

**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.	

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**PETITION FOR CONFIDENTIAL TREATMENT OF DUKE ENERGY  
KENTUCKY, INC. FOR CERTAIN RESPONSES TO THE ATTORNEY  
GENERAL’S FEBRUARY 26, 2025 SECOND REQUEST FOR INFORMATION**

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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 responses and attachments filed in its responses to the Attorney General’s (AG) Second Request for Information issued on February 26, 2025:

- (1) AG-DR-02-002 Confidential Attachment 1;
- (2) AG-DR-02-042(a) Confidential Attachments 1-3;
- (3) AG-DR-02-042(c) Confidential Attachments 2-13;
- (4) AG-DR-02-042(e)(ii) Confidential Attachment; and
- (5) AG-DR-02-048 Confidential Attachment.

Specifically, Duke Energy Kentucky seeks confidential treatment of information

referred to herein as the “Confidential Information,” which, broadly speaking, includes information pertaining to specific job titles tied to compensation information, proprietary reports and analysis prepared by the Company, contracts and agreements with third-parties, detailed financial and tax information about the Company and other Duke Energy operating companies, and other 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. Attachments for Which Confidential Treatment is Sought**

**i. AG-DR-02-002 Confidential Attachment 1**

AG Request No. 02-002(b) states as follows:

Explain in detail why Duke Kentucky filed the executive employee compensation information under confidential seal when the Commission has consistently found that, “any privacy interest executive officers may seek in their compensation data is outweighed by the public’s interest in executive compensation that is to be recovered in base rates. The Commission has previously held that executive salaries are not entitled to confidential protection because of the public interest in disclosure.”<sup>1</sup>

AG Request No. 02-002(c) states as follows:

Based upon extensive Commission precedent as referenced in (b), provide responses to the Attorney General’s First Request, Items 2(a) – (j) into the public record.

In response to AG Request No. 02-002(c), Duke Energy Kentucky provides an attachment, AG-DR-02-002 Attachment 1, that details the job title and annual salary for each for Duke Kentucky executive staff employees, as well as all executive staff employees

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<sup>1</sup> Citations omitted.

whose costs are allocated to Duke Kentucky for 2020 through 2025. In this attachment, Duke Energy Kentucky has only marked the job title as confidential and has provided as public the annual salary for each executive staff employee. The job titles provided in this confidential attachment are 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. This information meets the second element as the Commission has previously granted confidential treatment of this information in the Company's last electric base rate case.<sup>2</sup> Specifically, in Case No. 2022-00372, the Commission denied confidential treatment of compensation amounts included in response to Commission's Staff First Request, Item 41, because it is data used in the calculation of the proposed base rate. However, the Commission determined that the names and titles of the employees could be given confidential treatment because disclosure would be an "invasion of privacy."<sup>3</sup> Finally, this confidential attachment satisfies the third element of the standard as disclosure of the specific compensation tied to positions and titles of individual employees would provide competitors insight into the Duke Energy Kentucky's compensation philosophies, policies, and practices. Duke Energy Kentucky competes for employees among a robust pool of employers, including other regional utilities. The level of compensation provided by the Company is instrumental in recruiting and retaining highly qualified employees. If competitors had ready access to this information, they could

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<sup>2</sup> *In the Matter of the Electronic Application of Duke Energy Kentucky, Inc., for 1) An Adjustment of the Natural Gas Rates; 2) Approval of New Tariffs; and 3) All Other Required Approvals, Waivers, and Relief*, Case No. 2022-00372, Order at 6-7 (Feb. 10, 2023).

<sup>3</sup> *Id.*

use it to place Duke Energy Kentucky at a disadvantage in recruiting and retaining employees.

The Company requests that the job title portion of AG-DR-02-002 Attachment 1 be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1).

**ii. AG-DR-02-042(a) Confidential Attachments 1-3**

AG Request No. 02-042(a) requests the following information:

Refer to the Direct Testimony of Thomas Heath at 25 – 28, wherein he addresses the termination of the accounts receivables financing program in March 2024.

a. Provide a copy of all analyses performed by the Company, including all assumptions, data, and calculations, if any, and all studies, reports, emails, and/or other internal and/or external communications regarding the analyses and/or the results of the analyses and the decision to terminate the program.

In response to AG Request No. 02-042(a), Duke Energy Kentucky provides AG-DR-02-042(a) Confidential Attachments 1-3. These attachments are proprietary reports, communications, and analyses performed by Duke Energy Kentucky related to its decision to terminate the accounts receivable program in March 2024. These reports, communications, and analyses contained in these confidential attachments are 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. This information satisfies the second element of the standard, as this information is highly confidential and proprietary to the Company as it would provide competitors, and possible future vendors, with valuable information about how the Company analyzes the costs and benefits related to accounts receivable financing agreements and the Company's decision-making process. This information meets the third element as if disclosed, this information

would put the Company at a competitive disadvantage in potential future negotiations for accounts receivable financing contracts or related contracts and potentially inhibit the Company's ability to responsibly manage its costs.

The Company requests that AG-DR-02-042(a) Confidential Attachments 1-3 be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1) and additionally requests that these attachments be treated as confidential in their entirety pursuant to 807 KAR 5:001E, Section 13(2)(a)(3)(b).

