

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

ORDER

On October 28, 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 Second Request for Information (Staff's Second Request), Request Nos. 30, 36, 52, 53, 79, 82, 84, 105, 121, 130, 144, 155, and 168; the Attorney General of the Commonwealth, by and through the Office of Rate Intervention, First Request for Information (Attorney General's First Request), Request Nos. 9, 38, 39, 40, 46, 47, 48, 59, 70, 74, 109, 115, and 119; and Kroger's First Request for Information (Kroger's First Request), Request No. 3. 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 Second Request, Request No. 30. The designated information is described by Duke Kentucky as vendor contracts. Specifically, Duke Kentucky requests confidential treatment for the

pricing and cost of each individual contract. However, Duke Kentucky notes that it is not requesting confidential treatment of the total sum spent on the vendor contracts. Duke Kentucky states, “Disclosing such information at the detailed level of individual contracts will harm [Duke Kentucky] by setting a ‘floor’ in future negotiations with vendors that will make it very difficult for [Duke Kentucky] to negotiate the lowest possible cost.”

2. Materials filed in response to Staff’s Second Request, Request No. 36. The designated information is described by Duke Kentucky as details on its process to select Customer Connect and other sensitive information regarding software requirements. Duke Kentucky asserts that this information is internal corporate policies and procedures, and, therefore, disclosure would violate the Open Records Act.

3. Materials filed in response to Staff’s Second Request, Request No. 52. The designated information is described by Duke Kentucky as a recent slide provided by Scotiabank. Request No. 52 stated, “Provide documentation supporting Mr. Jacobi’s statement that financial markets continue to experience periods of volatility.” Duke Kentucky asserts that the slide’s author is Scotiabank for purposes of federal copyright law, which prevents its unauthorized disclosure under Kentucky law.

4. Materials filed in response to Staff’s Second Request, Request No. 53. The designated information is described by Duke Kentucky as calculations for the short-term interest rate for the base and the forecast period. Duke Kentucky asserts that if the information was disclosed it would put Duke Kentucky at a

disadvantage as it negotiates short-term debt in the future. Duke Kentucky also asserts that the Commission has previously held that information concerning future interest rate expense and associated fees is confidential.

5. Materials filed in response to Staff's Second Request, Request No. 79. The designated information is described by Duke Kentucky as a Cost-Benefit Analysis for its Crittenden Storage Project, which is the successor to the original hospital project. Request No. 79 states, "State whether the proposed battery project will provide increased reliability to any Duke Kentucky customer in addition to the hospital. . . . State whether a cost-benefit analysis was performed for the proposed battery project." Duke Kentucky asserts that the Commission has previously recognized that cost-benefit analyses are confidential and not subject to public disclosure.

6. Materials filed in response to Staff's Second Request, Request No. 82. The designated information is described by Duke Kentucky as an itemized breakdown of the cost of the battery storage project. Duke Kentucky asserts that the Kentucky Supreme Court has held that project costs such as the designated information under the Open Records Act.

7. Materials filed in response to Staff's Second Request, Request No. 84. The designated information is described by Duke Kentucky as its engineering report for the Crittenden Storage Project. Duke Kentucky asserts that engineering reports are confidential assessments of utility facilities and are entitled to confidential treatment.

8. Materials filed in response to Staff's Second Request, Request No. 105. The designated information is described by Duke Kentucky as customer information regarding customer accounts. Request No. 105 states, "Provide a list of the companies...currently receiving service and under what tariff they are served. Provide when each of the companies is expected to take service, and over what time frame they will achieve the projected demand. Explain how the projected increased demand has been reflected in the base period and the forecasted period."

9. Materials filed in response to Staff's Second Request, Request No. 121. The designated information is described by Duke Kentucky as the Florida ET Pilot Interim Report that was filed under seal with the Florida Public Service Commission and the Project Plug-IN Final Learnings Report from Duke Indiana's Project Plug-IN. Request No. 121 states, "Provide copies of any interim or annual EV program reports operated by Duke Kentucky affiliate companies that have been provided to other state regulatory Commissions." Duke Kentucky asserts that these reports are sensitive and confidential and are not publicly available.

10. Materials filed in response to Staff's Second Request, Request No. 130. The designated information is described by Duke Kentucky as a copy of its Cost-Benefit Analysis for the Non-Road Electrification Incentive Program. Duke Kentucky asserts that disclosure of the Non-Road Electrification Incentive Program Cost-Benefit Analysis would give competitors and vendors a significant unfair advantage in knowing how Duke Kentucky determines value and awards contracts.

11. Materials filed in response to Staff's Second Request, Request No. 144. The designated information is described by Duke Kentucky as a detailed analysis of service company costs. Request No. 144 states, "Provide a copy of the market research referenced in the testimony showing that the costs of common business functions that are allocated to Duke Kentucky and shared among all affiliated companies result in lower overall cost to Duke Kentucky than if it had to maintain separate functions." Duke Kentucky asserts that the Commission has previously held that information related to corporate affiliates is confidential and should be protected from public disclosure.

