

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF DUKE ENERGY)	CASE NO.
KENTUCKY, INC. TO AMEND ITS DEMAND SIDE)	2024-00264
MANAGEMENT PROGRAMS)	

PETITION FOR CONFIDENTIAL TREATMENT OF DUKE ENERGY KENTUCKY, INC. FOR CERTAIN RESPONSES TO COMMISSION STAFF’S SEPTEMBER 27, 2024 FIRST 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 the following responses and attachments to Commission Staff’s (STAFF) First Request for Information issued on September 27, 2024:

- (1) STAFF-DR-01-006(a) Confidential Attachment; and
- (2) Highlighted portion contained within STAFF-DR-01-008 Confidential Attachment.

Specifically, Duke Energy Kentucky seeks confidential treatment of information referred to herein as the “Confidential Information,” which includes a third party/vendor benchmark review and third party/vendor pricing.

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 Confidential Information for which Duke Energy Kentucky is seeking confidential treatment, each of which is described in further detail below, satisfies each of these three statutory criteria.

b. Responses and Attachments for Which Confidential Treatment is Sought

i. STAFF-DR-01-006(a) Confidential Attachment

STAFF Request No. 01-006 states as follows:

Refer to the Application, pages 10–13.

a. Provide the benchmark review from ESource in regard to reviewing the tiered incentives. Include in the response other jurisdictions

or utilities that offer a Peak Time Rebate DSM Program, or something similar, and their program characteristics compared to Duke Kentucky.

b.

In response to STAFF Request No. 01-006(a), Duke Energy Kentucky provides STAFF-DR-01-006(a) Confidential Attachment, which contains a benchmark review from vendor ESource of tiered incentive pricing programs. This benchmark review was provided confidentially to the Company, pursuant to a paid subscription, by the vendor. 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 confidential data is not publicly available, thus satisfying the first element of the statutory standard for confidentiality of a proprietary record. It was obtained pursuant to a paid subscription, a type of content that is generally recognized as confidential and proprietary. The confidential data also satisfies the third element, as it contains commercially sensitive material, whose release would undermine the Company's ability to receive confidential information as a paid subscriber and would undermine the vendor's competitiveness by making public information that the vendor offers for a price confidentially.

ii. Highlighted portion contained within STAFF-DR-01-008 Confidential Attachment

STAFF Request No. 01-008 states as follows:

Refer to the Application, pages 14–15. Provide documentation supporting the calculation of the additional budget of \$77,000 to the PowerShare® program to conduct an Evaluation, Measurement and Verification evaluation, including any contracts, responses to requests for proposals, or workpapers.

In response to STAFF Request No. 01-008, Duke Energy Kentucky provides STAFF-DR-01-008 Confidential Attachment, which contains an evaluation plan from a vendor for the

PowerShare® program. The Company requests that the highlighted proposed pricing information contained within the confidential attachment be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1). The highlighted information in the confidential attachment to Staff Request No. 01-008 is vendor pricing prepared for the Company and not publicly available, thus satisfying the first element of the statutory standard for confidentiality of a proprietary record. The highlighted information satisfies the second element of the standard, as negotiated pricing information is generally recognized as confidential and proprietary. The highlighted information also satisfies the third element because disclosure of this pricing would place the Company at a disadvantage with future such negotiations, as counter-parties would have access to at least one competitor's pricing, potentially resulting in or exacerbating a lack of bargaining power for the Company and less favorable contract terms. If released, this information could undermine the Company's ability to negotiate prices for similar evaluations in the future in a low-cost efficient manner.

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 impair the interests of the Company if publicly disclosed.

To the extent the Confidential Information becomes 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/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 October 15th, 2024; and there are currently no parties that the Commission has excused from participation by electronic means in this proceeding.

/s/Larisa M. Vaysman

Counsel for Duke Energy Kentucky, Inc.