

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF DUKE ENERGY)	
KENTUCKY, INC. FOR (1) AN ADJUSTMENT OF)	
ELECTRIC RATES; (2) APPROVAL OF NEW)	CASE NO.
TARIFFS; (3) APPROVAL OF ACCOUNTING)	2022-00372
PRACTICES TO ESTABLISH REGULATORY)	
ASSETS AND LIABILITIES; AND (4) ALL OTHER)	
REQUIRED APPROVALS AND RELIEF)	

ORDER

On May 4, 2023, 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 protection for 20 years for its responses to Sierra Club’s First Request for Information (Sierra Club’s First Request).¹

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.”² Exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.³ The

¹ On January 25, 2023, Duke Kentucky filed a Petition for Confidential Treatment containing requests for confidential treatment for its responses to requests for information from Commission Staff, Kroger, Sierra Club, Kentucky Broadband Cable Association, and the Attorney General. On April 5, 2023, the Commission issued an Order denying, in part, and granting, in part, confidential treatment for the petition with specific instructions on how Duke Kentucky should refile the petitions. On May 4, 2023, Duke Kentucky refiled the petition, but it did not file the original documents again. In the refiled petition, Duke Kentucky described the documents as originally filed.

² KRS 61.872(1).

³ See KRS 61.871.

party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.⁴ KRS 61.878(1)(c)(1) provides an exception to the requirement for public disclosure of records that are “generally recognized as confidential and proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.”⁵

DISCUSSION AND FINDINGS

In support of its petition, Duke Kentucky argued that the information contained in the attachments to its response to Sierra’s First Request, Item 1 and Item 2, should be granted confidential treatment pursuant to KRS 61.878(1)(c)(1), in accordance with the February 10, 2023 Order issued in this case and a petition previously filed by Duke Kentucky on December 1, 2022.⁶

While Duke Kentucky provided an unredacted copy of the June 2021 Duke Kentucky Integrated Resource Plan (IRP) in response to Sierra’s First Request, Item 3, it requested portions of the IRP receive confidential treatment. In support of its petition, Duke Kentucky argued that the redacted portions are confidential for the reasons previously set forth in Case No. 2021-00245.⁷

Duke Kentucky sought confidential treatment of its provided response to Sierra Club’s First Request, Item 8, output files for its preferred portfolio, including proprietary and detailed cost, capital, and revenue information. The response also included project

⁴ 807 KAR 5:001, Section 13(2)(c).

⁵ KRS 61.878(1)(c)(1).

⁶ Duke Kentucky’s Petition for Confidential Treatment (filed May 4, 2023) at 3-5; Order (Ky. PSC Feb. 10, 2023) at 6.

⁷ Case No. 2021-00245, *Electronic 2021 Integrated Resource Plan of Duke Energy Kentucky, Inc.* (filed June 21, 2021), Duke Kentucky’s Petition for Confidential Treatment at 5-6; .

costs and projected capital costs. In support of its petition, Duke Kentucky argued that this information be granted confidential treatment pursuant to KRS 61.878(1)(c)(1).⁸ Duke Kentucky argued that the information is not publicly available, its negotiated fuel costs and projected capital expenditures under various scenarios are propriety and constitute a trade secret, and disclosure would place it at a disadvantage with future negotiations.⁹

Duke Kentucky sought confidential treatment of Attachments 1 and 2 provided in response to Sierra Club's First Request, Item 9. Attachment 1 contains the 2017-2021 historical data on East Bend for installed capacity, unforced capacity, capacity factor, equivalent availability factor (EAF), heat rate, forced or random outage rate, and effective forced outage rate (EFOR). Attachment 2 contains coal and fuel oil costs of East Bend from 2017 through 2021. In support of its petition, Duke Kentucky argued that both attachments are not publicly available, are commercial sensitive, and would place Duke at a commercial disadvantage with future negotiations.¹⁰

Duke Kentucky sought confidential treatment of the following items provided in response to Sierra Club's First Request, Item 11: annual native load sales from 2015-2022; annual generation from 2016-2022; annual off system sales from 2015-2022 annual off system sales revenues from 2015-2022; annual off system energy purchases from 2015-2022; annual off system energy purchase cost from 2015-2022. Duke Kentucky

⁸ Duke Kentucky's Petition for Confidential Treatment at 6-7.

⁹ Duke Kentucky's Petition for Confidential Treatment at 6-7.

