

**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 ATTORNEY  
GENERAL OF THE COMMONWEALTH OF KENTUCKY'S  
NOVEMBER 1, 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 attachments and highlighted information filed in its responses to the Attorney General of the Commonwealth of Kentucky's (AG) Second Request for Information issued on November 1, 2024:

- (1) AG-DR-02-006(b) Confidential Attachment;
- (2) AG-DR-02-007 Confidential Attachment;
- (3) AG-DR-02-008 Confidential Attachment;
- (4) Confidential highlights contained within AG-DR-02-016 and its Confidential Attachment;
- (5) Confidential highlights contained within AG-DR-02-017;

(6) Confidential highlights contained within AG-DR-02-021 and its Confidential Attachment; and,

(7) AG-DR-02-024(b) 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 historic sales of capacity, including number of MegaWatts (MWs) and revenues, its historic and current capacity plans and positions, forecasted capacity position and plan to meet its load serving obligations in PJM, specific transmission circuit load, bilateral capacity purchase information, insurance policy analysis including terms, risks, costs, and possible counterparties. The public disclosure of the information described would place Duke Energy Kentucky at a commercial disadvantage as it manages its business and positions in the competitive 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.

## **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. AG-DR-02-006(b) Confidential Attachment**

AG Request No. 02-006 states as follows:

Refer to the Company’s response to AG DR 1-1 (e).

- a. Refer to p. 5 of the attachment. When the presentation was provided on 2/13/2023, the Company’s recommendation was to remain an FRR entity and reevaluate annually. What has changed in just one year, such that now the Company’s

reevaluation has led to a recommendation to transition to become an RPM entity?

- b. Page 5 of the attachment states, “Changing to the RPM construct costs ~\$1.8M annually over the current FRR approach but avoids future potential costs of ~\$16M to ~\$32M for up to two years if DEK remains in FRR and decides to retire East Bend early or if has significant additional demand growth.” Please explain each number and also provide the analysis, electronically, with all formulae intact that derived each number.
- c. Why might DEK even consider retiring East Bend if that would lead to higher market capacity prices in the DEOK zone for not only DEK Kentucky customers, but other Kentucky customers as well?
- d. Refer to page 6 of the attachment, why is Reserve Margin a benefit to an FRR entity, and explain further the sentence “Net expected cost to move to RPM ~\$1.8M/year.”
- e. Refer to page 6 of the attachment, and explain what Liquidity Differences mean and why that is a benefit to an RPM entity.
- f. Refer to page 15 of the attachment, and explain more about the payments for capacity non-performance. Specifically, explain the calculation of the \$3000 per deficient MW per performance event hour. Explain the Financial Penalty rate = Yearly Cone/30, and the Physical Penalty rate = 0.5/30. Explain what the 30 value refers to.
- g. Refer to pg. 16 of the attachment. Provide additional details about the statement that the Commission would need approximately 1 year due to staffing issues. Explain in detail the Commission staffing issues that would require a year to address.

In response to AG Request No. 02-006, Duke Energy Kentucky provides AG-DR-02-006(b) Confidential Attachment, which includes, but is not limited to, detailed information regarding East Bend’s forecasted operations and potential revenues in PJM’s capacity market, including number of MWs, prices, duration, and revenues. This information shows the Company’s capacity position in the competitive market during multiple future delivery years, which if released would allow potential competitors to know what the Company’s position could be in the future. 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. 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 confidential data satisfies this standard, as Duke Energy Kentucky’s capacity position for its generating unit represents inner workings of the corporation and, therefore, meets the second element of the statutory standard. The confidential data also satisfies the third element, as it contains commercially sensitive information related to the Company’s operation of its coal unit and capacity revenues by year for several years, and disclosure of this information would result in a commercial disadvantage for Duke Energy Kentucky as competitors would gain invaluable insight into the Company’s financial valuation of resources and future outlook.

## **ii. AG-DR-02-007 Confidential Attachment**

AG Request No. 02-007 states as follows:

Refer to the Company’s response to AG-DR-1-4d. The question that was posed requested information for 8 years. Please explain why the Company’s response only supplied information for 5 years, and unless there is a reason the information is unavailable, please provide the information for the remaining period.

In response to AG Request No. 02-007, Duke Energy Kentucky provides AG-DR-02-007 Confidential Attachment, which includes, but is not limited to, detailed information regarding East Bend’s capacity sales to counterparties, including number of MWs, prices, duration, and revenues. This information shows the Company’s capacity position in the

competitive market during multiple delivery years, which if released would allow potential competitors to know what the Company's position could be in the future. 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. 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 confidential data satisfies this standard, as Duke Energy Kentucky's capacity position for its generating unit represents inner workings of the corporation and, therefore, meets the second element of the statutory standard. The confidential data also satisfies the third element, as it contains commercially sensitive information related to the Company's operation of its coal unit and capacity revenues by year for several years, and disclosure of this information would result in a commercial disadvantage for Duke Energy Kentucky as competitors would gain invaluable insight into the Company's financial valuation of resources and future outlook.

