

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) APPROVAL OF NEW)	CASE NO.
TARIFFS; 3) APPROVAL OF ACCOUNTING)	2019-00271
PRACTICES TO ESTABLISH REGULATORY)	
ASSETS AND LIABILITIES; AND 4) ALL OTHER)	
REQUIRED APPROVALS AND RELIEF)	

ORDER

On January 15, 2020, Duke Energy Kentucky, Inc. (Duke Kentucky), electronically filed a petition, pursuant to 807 KAR 5:001, Section 13, requesting confidential treatment for certain attachments to its application for 20 years. Specifically, Duke Kentucky states that, as a part of its application, attachments to Tab 35 of Duke Kentucky's Financial Reporting Summaries monthly managerial reports, in relation to filing requirements pursuant to 807 KAR 5:001, Section 16(7)(o), and attachments to the Direct Testimony of Renee H. Metzler, RHM-5(a) – (c), of Duke Kentucky's 2019 Short-Term Incentive Plan and Union Employee Incentive Plans; 2019 Restricted Stock Award Plan; and 2019 Executive Long-Term Incentive Plan. Duke Kentucky states that the attachments contain detailed operations and maintenance (O&M) and capital expenses incurred by Duke Kentucky on a monthly basis, financial projections, and information relating to the compensation of non-senior executive employees and shared employees of Duke Kentucky.

Duke Kentucky asserts that the designated information was either developed internally or acquired on a proprietary basis by Duke Energy Corporation and Duke Kentucky personnel, is not on file publicly with any public agency, and is not publicly available from any other commercial source. Duke Kentucky states that the attachments to Tab 35 contain narrative explanations of variances for Duke Kentucky and show the financial condition of Duke Kentucky on a monthly basis. Duke Kentucky asserts that, individually, any of these documents would provide competitors with tremendous insight into Duke Kentucky's financial condition, capital and O&M philosophies, policies, practices and expenses.

Duke Kentucky asserts that gaining access to this information would be extremely valuable to Duke Kentucky's competitors and vendors. Finally, Duke Kentucky asserts that, if released, this information would put Duke Kentucky at a competitive disadvantage in future negotiations with potential vendors and even potentially inhibit the Duke Kentucky's ability to properly manage costs. In relation to the attachments to RHM-5(a) – (c), Duke Kentucky asserts that these documents provide intimate details on the nature, scope and operation of Duke Kentucky's incentive compensation plans. Duke Kentucky asserts that, taken together, these documents represent the accumulation of decades of best practices in human capital management, and that gaining access to this information would be extremely valuable to Duke Kentucky's competitors who might desire to poach Duke Kentucky's talent pool. Duke Kentucky also asserts that its disclosure would impose a significant and material obstacle in its efforts to continue to recruit and retain a skilled labor force.

Having carefully considered the motion and the materials at issue, the Commission finds that the attachments to Tab 35 and the attachments to RHM-5(a) and (b), consisting of Duke Kentucky's 2019 Short-Term Incentive Plan and Union Employee Incentive Plans; 2019 Restricted Stock Award Plan, for which Duke Kentucky seeks confidential treatment are exempt from public disclosure pursuant to KRS 61.878(1)(c)(1). The Commission finds, however, that attachment RHM-5(c), consisting of the 2019 Executive Long-Term Incentive Plan, is information that is not generally recognized as confidential, and therefore does not meet the criteria for confidential treatment and is not exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13.

The Commission has generally held that executive officer salary and compensation does not meet the criteria for confidential treatment because executive compensation is included as an expense in base rate calculations and because certain executive salary information must be disclosed to the public in any case in other regulatory filings.¹ Therefore, the Commission finds that Duke Kentucky's request for confidential treatment of the 2019 Executive Long-Term Incentive Plan should be denied.

IT IS THEREFORE ORDERED that:

1. Duke Kentucky's January 15, 2020 petition for confidential protection is granted in part and denied in part.
2. Duke Kentucky petition for confidential treatment for the attachments to Tab 35 of Duke Kentucky's Financial Reporting Summaries monthly managerial reports, in relation to filing requirements pursuant to 807 KAR 5:001, Section 16(7)(o), and

¹ See Case No. 2017-00349, *Electronic Application of Atmos Energy Corporation for an Adjustment of Rates and Tariff Modifications* (Ky. PSC May 17, 2018) at 1–2; See also, Case No. 2012-00221, *Application of Kentucky Utilities Company for an Adjustment of its Electric Rates* (Ky. PSC Sept. 11, 2013) at 1 (denying a request to treat executive salaries and benefits as confidential for those reasons).

attachments to the Direct Testimony of Renee H. Metzler, RHM-5(a) and (b), consisting of Duke Kentucky's 2019 Short-Term Incentive Plan and Union Employee Incentive Plans and 2019 Restricted Stock Award Plan, is granted.

3. Duke Kentucky's petition for confidential treatment for attachment RHM-5(c), consisting of the 2019 Executive Long-Term Incentive Plan, is denied.

4. The designated materials in the attachments to Tab 35 of Duke Kentucky's Financial Reporting Summaries monthly managerial reports and RHM-5(a) and (b) shall not be placed in the public record or made available for public inspection for 20 years, or until further Orders of this Commission.

5. The designated materials in RHM-5(c) are not exempt from public disclosure and shall be placed in the public record or made available for public inspection.

6. If Duke Kentucky objects to the Commission's determination that certain information not be granted confidential treatment, it must seek either rehearing pursuant to KRS 278.400 or judicial review of this Order pursuant to KRS 278.410. Failure to exercise either of these statutory rights will be deemed as agreement with the Commission's determination of which material should be granted confidential treatment.

7. Duke Kentucky shall be required to demonstrate a change in circumstances in any subsequent motion for continued confidential treatment of materials in question after the end of the period set forth in order paragraph 4.

8. Use of the designated materials in any Commission proceeding shall be in compliance with 807 KAR 5:001, Section 13(9).

9. Duke Kentucky shall inform the Commission if the designated materials that have been granted confidential treatment become publicly available or no longer qualify for confidential treatment.

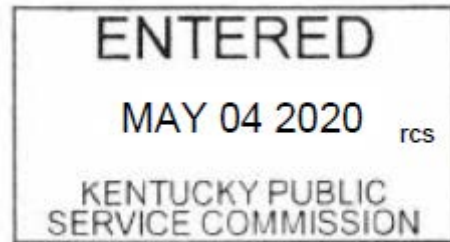
10. If a non-party to this proceeding requests to inspect the designated materials granted confidential treatment by this Order and the period during which the materials have been granted confidential treatment has not expired, Duke Kentucky shall have 30 days from receipt of written notice of the request to demonstrate that the materials still fall within the exclusions from disclosure requirements established in KRS 61.878. If Duke Kentucky is unable to make such demonstration, the requested materials shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

11. The Commission shall not make the requested materials available for inspection for 30 days following an Order finding that the materials no longer qualify for confidential treatment in order to allow Duke Kentucky to seek a remedy afforded by law.

12. Within 30 days of the date of this Order, Duke Kentucky shall file a revised version of RHM-5(c), which consists of the 2019 Executive Long-Term Incentive Plan, for which confidential protection was denied reflecting as unredacted the information that has been denied confidential treatment.

13. The designated materials for which Duke Kentucky's request for confidential treatment has been denied shall neither be placed in the public record nor made available for inspection for 30 days from the date of this in order to allow Duke Kentucky to seek a remedy afforded by law.

By the Commission



ATTEST:



Acting General Counsel

Case No. 2019-00271

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