

**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.	)	2024-00148
FROM MAY 1, 2023 THROUGH OCTOBER 31,	)	
2023	)	

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**PETITION FOR CONFIDENTIAL TREATMENT OF DUKE ENERGY  
KENTUCKY, INC. FOR CERTAIN RESPONSES TO THE STAFF OF THE  
PUBLIC SERVICE COMMISSION’S AUGUST 2, 2024 FIRST  
REQUEST FOR INFORMATION**

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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 the following attachment filed in its responses to Commission Staff’s (Staff) First Request for Information issued on August 2, 2024:

- (1) STAFF-DR-01-011 Confidential Attachment

Specifically, Duke Energy Kentucky seeks confidential treatment of information referred to herein as the “Confidential Information,” which, broadly speaking, includes internal fuel procurement policies and procedures. 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. Attachment for Which Confidential Treatment is Sought**

**i. STAFF-DR-01-011 Confidential Attachment**

Staff Request No. 01-011 states as follows:

For the period under review, state whether there have been any changes to Duke Kentucky's written policies and procedures regarding its fuel procurement.

- a. If yes:
  - 1) Describe the changes;
  - 2) Provide the written policies and procedures as changed;
  - 3) State the date(s) the changes were made; and
  - 4) Explain why the changes were made.
- b. If no, provide the date Duke Kentucky's current fuel procurement policies and procedures were last changed, provide the date when they were last provided to the Commission, and identify the proceeding in which they were provided. If any current fuel procurement policies and procedures have not been provided to the Commission, provide those fuel procurement policies and procedures, and explain why they were not previously provided.

In response to Staff Request No. 01-011, Duke Energy Kentucky provides STAFF-DR-01-011 Confidential Attachment, which includes, but is not limited to, risk tolerances, and the recommended contract term coverage level strategies for Duke Energy Kentucky, and its regulated utility affiliates in other jurisdictions. The Company requests that this 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 5:001E, Section 13(2)(a)(3)(b).

The public disclosure of the information described above would place Duke Energy Kentucky (and its regulated utility affiliates in other states) at a commercial disadvantage as it negotiates contracts with various suppliers and vendors and potentially harm Duke

Energy Kentucky's competitive position in the marketplace, to the detriment of Duke Energy Kentucky and its customers. It is 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.'" STAFF-DR-01-011 Confidential Attachment satisfies this standard. Duke Energy Corporation's Regulated Utilities Group, particularly the Fuels & Systems Optimization and Distributed Energy Resources groups, are responsible for the procurement of coal for the regulated utilities in the Duke Energy Corporate footprint and thus its policies and procedures are all-encompassing. 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 fuel procurement strategy, risk mitigation actions, and tolerances; therefore, meeting the second element of the statutory standard. It also satisfies the third element, as 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 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.

**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

Rocco O. D'Ascenzo (92796)

Deputy General Counsel

Larisa Vaysman

Associate General Counsel (98944)

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 August 26, 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.<sup>1</sup>

John G. Horne, II  
The Office of the Attorney General  
Utility Intervention and Rate Division  
700 Capital Avenue, Ste 118  
Frankfort, Kentucky 40601-8204

*/s/Rocco O. D'Ascenzo*  
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*Counsel for Duke Energy Kentucky, Inc.*

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<sup>1</sup>*In the Matter of Electronic Emergency Docket Related to the Novel Coronavirus COVID-19, Order, Case No. 2020-00085 (Ky. PSC July 22, 2021).*