

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC 2021 INTEGRATED RESOURCE)	CASE NO.
PLAN OF DUKE ENERGY KENTUCKY, INC.)	2021-00245

ORDER

This matter comes before the Commission on three petitions for confidential treatment filed by Duke Energy Kentucky, Inc. (Duke Kentucky). On June 21, 2021, Duke Kentucky filed a petition, pursuant to 807 KAR 5:001E, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for ten years for the following information included in its 2021 Integrated Resource Plan (IRP): Figures 3.1, 3.2, 3.8 (E-1 through E-8), 4.1, C-7, and C-8; Appendix B (figures B0-c to B0-i); and Tables H.2, H.4, and H.5. Duke Kentucky also seeks confidential protection for an indefinite period for Appendix A (Part D) to the IRP.

On October 22, 2021, Duke Kentucky filed a petition, pursuant to 807 KAR 5:001E, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for ten years for documents provided by Duke Kentucky in response to Commission Staff's First Request for Information (Staff's First Request), Items 38, 39, and 41; and in response to intervenor Sierra Club's First Request for Information (Sierra Club's First Request), Items 2 and 4(a).

On June 3, 2022, Duke Kentucky filed a petition, pursuant to 807 KAR 5:001E, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment

for ten years for documents provided by Duke Kentucky in response to Commission Staff's Post-Hearing Request for Information (Staff's Post-Hearing Request), Item 5.

LEGAL STANDARD

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."¹ In support of its petitions, Duke Kentucky argued the application of two provisions of KRS 61.878.

KRS 61.878(1)(c)(1) provides an exception to the requirement for public disclosure for records that are "generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records."

Under KRS 61.878(1)(m), the Open Records Act exempts "[p]ublic records the disclosure of which would have a reasonable likelihood of threatening the public safety by exposing a vulnerability in preventing, protecting against, mitigating, or responding to a terrorist act"² The exemption is limited to certain types of records, including:

Infrastructure records that expose a vulnerability referred to in this subparagraph through the disclosure of the location, configuration, or security of critical systems, including public utility critical systems. These critical systems shall include but not be limited to information technology, communication, electrical, fire suppression, ventilation, water, wastewater, sewage, and gas systems.³

A terrorist act is defined as including a criminal act intended to "[d]isrupt a system"

¹ KRS 61.872(1).

² KRS 61.878(1)(m)(1).

³ KRS 61.878(1)(m)(1)(f).

identified in the above.⁴

Exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.⁵ The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.⁶

JUNE 21, 2021 PETITION

Duke Kentucky sought confidential treatment under KRS 61.878(1)(c)(1) for portions of figures 3.1, 3.2, and 4.1 from its IRP, which are graphs showing gas and coal price forecasts through 2050 with y-axis price values redacted, and a graph showing projected costs through 2035. Duke Kentucky argued that this is proprietary data obtained from third parties whose contracts require the data to remain confidential. Duke Kentucky also asserted that if brokers or equipment vendors knew its forecasted fuel prices, such brokers or vendors would have an unfair advantage in negotiating future sales, to the detriment of Duke Kentucky and its customers.

Duke Kentucky also sought confidential treatment for portions of IRP figures 3.8, E-1 through E-8. These are forecasted PJM Interconnection, LLC (PJM) energy market power price graphs through 2050 and graphs for estimated cost of generation options under various conditions with y-axis redacted. Duke Kentucky stated that this information includes various forecasts depicting power prices, facility operations, and fuel consumption and that it would be placed at a competitive disadvantage if such information

⁴ KRS 61.878(1)(m)(2)(b).

⁵ See KRS 61.871.

⁶ 807 KAR 5:001E, Section 13(2)(c).

were released publicly, as it would provide competitors and vendors with a competitive advantage that would prevent Duke Kentucky being able to manage its costs.

