

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 STAFF OF THE PUBLIC
SERVICE COMMISSION’S JANUARY 11, 2023 SECOND REQUEST 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), 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 attachments filed in its responses to Commission Staff’s (Staff) Second Request for Information issued on January 11, 2023:

- (1) STAFF-DR-02-009 CONF Attachment;
- (2) STAFF-DR-02-029(b) CONF Attachment; and
- (3) STAFF-DR-02-070(b) Attachments 1 through 97.

Specifically, Duke Energy Kentucky seeks confidential treatment of information referred to herein as the “Confidential Information,” which, broadly speaking, includes information related to the calculation of the Company’s long-term debt rate, forecasted capital expenses under various potential scenarios, and vendor pricing and cost 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[.]

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 documents for which Duke Energy Kentucky is seeking confidential treatment, each of which is described in further detail below, satisfies each of these three statutory criteria.

b. Requests and Attachments for Which Confidential Treatment is Sought

i. STAFF-DR-02-009 CONF Attachment

Staff Request No. 02-009(c) states, in part, as follows:

For the expected \$130 million, explain the appropriateness of using a weighted average of 5-year, 10-year, and 30-year Treasury rates plus the respective basis point adders. Include in the response how each respective adder was derived.

In response to Staff Request No. 02-009(c), Duke Energy Kentucky provided STAFF-DR-02-009 CONF Attachment, which contains detailed information relating to how the Company calculated its long-term debt rate. STAFF-DR-02-009 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.’” STAFF-DR-02-009 CONF Attachment satisfies this standard, as how Duke Kentucky calculates its long-term debt rate represents the inner-workings of a corporation and, therefore, meets the second element of the statutory standard. STAFF-DR-02-009 CONF Attachment also satisfies the third element, as it contains commercially sensitive information related to the Company’s financial projections 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 financial outlook.

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).

ii. STAFF-DR-02-029(b) CONF Attachment

Staff Request No. 02-029(b) states, in part, as follows:

Provide the projected capital and operation costs of East Bend used in Duke Kentucky's analysis.

In response to Staff Request No. 02-029(b), Duke Energy Kentucky provided STAFF-DR-02-029(b) CONF Attachment, which contains detailed information relating to the Company's projected capital and operation and maintenance expenditures for East Bend in each scenario within the Duke Energy Kentucky's 2021 Integrated Resource Portfolio.

STAFF-DR-02-029(b) CONF Attachment is not publicly available, thus satisfying the first element of the statutory standard for confidentiality of a proprietary record. STAFF-DR-02-029(b) CONF Attachment satisfies the second element of the standard, as Duke Energy Kentucky's projected capital and operation and maintenance expenditures under various future scenarios represents the inner-workings of a corporation. STAFF-DR-02-029(b) CONF Attachment also satisfies the third element, as it 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 Kentucky as competitors would gain invaluable insight into the Company's future plans and financial outlook.

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).

iii. STAFF-DR-02-070(b) Attachments 1 through 97

Staff Request No. 02-070(b) states, in part, as follows:

Provide copies of its vegetation management contracts from 2019 through 2021.

In response to Staff Request No. 02-070(b), Duke Energy Kentucky provided STAFF-DR-02-070(b) CONF Attachments 1 through 97,¹ which contains the Company's vegetation management vendor contracts from 2019 through 2021.

STAFF-DR-02-070(b) CONF Attachments 1 through 97 are not publicly available, thus satisfying the first element of the statutory standard for confidentiality of a proprietary record. STAFF-DR-02-070(b) CONF Attachments 1 through 97 satisfy the second element of the standard as vendor contracts are generally recognized as confidential and proprietary because they include confidential pricing and other contract terms. STAFF-DR-02-070(b) CONF Attachments 1 through 97 also satisfies the third element because disclosure of these vendor contracts would 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 vegetation management and similar services, potentially resulting in increased costs for these services for customers.

The Company requests that these Attachments be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1), and additionally requests that these Attachments be treated as confidential in their entirety pursuant to 807 KAR 5:001E, Section 13(2)(a)(3)(b).

¹ For the sake of administrative efficiency, the Company is providing a single justification narrative for all 97 Attachments, as each Attachment is of the same type and this narrative applies the same to each Attachment.

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.

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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.²

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²In 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).