

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.
FOR TARIFF APPROVAL) 2023-00413

**PETITION FOR CONFIDENTIAL TREATMENT OF DUKE ENERGY
KENTUCKY, INC. FOR CERTAIN RESPONSES TO KENTUCKY SOLAR
ENERGY SOCIETY AND KENTUCKIANS FOR THE COMMONWEALTH'S
JANUARY 19, 2024 FIRST REQUEST FOR INFORMATION**

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 response to Data Request No. 4, as requested by Kentucky Solar Energy Society and Kentuckians for the Commonwealth (KSES/KC) in this case on January 19, 2024. The information KSES/KC seeks through discovery and for which Duke Energy Kentucky now seeks confidential treatment is contained in the response to Data Request No. 4, 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; (2) data licensed and produced from third party owned and licensed modeling tools;¹ and (3) data pertaining to ancillary services costs (collectively, Confidential Information).² The public disclosure of the information described would place

¹ The first two items refer to KSES-DR-01-004(b) CONF Attachment, which contains, in its entirety, the Confidential Attachment BLS-3 to the Direct Testimony of Bruce Sailors, which was already the subject of a separate petition for confidential treatment filed on December 11, 2023, in this proceeding.

² The third item refers to KSES-DR-01-004(b) CONF Attachment 3.

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 the response to Data Request No. 4 includes: (1) information related to O&M costs, projected fuel and environmental compliance forecasted costs, power market prices, and projected capacity and resource alternative capital costs; (2) data licensed and produced from third party owned and licensed modeling tools; and (3) data pertaining to ancillary services costs. The Company requests that this Confidential Information be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1), and additionally requests that KSES-DR-01-004 Confidential Attachment and KSES-DR-01-004(b) Confidential Attachment 3 be treated as confidential in their entirety pursuant to 807 KAR 5:001, Section 13(2)(a)(3)(b).

3. KSES-DR-01-004 Confidential Attachment and KSES-DR-01-004(b) Confidential Attachment 3 were developed internally by Duke Energy Kentucky personnel

(using third-party confidential data as described further below), are not on file with any public agency, and are 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 costs and projected costs.

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 KSES-DR-01-004 Confidential Attachment and KSES-DR-01-004(b) Confidential Attachment 3, 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. Duke Energy Kentucky used confidential data from a vendor in KSES-DR-01-004(b) Confidential Attachment 3. Moreover, this information is deserving of protection to protect Duke Energy Kentucky's customers. If vendors knew Duke Energy Kentucky's costs and/or forecasted costs, such brokers or vendors would have an unfair advantage in negotiating future contracts, possibly to the detriment of Duke Energy Kentucky and its customers.

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

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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 February 2, 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.³

/s/ Larisa M. Vaysman

Counsel for Duke Energy Kentucky, Inc.

³*In the Matter of Electronic Emergency Docket Related to the Novel Coronavirus COVID-19, Order, Case No. 2020-00085 (Ky. PSC July 22, 2021).*