

**COMMONWEALTH OF KENTUCKY**

**BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

ELECTRONIC APPLICATION OF DUKE ENERGY	)	
KENTUCKY, INC. TO BECOME A FULL PARTICIPANT	)	
IN THE PJM INTERCONNECTION LLC, BASE RESIDUAL	)	CASE NO.
AND INCREMENTAL AUCTION CONSTRUCT FOR THE	)	2024-00285
2027/2028 DELIVERY YEAR AND FOR NECESSARY	)	
ACCOUNTING AND TARIFF CHANGES	)	

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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 DECEMBER 16, 2024 THIRD  
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 confidential information filed in its responses to Commission Staff’s (Staff) Third Request for Information issued on December 16, 2024:

- (1) Confidential highlights contained within STAFF-DR-03-003; and,
- (2) Confidential highlights contained within STAFF-DR-03-006.

Specifically, Duke Energy Kentucky seeks confidential treatment of information referred to herein as the “Confidential Information,” which, broadly speaking, generally describes aspects of the Company’s capacity positions in competitive wholesale electric markets, how it would calculate capacity market offers, and how it meets and plans to meet its load serving obligations in PJM. 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 attempts to serve its load, which could potentially harm Duke Energy Kentucky's competitive position in the marketplace, to the detriment of Duke Energy Kentucky and 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 Confidential Information 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. Confidential highlights contained within STAFF-DR-03-003**

Staff Request No. 03-003 states as follows:

Refer to the Direct Testimony of John Swez (Swez Direct Testimony), generally. Explain whether being an FRR or a reliability pricing model (RPM) designated PJM participant affects how Duke Kentucky intends to bid the East Bend and Woodsdale generation units into the BRA and subsequent incremental auctions. If the designation matters, explain the impact.

In response to Staff Request No. 03-003, Duke Energy Kentucky provides highlighted confidential data, which includes, but is not limited to, discussion of its pricing strategy for capacity offers and capacity positions. The Company requests that highlighted data contained within the response be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1).

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 could 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.’” The highlighted confidential information in the written response to STAFF-DR-03-003 satisfies this standard. If publicly disclosed, this information setting forth Duke Energy Kentucky’s capacity positions and capacity offer strategy in PJM will impact its strategies for managing its operations to provide service to its customers in the future, including how it will participate in the wholesale power markets in that it could give competitors an advantage in bidding its resources in PJM. Similarly, disclosure would afford an undue advantage to Duke Energy Kentucky’s competitors in these markets as they would enjoy an obvious advantage to the extent they could calculate Duke Energy Kentucky’s capacity positions, how it values certain resources, and what Duke Energy Kentucky anticipates those requirements to cost and revenues it could produce. Public disclosure would give Duke Energy Kentucky’s competitor’s access to Duke Energy Kentucky’s capacity values and operational parameters. Such access would impair Duke Energy Kentucky’s competitive position in the power market, ultimately affecting the costs to serve customers.

**ii. Confidential highlights contained within STAFF-DR-03-006**

Staff Request No. 03-006 states as follows:

Explain whether Duke Kentucky has factored into its analyses changes to the Effective Load Carrying Capability (ELCC) methodology in future BRAs or PJM’s anticipated move to a seasonal auction. If so, explain how. If not, explain why not.

In response to Staff Request No. 03-006, Duke Energy Kentucky provides highlighted confidential data, which includes, but is not limited to, its capacity positions and obligations in PJM, as well as aspects of the Company's approach to capacity pricing and valuation. The Company requests that highlighted data contained within the response be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1).

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 bilateral capacity suppliers and could 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.'" The highlighted confidential information in the written response to STAFF-DR-03-006 satisfies this standard. If publicly disclosed, this information setting forth Duke Energy Kentucky's capacity positions and obligations in PJM will impact its strategies for managing its operations to provide service to its customers in the future, including how it will participate in the wholesale power markets in that it could give competitors an advantage in bidding for and securing its resources. Similarly, disclosure would afford an undue advantage to Duke Energy Kentucky's competitors in these markets as they would enjoy an obvious advantage to the extent they could calculate Duke Energy Kentucky's capacity positions, how it values certain resources, and what Duke Energy Kentucky anticipates those

requirements to cost and revenues it could produce. Public disclosure would give Duke Energy Kentucky's competitors access to Duke Energy Kentucky's capacity position. Such access would impair Duke Energy Kentucky's competitive position in the power market, ultimately affecting the costs to serve customers.

**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 3, 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>1</sup>

*/s/Larisa M. Vaysman*  
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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).*