

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF DUKE ENERGY	)	
KENTUCKY, INC. FOR: 1) AN ADJUSTMENT OF	)	CASE NO.
THE NATURAL GAS RATES; 2) APPROVAL OF	)	2021-00190
NEW TARIFFS, AND 3) ALL OTHER REQUIRED	)	
APPROVALS, WAIVERS, AND RELIEF	)	

ORDER

This matter arises on the motions for confidential treatment filed by Duke Energy Kentucky, Inc. (Duke Kentucky), pursuant to KRS 61.878 and 807 KAR 5:001, Section 13, on July 14, 2021, and November 4, 2021. The motions are described in further detail below.

JULY 14, 2021 MOTION FOR CONFIDENTIAL TREATMENT

Duke Kentucky requested confidential treatment for 20 years for Duke Kentucky's response to the following items: (1) Commission Staff's Second Request for Information (Staff's Second Request), Item 6; (2) Staff's Second Request, Item 15; (3) Staff's Second Request, Item 19 and Attorney General's First Request for Information (Attorney General's First Request), Item 57; (4) Staff's Second Request, Item 44; (5) Attorney General's First Request, Item 19(d); (6) Attorney General's First Request. Item 39; (7) Attorney General's First Request, Item 43; and (8) Attorney General's First Request, Item 40.

In support of its motion, Duke Kentucky argued that the response to Staff's Second Request, Item 6, contained detailed information related to expenses for professional

services. Duke Kentucky asserted this information is both confidential and proprietary in nature. Duke Kentucky stated that release of such information could place Duke Kentucky at a disadvantage in future negotiations with potential professional service providers and in competition.

In support of its motion, Duke Kentucky argued that the response to Staff's Second Request, Item 15, contained sensitive information. The forecast included debt and note maturity calculations.

In support of its motion, Duke Kentucky submitted reports by Moody's and S&P Global Rating for the years 2019, 2020, and 2021 in response to Attorney General's Second Request, Item 57, and Staff's Second Request, Item 19. Duke Kentucky argued that the credit reports were confidential in nature and proprietary.

In support of its motion, Duke Kentucky submitted two slides from a PowerPoint presentation in response to Staff's Second Request, Item 44. Duke Kentucky argued that the two slides from Benjamin Walter Bohdan Passty contained sensitive information.

In support of its motion, Duke Kentucky argued that information contained the response to Attorney General's First Request, Item 19(d), an internal memorandum, regarding the computer information system and the operating and management expenses. As such, the information was both confidential and proprietary pursuant to KRS 61.878(1)(c)(1).

In support of its motion, Duke Kentucky argued that Willis Towers Watson reports, Item 39, filed in response to the Attorney General's First Request, were confidential and subject to a non-disclosure agreement.

In support of its motion, Duke Kentucky argued Item 40, actuarial tables, contained confidential information related to salaries and pensions. The utility stated that information about employee compensation would allow competitors to gain an unfair advantage in the marketplace.

In support of its motion, Duke Kentucky argued that information provided in Item 43 regarding the Duke Energy Money Pool was confidential. Duke Kentucky also cited two cases holding similar information to be given confidential treatment.<sup>1</sup>

Having considered the motion and the material at issue, the Commission finds that Duke Kentucky's motion should be granted in part and denied in part. The Commission finds that the designated material contained in Item 6 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. Although Duke Kentucky signed a non-disclosure agreement with the bank, that alone is not determinative of whether a document is given confidential treatment. The material contains information that may be used by competitors and investors in a way that could adversely affect the company.

The Commission finds that the material submitted as Item 15 is given confidential treatment pursuant to KRS 61.878(1)(c)(1). The information contains forecasted debt calculations. The information may change but release may result in adverse consequences to the utility.

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<sup>1</sup> In Case No. 2014-00371, *Application of Kentucky Utilities Company for an Adjustment of its Electric Rates* (Ky. PSC January 29, 2016), Order; Case No. 2015-00382, *Application of Water Service Corporation of Kentucky for a General Adjustment of Rates* (Ky. PSC Apr. 5, 2016), Order.

The Commission finds that the material submitted in response to the Attorney General's Second Request, Item 57, and Staff's Second Request, Item 19, is given confidential treatment. The material is both proprietary and confidential in nature.

The Commission finds that the material submitted in Item 44 is not given confidential treatment. The two slides do not contain any confidential or proprietary information. They are generalized in nature.

