

**COMMONWEALTH OF KENTUCKY**

**BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

ELECTRONIC 2024 INTEGRATED RESOURCE	)	CASE NO.
PLAN OF DUKE ENERGY KENTUCKY, INC.	)	2024-00197

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**PETITION FOR CONFIDENTIAL TREATMENT OF DUKE ENERGY KENTUCKY, INC. FOR CERTAIN ATTACHMENTS IN ITS RESPONSES TO THE STAFF OF THE PUBLIC SERVICE COMMISSION’S DECEMBER 16, 2024 POST-HEARING REQUESTS 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 confidential information filed in its responses to Commission Staff’s (Staff) Post-Hearing Requests for Information issued on December 16, 2024:

- (1) Confidential response to STAFF-PHDR-01-008.

Specifically, Duke Energy Kentucky seeks confidential treatment of information referred to herein as the “Confidential Information,” which includes an individual customer’s name and sensitive load information pertaining only to that individual customer.

**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. Responses for Which Confidential Treatment is Sought**

**i. Confidential response to STAFF-PHDR-01-008**

Staff Post-Hearing Request No. 01-008 states as follows:

Refer to Case No. 2024-00354,<sup>1</sup> Direct Testimony of Ibrar A. Khera, page 7, lines 1 through 4 and the hearing video transcript of 2024-00197,<sup>2</sup> time stamps 07:12:12-07:12:36 and 07:12:49-07:13:27. Provide clarification regarding the commitment of a large energy intensive commercial customer locating in Duke Kentucky's service area.

In response to Staff Post-Hearing Request No. 01-008, Duke Energy Kentucky provided the name of an individual customer and sensitive load information pertaining to that customer. The Company requests that this Confidential Information be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1), and additionally requests that the highlighted Confidential Information be treated as confidential pursuant to 807 KAR 5:001E, Section 13(2)(a)(3)(b).

To the knowledge of Duke Energy Kentucky, the highlighted Confidential Information provided in STAFF-PHDR-01-008 is not publicly available, thus satisfying the first element of the statutory standard for confidentiality of a proprietary record. The response to STAFF-PHDR-01-008 also satisfies the second element, as it contains the identity of an individual customer and sensitive load information provided by that customer in confidence to the Company which may represent. The customer's future intent with regard to load likely pertains to the customer's effective execution of business decisions. And such information is generally regarded as confidential or proprietary. Indeed, as the

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<sup>1</sup> Case No. 2024-00354, *Electronic Application of Duke Energy Kentucky, Inc. For: 1) An Adjustment of The Electric Rates; 2) Approval of New Tariffs; 3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; And 4) All Other Required Approvals and Relief* (filed Dec 2, 2024), Application.

<sup>2</sup> Hearing Video Transcript of the Dec. 10, 2024 Hearing at 07:12:12-07:12:36 and 07:12:49-07:13:27. Volume 16 at 168.

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). Finally, the third element is satisfied, as disclosure of this information could result in both vendors and competitors of the customer having advance knowledge of the customer’s future business plans and obtaining undue advantage in the commercial arena on that basis.

**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

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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 January 21, 2025; 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>3</sup>

*/s/Larisa M. Vaysman*  
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*Counsel for Duke Energy Kentucky, Inc.*

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<sup>3</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).*