Duke Kentucky asked for confidential treatment for redactions from IRP Appendix B, figures B0-c through B0-I, which include load forecast variables. Duke Kentucky stated that this is proprietary information, which if disclosed, would give market competitors a significant advantage in being able to develop their own models to anticipate Duke Kentucky's present and future loads, which would then give them insight into its strategies for fulfilling its future energy market needs. According to Duke Kentucky, others would be able to replicate its analysis at significantly less cost and thereby reap an intellectual windfall without having to dedicate their own significant time and resources to the effort.

In addition, Duke Kentucky asked for confidential treatment for forecasted energy efficiency program costs and avoided costs. Duke Kentucky stated that it could better negotiate for goods and services relating to its energy efficiency programs if potential vendors are not aware of its projected budgets by program. Duke Kentucky also asserted that avoided cost data would be very useful to competitors in the marketplace who might seek to use such data to benchmark their own performance.

Duke Kentucky also sought confidential treatment for IRP tables H.2, H.4, and H.5, which included forecasts of operations and maintenance (O&M) costs, load, PJM purchases, and fuel use. Duke Kentucky alleged that disclosing this information would give vendors and competitors a highly detailed view of its fuel procurement needs, operating costs, and other information essential to its effective implementation of its business strategies and would result in a severe disadvantage in future contract negotiations if its overall needs, costs, and requirements were available to vendors.

Lastly, Duke Kentucky argued that IRP Appendix A, Part D should remain confidential under KRS 61.878(1)(m). This document consists of a transmission system map.

Having considered the petition and the material at issue, the Commission finds that Duke Kentucky's June 21, 2021 petition for confidential treatment should be granted. Projected gas prices, coal prices, and costs should remain confidential under KRS 61.878(1)(c)(1) because they are considered proprietary, public disclosure of forecasted fuel prices would give fuel vendors an unfair negotiating advantage, and projected costs could be used by PJM competitors to unfairly compete with Duke Kentucky.⁷ PJM power prices and estimated cost of generation options should be granted confidential treatment because estimated prices and costs could be used by PJM competitors to unfairly compete with Duke Kentucky.⁸ Load forecast variables should be confidential because energy market competitors could use this information to unfairly compete by using data that Duke Kentucky paid for.⁹ Confidential treatment should also be granted for forecasted energy efficiency program costs and avoided costs because disclosure could give vendors an unfair negotiating advantage and competitors could use this information to unfairly compete by using data Duke Kentucky paid for.¹⁰ Forecasts of O&M costs, load, PJM purchases, and fuel use should remain confidential because these forecasts, if disclosed, would allow energy market competitors to unfairly compete

⁷ See Case No. 2019-00096, *In the Matter of the 2019 Integrated Resource Plan of East Kentucky Power Cooperative, Inc.* (Ky. PSC Nov. 8, 2019), Order.

⁸ See Case No. 2019-00096, Nov. 8, 2019 Order.

⁹ See Case No. 2019-00096, Nov. 8, 2019 Order.

¹⁰ See Case No. 2019-00096, (Ky. PSC Oct. 14, 2020), Order at 1–2.

and would allow vendors a negotiating advantage over Duke Kentucky.¹¹ Lastly, the transmission system map should be confidential because the location of transmission assets are public utility critical infrastructure that could be made vulnerable if its location is made public, and is therefore exempted from disclosure by KRS 61.878(1)(m).

Therefore, the designated material meets the criteria for confidential treatment and should be exempted from public disclosure pursuant to 807 KAR 5:001E, Section 13, and KRS 61.878(1)(c)(1) or (m).

OCTOBER 22, 2021 PETITION

Duke Kentucky sought confidential treatment under KRS 61.878(1)(c)(1) for information provided in response to Staff's First Request, Items 38 and 39, which included forecasted load factor calculations, including calculations by rate class. Duke Kentucky argued that this information would provide energy market competitors with a competitive advantage.

Duke Kentucky also asked for confidential treatment for a treatise it filed in response to Staff's First Request, Item 41, provided to Duke Kentucky by Moody's Analytics titled "U.S. Macroeconomic Outlook Baseline and Alternative Scenarios," arguing that the document was subject to a confidentiality agreement.

