

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 September 18, 2019, Duke Energy Kentucky, Inc. (Duke Kentucky), pursuant to 807 KAR 5:001, Section 13, filed a petition requesting confidential treatment for its responses to Commission Staff’s First Request for Information (Staff’s First Request), Request Nos. 6, 13, 18, 30, 41, 43, 45, 46, and 49. Duke Kentucky requests that the designated information remain confidential for 20 years. Specifically, Duke Kentucky requested confidential treatment for the following documents:

1. Materials filed in response to Staff’s First Request, Request No. 6. The designated information is described by Duke Kentucky as vendor information. Request No. 6 stated to “[p]rovide a detailed analysis of expenses for professional services . . . and all workpapers supporting the analysis.”

2. Materials filed in response to Staff’s First Request, Request No. 13. The designated information is described by Duke Kentucky as salary information for employees. Request No. 13 stated to “[d]escribe [Duke Kentucky’s] lobbying activities

and a schedule showing name, salary and job title of each individual whose job function involves lobbying on the local, state, or national level.”

3. State and federal tax returns produced in response to Staff’s First Request No. 18.

4. Internal accounting policies and procedures produced in response to Staff’s First Request No. 30.

5. Materials filed in response to Staff’s First Request, Request No. 41. The designated information is described by Duke Kentucky as compensation and benefit information for corporate officers and for groups of employees by category for Directors, Managers, Supervisors, Exempt, Non-Exempt, Union, and Non-Union Hourly.

6. Materials filed in response to Staff’s First Request, Request No. 43. The designated information is described by Duke Kentucky as all health care plan, dental plan, and vision plan categories available to corporate officers and to groups of employees by category for Directors, Managers, Supervisors, Exempt, Non-Exempt, Union, and Non-Union Hourly, including associated employee contribution rates of total premium cost for each category.

7. Materials filed in response to Staff’s First Request, Request No. 45. The designated information is described by Duke Kentucky as all life insurance plan categories available to corporate officers and to groups of employees by category for Directors, Managers, Supervisors, Exempt, Non-Exempt, Union, and Non-Union Hourly, including associated employee contribution rates and employer contribution rates of total premium cost for each plan category.

8. Materials filed in response to Staff's First Request, Request No. 46. The designated information is described by Duke Kentucky as all retirement plans available to corporate officers and to groups of employees by category for Directors, Managers, Supervisors, Exempt, Non-Exempt, Union, and Non-Union Hourly, including associated employee contribution rates and employer contribution rates for the total cost for each plan category.

9. Internal presentation made to Duke Kentucky's Compensation Committee in Response to Staff's First Request No. 49.

In support of its petition, Duke Kentucky asserts that the designated materials are proprietary information and that the public disclosure of the designated materials would lead to a competitive disadvantage. Duke Kentucky states that if the designated materials are disclosed that competitors would have insight into the internal operations of Duke Energy Corporation, which the competitors could then use and incorporate into their own business strategies to the detriment of Duke Kentucky and its customers. Duke Kentucky also asserts that the information obtained from third-party vendors should be protected because the information was provided in accordance with licensing agreements or other contracts. Duke Kentucky states that the designated information has value to the vendors and would place Duke Kentucky at a disadvantage in being able to procure such services in the future if the information was disclosed, or that vendors may be unwilling to provide such services to Duke Kentucky at the same or lower costs if it is known that such costs would be made public. Duke Kentucky asserts that the designated compensation and benefit information is personal and private information and should not be in the public realm. Duke Kentucky asserts that the surveys, studies and presentations used by Duke

Kentucky to determine compensation and benefit offerings are highly confidential and subject to proprietary protection of third-party vendors. Duke Kentucky states that public disclosure of these sensitive documents would unnecessarily provide interested parties and competitors with access to information regarding employee compensation, which could lead to attempts to poach Duke Kentucky's workforce and management. Such public disclosure would unfairly harm Duke Kentucky's competitive position in the marketplace for utility management and a skilled workforce, to the detriment of Duke Kentucky and its customers. Duke Kentucky asserts that the designated information detailing internal accounting procedures is trade secret information.

Having carefully considered the petition and the material at issue, the Commission finds that the designated materials contained in Duke Kentucky's responses to Staff's First Request, Request Nos. 6, 18, 30, 41, and 49, is information that is generally recognized as confidential, and therefore meets the criteria for confidential treatment and is exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13.

The Commission also finds that the designated information of compensation and benefit information, lists of all health care, dental and vision plans, life insurance plans, and retirement plans pertaining to executive officers and lobbyists in Request Nos. 13, 43, 45, and 46, 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 salaries are

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 motion to grant confidentiality to compensation and benefit information, lists of all health care, dental and vision plans, life insurance plans, and retirement plans of Duke Kentucky executive officers and lobbyists should be denied.

IT IS THEREFORE ORDERED that:

1. Duke Kentucky's petition for confidential treatment for its responses to Staff's First Request for Information, Request Nos. 6, 18, 30, 41, and 49, is granted.

2. Duke Kentucky's petition for confidential treatment for its responses to Staff's First Request for Information, Request Nos. 13, 43, 45, and 46, as they pertain to executive officers and lobbyists is denied.

3. The designated materials in Duke Kentucky's responses to Staff's First Request for Information, Request Nos. 6, 18, 30, 41, and 49, shall not be placed in the public record or made available for public inspection for 20 years, or until further Orders of this Commission.

4. The designated materials in Duke Kentucky's responses to Staff's First Request for Information, Request Nos. 13, 43, 45, and 46, as they pertain to executive officers and lobbyists, are not exempt from public disclosure and shall be placed in the public record or made available for public inspection.

¹ See Case No. 2017-000349, *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 salary and benefits as confidential for those reasons).

5. If Duke Kentucky objects to the Commission's determination that certain requested 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 materials should be granted confidential treatment. Duke Kentucky will 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 ordering paragraphs 3 and 4.

6. Use of the materials that were granted confidential treatment in any Commission proceeding shall be in compliance with 807 KAR 5:001, Section 13(9).

7. If a non-party to this proceeding requests to inspect the material granted confidential treatment by this Order and the period during which the materials have been granted confidential treatment has not run, then 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.

8. The Commission shall not make the requested materials available for inspection for 20 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.

9. Within 20 days of the date of this Order, Duke Kentucky shall file a revised version of the responses to Staff's First Request for Information, Request Nos. 13, 43, 45, and 46, as they relate to executive officers and lobbyists, for which confidential

protection was denied reflecting as unredacted the information that has been denied confidential.

10. The material 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 Order in order to allow Duke Kentucky to seek a remedy afforded by law.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

By the Commission



ATTEST:

A. B. Pinner

Acting General Counsel

Case No. 2019-00271

*L Allyson Honaker
Goss Samford, PLLC
2365 Harrodsburg Road, Suite B325
Lexington, KENTUCKY 40504

*Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45202

*David S Samford
Goss Samford, PLLC
2365 Harrodsburg Road, Suite B325
Lexington, KENTUCKY 40504

*Larry Cook
Assistant Attorney General
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Debbie Gates
Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45201

*J. Michael West
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Dennis G Howard II
Howard Law PLLC
740 Emmett Creek Lane
Lexington, KENTUCKY 40515

*Minna Sunderman
Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45201

*William Don Wathern, Jr.
Director Rates & Reg. Strategy
Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45201

*Rocco O D'Ascenzo
Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45201

*Jody Kyler Cohn
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OHIO 45202

*Honorable Kurt J Boehm
Attorney at Law
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OHIO 45202