its state and federal tax returns. This information is highly confidential and proprietary to the Company and is historically considered confidential by the Commission. This information should not be publicly disclosed.

14. Request No. 30 of Commission Staff's First Request for Information states as follows:

State whether any changes have been made to the utility's internal accounting manuals, directives, and policies and procedures since the utility's most recent rate case. If so, provide each item that was changed and identify the changes.

15. In its response to Request No. 30, Duke Energy Kentucky is filing internal policies and procedures. These policies and procedures are proprietary in nature and are not publicly available. They have been developed by internal expertise and contain detailed information regarding the operations of the Company and Duke Energy Corporation including, but not limited to, how the Company evaluates risks, conducts hedging activities, accounts for various business transactions, capitalizes its electric and natural gas businesses and otherwise manages its business operations and finances. If this information were to become publicly available, competitors, potential vendors, and transaction counterparties would have access to information regarding the

Company's operations that would place it at a significant disadvantage in its operations as it competes for business or negotiates contracts.

16. Request No. 41 of Commission Staff's First Request for Information states as follows:

Provide, in the format provided in Schedule K, the following information for the utility's compensation and benefits, for the three most recent calendar years and the base period. Provide the information individually for each corporate officer and by category for Directors, Managers, Supervisors, Exempt, Non-Exempt, Union, and Non-Union Hourly. Provide the amounts, in gross dollars, separately for total company operations and jurisdictional operations.

- a. Regular salary or wages.
- b. Overtime pay.
- c. Excess vacation payout.
- d. Standby/Dispatch pay.
- e. Bonus and incentive pay.
- f. Any other forms of incentives, including stock options or forms of deferred compensation (specify).
- g. Other amounts paid and reported on the employees' W-2 (specify).
- h. Healthcare benefit cost.
 - (1) Amount paid by the utility.
 - (2) Amount paid by the employee.
- i. Dental benefits cost for employees.
 - (1) Amount paid by the utility.
 - (2) Amount paid by the employee.
- j. Vision benefits cost for employees.
 - (1) Amount paid by the utility.
 - (2) Amount paid by the employee.
- k. Life insurance cost for employees.
 - (1) Amount paid by the utility.
 - (2) Amount paid by the employee.
- l. Accidental death and disability benefits.
 - (1) Amount paid by the utility.
 - (2) Amount paid by the employee.
- m. Defined Benefit Retirement cost.
 - (1) Amount paid by the utility.
 - (2) Amount paid by the employee.
- n. Defined Contribution – 401(k) or similar plan cost.
Provide the amount paid by the utility.

- o. Cost of any other benefit available to an employee, including fringe benefits (specify).

17. In its response to Request No. 41, Duke Energy Kentucky is providing sensitive compensation and benefit information for its employees. This information is considered highly confidential as its current employees and potential employees consider the value of its compensation information as part of their employment status decision. Duke Energy Kentucky and Duke Energy Corp. compete for employees among a robust pool of employers, including other regional utilities. The level of benefits provided by the companies is instrumental in recruiting and retaining highly qualified employees. If competitors had ready access to this information, they could use it to place Duke Energy Corp. and Duke Energy Kentucky at a disadvantage in recruiting and retaining employees. This information is not publicly disclosed to the level of detail requested by the Commission and should be maintained as confidential.

18. Request No. 43 of Commission Staff's First Request for Information states as follows:

Provide a listing of all health care plan categories, dental plan categories, and vision plan categories available to corporate officers individually and to groups defined as Directors, Managers, Supervisors, Exempt, Non-Exempt, Union, and Non-Union Hourly employees (e.g., single, family, etc.). Include the associated employee contribution rates and employer contribution rates of the total premium cost for each category, and each plan's deductible(s) amounts.

19. In its response to Request No. 43 Duke Energy Kentucky is providing sensitive benefit information for its employees. This information is considered highly confidential as its current employees and potential employees consider the value of its compensation information as part of their employment status decision. Duke Energy Kentucky and Duke Energy Corp. compete for employees among a robust pool of employers, including other regional utilities. The level of

benefits provided by the companies is instrumental in recruiting and retaining highly qualified employees. If competitors had ready access to this information, they could use it to place Duke Energy Corp. and Duke Energy Kentucky at a disadvantage in recruiting and retaining employees.

20. Request No. 45 of Commission Staff's First Request for Information states as follows:

Provide a listing of all life insurance plan categories available to corporate officers individually and to groups defined as Directors, Managers, Supervisors, Exempt, Non-Exempt, Union, and Non-Union Hourly employees. Include the associated employee contribution rates and employer contribution rates of the total premium cost for each plan category.

21. In its response to Request No. 45 Duke Energy Kentucky is providing sensitive benefit information for its employees. This information is considered highly confidential as its current employees and potential employees consider the value of its compensation information as part of their employment status decision. Duke Energy Kentucky and Duke Energy Corp. compete for employees among a robust pool of employers, including other regional utilities. The level of benefits provided by the companies is instrumental in recruiting and retaining highly qualified employees. If competitors had ready access to this information, they could use it to place Duke Energy Corp. and Duke Energy Kentucky at a disadvantage in recruiting and retaining employees.