**iii. AG-DR-02-042(c) Confidential Attachments 2-13**

AG Request No. 02-042(c) requests the following information:

Provide a copy of the version of the receivables financing agreement and all related agreements in effect just prior to termination in March 2024

In response to AG Request No. 02-042(c), Duke Energy Kentucky provides AG-DR-02-042(c) Confidential Attachments 2-13. These attachments are copies of Duke Energy Kentucky's receivable financing agreements and all related agreements that were in effect with various third-parties, including banking institutions, prior to termination in March 2024. The contracts provided in these confidential attachments are not publicly available, and Duke Energy Kentucky is not required to make these contracts public, thus satisfying the first element of the statutory standard for confidentiality of a proprietary record. The second element is met as such contracts are generally considered confidential as they contain proprietary pricing information and negotiated contract terms and conditions that are maintained as confidential between the contracting parties. Each of these contracts was also marked as confidential at the time of its execution. The third element is satisfied as public disclosure of these contracts would place the Company at a disadvantage in future negotiations as potential vendors would have access to what the

Company currently pays or expects to pay for such services. Moreover, vendors would be less willing to negotiate with the Company out of fear of their sensitive and competitive pricing and contractual terms would be made public, in spite of marking the contract as confidential.

The Company requests that AG-DR-02-042(c) Confidential Attachments 2-13 be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1) and additionally requests that these attachments be treated as confidential in their entirety pursuant to 807 KAR 5:001E, Section 13(2)(a)(3)(b).

**iv. AG-DR-02-042(e)(ii) Confidential Attachment**

AG Request No. 02-042(e)(ii) requests the following information:

Refer to the Direct Testimony of Witness Heath at 27: lines 20 – 21, wherein he states, “[t]he CRC accounts receivable financing program was terminated in March 2024 and all outstanding borrowings were repaid at that time.”

ii. Provide the amount of the “outstanding borrowings that were repaid at that time.”

In response to AG Request No. 02-042(e)(ii), Duke Energy Kentucky provides AG-DR-02-042(e) Confidential Attachment. This attachment provides a detailed accounting of all outstanding borrowings that were repaid by Duke Energy Kentucky, Duke Energy Ohio, and Duke Energy Indiana when the receivable financing program was terminated in March 2024. The Company requests that AG-DR-02-042(e) Confidential Attachment be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1). The detailed accounting and financial information provided in response to AG Request No. 02-0042(e) 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. In addition, the information provided in this attachment pertains not just to Duke Energy Kentucky but also

to Duke Energy Ohio and Duke Energy Indiana that are not regulated by the Kentucky Public Service Commission and their information has no bearing on Duke Energy Kentucky's application in this proceeding. The information also satisfies the second element of the standard, as detailed accounting and financial information about the outstanding borrowings of Duke Energy Kentucky, Duke Energy Ohio, and Duke Energy Indiana is information that is commercially sensitive information that would provide insight into the financial inner workings of these corporations.<sup>4</sup> Finally, the information also satisfies the third element because disclosure of this detailed accounting and financial information would result in a commercial disadvantage for Duke Energy Kentucky as competitors would gain invaluable insight into the Company's financial state.

As the elements for granting confidential treatment have been satisfied, the Company requests that AG-DR-02-042(e) Confidential 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).

**v. AG-DR-02-048 Confidential Attachment**

AG Request No. 02-048(ii) states as follows:

Refer to tab WPB-6's on Duke Kentucky's response to Staff's First Request, Item 54, Attachment\_KPSC\_Electric\_SFRs-2024. Refer to line number 12, account 190.

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<sup>4</sup> *Hoy v. Kentucky Indus. Revitalization Auth.*, 907 S.W.2d 766, 768 (Ky. 1995)(documents detailing the "inner workings of a corporation (are) 'generally recognized as confidential or proprietary.'")



ii. Provide CAMT and regular tax calculations for Duke Energy, Duke Energy Ohio, and Duke Kentucky, including the calculations of the CAMT AFSI income/loss and carryforward and utilization, as well as any CAMT excess over regular tax carryforward and utilization for each year since Duke Energy was subject to the CAMT through the end of the test year in this proceeding.

In response to AG Request No. 02-048(ii), Duke Energy Kentucky is providing an excel spreadsheet, AG-DR-02-048 Confidential Attachment, containing detailed financial and tax information related to the Corporate Alternative Minimum Tax (CAMT) for Duke Energy, Duke Energy Ohio, and Duke Kentucky. This information is not publicly available, thus satisfying the first element of the statutory standard for confidentiality of a proprietary record. In addition, the information provided in this attachment pertains not just to Duke Energy Kentucky but also to Duke Energy Ohio that is not regulated by the Kentucky Public Service Commission and its information has no bearing on Duke Energy Kentucky's application in this proceeding. The information also satisfies the second element of the standard, as detailed financial and tax information related to the CAMT is information that is commercially sensitive information that would provide insight into the financial inner workings of the corporation.<sup>5</sup> Finally, the information also satisfies the third element because disclosure of this detailed financial and tax information would result in a commercial disadvantage for Duke Energy Kentucky as competitors would gain invaluable insight into the Company's financial state.

As the elements for granting confidential treatment have been satisfied, the Company requests that AG-DR-02-048 Confidential Attachment be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1), and additionally requests that this attachment

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<sup>5</sup> *Id.*

be treated as confidential in its entirety pursuant to 807 KAR 5:001E, Section 13(2)(a)(3)(b).

**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.<sup>6</sup> 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 proprietary.’”<sup>7</sup> The information for which Duke Energy Kentucky is seeking confidential treatment 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

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<sup>6</sup> See KRS 61.878(1)(c)1.

<sup>7</sup> *Hoy v. Kentucky Industrial Revitalization Authority*, Ky., 907 S.W.2d 766, 768 (Ky. 1995).

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.

## **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.

/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 in paper medium; that the electronic filing was transmitted to the Commission on February 26, 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>8</sup>

*/s/Rocco D'Ascenzo*  
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*Counsel for Duke Energy Kentucky, Inc.*

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<sup>8</sup> *In the Matter of Electronic Emergency Docket Related to the Novel Coronavirus COVID-19*, Case No. 2020-00085, Order (Ky. P.S.C. July 22, 2021).