

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)	

**PETITION FOR CONFIDENTIAL TREATMENT OF DUKE ENERGY
KENTUCKY, INC. FOR CERTAIN RESPONSES TO THE STAFF OF THE
PUBLIC SERVICE COMMISSION’S NOVEMBER 1, 2024, SECOND
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 attachment filed in its responses to Commission Staff’s (Staff) Second Request for Information issued on November 1, 2024:

- (1) Confidential highlights contained within STAFF-DR-02-003 and its Confidential Attachment.

Specifically, Duke Energy Kentucky seeks confidential treatment of information referred to herein as the “Confidential Information,” which, broadly speaking, generally includes the Company’s capacity positions in competitive wholesale electric markets 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 vendors 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. 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. Information for Which Confidential Treatment is Sought

i. Confidential highlights contained within STAFF-DR-02-003 and its Confidential Attachment

Staff Request No. 02-003 states as follows:

Refer to the Application, page 5. Explain the degree to which Duke Kentucky is allowed to procure bilateral capacity from outside the DEOK zone. Include in the response whether the constraints are related to the availability of uncommitted capacity, excessive costs, or some other factor.

In response to Staff Request No. 02-003, Duke Energy Kentucky provides confidential data and STAFF-DR-02-003 Confidential Attachment, which includes, but is not limited to, its capacity purchases and sales, capacity positions, and revenues. The Company requests that highlighted data contained within the response and the Attachment be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1), and additionally requests that the Attachment be treated as confidential in its entirety pursuant to 807 KAR 5:001, 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 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.'" STAFF-DR-02-003 Confidential Attachment 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 new 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 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.

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

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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 November 15, 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.¹

/s/Rocco D'Ascenzo

Counsel for Duke Energy Kentucky, Inc.

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