In addition, Duke Kentucky requested confidential treatment for Attachments 1 through 90 to its responses to Sierra Club's First Request, Item 2, which are spreadsheets forecasting power production costs by generating unit, asserting disclosure of information regarding power production costs could give competitors an advantage in bidding for and securing new resources. Duke Kentucky further stated that vendors and suppliers would

¹¹ See Case No. 2019-00096, Oct. 14, 2020 Order at 1–2.

enjoy an obvious advantage in any contractual negotiations to the extent they could calculate Duke's Kentucky's requirements, how it values certain resources, and what it anticipates those requirements to cost. Finally, Duke Kentucky stated that public disclosure of this information, particularly as it relates to supply-side alternatives, would reveal the business model Duke Kentucky uses—the procedure it follows and the factors and inputs it considers—in evaluating the economic viability of various generation-related projects.

Lastly, Duke Kentucky argued for confidential treatment for its response to Sierra Club's First Request, Item 4(a), consisting of forecasted O&M costs for the East Bend generating facility. Duke Kentucky argued that this information would give vendors and competitors information about Duke Kentucky's fuel procurement needs and operating costs, placing it at a disadvantage in future contract negotiations if its overall needs, costs, and requirements were publicly available to vendors.

Having considered the petition and the material at issue, the Commission finds that Duke Kentucky's October 22, 2021 petition for confidential treatment should be granted. Forecasted load calculations should be afforded confidential treatment because forecasted load may be used by competitors in the energy market to unfairly compete.¹² The Moody's Analytics publication should be confidential because public disclosure could jeopardize Duke Kentucky's ability to obtain this type of information from third parties in the future and might represent a copyright law violation.¹³ Lastly, power production cost

¹² See Case 2020-00299, *Electronic 2020 Integrated Resource Plan of Big Rivers Electric Corporation* (Ky. PSC Apr. 14, 2022), Order at 9.

¹³ See Case No. 2021-00407 *Electronic Application of South Kentucky Rural Electric Cooperative Corporation for a General Adjustment of Rates, Approval of Depreciation Study, and Other General Relief* (Ky. PSC Mar. 28, 2022), Order at 3.

and O&M forecasts should be granted confidential treatment because estimated costs could be used by PJM competitors to unfairly compete with Duke Kentucky.¹⁴

Therefore, the designated material meets the criteria for confidential treatment and should be exempted from public disclosure pursuant to 807 KAR 5:001E, Section 13, and KRS 61.878(1)(c)(1).

JUNE 3, 2022 PETITION

Duke Kentucky sought confidential treatment for an attachment provided in response to Staff's Post-Hearing Request, Item 5, consisting of a spreadsheet calculating estimated costs for solar and wind power and electric storage. Duke Kentucky argued that this spreadsheet contains proprietary data obtained from third parties whose contracts require the data to remain confidential. Duke Kentucky also stated that it would be placed at a competitive disadvantage if such information is released publicly as it would provide the competitors and potential counterparties and vendors with a competitive advantage that would prevent it from having the ability to manage its costs.

Having considered the petition and the material at issue, the Commission finds that Duke Kentucky's June 3, 2022 petition for confidential treatment should be granted. Solar, wind and storage cost estimates, if disclosed, would allow energy market competitors to unfairly compete and would allow vendors a negotiating advantage.¹⁵

IT IS THEREFORE ORDERED that:

1. Duke Kentucky's petitions for confidential treatment filed on June 21, 2021, October 22, 2021, and June 3, 2022, are granted.

¹⁴ See Case No. 2019-00096, Nov. 8, 2019 Order.

¹⁵ See Case No. 2019-00096, Oct. 14, 2020 Order at 1–2.

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, except for IRP Appendix A, Part D, which shall not be placed in the public record nor made available for public inspection for an indefinite period 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 5:001E, Section 13(9).

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


Chairman


Vice Chairman


Commissioner

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SERVICE COMMISSION

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