12. Materials filed in response to Staff's Second Request, Request No. 155. The designated information is described by Duke Kentucky as a copy of its Fixed Resource Requirement plan in 2019. Duke Kentucky states that the FRR plan goes to the heart of a utility's operations within an organized electric market and includes information regarding its plans for supplying and procuring power. Duke Kentucky asserts that the information is highly valuable to competitors in the marketplace who would use such information to game the system and manipulate market pricing, and that the Commission has previously recognized market participation information as confidential.

13. Materials filed in response to Staff's Second Request, Request No. 168: The designated information is described by Duke Kentucky as an Excel spreadsheet with the supporting calculations for Attachment JLK3.xlsx, which was provided by Duke Kentucky in response to Staff's First Request, Request No. 54. Duke Kentucky asserts that the supporting calculations, if disclosed, would provide

a competitor or vendor with commercially valuable information regarding the methodologies and analytical strategies of Duke Kentucky.

14. Materials filed in response to Attorney General's First Request, Request No. 9. The designated information is described by Duke Kentucky as vendor contracts. Request No. 9 states, "[I]n regards to routine distribution vegetation management costs." Duke Kentucky states that it "seeks confidential treatment for the pricing and cost information related to each specific contract which is being provided."

15. Materials filed in response to Attorney General's First Request, Request No. 38. The designated information is described by Duke Kentucky as its Five-Year Forecast. Duke Kentucky asserts that the Commission has previously recognized financial forecast data to be confidential and not subject to public disclosure under the Open Records Act.

16. Materials filed in response to Attorney General's First Request, Request No. 39. The designated information is described by Duke Kentucky as specific costs incurred by Duke Kentucky and its affiliates. Duke Kentucky asserts that the information should be kept confidential because it contains information related to affiliates and financial forecasts.

17. Materials filed in response to Attorney General's First Request, Request No. 40. The designated information is described by Duke Kentucky as a detailed schedule regarding the charges from Duke Energy Ohio by FERC expense account and how they are assigned and allocated. Specifically, Duke Kentucky states that it is seeking confidential treatment of data pertaining to its

third quarter 2019 financial data. Duke Kentucky states that this information is not yet publicly available as Duke Energy Corporation has not yet reported its quarterly earnings. As such, Duke Kentucky asserts the information is deemed confidential under federal law and, therefore, may not be disclosed at the current time under Kentucky law. Duke Kentucky states that it will supplement this response with a non-confidential filing once its earnings have been publicly reported.

18. Materials filed in response to Attorney General's First Request, Request Nos. 46 and 47. The designated information is described by Duke Kentucky as costs recorded in Account 500000 and 502100. Duke Kentucky states that it seeks confidential treatment for data pertaining to its third quarter 2019 financial data. Duke Kentucky states that this information is not yet publicly available as Duke Energy Corporation has not yet reported its quarterly earnings. As such, Duke Kentucky asserts the information is deemed confidential under federal law and, therefore, may not be disclosed at the current time under Kentucky law. Duke Kentucky states that it will supplement this response with a non-confidential filing once its earnings have been publicly reported.

19. Materials filed in response to Attorney General's First Request, Request No. 48. The designated information is described by Duke Kentucky as its total distribution O&M costs. Duke Kentucky states that it seeks confidential treatment for data pertaining to its third quarter 2019 financial data. Duke Kentucky states that this information is not yet publicly available as Duke Energy Corporation has not yet reported its quarterly earnings. As such, Duke Kentucky asserts the information is deemed confidential under federal law and, therefore, may not be

disclosed at the current time under Kentucky law. Duke Kentucky states that it will supplement this response with a non-confidential filing once its earnings have been publicly reported.

20. 2018 federal tax returns produced in response to Attorney General's First Request, Request No. 59. Duke Kentucky states that this information is highly confidential and sensitive, which is protected from disclosure by federal law.

21. Materials filed in response to Attorney General's First Request, Request No. 70. The designated information is described by Duke Kentucky as the Authorized Electric Returns by utility. Request No. 70 states, "Provide the Authorized Electric Returns by utility for 2019." Duke Kentucky asserts that this is highly sensitive information that is universally regarded as confidential by the Commission, both due to its sensitive and proprietary nature and by virtue of its confidentiality under federal law.

22. Materials filed in response to Attorney General's First Request, Request No. 74. The designated information is described by Duke Kentucky as its historical capital structure for the last ten years which shows stock, long-term debt and short-term debt components. Duke Kentucky states that information that it seeks to be kept confidential relates to its year to date financial data and that this information is not yet publicly available as Duke Kentucky has not yet reported its quarterly earnings. Duke Kentucky states that it will supplement this response with a non-confidential filing once its earnings have been publicly reported.

