

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 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 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. Duke Energy Corporation's Regulated Fuels Group is responsible for managing the Company's capacity position in the competitive wholesale markets as well as, 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 operational characteristics, risk mitigation actions, and tolerances. 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 capacity position in the market, 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. It is not publicly available, thus satisfying the first element of the statutory standard for confidentiality of a proprietary record.

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 23, 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/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).