

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

The Electronic Application of Duke Energy)
Kentucky, Inc. for a Certificate of Public)
Convenience and Necessity to Construct A) Case No. 2023-00239
138-kV Transmission Line And Associated)
Facilities In Boone County (Hebron to)
Oakbrook Transmission Line Project))

**PETITION OF DUKE ENERGY KENTUCKY, INC. FOR CONFIDENTIAL
TREATMENT OF INFORMATION CONTAINED IN ITS APPLICATION**

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 certain information provided by Duke Energy Kentucky in its Application:

- (1) Confidential Exhibit 4 – Duke Energy 138-kV Transmission Line Standards;
- (2) Confidential Exhibit 15 – Distribution Planning Document of Growth; and,
- (3) Confidential Exhibit 17 – Transmission Planning Analysis.

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.

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. Confidential Exhibit 4 – Duke Energy 138-kV Transmission Line Standards

Confidential Exhibit 4 contains standards and internal policies and procedures. These policies and procedures are proprietary in nature and are 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.’” Confidential Exhibit 4 satisfies this standard, as these transmission line standards have been developed by internal expertise and contain detailed information regarding the operations of the Company and Duke Energy Corporation and, therefore, meets the second element of the statutory standard. Confidential Exhibit 4 also satisfies the third element, as it contains commercially sensitive information that if it were to become publicly available, competitors, potential vendors, and transaction counterparties would have access to information regarding the Company’s operations that would place it at a significant disadvantage in its operations as it competes for business or negotiates contracts.

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

ii. Confidential Exhibit 15 – Distribution Planning Document of Growth

Confidential Exhibit 15 contains confidential records and analysis that includes and contains detailed customer load information and their expansion strategies as well as sensitive economic development projects that are subject to non-disclosure agreements.

Confidential Exhibit 15 is not publicly available, thus satisfying the first element of the statutory standard for confidentiality of a proprietary record. This information represents confidential and proprietary information, that if released would place these entities at a commercial disadvantage versus their competitors and would potentially place the Company in violation of negotiated non-disclosure agreements. It should be considered confidential for reasons as defined under KRS 61.878(1)(d) as prospective locations of business or industry as well as potential utility infrastructure to serve such locations as contemplated under (m)(1). If publicly released, this information would provide details regarding potential business expansion in the Commonwealth and utility infrastructure that, in the wrong hands, could be exploited and used in ways that could create competitive advantages and security and potential public safety risks.

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

iii. Confidential Exhibit 17 – Transmission Planning Analysis

Confidential Exhibit 17 contains confidential records and analysis, including the configuration of the Company's transmission system with loading, overloading scenarios, which if released would expose vulnerabilities of these critical systems.

Confidential Exhibit 17 is not publicly available, thus satisfying the first element of the statutory standard for confidentiality of a proprietary record. This information represents confidential and proprietary information in accordance with 16.878(1)(m)(1), that if released would provide details regarding utility infrastructure that, in the wrong hands, could be exploited and used in ways that could harm the public.

The Company requests that this Exhibit be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1), and additionally requests that this Exhibit be treated as confidential in their 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,

/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 September 13th, 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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/s/Rocco O. D'Ascenzo

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).*