22. Request No. 46 of Commission Staff's First Request for Information states as follows:

Provide a listing of all retirement plans available to corporate officers individually and to groups defined as Directors, Managers, Supervisors, Exempt, Non-Exempt, Union, and Non-Union Hourly employees. Include the associated employee contribution rates, if any, and employer contribution rates of the total cost for each plan category.

23. In its response to Request No. 46 Duke Energy Kentucky is providing sensitive benefit information for its employees. This information is considered highly confidential as its current employees and potential employees consider the value of its compensation information as part of their employment status decision. Duke Energy Kentucky and Duke Energy Corp. compete for employees among a robust pool of employers, including other regional utilities. The level of benefits provided by the companies is instrumental in recruiting and retaining highly qualified employees. If competitors had ready access to this information, they could use it to place Duke Energy Corp. and Duke Energy Kentucky at a disadvantage in recruiting and retaining employees.

24. Request No. 49(b) – (c) of Commission Staff’s First Request for Information states as follows:

Regarding the utility’s employee compensation policy:

- b. Provide a narrative description of the compensation policy, including the reasons for establishing the policy and the utility’s objectives for the policy.
- c. Explain whether the compensation policy was developed with the assistance of an outside consultant. If the compensation policy was developed or reviewed by a consultant, provide any study or report provided by the consultant.

25. In its response to Request No. 49(b) – (c) Duke Energy Kentucky is providing a copy of its internal presentations made to its Compensation Committee. This information is considered highly confidential as its current employees and potential employees consider the value of its compensation information as part of their employment status decision. Duke Energy Kentucky and Duke Energy Corp. compete for employees among a robust pool of employers, including other regional utilities. The level of benefits provided by the companies is instrumental in recruiting and retaining highly qualified employees. If competitors had ready access to this information, they could use it to place Duke Energy Corp. and Duke Energy Kentucky at a disadvantage in recruiting and retaining employees.

26. Request No. 56 of Commission Staff's First Request for Information states as follows:

To the extent not already provided, provide a copy of each cost of service study, billing analysis, and all exhibits and schedules that were prepared in the utility's rate application in Excel spreadsheet format with all formulas, columns, and rows unprotected and fully accessible.

27. In its response to Request No. 56, Confidential Attachments BLS-3, BLS-4, BLS-6, and BLS-8 relate 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.

28. Contemporaneous with the filing of this Petition, Duke Energy Kentucky is tendering documentation responsive to Commission Staff's Request Nos. 6, 13, 14(b), 18, 30, 41, 43, 45, 46, 49(b) – (c), and 56. The Confidential Information provided is proprietary information that is retained by Duke Energy Kentucky on a "need-to-know" basis. The Confidential Information is distributed within Duke Energy Kentucky only to the Chief Executive Officer, Senior Management, and the Board, who must have access for business reasons, and it is generally recognized as confidential and proprietary in the energy industry and in business generally. Specifically, the Confidential Information contains compensation and benefit information for Duke Energy Kentucky employees, corporate tax information, detailed accounting and operational policies and procedures, along with surveys and studies provided by third party vendors and used

by Duke Energy Kentucky to determine compensation and benefit offerings, internal presentations regarding compensation and benefit offerings, and invoices from third party vendors who provide services to the Company under negotiated rates and in one instance, was directed by counsel.

29. 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 Confidential Information includes information regarding job titles and historical compensation amounts for years other than the test year for Duke Energy Kentucky employees. Benefit information is personal and private information and should not be in the public realm. Furthermore, the surveys, studies and presentations used by Duke Energy Kentucky to determine compensation and benefit offerings are highly confidential and subject to proprietary protection of third-party vendors. The Commission has previously granted confidential protection to these types of surveys, studies, etc.² Additionally, public disclosure of these sensitive documents would unnecessarily provide interested parties and Duke Energy Kentucky's competitors with access to exclusive information regarding employee compensation. By knowing what Duke Energy Kentucky compensates each of its employees, it would be very easy for other utilities to attempt to poach Duke Energy Kentucky's workforce and management. Such public disclosure could unfairly harm Duke Energy Kentucky's competitive position in the marketplace for utility management and a skilled workforce, to the detriment of Duke Energy Kentucky and its customers. For these reasons, the

² *In the Matter of the Application of Water Service Corporation of Kentucky for a General Adjustment of Rates*, Order, Case No. 2015-00382 (Ky. P.S.C. Apr. 5, 2016). *In the Matter of: Electronic Application of Duke Energy Kentucky, Inc. for: 1) An Adjustment of the Electric Rates; 2: Approval of an Environmental Compliance Plan and Surcharge Mechanism; 3) Approval of New Tariffs; 4) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities and 5) All Other Required Approvals and Relief*, Order, Case No. 2017-00321 (Ky. P.S.C. May 4, 2018).

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 compensation and wage documents in prior proceedings.³

30. 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 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. This could result in the Company not achieving as favorable pricing as it otherwise could, which in turn could result in increased costs to customers.

31. 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.

³ *Id.*, See also, *In the Matter of the Application of Kentucky Utilities Company for an Adjustment of its Electric Rates*, Order, Case No. 2014-00371 (Ky. P.S.C., Jan. 29, 2016).

32. 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.

33. 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 if publicly disclosed.

34. 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,

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/s/Rocco D'Ascenzo

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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 December 15, 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.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).