

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 ATTORNEY
GENERAL OF THE COMMONWEALTH OF KENTUCKY’S
OCTOBER 4, 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 attachments and highlighted information filed in its responses to the Attorney General of the Commonwealth of Kentucky’s (AG) First Request for Information issued on October 4, 2024:

- (1) AG-DR-01-004 Confidential Attachment;
- (2) Confidential highlights contained within AG-DR-01-006;
- (3) AG-DR-01-007 Confidential Attachment;
- (4) AG-DR-01-037 Confidential Attachments 2, 3, 4;
- (5) AG-DR-01-038 Confidential Attachment;
- (6) AG-DR-01-047(c) Confidential Attachment; and,
- (7) AG-DR-01-049 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, future transmission projects, forecasted peaks, reserve margins, detailed models and modeling input information, demand response accreditation, resource costs, and data analysis related to forecasted capital and operations and management (O&M) costs. 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-01-004 Confidential Attachment

AG Request No. 01-004 states as follows:

Regarding bilateral sales or off-system sales.

- a. Explain whether DEK provides power to DEO through bilateral sales or off-system sales. Include in your response a description of the accounting entries DEK makes to record power sales to DEO.

- b. For the last eight years, provide a list by year and by category of bilateral sales or off-system sales that DEK made to DEO, and for each include the sales type, the maximum capacity, the energy, and the cost.
- c. For the last eight years, provide a list by year and by category of bilateral sales or off-system sales that DEK made to MISO, and for each include the sales type, the maximum capacity, the energy, and the cost.
- d. For the last eight years, provide a list by year and by category of bilateral sales or off-system sales that DEK made to any party other than DEO or MISO, and for each include the sales type, the maximum capacity, the energy, and the cost.

In response to AG Request No. 01-004, Duke Energy Kentucky provides AG-DR-01-004 Confidential Attachment, which includes, but is not limited to, detailed information regarding East Bend's off-system 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.

ii. Confidential highlights contained within AG-DR-01-006

AG Request No. 01-006 states as follows:

Identify the approximate date when DEK believes it will have to procure a new capacity resource, and the reason(s) why the Company believes such new capacity will be necessary. If DEK's answer would be different depending on whether DEK is an FRR or an RPM participant, please provide an answer for each case.

In response to AG Request No. 01-006, Duke Energy Kentucky provides the Company's load obligation, including reserves, and strategy to make capacity sales. 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 capacity sales 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.

iii. AG-DR-01-007 Confidential Attachment

AG Request No. 01-007 states as follows:

Identify all transmission projects planned for the DEOK transmission system and the DEOK zone over the next 5 years. Explain also whether the projects you identify in your response are included within the "Submission of Supplemental Projects for Inclusion in the Local Plan," also referred to as the "DEOK Local Plan 2024" filed with PJM.

In response to AG Request No. 01-007, Duke Energy Kentucky provides AG-DR-01-007 Confidential Attachment, which contains sensitive operational data and projected costs related to planned future investments 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 be treated as confidential in its entirety pursuant to 807 KAR 5:001, Section 13(2)(a)(3)(b).

AG-DR-01-007 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-01-007 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. AG-DR-01-037 Confidential Attachments 2, 3, 4

AG Request No. 01-037 states as follows:

For each of the past 10 years, provide the following historical data:

- a. Annual peak demand for the DEK system and DEOK zone, and the specific hours when peaks occurred.
- b. Annual energy requirement for the DEK system.
- c. Annual generation and costs by unit for each of DEK's generating units (costs broken down by fuel, fixed and variable O&M, emissions, etc.).
- d. Annual fuel consumption, MBTUs, fuel units, and costs for each of DEK's generating units.
- e. Annual DEK bilateral sales and purchases, by purchase and sales categories (MWs, MWhs and costs).
- f. Annual DEK off-system sales and purchases by categories (MWs, MWhs and costs).
- g. For each of the 10 years, provide DEK's calculation of its reserve margin target as required by PJM.
- h. For each of the 10 years, provide DEK's load and resource balance table showing all capacity resources and how DEK satisfied its Reserve Margin requirement.
- i. For each of the past 10 years, provide a copy of the FRR capacity plan that the Company submitted to PJM.

In response to AG Request No. 01-037, Duke Energy Kentucky provides AG-DR-01-037 Confidential Attachments 2, 3, and 4, which contain sensitive and proprietary data for generating unit operations, but not limited to, targeted reserve margins, capacity values, committed capacity values, and forced outage factors by generating unit models, modeling assumptions, forecasts, and dispatch costs. The Company requests that these Attachments be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1), and additionally

requests that the Attachments be treated as confidential in their entirety pursuant to 807 KAR 5:001, Section 13(2)(a)(3)(b).

