

**COMMONWEALTH OF KENTUCKY
BEFORE THE KENTUCKY STATE BOARD ON
ELECTRIC GENERATION AND TRANSMISSION SITING**

In the Matter of:

THE ELECTRONIC APPLICATION OF DUKE)	
ENERGY OHIO, INC. FOR A CERTIFICATE OF)	
CONSTRUCTION FOR TWO NEW 138)	CASE NO.
KILOVOLT NONREGULATED ELECTRIC)	2025-00228
TRANSMISSION LINES APPROXIMATELY 1.2)	
AND 1.3 MILES IN LENGTH, IN BOONE)	
COUNTY, KENTUCKY)	

**PETITION OF DUKE ENERGY OHIO, INC. FOR CONFIDENTIAL
TREATMENT OF INFORMATION CONTAINED IN ITS APPLICATION**

Duke Energy Ohio, Inc. (Duke Energy Ohio or Company), by counsel, pursuant to 807 KAR 5:110, Section 5(2), KRS 61.878(1)(c), and other applicable law, moves the Kentucky State Board on Electric Generation and Transmission Siting (Board) for an Order granting confidential treatment to certain information provided by Duke Energy Ohio in its Application:

- (1) Confidential Exhibit 7 – Duke Energy 138-kV Transmission Line Standards;

Specifically, Duke Energy Ohio seeks confidential treatment of information referred to herein as the “Confidential Information,” which, broadly speaking, includes information related to the Company’s proprietary construction standards for its transmission system.

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 Board 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[.]”¹

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

¹ KRS 61.878(1)(c)(1)

present an unfair commercial advantage to competitors of the entity that disclosed the records.

Similarly, KRS 61.878(1)(m)(1) protects from disclosure, “Public records the disclosure of which would have a reasonable likelihood of threatening the public safety by exposing a vulnerability in preventing, protecting against, mitigating, or responding to a terrorist act and limited to...

(f) Infrastructure records that expose a vulnerability referred to in this subparagraph through the disclosure of the location, configuration, or security of critical systems, including public utility critical systems. These critical systems shall include but not be limited to information technology, communication, electrical, fire suppression, ventilation, water, wastewater, sewage, and gas systems;”²

Finally, KRS 61.878(1)(d) provides protection for certain economic development purposes, excluding from disclosure: “Public records pertaining to a prospective location of a business or industry where no previous public disclosure has been made of the business' or industry's interest in locating in, relocating within or expanding within the Commonwealth...”³

The document for which Duke Energy Ohio is seeking confidential treatment, which is described in further detail below, satisfies each of these three statutory criteria enumerated in KRS 61.878(1)(c)(1), and/or constitutes critical utility infrastructure that is protected under 61.878(1)(m)(1)(f), or includes information about potential expansion or locations of new or existing businesses in the Commonwealth that the Company uses for its system planning.

² KRS 61.878(1)(m)(1)

³ KRS 61.878(1)(d)

b. Attachment for Which Confidential Treatment is Sought

i. Confidential Exhibit 7 – Duke Energy 138-kV Transmission Line Standards

Confidential Exhibit 7 contains standards and internal policies and procedures for the design and construction of Duke Energy Ohio's transmission system. These policies and procedures are proprietary in nature and 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.'" Confidential Exhibit 7 satisfies this standard, as these transmission line standards have been developed by internal expertise and contain detailed information regarding the operations of the Company and Duke Energy Corporation and, therefore, meets the second element of the statutory standard. Confidential Exhibit 7 also satisfies the third element, as it contains commercially sensitive information that if it were to become publicly available, competitors, potential vendors, and transaction counterparties would have access to information regarding the Company's operations that would place it at a significant disadvantage in its operations as it competes for business or negotiates contracts.

Additionally, as this information depicts the construction specifications of Duke Energy Ohio's transmission system, detailing its design standards and components, this information also constitutes electrical infrastructure that is protected under KRS 61.878(1)(m)(1)(f). Releasing this information would expose the Company's delivery system to potential risks and in turn, customers to harm as potential bad actors would have

keen insight into how the Company designs and configures its critical energy delivery system.

The Company requests that this Exhibit be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1) and 61.878(1)(m)(1)(f) and additionally requests that this Exhibit be treated as confidential in its entirety pursuant to 807 KAR 5:001, Section 13(2)(a)(3)(b).

c. Request for Confidential Treatment

Duke Energy Ohio 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 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 Ohio will notify the Commission and have its confidential status removed, pursuant to 807 KAR 5:001 Section 5(1)(a).

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

Respectfully submitted,

DUKE ENERGY OHIO, INC.

/s/Rocco D'Ascenzo

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