

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE ELECTRONIC APPLICATION OF DUKE)	
ENERGY KENTUCKY, INC., FOR: 1) AN)	
ADJUSTMENT OF THE ELECTRIC RATES; 2))	CASE NO.
APPROVAL OF NEW TARIFFS; 3) APPROVAL)	2024-00354
OF ACCOUNTING PRACTICES TO ESTABLISH)	
REGULATORY ASSETS AND LIABILITIES;)	
AND 4) ALL OTHER REQUIRED APPROVALS)	
AND RELIEF.)	

**PETITION FOR CONFIDENTIAL TREATMENT OF DUKE ENERGY
KENTUCKY, INC. FOR CERTAIN SUPPLEMENTAL RESPONSES TO THE
STAFF OF THE PUBLIC SERVICE COMMISSION’S NOVEMBER 22, 2024
FIRST REQUEST FOR INFORMATION**

Duke Energy Kentucky, Inc. (Duke Energy Kentucky or the Company), by counsel, pursuant to 807 KAR 5:001, Section 13(2), KRS 61.878(1)(c), and other applicable law, respectfully moves the Public Service Commission of Kentucky (Commission) for an Order granting confidential treatment to the identified portions of the following supplemental attachment filed in its supplemental responses to Commission Staff’s (Staff) First Request for Information issued on November 22, 2024:

- (1) the highlighted portions of STAFF-DR-01-014 Confidential 1st Supplemental Attachment 1.

Specifically, Duke Energy Kentucky seeks confidential treatment of information referred to herein as the “Confidential Information,” which, broadly speaking, includes detailed information pertaining contracts with outside vendors and tax payer and personal information.

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 documents 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. Attachment for Which Confidential Treatment is Sought

i. Highlighted portions in Confidential 1st Supplemental Attachment 1 to the response to STAFF-DR-01-014;

Staff Request No. 01-014 requests the following information:

Provide the following information concerning the costs for the preparation of this case:

- a. A detailed schedule of expenses incurred to date for the following categories:
 - (1) Accounting;
 - (2) Engineering;
 - (3) Legal;
 - (4) Consultants; and
 - (5) Other Expenses (Identify separately).
- b. For each category identified in Item 14a, the schedule should include the date of each transaction, check number or other document reference, the vendor, the hours worked, the rates per hour, amount, a description of the services performed, and the account number in which the expenditure was recorded. Provide copies of contracts or other documentation that support charges incurred in the preparation of this case. Identify any costs incurred for this case that occurred during the base period.
- c. An itemized estimate of the total cost to be incurred for this case. Expenses should be broken down into the same categories as identified in Item 14a, with an estimate of the hours to be worked and the rates per hour. Include a detailed explanation of how the estimate was determined, along with all supporting workpapers and calculations.
- d. Provide monthly updates of the actual costs incurred in conjunction with this rate case, reported in the manner requested in Items 14a and 14b, and a cumulative total of cost incurred to date for each category. Updates will be due when Duke Kentucky files its monthly financial statements with the Commission, until the close of the record.

In response to Staff Request No. 01-014, Duke Energy Kentucky provides sensitive hourly rate detail and cost estimates for its outside counsel in this proceeding, banking and taxpayer information, and individual personal information. The Company requests that the highlighted portions of the attachment, which includes negotiated rates, budget proposals, taxpayer identification information, and contact information be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1). The highlighted information is not publicly reported, and Duke Energy Kentucky is not required to do so, thus satisfying the first element of the statutory standard for confidentiality of a proprietary record. The highlighted information also satisfies the second element of the standard, as negotiated pricing and cost information is generally recognized as confidential and proprietary. The highlighted information also satisfies the third element because public disclosure would harm Duke Energy Kentucky's ability to negotiate for the most reasonable prices for legal services in the future, which would result in competitive harm to Duke Energy Kentucky and, in turn, financial harm to their customers who could pay more for utility service. The highlighted information should therefore be treated as confidential and protected accordingly.

c. Request for Confidential Treatment

The Kentucky Open Records Act exempts from disclosure information that, due to its confidential and proprietary nature, would permit “an unfair commercial advantage to competitors of the entity that disclosed the records” if openly disclosed.¹ The Confidential Information was, and remains, integral to Duke Energy Kentucky's effective execution of business decisions. Indeed, as the Kentucky Supreme Court has found, “information concerning the inner workings of a corporation is ‘generally accepted as confidential or

¹ See KRS 61.878(1)(c)1.

proprietary.’”² The information for which Duke Energy Kentucky is seeking confidential treatment was either developed internally, or acquired on a proprietary basis, by Duke Energy Corporation and Duke Energy Kentucky personnel, is not on file publicly with any public agency, and is not publicly available from any commercial or other source. The aforementioned information is distributed within Duke Energy Kentucky only to those employees who must have access for business reasons, and is generally recognized as confidential and proprietary in the utility industry.

Duke Energy Kentucky respectfully requests that the Confidential Information be withheld from public disclosure for a period of twenty 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.

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).

Duke Energy Kentucky does not object to limited disclosure of the Confidential Information pursuant to an acceptable protective agreement entered into with any intervenors with a legitimate interest in reviewing the same for the sole purpose of participating in this case.

In accordance with the provisions of 807 KAR 5:001, Section 13(2)(e), the Company is filing one copy of the Confidential Information separately under seal, and the appropriate number of copies with the Confidential Information redacted.

² *Hoy v. Kentucky Industrial Revitalization Authority*, Ky., 907 S.W.2d 766, 768 (Ky. 1995).

II. CONCLUSION

WHEREFORE, Duke Energy Kentucky, Inc., respectfully requests that the Commission classify and protect as confidential the specific information described herein.

Respectfully Submitted,

DUKE ENERGY KENTUCKY, INC.

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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 in paper medium; that the electronic filing was transmitted to the Commission on February 5, 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.³

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³ *In the Matter of Electronic Emergency Docket Related to the Novel Coronavirus COVID-19*, Order, Case No. 2020-00085 (Ky. P.S.C. July 22, 2021).