

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 SIERRA CLUB’S JANUARY 10,
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 Sierra Club’s First Set of Requests for Information issued on January 10, 2023:

- (1) SIERRA-DR-01-001 Confidential Attachment;
- (2) SIERRA-DR-01-002 Confidential Attachment;
- (3) SIERRA-DR-01-003 Confidential Attachment;
- (4) SIERRA-DR-01-008 Confidential Attachment;
- (5) SIERRA-DR-01-009 Confidential Attachment 1;
- (6) SIERRA-DR-01-009 Confidential Attachment 2;
- (7) SIERRA-DR-01-011 Confidential Attachment;
- (8) The highlighted information contained in the Response to Sierra Club Request No.

01-015.

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, fuel costs, historical capacity and projected revenue information for the Company’s East Bend facility, annual sales, revenue, and purchase information, and integrated resource planning information.

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 information for which Duke Energy Kentucky is seeking confidential treatment, each of which is described in further detail below.

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

i. SIERRA-DR-01-001 Confidential Attachment

Sierra Club Request No. 01-001 states as follows:

Please provide all public and confidential responses to Requests for Information issued by Duke and any other party to this proceeding.

In response to Sierra Club Request No. 01-001, Duke Energy Kentucky is providing SIERRA-DR-01-001 Confidential Attachment, which contains copies of all confidential responses to the Requests for Information issued by other parties to this proceeding.¹ These confidential

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).

responses 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.

ii. SIERRA-DR-01-002 Confidential Attachment

Sierra Club Request No. 01-002 states as follows:

Please provide all confidential, unredacted testimony, exhibits, work papers, and schedules supporting Duke's application in electronic, machine-readable format with formulae intact, including all confidential or highly sensitive testimonies, exhibits, work papers, and schedules supporting Duke's application.

In response to Sierra Club Request No. 01-002, Duke Energy Kentucky is providing SIERRA-DR-01-002 Confidential Attachment, which contains confidential information previously filed with the Company's Application. 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).

This information 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, and includes the following attachments: 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

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 by the Commission's February 10, 2023 order.

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

- 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

iii. SIERRA-DR-01-003 Confidential Attachment

Sierra Club Request No. 01-003 states as follows:

Please refer to the Direct Testimony of Scott Park at page 2. Please provide an unredacted copy of the referenced June 2021 Duke Integrated Resource Plan (“IRP”), including all appendices, exhibits, and/or workpapers in native format with all formulae intact.

In response to Sierra Club Request No. 01-003, Duke Energy Kentucky is providing SIERRA-DR-01-003 Confidential Attachment, which is the confidential version of the Company’s 2021 Integrated Resource Plan (“IRP”) filing. This IRP includes (a) projected pricing estimates for natural gas, coal and power; (b) estimated capital costs for various electric generation technologies; (c) energy efficiency program and avoided costs; (d) cost data for the 2021 IRP’s screening analysis; and (e) a transmission map showing the Company’s critical system, all of which are confidential as set forth in the Petition of Duke Energy Kentucky, Inc. for Confidential Treatment of Information Contained in its Integrated Resource Plan filed June 21, 2021 in Case No. 2021-00245, which the Company incorporates by reference herein. The Company requests

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).

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).

iv. SIERRA-DR-01-008 Confidential Attachment

Sierra Club Request No. 01-008 states, in part, as follows:

For each retirement study or unit condition assessment in response to Sierra Club 1.4 above . . . provide all model outputs by unit, including (i) annual generation (MWh); (ii) fuel costs (\$); (iii) VOM Costs (\$); (iv) FOM Costs (\$); (v) Capital Expenditures (\$); and (vi) Other Capital expenditures (\$).

In response to Sierra Club Request No. 01-008, Duke Energy Kentucky is providing SIERRA-DR-01-008 Confidential Attachment, which contains output files for the Company's preferred portfolio in Duke Energy Kentucky's 2021 IRP, including proprietary and detailed fuel costs and capital expenditures. 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).

SIERRA-DR-01-008 Confidential Attachment is not publicly available, thus satisfying the first element of the statutory standard for confidentiality of a proprietary record. SIERRA-DR-01-008 Confidential Attachment satisfies the second element of the standard, as Duke Energy Kentucky's competitively negotiated fuel costs and projected capital expenditures under various future scenarios are commercially sensitive and proprietary and constitute a "trade secret" under KRS 365.880(4). SIERRA-DR-01-008 Confidential Attachment also satisfies the third element because disclosure of the Company's fuel costs would place the Company at a disadvantage with future negotiations, as potential vendors would have access to what the Company currently pays or expects to pay for fuel, potentially resulting in increased costs for these services for customers.

