

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN ELECTRONIC EXAMINATION OF THE)	
APPLICATION OF THE FUEL ADJUSTMENT)	CASE NO.
CLAUSE OF DUKE ENERGY KENTUCKY,)	2023-00012
INC. FROM NOVEMBER 1, 2020 THROUGH)	
OCTOBER 31, 2022)	

**PETITION FOR CONFIDENTIAL TREATMENT OF DUKE ENERGY
KENTUCKY, INC. FOR CERTAIN RESPONSES TO THE STAFF OF THE
PUBLIC SERVICE COMMISSION’S SEPTEMBER 6, 2023 FIRST
REQUEST FOR INFORMATION**

Duke Energy Kentucky, Inc. (Duke Energy Kentucky or 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 Request for Information issued on September 6, 2023:

- (1) STAFF-DR-01-004 Confidential Attachment;
- (2) STAFF-DR-01-005 Confidential Attachment;
- (3) STAFF-DR-01-017 Confidential Attachment;
- (4) STAFF-DR-01-032 Confidential Attachment;
- (5) STAFF-DR-01-033 Confidential Attachment;
- (6) STAFF-DR-01-034 Confidential Attachment; and,
- (7) STAFF-DR-01-037 Confidential Attachment.

Specifically, Duke Energy Kentucky seeks confidential treatment of information referred to herein as the “Confidential Information,” which, broadly speaking, includes: fuel solicitation proposals, evaluation and rankings; internal fuel procurement policies and procedures; generating unit outages, availability and dispatch; the projected fuel costs and total kilowatt hours (kWh) used to calculate base fuel costs; sales forecasts in both kWh and dollars; and planned future outages and maintenance schedules by plant. The Confidential Information is not known outside of Duke Energy Corporation and was developed internally by Duke Energy Corporation and Duke Energy Kentucky personnel that is not on file with any public agency, and is not available from any commercial or other source outside of the Company. All Confidential Information is only distributed within Duke Energy Kentucky to those who must have access for business reasons and is generally recognized as confidential and proprietary in the energy industry.

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. Attachments for Which Confidential Treatment is Sought

i. STAFF-DR-01-004 Confidential Attachment

Staff Request No. 01-004 states, in part, as follows:

List each written coal-supply solicitation issued during the last six months of the period under review.

a. For each solicitation, provide the date of the solicitation, the type of solicitation (contract or spot), the quantities solicited, a general description of the quality of coal solicited, the period over which deliveries were requested, and the generating unit(s) for which the coal was intended.

b. For each solicitation, state the number of vendors to whom the solicitation was sent, the number of vendors who responded, and the selected vendor(s). Provide the bid tabulation sheet or corresponding document that ranks the proposals. (This document

shall identify all vendors who made offers.) State the reasons for each selection. For each lowest-cost bid not selected, explain why the bid was not selected.

In response to Staff Request No. 01-004, Duke Energy Kentucky provided STAFF-DR-01-004 Confidential Attachment, that includes the Company's evaluation of its coal supply solicitation that includes the responsive bids from multiple vendors. Releasing this information would make public the coal pricing from multiple vendors and would place Duke Energy Kentucky at a commercial disadvantage as it negotiates contracts with various suppliers and vendors. It 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-01-004 Confidential Attachment satisfies this standard. Duke Energy Corporation's Regulated Fuels Group is responsible for the procurement of fuel and obtaining competitive pricing. Releasing this information would give potential competitors and fuel vendors for Duke Energy Kentucky in the energy markets inside information about Duke Energy Kentucky's fuel procurement strategy, risk mitigation actions, and tolerances; therefore, meeting the second element of the statutory standard. It also satisfies the third element, as releasing this information would harm the Company and its customers in the future as competitors and counterparties would know how Duke Energy Kentucky evaluates its fuel supply and procures fuel for its generating station. If publicly available, competitors could use this information to manipulate the market and financially harm Duke Energy Kentucky's

customers by adjusting their bidding strategies and potentially manipulating the price the Company pays for coal.

ii. STAFF-DR-01-005 Confidential Attachment

Staff Request No. 01-005 states, in part, as follows:

List each oral coal-supply solicitation issued during the last six months of the period under review.

a. For each solicitation, state why the solicitation was not written, the date(s) of the solicitation, the quantities solicited, a general description of the quality of coal solicited, the period over which deliveries were requested, and the generating unit(s) for which the coal was intended.

b. For each solicitation, identify all vendors solicited and the vendor(s) selected. Provide the bid tabulation sheet or other document that ranks the proposals. (This document shall identify all vendors who made offers.) State the reasons for each selection. For each lowest-cost bid not selected, explain why the bid was not selected.