AG-DR-01-037 Confidential Attachments 2, 3, and 4 are 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 Company’s capacity positions in the competitive wholesale markets are sensitive and proprietary information constituting trade secrets. Finally, the third element is satisfied, as disclosure of this information would result in a commercial disadvantage. AG-DR-01-037 Confidential Attachments 2, 3, and 4 contain 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 how the Company’s generating units are valued as by Duke Energy Kentucky and in the competitive energy markets.

v. AG-DR-01-038 Confidential Attachment

AG Request No. 01-038 states as follows:

For each of the next 10 years, provide a projection of the following data, under the assumption that DEK continues as an FRR participant:

- a. Annual peak demand for the DEK system and DEOK zone, and the specific hours when peaks are expected to occur.
- b. Annual energy requirement for the DEK system.
- c. Annual generation and costs by unit for each of DEK’s generating units (costs broken down by fuel, fixed and variable O&M, emissions, etc.).
- d. Annual fuel consumption, MBTUs, fuel units, and costs by each of DEK’s generating units.
- e. Annual DEK bilateral sales and purchases, by purchase and sales categories (for MWs, MWs and costs).
- f. Annual DEK off-system sales and purchases by categories (for MWs, MWs and costs).

- g. For each of the next 10 years, provide DEK's calculation of its projected required reserve margin target.
- h. For each of the next 10 years, provide DEK's projected load and resource balance analysis (showing each owned resource and its seasonal MW capacity and each purchased resource and its seasonal MW capacity) and the resulting reserve margin requirement compared to PJM minimum requirements.

In response to AG Request No. 01-038, Duke Energy Kentucky provides AG-DR-01-038 Confidential Attachment, which contains sensitive and proprietary data including, but not limited to, detailed models and modeling assumptions, forecasts, supply-side resource, and dispatch costs. The Company requests that this 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 5:001E, Section 13(2)(a)(3)(b).

AG-DR-01-038 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 assumptions, costs, modeling inputs and data in the Company's forecast models are proprietary to the Company and are Company work product. Finally, the third element is satisfied, as disclosure of this information would result in a commercial disadvantage. AG-DR-01-038 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 work and ideas developed by Duke Energy Kentucky and insight into how the Company finances its operations.

vi. AG-DR-01-047(c) Confidential Attachment

AG Request No. 01-047 states as follows:

Refer to Witness Swez's direct testimony at p. 8:

- a. Explain how the 9.3 MW of nameplate solar capacity was determined to be considered net firm summer capacity of 3.9 MW. Please show the calculations used to determine that capacity accreditation.
- b. What is the net firm winter capacity value for that solar capacity and how would it be determined?
- c. Provide a description of the Company's demand response program capacity and the capacity accreditation value (summer and winter net firm capacity).
- d. Provide information about all potential bilateral capacity purchases Mr. Swez was referring to at line 11.

In response to AG Request No. 01-047, Duke Energy Kentucky provides AG-DR-01-047 Confidential Attachment, which includes the Company's demand response program capacity accreditation. The Company requests that this 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 5:001E, Section 13(2)(a)(3)(b).

AG-DR-01-047 Confidential Attachment 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-01-047 Confidential Attachment satisfies this standard, as Duke Energy Kentucky's demand response program capacity accreditation values represent the inner workings of a corporation and, therefore, meets the second element of the statutory standard. AG-DR-01-047 Confidential Attachment 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 competitor's access to Duke Energy Kentucky's insight into its capacity 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.

vii. AG-DR-01-049 Confidential Attachment

AG Request No. 01-049 states as follows:

Refer to Witness Swez's direct testimony at p. 14:18, and provide evidence that DEK's typical long capacity position has been 9%. Show evidence of the long position, and what length of time that has been typical.

In response to AG Request No. 01-049, Duke Energy Kentucky provides AG-DR-01-049 Confidential Attachment, which includes the Company's demand response program capacity. The Company requests that this 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).

AG-DR-01-049 Confidential Attachment 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-01-049 Confidential Attachment satisfies this standard, as Duke Energy Kentucky's demand response program capacity accreditation values represent the inner workings of a corporation and, therefore,

meets the second element of the statutory standard. AG-DR-01-049 Confidential Attachment also satisfies the third element, as it contains commercially sensitive information related to the Company's load obligations and capacity values, 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 competitor's access to Duke Energy Kentucky's insight into its capacity practices. Such access would impair Duke Energy Kentucky's competitive position in the competitive 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 October 18, 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).