

**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 THE KENTUCKY BROADBAND  
AND CABLE ASSOCIATION’S JANUARY 11, 2023  
FIRST REQUESTS FOR INFORMATION**

---

Duke Energy Kentucky, Inc. (Duke Energy Kentucky or the Company), by counsel, pursuant to 807 KAR 5:001, Section 13(2), KRS 61.878(1)(c)(1), and other applicable law, moves the Public Service Commission of Kentucky (Commission) for an Order granting confidential treatment to the identified portions of the following response to the Kentucky Broadband and Cable Association’s (KBCA) First Requests for Information issued on January 11, 2023:

- (1) The highlighted information contained in the Company’s Response to KBCA Request No. 01-016.

Specifically, Duke Energy Kentucky seeks confidential treatment of information referred to herein as the “Confidential Information,” which provides negotiated pole attachment charges.

Pursuant to the Commission’s April 5, 2023 Order denying the Petition for Confidential Treatment of Duke Energy Kentucky, Inc. for Certain Responses to Sierra Club, The Kroger Co., Attorney General, Commission Staff, and Kentucky Broadband and Cable Association’s Requests

for Information, filed January 25, 2023, this is a renewed Petition for Confidential Treatment. As such, this renewed Petition for Confidential Treatment complies with the requirements outlined in the Commission’s April 5, 2023 Order.

## **I. MOTION FOR CONFIDENTIAL TREATMENT**

### **a. Statutory Standard**

Administrative Regulation 807 KAR 5:110, Section 5 sets forth the procedure by which certain information filed with the Commission shall be treated as confidential. Specifically, the party seeking confidential treatment must establish “each basis upon which the petitioner believes the material should be classified as confidential” in accordance with the Kentucky Open Records Act, KRS 61.878. See 807 KAR 5:110 Section 5(2)(a)(1).

The Kentucky Open Records Act exempts certain records from the requirement of public inspection. *See* KRS 61.878. In particular, KRS 61.878(1)(c)(1) excludes from the Open Records Act:

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[.]

This exception “is aimed at protecting records of private entities which, by virtue of involvement in public affairs, must disclose confidential or proprietary records to a public agency, if disclosure of those records would place the private entities at a competitive disadvantage.” Ky. OAG 97-ORD-66 at 10 (Apr. 17, 1997).

KRS 61.878(1)(c)(1) requires the Commission to consider three criteria in determining confidentiality: (1) whether the record is confidentially disclosed to an agency or required by an agency to be disclosed to it; (2) whether the record is generally recognized as confidential or proprietary; and (3) whether the record, if openly disclosed, would present an unfair commercial

advantage to competitors of the entity that disclosed the records. The information for which Duke Energy Kentucky is seeking confidential treatment, as discussed further below, satisfies each of these three statutory criteria.

**b. Requests and Responses for Which Confidential Treatment is Sought**

**i. The highlighted information contained in the Response to KBCA**

**Request No. 01-016**

KBCA Request No. 01-016 states as follows:

If any entity that is attached to Your poles will be subject to a different Pole Attachment Charges than those identified in Your Fourth Revised Sheet No. 92, state the charges those entities will incur and the basis of, including any calculations related to, the charges.

In response to KBCA Request No. 01-016, Duke Energy Kentucky is providing negotiated pole attachment charges included in joint use and other agreements with telecommunication companies in Kentucky. The Company requests that the highlighted information contained in this Attachment be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1). The highlighted information is not publicly available, thus satisfying the first element of the statutory standard for confidentiality of a proprietary record. The highlighted information satisfies the second element of the standard, as negotiated pricing information is generally recognized as confidential and proprietary. The highlighted information also satisfies the third element because disclosure of these charges would place the Company at a disadvantage with future such negotiations, as counterparties would have access to what the Company charges other parties, potentially resulting in less favorable contract terms for the Company.

**c. Request for Confidential Treatment**

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.

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

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 May 4, 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.<sup>1</sup>

Angela M. Goad  
J. Michael West  
Lawrence W. Cook  
John G. Horne II  
Assistant Attorneys General  
1024 Capital Center Drive, Suite 200  
Frankfort, KY 40601  
[Angela.Goad@ky.gov](mailto:Angela.Goad@ky.gov)  
[Michael.West@ky.gov](mailto:Michael.West@ky.gov)  
[Larry.Cook@ky.gov](mailto:Larry.Cook@ky.gov)  
[John.Horne@ky.gov](mailto:John.Horne@ky.gov)

Joshua Smith  
Sierra Club  
2101 Webster Street, Suite 1300  
Oakland, CA 94612  
[Joshua.Smith@sierraclub.org](mailto:Joshua.Smith@sierraclub.org)

Joe F. Childers, Esq.  
Childers & Baxter, PLLC  
The Lexington Building  
201 West Short Street, Suite 300  
Lexington, KY 40507  
[Joe@Jchilderslaw.com](mailto:Joe@Jchilderslaw.com)

Carrie H. Grundmann  
110 Oakwood Drive, Suite 500  
Winston-Salem, NC 27103  
[cgrundmann@spilmanlaw.com](mailto:cgrundmann@spilmanlaw.com)

Steven W. Lee  
1100 Bent Creek Boulevard, Suite 101  
Mechanicsburg, PA 17050  
[slee@spilmanlaw.com](mailto:slee@spilmanlaw.com)

Kurt J. Boehm, Esq.  
Jody Kyler Cohn, Esq.  
BOEHM, KURTZ & LOWRY  
36 East Seventh Street, Suite 1510  
Cincinnati, OH 45202  
[kboehm@bkllawfirm.com](mailto:kboehm@bkllawfirm.com)  
[jkylercohn@bkllawfirm.com](mailto:jkylercohn@bkllawfirm.com)

James W. Gardner  
M. Todd Osterloh  
Sturgill, Turner, Barker & Moloney, PLLC  
333 West Vine Street, Suite 1500  
Lexington, KY 40507  
[jgardner@sturgillturner.com](mailto:jgardner@sturgillturner.com)  
[tosterloh@sturgillturner.com](mailto:tosterloh@sturgillturner.com)

Paul Werner  
Hannah Wigger  
Maria Laura Coltre  
Sheppard Mullin Richter & Hampton LLP  
2099 Pennsylvania Avenue NW, Suite 100  
Washington, DC 20006  
[pwerner@sheppardmullin.com](mailto:pwerner@sheppardmullin.com)  
[hwigger@sheppardmullin.com](mailto:hwigger@sheppardmullin.com)  
[mcoltre@sheppardmullin.com](mailto:mcoltre@sheppardmullin.com)

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

---

<sup>1</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).