Similar to that of STAFF-DR-01-004, in response to Staff Request No. 01-005, Duke Energy Kentucky provided STAFF-DR-01-005 Confidential Attachment, which would make public the responses to an oral coal supply solicitation from multiple vendors. Releasing this information would place Duke Energy Kentucky at a commercial disadvantage as it negotiates contracts with various suppliers and vendors and could discourage them from providing information in the future. It 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-01-005 Confidential Attachment satisfies this standard. Duke Energy Corporation’s Regulated

Fuels Group is responsible for the procurement of fuel and obtaining competitive pricing. Releasing this information would give potential competitors and fuel vendors for Duke Energy Kentucky in the energy markets inside information about Duke Energy Kentucky's fuel procurement strategy, risk mitigation actions, and tolerances; therefore, meeting the second element of the statutory standard. It also satisfies the third element, as releasing this information would harm the Company and its customers in the future as competitors and counterparties would know how Duke Energy Kentucky evaluates its fuel supply and procures fuel for its generating station. If publicly available, competitors could use this information to manipulate the market and financially harm Duke Energy Kentucky's customers by adjusting their bidding strategies and potentially manipulating the price the Company pays for coal.

iii. STAFF-DR-01-017 Confidential Attachment

Staff Request No. 01-017 states, in part, as follows:

For the last six months of the period under review provide the hour by hour availability of each generating unit availability, how the unit had been bid into the day ahead market, whether the unit was operating, and if operating the minimum (economic or operational) and maximum capacity of the unit.

In response to Staff Request No. 01-017, Duke Energy Kentucky provided STAFF-DR-01-017 Confidential Attachment, which contains generating unit daily availability could grant vendors a distinct advantage in that they would be able to anticipate how Duke Energy Kentucky utilizes its generating fleet in the competitive markets.

STAFF-DR-01-017 Confidential Attachment is not publicly available, thus satisfying the first element of the statutory standard for confidentiality of a proprietary record. Further, this information represents confidential and proprietary information in

accordance with KRS 61.878(1)(c)(1), which could provide power marketing competitors and fuel vendors with knowledge regarding Duke Energy Kentucky's operating costs and commodity positions. This would allow them to potentially manipulate the marketplace so as to unnecessarily cause consumers to pay more for electricity than they otherwise would.

iv. STAFF-DR-01-032 Confidential Attachment

Staff Request No. 01-032 states, in part, as follows:

Provide the most recent projected fuel requirements for the years 2023 and 2024 in tons for coal, MMBtu for natural gas, and dollars.

In response to Staff Request No. 01-032, Duke Energy Kentucky provided STAFF-DR-01-032 Confidential Attachment, which provides a forecast of projected fuel consumption over the next two years. Releasing this information would disclose the Company's projected fuel requirements and estimated costs which if made available, could be used by potential vendors to manipulate prices to win contracts they may not otherwise win, and adversely impact what customers would ultimately pay. It is not publicly available, thus satisfying the first element of the statutory standard for confidentiality of a proprietary record.

Further, this information represents confidential and proprietary information in accordance with KRS 61.878(1)(c)(1), of which public disclosure of the Company's projected costs would afford Duke Energy Kentucky's competitors a distinct competitive advantage in bidding for and securing new bulk power loads and would place Duke Energy Kentucky at a commercial disadvantage in competing in the wholesale power markets.

v. STAFF-DR-01-033 Confidential Attachment

Staff Request No. 01-033 states, in part, as follows:

Provide the most recent sales projections for the years 2023 and 2024 in kWh and dollars.

In response to Staff Request No. 01-033, Duke Energy Kentucky provided STAFF-DR-01-033 Confidential Attachment, which provides a list of projected sales by customer class, including anticipated revenue assuming specific total kWh sales projections. It is not publicly available, thus satisfying the first element of the statutory standard for confidentiality of a proprietary record.