The Commission finds that the material submitted as Item 19(d) is given confidential treatment. The material contains an extensive discussion of several computer information systems as well as how those systems would affect the operating and management expenses of the utility. The information is also proprietary to the utility.

The Commission finds that the material submitted as Item 39 is given confidential treatment. Although the material is subject to a non-disclosure agreement, the Commission is not bound by that agreement. However, the reports provide extensive information about pension computations and compensation. The reports were created by a third party for the benefit of Duke Kentucky. The reports are both confidential and proprietary pursuant to KRS 61.878(1)(c)(1).<sup>2</sup>

The Commission finds that the material submitted as Item 43 is given confidential treatment. The information relates to borrowings within the company. The finding is consistent with at least two prior Orders.<sup>3</sup>

The Commission finds that the material submitted in response to the Attorney General's First Request, Item 40, should not be given confidential treatment. The

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<sup>2</sup> Case No. 2014-00371, *Kentucky Utilities Company* (Ky. PSC Jan. 29, 2016), Order.

<sup>3</sup> *Id.* See also Case No. 2015-00382, *Water Service Corporation of Kentucky* (Ky. PSC Apr. 5, 2016), Order.

information was generalized. The spreadsheet did not contain specific names, salaries, calculations related to salary or incentives.

NOVEMBER 4, 2021 MOTION FOR CONFIDENTIAL TREATMENT

On November 4, 2021, Duke Kentucky requested that the Commission grant confidential treatment for its response to the Commission Staff's Post-Hearing Request for Information, Item 5.

In support of its motion, Duke Kentucky argued that the maximum allowable pressure (MAOP) and operating pressure (OP) information should be given confidential treatment pursuant to KRS 61.878(1)(m)(1)(f). Duke Kentucky argues that at least two prior cases have held the information provided to be confidential.<sup>4</sup>

The Commission finds that the information in the post-hearing response to Commission Staff's Post-Hearing Request for Information, Item 5, is granted confidential treatment. Although the Commission finds that the cited cases are not directly applicable, the information does contain detail related to the flow of natural gas and configuration of pipelines. The information, if disclosed, could be used for nefarious purposes.

IT IS THEREFORE ORDERED that:

1. The July 14, 2021 motion for confidential treatment is granted in part and denied in part.
2. Duke Kentucky's request for confidential treatment for the designated material in Item 6, Item 15, Item 57, Item 19, Item 19(d), Item 39, and Item 43 is granted.

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<sup>4</sup> Case 2018-00337, *Purchased Gas Adjustment Filing of Atmos Energy Corporation* (Ky. PSC Jan. 24, 2019), Order; Case No. 2016-00168, *Electronic Application of Duke Energy Kentucky, Inc.* (Ky. PSC July 27, 2017), Order.

3. Duke Kentucky's request for confidential treatment for Item 44 and Item 40 is denied.

4. The designated material: Item 6, Item 15, Item 57, Item 19, Item 19(d), Item 39, and Item 43, are granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for 20 years or until further Order of made available for public inspection for 20 years or until further Order of this Commission.

5. Duke Kentucky's November 4, 2021 motion for confidential treatment is granted.

6. Duke Kentucky's request for confidential treatment for Item 5 to the response to Commission Staff's Post-Hearing Request for Information is granted.

7. The designated material, Item 5, is granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for 20 years or until further Order of this Commission.

8. 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).

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

10. 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.

11. The Commission shall not make the requested material for which confidential treatment was granted 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.

12. The designated material denied confidential treatment by this Order or no confidential treatment was actually requested is not exempt from public disclosure and shall be placed in the public record and made available for public inspection.

13. If Duke Kentucky objects to the Commission's determination that the requested material 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.

14. Within 30 days of the date of service of this Order, Duke Kentucky shall file a revised version of the designated material for which confidential treatment was denied, reflecting as unredacted the information that has been denied confidential treatment. Duke Kentucky shall file publicly all the material for which no confidential treatment was requested.

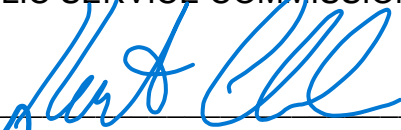
15. The designated material for which Duke Kentucky's request for confidential treatment has been denied shall neither be placed in the public record nor made available

for inspection for 30 days from the date of service of this Order to allow Duke Kentucky to seek a remedy afforded by law.

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PUBLIC SERVICE COMMISSION

  
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Chairman

  
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Vice Chairman

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Commissioner

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KENTUCKY PUBLIC  
SERVICE COMMISSION

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