### **iii. AG-DR-02-008 Confidential Attachment**

AG Request No. 02-008 states as follows:

Refer to the Company's response to AG-DR-1-6 that included DEK's Initial FRR Plan for the 2025/2026 plan year.

- a. Please provide workpapers for the same table for the most recent 8 years. Provide the information electronically with all formulae intact.
- b. Provide a narrative explanation for the derivation of the FRR Committed (MW) – Load Obligation for each resource. Also,

- explain how the values in this column relates to the Company's load requirement.
- c. Provide the derivation of the FRR Committed (MW) – Add'l 3% Holdback. Also, explain why the value shown is associated with just the first generating unit in the table.
  - d. Explain why the Company's excess position is tied to the first generating unit in the table, when in fact the Company's excess position would seem to be based on total load vs total capacity.

In response to AG Request No. 02-008, Duke Energy Kentucky provides AG-DR-02-008 Confidential Attachment, which contains sensitive operational data, including historic and future projected positions in the competitive wholesale electric markets that if released would adversely affect their position in those 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 be treated as confidential in its entirety pursuant to 807 KAR 5:001, Section 13(2)(a)(3)(b).

AG-DR-02-008 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. AG-DR-02-008 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 transmission system investments and the work and ideas developed by Duke Energy Kentucky.

**iv. Confidential highlights contained within AG-DR-02-016 and its Confidential Attachment**

AG Request No. 02-016 states as follows:

Refer to the response to AG-DR-1-45 b. and c.

- a. Please describe further what the Longbranch load is, state what is the peak capacity of that load, what percent is that load of the total DEOK load, and what percent is that load of the total EKPC load?
- b. Please provide the calculation that determined the non-performance assessment due to Winter Storm Elliot was 1.2 MW.

In response to AG Request No. 02-016, Duke Energy Kentucky provides the Company's load obligation at a specific circuit, as well as, AG-DR-02-016(b) Confidential Attachment which depicts and details the positions and performance of the Company's generating units during Winter Storm Elliot in five minute increments. The Company requests that the highlighted information within the response 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 highlighted information and the attachment are 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 information described above satisfies this standard, as Duke Energy Kentucky's generating unit performance in this detail, represents the inner workings of a corporation and, therefore, meets the second element of the statutory standard. The information also satisfies the third element, as it contains commercially sensitive information related to the Company's load obligations and disclosure of this information would result in a commercial disadvantage for Duke Energy Kentucky in which public disclosure would give Duke Energy



Kentucky's contractors, vendors and competitor's access to Duke Energy Kentucky's insight into its generation unit management and sales practices. Such access would impair Duke Energy Kentucky's ability to negotiate with prospective contractors and vendors and could harm Duke Energy Kentucky's competitive position in the power market, ultimately affecting the costs to serve customers.

**v. Confidential highlights contained within AG-DR-02-017**

AG Request No. 02-017 states as follows:

Refer to the response to AG-DR-1-49.

- a. Provide the FRR plan for each year that shows the calculation of the capacity value of each resource on the table.
- b. Provide a workpaper showing the calculation of the Load obligation values.
- c. Explain why the load obligation value was so high in 2024/2025.

In response to AG Request No. 02-017, Duke Energy Kentucky provides the Company's load obligation and position in the wholesale electric markets. The Company requests that the highlighted information within the response be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1). The highlighted information 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 information satisfies this standard, as Duke Energy Kentucky's load obligations within the FRR Plan in order to make sales in the wholesale markets represents the inner workings of a corporation and, therefore, meets the second element of the statutory standard. The highlighted information also satisfies the third element, as it

contains commercially sensitive information related to the Company's load obligations and disclosure of this information would result in a commercial disadvantage for Duke Energy Kentucky in which public disclosure would give Duke Energy Kentucky's contractors, vendors and competitor's access to Duke Energy Kentucky's insight into its capacity management and sales practices. Such access would impair Duke Energy Kentucky's ability to negotiate with prospective contractors and vendors and could harm Duke Energy Kentucky's competitive position in the power market, ultimately affecting the costs to serve customers.