¹⁰ Duke Kentucky's Petition for Confidential Treatment at 7-8.

argued that the information is not publicly available, it represents the inner workings of a corporation and could create a commercial disadvantage to Duke Kentucky.¹¹

Finally, in response to Sierra Club's First Request, Item 15, Duke Kentucky provided the total projected energy and ancillary service market revenues for East Bend from 2023-2035. Duke Kentucky argued that the highlighted information within the response is not publicly available, represents the inner workings of a corporation, is company work product, and would create a commercial disadvantage.¹²

DISCUSSION AND FINDINGS

Having considered the petition and the material provided in Duke Kentucky's application, the Commission finds that Duke Kentucky's petition should be granted, in part, and denied, in part. On April 5, 2023, the Commission directed Duke Kentucky to file separate petitions for each of its responses to requests for information propounded by Commission Staff and Intervenors.¹³ On May 4, 2023, to comply with this Order, Duke Kentucky filed five petitions for confidential treatment. Some of the information Duke Kentucky requested confidential treatment in the current petition was previously addressed in the Commission's February 10, 2023¹⁴ and December 7, 2023¹⁵ Orders. Based on the findings of these previous Orders, the Commission finds that the following items should be granted confidential treatment pursuant to KRS 61.878(1)(c)(1): Duke Kentucky's response to Sierra Club's First Request, Item 1, except for the document

¹¹Duke Kentucky's Petition for Confidential Treatment at 8-9.

¹² Duke Kentucky's Petition for Confidential Treatment at 9-10.

¹³ Duke Kentucky's Petition for Confidential Treatment at 9-10.

¹⁴ Order (Ky. PSC Feb. 10, 2023) at 5-7.

¹⁵ Order (Ky. PSC Dec. 7, 2023) at 2-3.

labeled Staff's First Request, Item 56, Attachment BLS-5; and Duke Kentucky's response to Sierra Club's First Request, Item 2, except for the document Budget Guidelines and Assumptions. The Commission finds that the Budget Guidelines and Assumption should not receive confidential treatment, as the same information was previously denied confidential treatment in a prior order.¹⁶ Likewise, the Commission finds that Attachment BLS-5 should not receive confidential treatment pursuant to KRS 61.878(1)(c)(1), as it was not filed confidentially, and Duke Kentucky did not provide any additional argument as to why it should be granted confidential protection.

The Commission further finds that Duke Kentucky's response to Sierra Club's First Request, Item 3, 8; 15, and Item 9, Attachment 2 are records that meet the criteria for confidential treatment and should be exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13. Disclosure of this type of information would permit an unfair commercial advantage to competitors and could put Duke Kentucky at a disadvantage in future negotiations.

The Commission finds that the request for confidential treatment should be denied for Duke Kentucky's response to Sierra Club's First Request, Item 9, Attachment 1, and response to Sierra Club's First Request, Item 11. The designated material does not meet the criteria for confidential treatment and should not be exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13. Duke Kentucky's response to Sierra Club's First Request, Item 9, Attachment 1, is historical information regarding capacity. While the Commission has previously found that forecasted information should be afforded confidential treatment, the Commission has not found that

¹⁶ Order (Ky. PSC Dec 7, 2023) at 7-8.

historical information would result in a commercial advantage to competitors. Duke Kentucky's response to Sierra Club's First Request, Item 11c-h, contains off-system sales, some of which are included in calculating the profit-sharing mechanism (Rider PSM). This data is historical and is unlikely to result in a commercial disadvantage to Duke Kentucky.

IT IS THEREFORE ORDERED that:

1. Duke Kentucky's petition for confidential treatment for Duke Kentucky's responses to Sierra Club's First Request is granted, in part, and denied, in part.

2. Duke Kentucky's petition for confidential treatment for Budget Guideline and Assumptions; Sierra Club's First Request for Information, Item 1, Attachment BLS-5; the Direct Testimony of Jake Stewart Attachment, JJS 3(c); response to Sierra Club's First Request, Item 9, Attachment 1, response to Sierra Club's First Request Items 11c-h is denied.

3. Duke Kentucky's petition for confidential treatment for Duke Kentucky's Duke Kentucky's response to Sierra Club's First Request, Item 3, 8; 15; Item 9, Attachment 2; and the remaining responses to Sierra Club's First Request, Item 1 and 2 is granted.

4. The designated material 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.

5. 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).

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

7. 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.

8. 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.

9. The designated material denied confidential treatment by this Order is not exempt from public disclosure and shall be placed in the public record and made available for public inspection.

10. 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 shall be granted confidential treatment.

11. 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.

12. 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

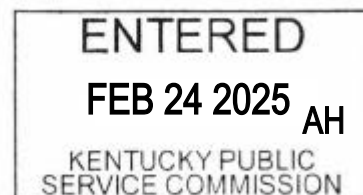
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