

**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 RESPONSES TO THE STAFF OF THE PUBLIC SERVICE COMMISSION’S SEPTEMBER 23, 2024 SECOND 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) Second Request for Information issued on September 23, 2024:

- (1) STAFF-DR-02-001 Confidential Attachment; and
- (2) STAFF-DR-02-008(a) and (b) Confidential Attachments.

Specifically, Duke Energy Kentucky seeks confidential treatment of information referred to herein as the “Confidential Information,” which, broadly speaking, includes a management presentation with detailed analysis and strategy recommendations related to the Company transitioning away from a fixed resource requirement entity in PJM. This sensitive and proprietary information includes analysis of costs and energy markets, and vendor whitepapers. The public disclosure of the information described would place Duke Energy Kentucky at a commercial disadvantage as it manages its business in the wholesale power markets, 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. Moreover, to the extent the requested information is subject to licensing agreements, disclosure of the information would be in violation of such agreements and could put the Company in an adverse legal position to the detriment of its customers.

## **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. Attachments for Which Confidential Treatment is Sought**

**i. STAFF-DR-02-001 Confidential Attachment**

Staff Request No. 02-001 states as follows:

On September 6, 2024, Duke Kentucky filed its application to the Commission to become a full participant in the PJM base residual and incremental auction construct for the 2027/2028 delivery year and for necessary accounting and tariff changes.<sup>1</sup>

- a. Identify the time interval between when the Integrated Resource Plan (IRP) modeling was completed, and the decision was made to switch to a PJM reliability pricing model (RPM) construct.
- b. Provide any meeting minutes, notes, or correspondence relating to the decision to switch to the RPM construct.

In response to Staff Request No. 02-001, Duke Energy Kentucky provides STAFF-DR-02-001 Confidential Attachment, which contains a management presentation regarding sensitive operational data and risk assessments related to the Company's generating units that if released would adversely affect their position in the competitive energy markets. The Company requests that this Attachment be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1), and additionally requests that this Attachment

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<sup>1</sup> See Case No. 2024-00285, *In the Matter of the Electronic Application of Duke Energy Kentucky, Inc. to Become a Full Participant in the PJM Interconnection LLC, Base Residual and Incremental Auction Construct for the 2027/2028 Delivery Year and for Necessary Accounting and Tariff Changes* (filed Sept. 6, 2024).

be treated as confidential in its entirety pursuant to 807 KAR 5:001E, Section 13(2)(a)(3)(b).

STAFF-DR-02-001 Confidential Attachment is not publicly available, thus satisfying the first element of the statutory standard for confidentiality of a proprietary record. The second element is also satisfied, as this information is commercially sensitive and proprietary information that constitutes a “trade secret” under KRS 365.880(4). The third element is satisfied, as disclosure of this information would result in a commercial disadvantage. STAFF-DR-02-001 Confidential Attachment contains Company work product and if this information is publicly released, it will place the Company at a competitive disadvantage, as competitors would have access to the operations of the Company’s generating units and the work and ideas developed by Duke Energy Kentucky.

**ii. STAFF-DR-02-008(a) and (b) Confidential Attachments**

Staff Request No. 02-008 states as follows:

On September 6, 2024, Duke Kentucky filed its application to the Commission to become a full participant in the PJM base residual and incremental auction construct for the 2027/2028 delivery year and for necessary accounting and tariff changes.<sup>2</sup>

- c. Identify the time interval between when the Integrated Resource Plan (IRP) modeling was completed, and the decision was made to switch to a PJM reliability pricing model (RPM) construct.
- d. Provide any meeting minutes, notes, or correspondence relating to the decision to switch to the RPM construct.

In response to Staff Request No. 02-001, Duke Energy Kentucky provides STAFF-DR-02-008(a) and (b) Confidential Attachments, which broadly speaking includes Vendor analysis and modeling and licensed proprietary data. The Company requests that these

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<sup>2</sup> See Case No. 2024-00285, *In the Matter of the Electronic Application of Duke Energy Kentucky, Inc. to Become a Full Participant in the PJM Interconnection LLC, Base Residual and Incremental Auction Construct for the 2027/2028 Delivery Year and for Necessary Accounting and Tariff Changes* (filed Sept. 6, 2024).

Attachments be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1), and additionally requests that the Attachments be treated as confidential in its entirety pursuant to 807 KAR 5:001E, Section 13(2)(a)(3)(b).

STAFF-DR-02-008(a) and (b) Confidential Attachments are not publicly available, thus satisfying the first element of the statutory standard for confidentiality of a proprietary record. STAFF-DR-02-008(a) and (b) Confidential Attachments satisfy the second element, as they contain information generated by a third-party for a fee that derives value from not being publicly available and constitutes a “trade secret” under KRS 365.880(4). Finally, the third element is satisfied, as disclosure of this information would result in a commercial disadvantage and could violate the Company’s agreement with the third-party to maintain the confidentiality of the information.

**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 (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 October 16, 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>3</sup>

/s/Rocco D'Ascenzo  
*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).