

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, INC.)	2024-00140
FROM NOVEMBER 1, 2022 THROUGH APRIL)	
30, 2023)	

PETITION FOR CONFIDENTIAL TREATMENT OF DUKE ENERGY KENTUCKY, INC. FOR CERTAIN RESPONSES TO THE STAFF OF THE PUBLIC SERVICE COMMISSION’S SEPTEMBER 9, 2024 SECOND 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 its response to Commission Staff’s (Staff) Second Request for Information issued on September 9, 2024:

(1) Highlighted portion of the table included in response to STAFF-DR-02-005.

Specifically, Duke Energy Kentucky seeks confidential treatment of information referred to herein as the “Confidential Information,” which, broadly speaking, includes sensitive information regarding the Company’s forced outage rates, its capacity plan submitted to PJM, which includes the individual unforced capacity and installed capacity for each of its generating units, the disclosure of which would injure Duke Energy Kentucky and its competitive position and business interests. The Confidential Information is not known outside of Duke Energy Corporation, except by PJM (who keeps it confidential), 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.

Pursuant to the Commission’s November 21, 2024 Order denying the Petition for Confidential Treatment of Duke Energy Kentucky, Inc. for Commission Staff’s Requests for Information, filed September 23, 2024, this is a renewed Petition for Confidential Treatment. As such, this renewed Petition for Confidential Treatment complies with paragraph 3 in the Commission’s November 21, 2024 Order.

I. MOTION FOR CONFIDENTIAL TREATMENT

a. Statutory Standard

Administrative Regulation 807 KAR 5:001, Section 13, 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 “specific grounds pursuant to KRS 61.878 for classification of that material as confidential,” in accordance with the Kentucky Open Records Act, KRS 61.878. *See* 807 KAR 5:001 Section 13(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 document for which Duke Energy Kentucky is seeking confidential treatment, which is described in further detail below, satisfies each of these three statutory criteria.

b. Information for Which Confidential Treatment is Sought

i. Highlighted portion of the table included in response to STAFF-DR-02-005

Staff Request No. 02-005 states as follows:

Explain if Duke Kentucky was subject to PJM Performance Assessment Interval penalties during the review period. If so, include an explanation for why for each instance and the amount(s) of the penalties.

In response to Staff Request No. 02-005, Duke Energy Kentucky provides a table, which includes sensitive information, the disclosure of which would injure Duke Energy Kentucky and its competitive position and business interests. First, it is not publicly available, thus satisfying the first element of the statutory standard for confidentiality of a proprietary record.

Second, this type of information is generally recognized as confidential or proprietary. Duke Energy Corporation's Fuels and Systems Optimization (FSO) group is responsible for managing the Company's capacity position in the competitive wholesale markets. 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.'" The highlighted table satisfies this standard, as Duke Energy Kentucky's capacity position represents the inner-workings of a corporation and, therefore, meets the second element of the statutory standard.

Finally, if openly disclosed, would present an unfair commercial advantage to competitors and counterparties of the Company, meeting the third statutory element. The information contained in the response would give potential bilateral capacity buyers and sellers, as well as PJM capacity market participants, information regarding Duke Energy Kentucky's capacity position thus meeting the criteria for the third element. As Duke Energy Kentucky engages in the bilateral capacity market and the PJM capacity market, this information can be used by competitors and counterparties to assess Duke Energy Kentucky's position and unfairly influence the price.

For all of the reasons above, the Company requests that the highlighted table be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1).

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).

II. CONCLUSION

WHEREFORE, Duke Energy Kentucky, Inc., respectfully requests that the Commission classify and protect as confidential the specific 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
rocco.d'ascenzo@duke-energy.com
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 being filed in paper medium; that the electronic filing was transmitted to the Commission on December 20, 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

/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).*