

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 KROGER CO.’S JANUARY
11, 2023 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 responses and attachments to its responses to The Kroger Co.’s (Kroger) First Set of Requests for Information issued on January 11, 2023:

- (1) KROGER-DR-01-001 Confidential Attachments 1 and 2;
- (2) KROGER-DR-01-002(c) CONF Attachment;
- (3) KROGER-DR-01-003(c) CONF Attachment;
- (4) KROGER-DR-01-004(c) CONF Attachment; and
- (5) KROGER-DR-01-004(g) CONF Attachment.

Specifically, Duke Energy Kentucky seeks confidential treatment of information referred to herein as the “Confidential Information,” which, broadly speaking, may include, but is not limited to, the Company’s forecasted capital expenditures and maintenance expense for various

facilities and other confidential information that has been filed to date.

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.

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.

This exception applies to the following attachments for which Duke Energy Kentucky is seeking confidential treatment, each of which is described in further detail below.

b. Requests and Attachments for Which Confidential Treatment is Sought

i. KROGER-DR-01-001 Confidential Attachments 1 and 2

Kroger Request No. 01-001 states as follows:

Please provide an electronic version of the Company's confidential filing documents, workpapers, and responses to discovery in this case. To the extent the Company files corrections, revisions, amendments, supplemental information and/or errata to these documents, please provide all updated materials.

In response to Kroger Request No. 01-001, Duke Energy Kentucky is providing KROGER-DR-01-001 Confidential Attachments 1 and 2, which contains copies of all confidential responses to the Requests for Information issued by other parties to this proceeding.¹ These confidential Attachments include the following, each of which the Commission granted confidential protection in its February 10, 2023 Order: STAFF-DR-01-041 CONF Attachment² and STAFF-DR-01-056 CONF Attachments BLS-3, BLS-4, BLS-5, and BLS-6.³ As such, the Commission has already ruled on the confidentiality of these Attachments, and Duke Energy Kentucky reiterates the need for confidentiality of these Attachments here. These confidential Attachments also include the

¹ All responses and accompanying attachments to Requests for Information for which the Company has sought confidential treatment are provided in the following filings: Petition for Confidential Treatment of Duke Energy Kentucky, Inc. for Certain Responses to Commission Staff's First Request for Information, filed December 15, 2022 (granted in part and denied in part by Order dated February 10, 2023); 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 (denied by Order dated April 5, 2023 with instructions to refile in accordance with statutory and regulatory standards); Petition for Confidential Treatment of Duke Energy Kentucky, Inc. for Certain Responses to Sierra Club, Attorney General, and Commission Staff's Requests for Information, filed March 2, 2023, revised March 8, 2023 (pending); Petition for Confidential Treatment of Duke Energy Kentucky, Inc. for Certain Responses to Commission Staff's Fourth Request for Information, filed April 12, 2023 (pending).

² Order at 6–7 (Feb. 10, 2023) (confidential treatment granted in part and denied in part). Duke Energy Kentucky has removed the attachments that were denied confidential treatment in the Commission's February 10, 2023 order.

³ *Id.* at 6 (confidential treatment granted).

following, which the Company maintains is confidential, as set forth in the Petition of Duke Energy Kentucky, Inc. for Confidential Treatment of Information Contained in its Application Regarding an Adjustment of Electric Rates filed December 1, 2022 in this case: FR 16(7)(c) Confidential Attachment; FR 16(7)(o) Confidential Attachment – FRS Reports; FR 16(7)(o) Confidential Attachment - ROCR Reports - O&M; FR 16(7)(o) Confidential Attachment - ROCR Reports - Capital; Confidential Direct Testimony of Paul L. Halstead, including Confidential Attachments PLH-2 and PLH-3; Confidential Attachments JJS-3(a), JJS-3(b), and JJS-3(c);⁴ Confidential Attachments BLS-3, BLS-4, BLS-6, and BLS-8.⁵ Duke Energy Kentucky has provided justification for the confidentiality of each of these documents in its Petition for Confidential Treatment of Information Contained in its Application Regarding an Adjustment of Electric Rates, filed December 1, 2022. As such, Duke Energy Kentucky renews its request related to the confidentiality of these documents here.⁶

ii. KROGER-DR-01-002(c) CONF ATTACHMENT

Kroger Request No. 01-002(c) states, in part, as follows:

Please provide a forecast of maintenance expense for East Bend through the expected retirement in 2032. If a forecast is not available through 2032, please provide all available forecasted information. Please provide all supporting workpapers in Microsoft Excel format.

In response to Kroger Request No. 01-002(c), Duke Energy Kentucky is providing KROGER-DR-01-002(c) CONF Attachment, which contains forecasted maintenance expense for East Bend. The Company requests that this Attachment be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1), and additionally requests that this Attachment be treated as confidential

⁴ Attached to the Direct Testimony of Jacob J. Stewart.

⁵ Attached to the Direct Testimony of Bruce L. Sailors.

⁶ The Commission has already granted confidential protection for Confidential Attachments BLS-3, BLS-4, BLS-6, and BLS-8, as indicated above. Order at 6 (Feb. 10, 2023) (confidential treatment granted).

in its entirety pursuant to 807 KAR 5:001E, Section 13(2)(a)(3)(b).

