

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN ELECTRONIC EXAMINATION OF THE	)	
APPLICATION OF THE FUEL ADJUSTMENT	)	CASE NO.
CLAUSE OF DUKE ENERGY KENTUCKY, INC.	)	2022-00040
FROM MAY 1, 2021 THROUGH OCTOBER 31,	)	
2021	)	

ORDER

On April 14, 2022, Duke Energy Kentucky (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 redactions from documents it filed in response to Commission Staff's First Requests for Information (Staff's First Request), Items 4 and 5.

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 petitions, Duke Kentucky argued for the application of KRS 61.878(1)(c)(1), which exempts from disclosure "[r]ecords confidentially disclosed to an agency or required by an agency to be disclosed to it, 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." Exceptions to the free and open examination of public records contained in

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

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>

Duke Kentucky's responses to Staff's First Request, Items 4 and 5, included redacted documents containing fuel solicitation information. Duke Kentucky argued that releasing this information would give potential fuel vendors and competitors in the energy market inside information about its fuel procurement strategy, risk mitigation actions, and tolerances. Competitors could use this information to adjust their bidding strategies and potentially manipulate the price that Duke Kentucky pays for coal.

Having considered the petition and the material at issue, the Commission finds that Duke Kentucky's petition should be granted. Disclosure of fuel solicitation information could affect future bidding, allowing competitors and suppliers to gain an unfair advantage by having access to Duke Kentucky's solicitation strategies and bids. This type of information was previously held confidential by the Commission.<sup>4</sup> The Commission finds that the designated materials are records that meet the criteria for confidential treatment and are exempted from public disclosure for ten years pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13.

IT IS THEREFORE ORDERED that:

1. Duke Kentucky's petition for confidential treatment is granted.

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

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

<sup>4</sup> Case No. 2018-00019, *Electronic Examination of the Application of the Fuel Adjustment Clause of East Kentucky Power Cooperative, Inc. from May 1, 2017 Through October 31, 2017* (Ky. PSC May 29, 2018), Order at 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.

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).

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.

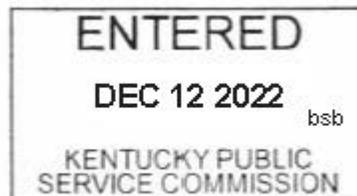
6. The Commission shall not make the requested material available for inspection for 30 days from the date of service of an Order finding that the material no longer qualifies for confidential treatment in order to allow Duke Kentucky to seek a remedy afforded by law.

PUBLIC SERVICE COMMISSION

  
Chairman

Vice Chairman

  
Commissioner



ATTEST:

  
Executive Director

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