

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF DUKE)	
ENERGY KENTUCKY, INC. FOR: 1) AN)	
ADJUSTMENT OF THE ELECTRIC RATES; 2))	CASE NO.
APPROVAL OF AN ENVIRONMENTAL)	2017-00321
COMPLIANCE PLAN AND SURCHARGE)	
MECHANISM; 3) APPROVAL OF NEW)	
TARIFFS; 4) APPROVAL OF ACCOUNTING)	
PRACTICES TO ESTABLISH REGULATORY)	
ASSETS AND LIABILITIES AND 5) ALL OTHER)	
REQUIRED APPROVALS AND RELIEF)	

ORDER

On or about November 13, 2017, Duke Energy Kentucky, Inc. (“Duke Kentucky”) electronically filed a motion, pursuant to 807 KAR 5:001, Section 13 and KRS 61.878, requesting that the Commission grant confidential protection to certain designated materials. In its motion, Duke Kentucky requested that certain material filed in response to Commission Staff’s Second Request for Information (“Staff’s Second Request”) and the Attorney General’s First Request for Information (“Attorney General’s First Request”) be treated confidentially. Specifically, Duke Kentucky is requesting confidential treatment for the following documents:

1. Information produced in Response to Staff’s Second Request No. 16: Duke Kentucky asserted that it submitted material regarding the cost of short-term capacity sales and purchases in response to this request and argued that it would place Duke Kentucky at a competitive disadvantage in

negotiating capacity sales if the information was publically disclosed.

2. Property tax records produced in response to Staff's Second Request No. 21: Duke Kentucky argued that these property tax records must remain confidential pursuant to KRS 131.190 and KRS 131.190(1) and KRS 61.878(1)(k).

3. Survey prepared by Edison Electric Institute in response to Staff's Second Request No. 41: Duke Kentucky claims that the document is provided copyright protection under federal law and, thus, Duke Kentucky must take reasonable steps to protect the document.

4. Woodsdale Station – Unit Net Capacity Factors produced in response to Staff's Second Request No. 59(f): Duke Kentucky produced a chart with the Woodsdale Station – Unit Net Capacity Factors and asserted that public disclosure would give other suppliers and takers in the capacity market information which would be valuable for assessing the purchase and sales strategy of Duke Kentucky, which would put Duke Kentucky at a disadvantage.

5. Information Regarding Lobbyist produced in response to Staff's Second Request No. 90(b): Duke Kentucky stated that it filed information regarding lobbyists' salary, fringe benefits, and incentive pay in response to Staff's Second

Request No. 90(b). Duke Kentucky asserted that amounts paid to individuals who are not within the executive management of a utility are generally recognized to be confidential.

6. Summary of major inputs and outputs of the GenTrader model produced in response to Attorney General's Request No. 11(c): Duke Kentucky asserted that the GenTrader model is a business model used by it to develop its forecasts and the inputs and outputs used in the context of the GenTrader model would, if disclosed, reveal Duke Kentucky's assumptions regarding various aspects of its energy forecast.

7. Working files regarding billing determinates produced in response to Attorney General's Request No. 17: Duke Kentucky asserted that the working files contained specific customer account information, including account numbers and billing data for specific customers that should be kept confidential.

8. Materials regarding the disposition of Miami Fort 6 produced in response to Attorney General's Request No. 33: Duke Kentucky asserted that this information contains many assumptions and options for future action the company might take, which if prematurely disclosed could undermine the Company's ability to pursue such actions.

9. Compensation and Benefit materials produced in response to Attorney General's Request No. 45: The documents produced in response to Attorney General Request No. 45 consist of a report from Willis Towers Watson dated August 31, 2017, regarding projected costs of Duke Energy's and Duke Kentucky's pension obligations and a spreadsheet showing projected pension costs for all Duke Energy affiliates through 2022. Duke Kentucky asserted that the designated materials are considered confidential and would provide competitors an unfair advantage in recruiting and retaining employees if disclosed.

10. Federal income tax documentation produced in response to Attorney General's Request No. 54.

11. IHS material produced in response to Attorney General's First Request No. 61: Duke Kentucky asserted that the IHS forecasts and other IHS material produced in response to Attorney General First's Request No. 61 is subject to the copyrights of third parties, and therefore must be held as confidential.

12. Materials regarding bond ratings produced in response to Attorney General's First Request No. 63: Duke Kentucky asserted that it was providing sensitive credit information and could be used to its detriment if disclosed.

13. Materials regarding the credit spread on the current Sale of Accounts Receivables produced in response to Attorney General's Request No. 68: Duke Kentucky asserted that this material contains information about borrowing and lending actions of the Company and other affiliates that are part of the Duke Energy Money Pool and that the information is highly confidential.

14. Confidential Attachment DLS-4 from Case No. 2016-00152 and information regarding the source of WPD-2.26a produced in response to Attorney General's First Request No. 74: Duke Kentucky asserted that those materials contain sensitive information regarding the source for WPD-2.26a but did not explain the basis for keeping the information confidential other than an assertion that the same information was subject to a pending motion for confidential treatment in Case 2016-00152, the case in which Duke Kentucky requested approval for advanced meters.

Duke Kentucky argued that the materials designated and described above should be treated as confidential pursuant to KRS 61.878(1)(a), (c) and (k) for a period of 20 years.