Further, this information represents confidential and proprietary information in accordance with KRS 61.878(1)(c)(1), which contains sales projections that should be afforded confidential protections as they are internally-derived figures that would give competitors, marketers, and vendors a competitive advantage in any existing or prospective commercial relationship involving Duke Energy Kentucky. Maintaining the confidentiality of the projected kWh sales is necessary to protect the interests of both the Company and its customers.

vi. STAFF-DR-01-034 Confidential Attachment

Staff Request No. 01-034 states, in part, as follows:

Provide the planned maintenance schedule for each of the generating units for the years 2023 and 2024.

In response to Staff Request No. 01-034, Duke Energy Kentucky provided STAFF-DR-01-034 Confidential Attachment, which contains a list of planned maintenance over the next two years, could grant vendors a distinct advantage that would provide critical “downtime” information that would necessarily impair Duke Energy Kentucky’s ability to negotiate with prospective contractors and vendors.

STAFF-DR-01-034 Confidential Attachment is not publicly available, thus satisfying the first element of the statutory standard for confidentiality of a proprietary

record. Further, this information represents confidential and proprietary information in accordance with KRS 61.878(1)(c)(1), that if released prospective contractors and vendors would have access to the number, duration, and timing of outages, it would give them a distinct advantage in anticipating maintenance schedules and plant condition and operating characteristics. This would very likely impair Duke Energy Kentucky's ability to negotiate with prospective contractors and vendors. Thus, satisfying the remaining two elements of the statutory standard.

vii. STAFF-DR-01-037 Confidential Attachment

Staff Request No. 01-037 states, in part, as follows:

List each written coal-supply solicitation issued during the last six months of the period under review. a. For each solicitation, provide the date of the solicitation, the type of solicitation (contract or spot), the quantities solicited, a general description of the quality of coal solicited, the period over which deliveries were requested, and the generating unit(s) for which the coal was intended. b. For each solicitation, state the number of vendors to whom the solicitation was sent, the number of vendors who responded, and the selected vendor(s). Provide the bid tabulation sheet or corresponding document that ranks the proposals. (This document shall identify all vendors who made offers.) State the reasons for each selection. For each lowest-cost bid not selected, explain why the bid was not selected.

In response to Staff Request No. 01-037, Duke Energy Kentucky provided STAFF-DR-01-037 Confidential Attachment, which would make public confidential operating characteristics of its generating units including costs of operation at minimum and maximum loads. The attachment includes a detailed calculation of the Company's limitation for costs recoverable in its FAC using hourly data. Releasing this information would disclose confidential operating characteristics of the Company's generating fleet and place the Company at a commercial disadvantage in the competitive energy markets. It 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-01-037 Confidential Attachment satisfies this standard. Duke Energy Corporation’s Regulated Fuels Group is responsible for the procurement of fuel and obtaining competitive pricing. Releasing this information would give potential competitors and fuel vendors for Duke Energy Kentucky in the energy markets inside information about Duke Energy Kentucky’s fleet economics, operating parameters, and fuel procurement strategy, including risk mitigation actions, and tolerances. Therefore, this information meets the second element of the statutory standard. It also satisfies the third element, as releasing this information would harm the Company and its customers in the future as competitors and counterparties would know how Duke Energy Kentucky evaluates its fuel supply and procures fuel for its generating station. If publicly available, competitors could use this information to manipulate the market and financially harm Duke Energy Kentucky’s customers by adjusting their bidding strategies and potentially manipulating the price the Company pays for coal.

c. Request for Confidential Treatment

Duke Energy Kentucky respectfully requests that the Confidential Information be withheld from public disclosure for a period of ten 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.

The Company does not object to limited disclosure of the confidential information described herein, pursuant to an acceptable protective agreement, with the Attorney General or other intervenors with a legitimate interest in reviewing the same for the purpose of participating in this case.

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,

/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 being filed in paper medium; that the electronic filing was transmitted to the Commission on September 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.¹

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Counsel for Duke Energy Kentucky, Inc.

¹*In the Matter of Electronic Emergency Docket Related to the Novel Coronavirus COVID-19, Order, Case No. 2020-00085 (Ky. PSC July 22, 2021).*