**vi. Confidential highlights contained within AG-DR-02-021 and its Confidential Attachment**

AG Request No. 02-021 states as follows:

Refer to the response to AG-DR-01-24(a) wherein the Company states: "Thus, due to higher expected capacity prices, Duke Energy Kentucky is considering pursuing insurance to manage this non-compliance risk." Refer also to the response to AG-DR-01-24(b) wherein the Company states: Insurance may need to be purchased for two reasons, both (1) under RPM the physical option is not available, and (2) higher overall capacity prices make the physical option available under FRR have less value. Even if Duke Energy Kentucky were to say in FRR, it may pursue capacity performance insurance."

- a. Please state all of the ways non-compliance can cause greater harm under the FRR compared to the RPM option.
- b. Please state all of the ways non-compliance can cause greater harm under the RPM compared to the FRR option.
- c. Describe the factors that will influence the decision to purchase insurance and provide a decision tree that portrays how those factors affect the decision to purchase capacity performance insurance. Provide this explanation i) if the Company were to stay an FRR and ii) if the Company were to convert to RPM.
- d. Provide an estimate or matrix of estimates of the cost of such insurance, and the scope and dollar limits of the coverage obtained for the cost: i) if the Company were to stay an FRR and ii) if the Company were to convert to RPM.

- e. Identify the providers of such capacity performance insurance coverage, a description of the market for such insurance coverage, and the trigger(s) for payout if there is a non-compliance circumstance.
- f. Provide an estimate of the benefits that would be paid out from such insurance, i) if the Company were to stay an FRR and ii if the Company were to convert to RPM.
- g. If FRR non-compliance could result in greater harm, which provides an incentive to move to the RPM, would having insurance under the FRR eliminate the potential for harm and reduce the desire to move to the RPM?
- h. Please explain this statement further. “Therefore, it is appropriate to assign all of the insurance premium against the savings from entering RPM, but it is appropriate to assign a portion of this insurance against the benefits shown in the “Heat Map.” Explain the cost implications of doing this, and the magnitude of the change to the Heat Map results that would occur if this were done.

In response to AG Request No. 02-021, Duke Energy Kentucky provides confidential data and AG-DR-02-021 Confidential Attachment, which includes, but is not limited to, its negotiations and evaluations of insurance products, including terms and conditions from potential vendors. 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.’” AG-DR-02-021 Confidential Attachment satisfies this standard. If publicly disclosed, this information setting forth Duke Energy Kentucky’s forecasted load serving obligations in PJM and generation unit operational data, will impact its strategies for managing its operations to provide service to its customers in the future in the wholesale power markets. Similarly, disclosure would afford an undue advantage to Duke Energy Kentucky’s vendors and suppliers as they would enjoy an obvious advantage in any contractual negotiations to the extent they could calculate Duke Energy Kentucky’s requirements, how it values certain resources, and what Duke Energy Kentucky anticipates those requirements to cost. Such access would impair Duke Energy Kentucky’s competitive position in the power market, ultimately affecting the costs to serve customers.

**vii. AG-DR-02-024(b) Confidential Attachment**

AG Request No. 02-024 states as follows:

Refer to the response to AG-DR-01-61a. and b.

- a. Confirm there are no bilateral capacity transaction costs included in the base revenue requirement. If this is not correct, then provide a corrected statement and provide the amount of expense included in the base revenue requirement and the support for your response, such as a schedule or workpaper from the Company’s last base rate case.
- b. Provide a list of all bilateral capacity purchases by supplier/contract and the MW, cost per MW, and total expense by supplier/contract for each month from January 2021 through the most recent month for which actual information is available.
- c. Provide a response to AG-DR-01-61(c). No response has been provided. Note that the question includes all owned capacity costs and purchased capacity costs. It is not limited only to purchased capacity costs.

In response to AG Request No. 02-024, Duke Energy Kentucky provides AG-DR-02-024(b) Confidential Attachment, which includes, but is not limited to, detailed information regarding East Bend's bilateral capacity purchases from counterparties, including number of MWs, prices, duration, payments, and broker commissions. This information shows the Company's capacity position in the competitive market during multiple delivery years, which if released would allow potential competitors to know what the Company's position could be in the future. 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. 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 confidential data satisfies this standard, as Duke Energy Kentucky's capacity position for its generating unit represents inner workings of the corporation and, therefore, meets the second element of the statutory standard. The confidential data also satisfies the third element, as it contains commercially sensitive information related to the Company's operation of its capacity needs by year for several years, and disclosure of this information would result in a commercial disadvantage for Duke Energy Kentucky as competitors would gain invaluable insight into the Company's financial valuation of resources and future outlook.

**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.<sup>1</sup>

/s/Rocco D'Ascenzo  
*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).*