In addition, SIERRA-DR-01-008 Confidential Attachment contains commercially sensitive information related to the Company's potential future capital projects and disclosure of this information would result in a commercial disadvantage for Duke Energy Kentucky, as competitors would gain invaluable insight into the Company's future plans and financial outlook.

v. SIERRA-DR-01-009 Confidential Attachment 1

Sierra Club Request No. 01-009 states, in part, as follows:

For East Bend, please provide the following historical annual data from 2011 through 2020, and by month as available for 2021: (a) Installed Capacity; (b) Unforced Capacity; (3) Capacity Factor; (d) Equivalent Availability Factor (EAF); (e) Heat Rate; (f) Forced or random outage rate; (g) Effective forced outage rate (EFORd)...

In response to Sierra Club Request No. 01-009(a)–(g), Duke Energy Kentucky is providing SIERRA-DR-01-008 Confidential Attachment 1, which contains historical annual data from 2011 through 2020, and additional data for certain months in 2021, for East Bend's installed capacity, unforced capacity, capacity factor, EAF, Heat Rate, forced or random outage rate, and EFORd. 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).

SIERRA-DR-01-009 Confidential Attachment 1 is not publicly available, thus satisfying the first element of the statutory standard for confidentiality of a proprietary record. SIERRA-DR-01-009 Confidential Attachment 1 satisfies the second element of the standard, as this historical data associated with East Bend constitutes commercially sensitive information. SIERRA-DR-01-009 Confidential Attachment 1 also satisfies the third element because disclosure of the Company's historical data for East Bend would place the Company at a competitive disadvantage, as competitors would have access to sensitive efficiency and reliability data related to the Company's operations.

vi. SIERRA-DR-01-009 Confidential Attachment 2

Sierra Club Request No. 01-009(j) states, in part, as follows:

For East Bend, please provide the following historical annual data from 2011 through 2020, and by month as available for 2021: (j) Fuel Costs (by fuel type).

In response to Sierra Club Request No. 01-009(j), Duke Energy Kentucky is providing SIERRA-DR-01-009 Confidential Attachment 2, which contains historical annual data from 2011 through 2020, and additional data for certain months in 2021, for East Bend's fuel costs. 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).

SIERRA-DR-01-009 Confidential Attachment 2 is not publicly available, thus satisfying the first element of the statutory standard for confidentiality of a proprietary record. SIERRA-DR-01-009 Confidential Attachment 2 satisfies the second element of the standard, as Duke Energy Kentucky's historical and competitively negotiated fuel costs for East Bend are commercially sensitive. SIERRA-DR-01-009 Confidential Attachment 2 also satisfies the third element because disclosure of the Company's fuel costs would place the Company at a disadvantage with future negotiations, as potential vendors would have access to what the Company currently pays or expects to pay for fuel, potentially resulting in increased costs for these services for customers.

vii. SIERRA-DR-01-011(c)–(h) Confidential Attachment

Sierra Club Request No. 01-011(c)–(h) states, in part, as follows:

Please provide the following for Duke Kentucky, with supporting workpapers (in electronic, machine-readable format): (c) Annual sales since 2015 (or earliest available); (d) Annual generation since 2015 (or earliest available); (e) Annual off-system energy sales in GWs since 2015 (or earliest available); (f) Annual off-system energy sales revenues in dollars since 2015 (or earliest available); (g) Annual off-system energy purchases in GWs since 2015 (or earliest available); (h) Annual off-system energy purchases revenues in dollars since 2015 (or earliest available).

In response to Sierra Club Request No. 01-011(c)–(h), Duke Energy Kentucky is providing SIERRA-DR-01-011 Confidential Attachment, which contains information related to the Company’s annual sales, generation, off-system energy sales, sales revenues, purchase, and purchases revenues since 2015. 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).

SIERRA-DR-01-011 Confidential 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 historical sales, revenues, and purchases represent the inner-workings of a corporation and, therefore, meets the second element of the statutory standard. SIERRA-DR-01-011 Confidential Attachment also satisfies the third element, as it contains commercially sensitive information related to the Company’s historical finances and disclosure of this information would result in a commercial disadvantage for Duke Kentucky, as competitors would gain invaluable insight into the Company’s financial past and future outlook.

viii. The highlighted information contained in the Response to Sierra Club Request No. 01-015

Sierra Club Request No. 01-015 states as follows:

Provide total projected energy and ancillary service market revenues for East Bend, for the period 2023–2035.

In response to Sierra Club Request No. 01-015, Duke Energy Kentucky is providing the highlighted information in SIERRA-DR-01-015, which contains information relating to the

Company's projected energy and ancillary market revenues for East Bend. The Company requests that this information be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1).

The highlighted information in SIERRA-DR-01-015 is not publicly available, thus satisfying the first element of the statutory standard for confidentiality of a proprietary record. Duke Energy Kentucky's projected energy and ancillary market revenues for East Bend represent the inner-workings of a corporation and are additionally Company work product; the second element of the statutory standard is therefore satisfied. The highlighted information in SIERRA-DR-01-015 also satisfies the third element, as it contains commercially sensitive information related to the Company's future financial outlook and disclosure of this information would result in a commercial disadvantage for Duke Kentucky, as competitors would gain invaluable insight into the Company's financial state.

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

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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 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

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⁷In 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).