

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 DECEMBER 5, 2023 FIRST REHEARING 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) First Rehearing Request for Information issued on December 5, 2023:

- (1) STAFF-RHDR-01-006 CONF Attachment 2; and
- (2) STAFF-RHDR-01-007 CONF Attachment.

Specifically, Duke Energy Kentucky seeks confidential treatment of information referred to herein as the “Confidential Information,” which, broadly speaking, includes information related to sensitive third party agreements, vendor pricing, and cost information.

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-RHDR-01-006 CONF Attachment 2

Staff Rehearing Request No. 01-006 states as follows:

Refer to the Petition for Rehearing, page 26. Provide in an Excel spreadsheet format with all formulas, columns, and rows unprotected and fully accessible a version of Attachment BLS-2 using the changes to the weighted cost in capital ordered by the Commission in its October 12, 2023 final Order.

In response to Staff Rehearing Request No. 01-006, Duke Energy Kentucky is providing STAFF-RHDR-01-006 CONF Attachment 2 that includes the Company's calculation of: (a) equipment charges for the Company's Rate LED, and (b) maintenance charges for the Company's Rate LED. This Attachment contains information from vendors related to the costs of fixtures, poles, and other equipment categories, as well as labor rates related to maintenance of that equipment. STAFF-RHDR-01-006 CONF Attachment 2 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-RHDR-01-006 CONF Attachment 2 satisfies this standard, as it relates to the Company's vendors' pricing of certain equipment, services, and labor which should be treated as confidential, as gaining access to this information would be extremely valuable to the both the Company's competitors and its vendors' competitors, therefore meeting the second element of the statutory standard. STAFF-RHDR-01-006 CONF Attachment 2 also satisfies the third element, as it contains commercially sensitive information and 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 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). Additionally, the Commission has already afforded confidential treatment of Attachment BLS-3 which contains similar confidential information to STAFF-RHDR-01-006 CONF Attachment 2.¹

ii. STAFF-RHDR-01-007 CONF Attachment

Staff Rehearing Request No. 01-007 states, in part (c), as follows:

Provide the contract or written document memorializing the agreement regarding payment locations between Kroger and Duke Kentucky.

In response to Staff Rehearing Request No. 01-007(c), Duke Energy Kentucky is providing STAFF-RHDR-01-007 CONF Attachment, which is the Company's vendor contract between Kroger and Duke Energy Kentucky.

STAFF-RHDR-01-007 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 vendor contracts are generally recognized as confidential and proprietary because they include confidential pricing and other contract terms. STAFF-RHDR-01-007 CONF Attachment 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

¹ *In the Matter of the Electronic Application of Duke Energy Kentucky for 1) Adjustment of 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*, Order at 6, Case No. 2022-00372 (Ky. P.S.C. February 10, 2023) and *Id.*, Order at 2 (Ky. P.S.C. December 7, 2023).

expects to pay for similar services, potentially resulting in increased costs for these services for customers.

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).

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 December 22, 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).