KROGER-DR-01-002(c) CONF Attachment is not publicly available, thus satisfying the first element of the statutory standard for confidentiality of a proprietary record. In *Hoy v. Kentucky Indus. Revitalization Auth.*, 907 S.W.2d 766, 768 (Ky. 1995), the Kentucky Supreme Court held that documents detailing the “inner workings of a corporation (are) ‘generally recognized as confidential or proprietary.’” Duke Energy Kentucky’s projected maintenance expense for East Bend represent the inner-workings of a corporation; the second element of the statutory standard is therefore satisfied. The third element is satisfied, as disclosure of this information would result in a commercial disadvantage. KROGER-DR-01-002(c) CONF Attachment contains Company work product and if this information is publicly released, it will place the Company at a competitive disadvantage, as competitors would gain tremendous insight into the Company’s financial condition and future plans.

iii. KROGER DR-01-003(c) CONF Attachment

Kroger Request No. 01-003(c) states, in part, as follows:

Please provide a forecast of capital investments for East Bend through the expected retirement in 2032. If a forecast is not available through 2032, please provide all available forecasted information. Please provide all supporting workpapers in Microsoft Excel format.

In response to Kroger Request No. 01-003(c), Duke Energy Kentucky is providing KROGER-DR-01-003(c) CONF Attachment, which contains forecasted capital investments for East Bend. The Company requests that this Attachment be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1), and additionally requests that this Attachment be treated as confidential in its entirety pursuant to 807 KAR 5:001E, Section 13(2)(a)(3)(b).

KROGER-DR-01-003(c) CONF Attachment is not publicly available, thus satisfying the first element of the statutory standard for confidentiality of a proprietary record. Duke Energy

Kentucky's projected capital investments for East Bend represent the inner-workings of a corporation; the second element of the statutory standard is therefore satisfied. The third element is satisfied, as disclosure of this information would result in a commercial disadvantage. KROGER-DR-01-003(c) CONF Attachment contains Company work product and if this information is publicly released, it will place the Company at a competitive disadvantage, as competitors would gain tremendous insight into the Company's financial condition and future plans.

iv. KROGER DR-01-004(c) CONF Attachment

Kroger Request No. 01-004(c) states, in part, as follows:

Please provide a forecast of maintenance expense for Woodsdale through the expected retirement in 2032. If a forecast is not available through 2032, please provide all available forecasted information. Please provide all supporting workpapers in Microsoft Excel format.

In response to Kroger Request No. 01-004(c), Duke Energy Kentucky is providing KROGER-DR-01-004(c) CONF Attachment, which contains forecasted maintenance expenses for Woodsdale. The Company requests that this Attachment be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1), and additionally requests that this Attachment be treated as confidential in its entirety pursuant to 807 KAR 5:001E, Section 13(2)(a)(3)(b).

KROGER-DR-01-004(c) CONF Attachment is not publicly available, thus satisfying the first element of the statutory standard for confidentiality of a proprietary record. Duke Energy Kentucky's projected maintenance expenses for Woodsdale represent the inner-workings of a corporation; the second element of the statutory standard is therefore satisfied. The third element is satisfied, as disclosure of this information would result in a commercial disadvantage. KROGER-DR-01-004(c) CONF Attachment contains Company work product and if this information is publicly released, it will place the Company at a competitive disadvantage, as

competitors would gain tremendous insight into the Company's financial condition and future plans.

v. KROGER DR-01-004(g) CONF Attachment

Kroger Request No. 01-004(g) states, in part, as follows:

Please provide a forecast of capital investments for Woodsdale through the expected retirement in 2032. If a forecast is not available through 2032, please provide all available forecasted information. Please provide all supporting workpapers in Microsoft Excel format.

In response to Kroger Request No. 01-004(g), Duke Energy Kentucky is providing KROGER-DR-01-004(g) CONF Attachment, which contains forecasted capital investments for Woodsdale. The Company requests that this Attachment be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1), and additionally requests that this Attachment be treated as confidential in its entirety pursuant to 807 KAR 5:001E, Section 13(2)(a)(3)(b).

KROGER-DR-01-004(g) CONF Attachment is not publicly available, thus satisfying the first element of the statutory standard for confidentiality of a proprietary record. Duke Energy Kentucky's projected capital investments for Woodsdale represent the inner-workings of a corporation; the second element of the statutory standard is therefore satisfied. The third element is satisfied, as disclosure of this information would result in a commercial disadvantage. KROGER-DR-01-004(g) CONF Attachment contains Company work product and if this information is publicly released, it will place the Company at a competitive disadvantage, as competitors would gain tremendous insight into the Company's financial condition and future plans.

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.⁷

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
Michael.West@ky.gov
Larry.Cook@ky.gov
John.Horne@ky.gov

Joshua Smith
Sierra Club
2101 Webster Street, Suite 1300
Oakland, CA 94612
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

Carrie H. Grundmann
110 Oakwood Drive, Suite 500
Winston-Salem, NC 27103
cgrundmann@spilmanlaw.com

Steven W. Lee
1100 Bent Creek Boulevard, Suite 101
Mechanicsburg, PA 17050
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
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
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
hwigger@sheppardmullin.com
mcoltre@sheppardmullin.com

/s/Rocco D'Ascenzo

Counsel for Duke Energy Kentucky, Inc.

⁷*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).