23. Materials filed in response to Attorney General's First Request, Request No. 109. The designated information is described by Duke Kentucky as

its cost benefit analysis for the Crittenden Storage Project. Duke Kentucky contends that this information is confidential and highly sensitive and should be exempt from public disclosure.

24. Materials filed in response to Attorney General's First Request, Request No. 115. The designated information is described by Duke Kentucky as its net metering forecast. Duke Kentucky asserts that disclosure of its internal forecasting for net metering would likely be prejudicial to Duke Kentucky and its non-net metering customers in regard to future rate setting procedures as contemplated by Senate Bill 100.

25. Materials filed in response to Attorney General's First Request, Request No. 119. The designated information is described by Duke Kentucky as customer information regarding customer accounts, which contains personal information and should be kept confidential. Request No. 119 states, "Provide the residential customer count served by [the Donaldson Substation] over each of the past five (5) years. Confirm that these projects are driven primarily by commercial class customers. Identify any industrial class customers included in these projects."

26. Materials filed in response to Kroger's First Request, Request No. 3. The designated information is described by Duke Kentucky as customer information, which contains personal information and should be kept confidential. Request No. 3 states, "Will [Duke Kentucky] be the electric service provider for the Amazon Air Hub facility? . . . Provide the rate schedule(s) that the Amazon Air Hub facility is likely to be served under. Provide the expected level of electric

consumption for the Amazon Air Hub facility. Provide the expected commercial operation start date for the Amazon Air Hub facility. Does [Duke Kentucky] plan to offer an incentive electric rate?”

In support of its petition, Duke Kentucky asserts that the designated materials are proprietary information retained by Duke Kentucky on a need-to-know basis. Duke Kentucky states that the designated materials are generally recognized as confidential and proprietary in the energy industry and in business generally. Duke Kentucky asserts that the designated internal accounting procedures are considered proprietary and trade secret information as it contains sensitive business operations procedures, which if made available, would potentially harm Duke Energy Corporation and Duke Kentucky. Duke Kentucky asserts that if the designated information was publicly disclosed, competitors would have insight into the internal operations of Duke Energy Corporation and its subsidiaries, including Duke Kentucky, which they could then use and incorporate into their own business strategies, to the detriment of Duke Kentucky and its customers. Duke Kentucky states that its procedures were developed over years of operation and implementation of best practices gleaned from various corporate mergers and acquisitions and decades of experiences. Duke Kentucky also asserts that public disclosure of the designated information contained in contracts with third party vendors would place Duke Kentucky at a disadvantage in being able to procure such services in the future. Duke Kentucky states 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 at contract-specific level of detail. Duke Kentucky states that it does not object to public disclosure of this information in the aggregate, but only at such a level of detail that

it would make it more expensive to contract for such services in the future. Duke Kentucky asserts that public disclosure of this information will hinder Duke Kentucky's ability to provide similar services as the current contract pricing to Duke Kentucky would be used against it in other negotiations. Finally, Duke Kentucky asserts that designated information, either developed internally or acquired on a proprietary basis by Duke Energy Corporation and Duke Kentucky personnel, is not on file publicly with any agency and is not publicly available from any commercial or other source.

Having carefully considered the petition and the materials at issue, the Commission finds that the designated materials contained in Duke Kentucky's responses to Staff's Second Request, Request Nos. 30, 36, 52, 53, 79, 82, 84, 105, 121, 130, 144, 155, and 168; the Attorney General's First Request, Request Nos. 9, 38, 39, 40, 46, 47, 48, 59, 70, 74, 109, 115, and 119; and Kroger's First Request, Request No. 3, are exempted from public disclosure pursuant to KRS 61.878(1)(a), 61.878(1)(c)(1), and 61.878(1)(k).

IT IS THEREFORE ORDERED that:

1. Duke Kentucky's October 28, 2019 petition for confidential protection is granted.
2. Except for the responses to the Attorney General's First Request, Response Nos. 40, 46, 47, 48, and 74, the designated materials shall not be placed in the public record or made available for public inspection for 20 years, or until further Orders of this Commission. Duke Kentucky shall supplement the responses to the Attorney General's First Request, Request Nos. 40, 46, 47, 48, and 74 with a non-confidential filing once its earnings have been publicly reported.

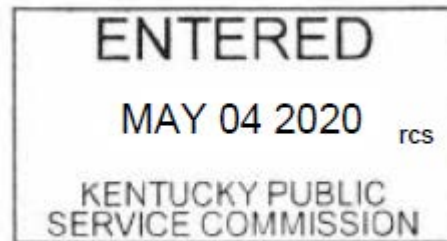
3. Use of the designated materials in any Commission proceeding shall be in compliance with 807 KAR 5:001, Section 13(9).

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

5. 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.

6. The Commission shall not make the designated 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.

By the Commission



ATTEST:



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Case No. 2019-00271

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