

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF DUKE ENERGY KENTUCKY, INC.)
FOR AN ADJUSTMENT TO RIDER NM RATES AND) CASE NO. 2023-00413
FOR TARIFF APPROVAL)

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

Duke Energy Kentucky, Inc. (Duke Energy Kentucky or Company), pursuant to 807 KAR 5:001, Section 13, respectfully requests the Commission to classify and protect certain information provided by Duke Energy Kentucky in its Rebuttal Testimony. The information for which Duke Energy Kentucky now seeks confidential treatment is contained in Confidential Rebuttal Attachment BLS-1 to the Rebuttal Testimony of Bruce L. Sailors, and includes: (1) information related to operations and management (O&M) costs, projected fuel and environmental compliance forecasted costs, power market prices, and projected capacity and resource alternative capital costs; and (2) data licensed and produced from third party owned and licensed modeling tools; (collectively Confidential Information). The public disclosure of the information described would place Duke Energy Kentucky at a commercial disadvantage as it negotiates contracts with various suppliers and vendors and could potentially harm Duke Energy Kentucky's competitive position in the marketplace, to the detriment of Duke Energy Kentucky and its customers.

In support of this Petition, Duke Energy Kentucky states:

1. The Kentucky Open Records Act exempts from disclosure certain commercial information. KRS 61.878 (1)(c). 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.

Public disclosure of the information identified herein would, in fact, prompt such a result for the reasons set forth below.

2. The Confidential Information in Confidential Rebuttal Attachment BLS-1 attached to Bruce Sailors' Rebuttal Testimony includes: (1) information related to operations and management (O&M) costs, projected fuel and environmental compliance forecasted costs, power market prices, and projected capacity and resource alternative capital costs; and (2) data licensed and produced from third party owned and licensed modeling tools. The Company requests that this Confidential 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 5:001, Section 13(2)(a)(3)(b).

3. Confidential Rebuttal Attachment BLS-1 was developed internally by Duke Energy Kentucky personnel, is not on file with any public agency, and is not available from any commercial or other source outside Duke Energy Kentucky. The aforementioned information is distributed within Duke Energy Kentucky only to those employees who must have access for business reasons.

4. If publicly disclosed, this Confidential Information could give competitors an advantage in bidding for and securing new resources. Similarly, disclosure would afford an undue advantage to Duke Energy Kentucky's vendors and suppliers as they would enjoy an obvious advantage in any contractual negotiations to the extent they could calculate

Duke Energy Kentucky's requirements and what Duke Energy Kentucky anticipates those requirements to cost.

5. Public disclosure of this information, particularly as it relates to supply-side alternatives, would reveal the business model Duke Energy Kentucky uses - the procedure it follows and the factors and inputs it considers - in evaluating the economic viability of various generation related projects. Public disclosure would give Duke Energy Kentucky's contractors, vendors and competitor's access to Duke Energy Kentucky's cost and operational parameters, as well as insight into its contracting practices. Such access would impair Duke Energy Kentucky's ability to negotiate with prospective contractors and vendors and could harm Duke Energy Kentucky's competitive position in the power market, ultimately affecting the costs to serve customers.

6. Additionally, in developing Confidential Rebuttal Attachment BLS-1, Duke Energy Kentucky used certain confidential and proprietary data consisting of confidential information belonging to third parties who take reasonable steps to protect their confidential information, such as only releasing such information subject to confidentiality agreements. Duke Energy Kentucky used forecasts of various commodities and inputs such as power market data and fuel price forecasts (coal prices and gas prices) developed by independent third parties, subject to confidentiality restrictions. Moreover, this information is deserving of protection to protect Duke Energy Kentucky's customers. If allowance brokers or equipment vendors knew Duke Energy Kentucky's forecasted emissions and fuel prices, by station or otherwise, such brokers or vendors would have an unfair advantage in negotiating future emission allowance or emission control equipment sales, to the detriment of Duke Energy Kentucky and its customers. Furthermore, if competitors

of Duke Energy Kentucky knew such forecasts, they could have an advantage in competing for new business against Duke Energy Kentucky.

7. This information was, and remains, integral to Duke Energy Kentucky's effective execution of business decisions. And such information is generally regarded as confidential or proprietary. Indeed, as the Kentucky Supreme Court has found, "information concerning the inner workings of a corporation is 'generally accepted as confidential or proprietary.'" *Hoy v. Kentucky Industrial Revitalization Authority, Ky.*, 904 S.W.2d 766, 768 (Ky. 1995).

8. 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.

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

10. 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 Confidential Information described herein.

Respectfully submitted,

/s/ Larisa M. Vaysman

Rocco O. D'Ascenzo (92796)

Deputy General Counsel

Larisa M. Vaysman (98944)

Associate General Counsel

Duke Energy Business Services LLC

139 East Fourth Street, 1303-Main

Cincinnati, Ohio 45202

Phone: (513) 287-4320

Fax: (513) 370-5720

larisa.vaysman@duke-energy.com

Counsel for Duke Energy Kentucky, Inc.

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 April 17, 2024; 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

John G. Horne, II
The Office of the Attorney General
Utility Intervention and Rate Division
700 Capital Avenue, Ste 118
Frankfort, Kentucky 40601
John.Horne@ky.gov

Randal A. Strobo
David E. Spenard
STROBO BARKLEY PLLC
730 West Main Street, Suite 202
Louisville, Kentucky 40202
rstrobo@strobobarkley.com
dspenard@strobobakley.com

Byron L. Gary
Tom FitzGerald
Ashley Wilmes
Kentucky Resources Council
P.O. Box 1070
Frankfort, Kentucky 40602
Byron@kyrc.org
FitzKRC@aol.com
Ashley@kyrc.org

/s/ Larisa M. Vaysman

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).*