The Commission is a public agency subject to Kentucky's Open Records Act, which requires that all public records "be open for inspection by any person, except as otherwise provided by KRS 61.870 to 61.884."¹ Exceptions to the free and open

¹ KRS 61.872(1).

examination of public records contained in KRS 61.878 should be strictly construed.² The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.³ In determining whether materials should be exempt from disclosure, the Commission must balance the harm from disclosure with “the effect of protecting a given document from scrutiny by the public and potential intervenors.”⁴

Having carefully considered the petition and the materials at issue, the Commission finds that the designated materials, except for those documents produced in response to Staff’s Second Request 90(b) and Attorney General’s First Request No. 74, meet the criteria for confidential treatment and are exempted from public disclosure pursuant to KRS 61.878(1) and 807 KAR 5:001, Section 13 for a period of 20 years.

Duke Kentucky asserted that the documents produced in response to Staff’s Second Request No. 90(b) contain information regarding the salary and benefits for lobbyists that perform work for Duke Kentucky and argued that the salary and benefits of employees who are not officers is generally kept confidential. However, the documents in question indicate that the relevant employee’s salaries and benefits are not attributed to Duke Kentucky and, thus, provide no information about those employees’ actual salary and benefits. Moreover, given the public interest regarding the lobbying of public officials, it is questionable as to whether information regarding lobbyist pay included in the cost of service would ever be something that is generally considered to be confidential, whether

² See KRS § 61.871.

³ 807 KAR 5:001, Section 13(2)(c).

⁴ *Southern United Medigroup, Inc. v. Hughes*, 952 S.W.2d 195, 199 (Ky. 1997), *abrogated on other grounds by Hoskins v. Maricle*, 150 S.W.3d 1 (Ky. 2004).

or not it revealed information regarding the specific salary and benefits of the lobbyists. Thus, the Commission finds that the designated materials produced in response to Staff's Second Request No. 90(b) do not meet the criteria for confidential treatment and, therefore, are not exempted from public disclosure pursuant to KRS 61.878(1) and 807 KAR 5:001, Section 13.

Duke Kentucky did not assert a specific reason as to why the materials produced in response to Attorney General's First Request No. 74 should be kept confidential except to assert that the materials are subject to a pending confidentiality motion in another matter. The materials consist of spreadsheets—a 13-page spreadsheet identified as AG-DR-01-074(a) and a three-page spreadsheet identified as AG-DR-01-074(b)—showing the costs to implement Duke Kentucky's advanced meters through 2018 and then ongoing costs through 2031 and the expected cost savings during that period. That information, in part, was the basis of the Commission's decision to grant Duke Kentucky a Certificate of Public Need and Convenience ("CPCN") for the implementation of the advanced meters and relates to contested issues regarding the cost of service in this matter. The Commission has previously held that ratepayers have a right to know the evidence upon which the Commission relied in reaching its decision.⁵ Thus, under the circumstances, the Commission finds that Duke Kentucky failed to establish that the

⁵ See Case No. 2016-00220, *Application of Clark Energy Cooperative, Inc. for a Certificate of Public Convenience and Necessity to Install an Advanced Metering Infrastructure (AMI) System* (Ky. PSC Dec. 22, 2016) at 1 (denying a request to treat costs of a project for which a CPCN was requested as confidential, in part, because the ratepayers "have the right to know the costs of the assets that Clark Energy is proposing to purchase and they have a right to know the evidence upon which the Commission relied in determining that such costs are fair, just, and reasonable"); Case No. 2013-00219, *Application of Jackson Cooperative Corporation for an Adjustment of Rates*, (Ky. PSC Feb. 14, 2014) at 1–2 ("Jackson Energy's ratepayers have a right to know the actual costs of the power that they are purchasing, and they have a right to know the evidence upon which the Commission relied in determining that the costs of the Wellhead contract are fair, just, and reasonable.").

designated materials produced in response to Attorney General's First Request No. 74 meet the criteria for confidential treatment and, therefore, those materials are not exempted from public disclosure pursuant to KRS 61.878(1) and 807 KAR 5:001, Section 13.

IT IS THEREFORE ORDERED that:

1. Duke Kentucky's motion for confidential treatment made on or about November 13, 2017, be and is hereby granted, in part, and denied, in part.

2. Duke Kentucky failed to establish that the materials produced in response to Staff's Second Request 90(b) and Attorney General's First Request No. 74 meet the criteria for confidential treatment and, therefore, those materials shall be made available to the public.

3. The remaining materials for which confidential treatment was sought meet the criteria for confidential treatment and, therefore, shall not be made available to the public for a period of 20 years from the date of this order, unless the Commission orders otherwise.

4. Duke Kentucky shall inform the Commission if the materials granted confidential protection become publicly available or no longer qualify for confidential treatment.

5. If a non-party to this proceeding requests to inspect materials granted confidential treatment by this order, Duke Kentucky shall have 20 days from receipt of written notice of the request to demonstrate that the materials are exempt from disclosure, pursuant to KRS 61.878. If Duke Kentucky is unable to make such demonstration or the

non-party establishes that an exemption does not apply, the requested materials shall be made available for inspection.

6. The Commission shall not place the documents and materials for which confidential treatment was denied into the public record for a period of 30 days pursuant to 807 KAR 5:001, Section 13(5).

7. Nothing in this Order shall be construed as preventing the Commission from revisiting the confidential treatment of documents and materials.

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By the Commission



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