

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC BACK-UP POWER SUPPLY PLAN )	CASE NO.
OF DUKE ENERGY KENTUCKY, INC. )	2021-00086

ORDER

On March 1, 2022, Duke Energy Kentucky, Inc. (Duke Kentucky) filed a petition, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for ten years for information redacted from Attachment 2 to documents filed as required by the Commission's November 30, 2021 Order.

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."<sup>1</sup> In support of its petition, Duke Kentucky argued for the application of KRS 61.878(1)(c)(1), which exempts records that are "[g]enerally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records." Exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.<sup>2</sup> The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.<sup>3</sup>

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<sup>1</sup> KRS 61.872(1).

<sup>2</sup> See KRS 61.871.

<sup>3</sup> 807 KAR 5:001, Section 13(2)(c).

The redacted document consists of Duke Kentucky's monthly energy market hedging gains and losses from 2006 to 2021. Duke Kentucky argued that the timing and amounts reflected in this spreadsheet constitute hedging strategies that would harm Duke Kentucky and assist its competitors in the energy market if disclosed.

Having considered the petition and the material at issue, the Commission finds that Duke Kentucky's petition is granted. The hedging trends and tendencies with regards to time of year, year to year activities, and gain or loss amounts reflect Duke Kentucky's internal hedging strategies. In Duke Kentucky's previous back-up power supply plan case, the Commission granted confidential treatment for historical hedging gains and losses for periods of time greater than one month.<sup>4</sup> The historical data at issue in the present petition is even more specific and should be protected. The designated material is generally recognized as confidential or proprietary and therefore meets the criteria for confidential treatment and is exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

IT IS THEREFORE ORDERED that:

1. Duke Kentucky's petition for confidential treatment is granted.
2. The designated material granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for ten years or until further Order of this Commission.
3. Use of the designated material granted confidential treatment by this Order in any Commission proceeding shall comply with 807 KAR 5:001, Section 13(9).

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<sup>4</sup> Case No. 2017-00117, *Back-Up Power Supply Plan of Duke Energy Kentucky, Inc.* (Ky. PSC May 21, 2019), Order at 2.

4. Duke Kentucky shall inform the Commission if the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment.

5. If a nonparty to this proceeding requests to inspect the material granted confidential treatment by this Order and the period during which the material has 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 material still falls within the exclusions from disclosure requirements established in KRS 61.878. If Duke Kentucky is unable to make such demonstration, the requested material shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

6. The Commission shall not make the requested material available for inspection for 30 days from the date of service of an Order finding that the material no longer qualifies for confidential treatment in order to allow Duke Kentucky to seek a remedy afforded by law.

PUBLIC SERVICE COMMISSION

  
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Chairman

  
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Vice Chairman

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Commissioner



ATTEST:

  
\_\_\_\_\_  
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