

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 January 26, 2023, Duke Energy Kentucky, Inc. (Duke Kentucky) filed a motion, pursuant to 807 KAR 5:001E, Section 13, and KRS 61.878, requesting that the Commission grant confidential protection for approximately 200 discrete documents filed in response to requests for information from Commission Staff, the Attorney General, Sierra Club, Kroger Co. and Kentucky Broadband and Cable Association, respectively.

Having considered the motion and the designated material, the Commission finds that Duke Kentucky's January 26, 2023 motion should be granted in part and denied in part. The Commission finds that Duke Kentucky's response to the Attorney General's First Request for Information (Attorney General's First Request), Item 58, should be granted confidential treatment. Duke Kentucky requested confidential treatment for 20 years for its response to Attorney General's First Request, Item 58, under KRS 61.878(1)(m), which prohibits public disclosure of records, such as critical energy infrastructure, that, if publicly disclosed, would have a reasonable likelihood of threatening the public safety by exposing a vulnerability in preventing, protecting against, or

responding to a terrorist act. The designated material in Duke Kentucky's response to Attorney General's First Request, Item 58 consists of detailed information pertaining to self-optimizing grid implementation and substation maps. Because the designated material is critical energy infrastructure information, it meets the standard for confidential treatment under KRS 61.878(1)(m) and 807 KAR 5:001E, Section 13, and therefore confidential treatment is granted for Duke Kentucky's response to Attorney General's First Request, Item 58.

The Commission further finds that confidential treatment should be denied for the remaining documents for which confidential treatment is requested, with leave to refile a corrected motion that complies with filing requirements for motions requesting confidential treatment established in Commission regulations. Commission regulation 807 KAR 5:001E, Section 13(2)(c) provides that Duke Kentucky has the burden of proof to show the designated material falls within the exemptions from Open Records laws established in KRS 61.878. Commission regulation 807 KAR 5:001E, Section 13(2)(a)(1) states that a motion for confidential treatment shall establish specific grounds pursuant to KRS 61.878 for classification of the material as confidential. Other than its response to Attorney General's First Request, Item 58, Duke Kentucky failed to cite to the statutory basis under KRS 61.878 for any of the other requests. Duke Kentucky provided a generalized reference to KRS 61.878 in the opening paragraph of the motion and, in paragraph 61 of the motion, cited to KRS 61.878(1)(a) and 61.878(1)(c)(1) in a general discussion, but did not indicate which, if any, of the documents Duke Kentucky was referencing. Additionally, some of the documents potentially meet the standards for

exemption from the provisions of KRS 61.878 other than KRS 61.878(1)(a), (1)(c)(1), or (1)(m).

While Duke Kentucky has leave to refile the motion that complies with 807 KAR 5:001E, Section 13, due to the voluminous number of documents for which confidential treatment is requested, Duke Kentucky shall do the following:

- Duke Kentucky shall file a motion requesting confidential treatment for its responses to each of the intervenors' and Staff's request for information as separate motions rather than an omnibus motion. For example, Duke Kentucky shall file one motion that requests confidential treatment for the designated material in Duke Kentucky's response to Staff's request for information; another motion that requests confidential treatment for the designated material in Duke Kentucky's response to the Attorney General's request for information; and so forth for Duke Kentucky's response to the respective intervenors' requests for information.

- In each motion, Duke Kentucky shall address each document for which confidential treatment is requested individually in a discrete paragraph for each document, describing what material is in the document, the statutory basis for the request, and a narrative that identifies the basis for Duke Kentucky's argument that the designated material in each document meets the statutory basis cited by Duke Kentucky.

- Due to the large number of documents that are marked "Confidential and Proprietary," Duke Kentucky shall state in its motions when it requests confidential treatment for an entire document. Under 807 KAR 5:001E, Section 13(2)(a)(3)(b), a utility requesting confidential treatment for an entire document shall provide written notification that the entire document is confidential, or shall highlight or otherwise use a reasonable

means to distinguish the portions of the designated material that are subject to the request for confidential treatment.

Finally, the Commission finds that Duke Kentucky shall file the revised motions for confidential treatment that comply with the provisions of this Order within 30 days of service of this Order. Duke Kentucky is cautioned that future motions for confidential treatment should comply with 807 KAR 5:001E, Section 13, and be reasonably organized to facilitate efficient processing of the motions.

IT IS THEREFORE ORDERED that:

1. Duke Kentucky's January 26, 2023 motion for confidential treatment for is granted in part and denied in part.

2. Duke Kentucky's request for confidential treatment for its response to Attorney General's First Request, Item 58 is granted.

3. The remainder of the designated material for which Duke Kentucky requests confidential treatment is denied.

4. Duke Kentucky has leave to refile the designated material for which confidential treatment was denied in compliance with the requirements set forth in the body of this Order.

5. 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.

6. 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).

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

8. 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.

9. 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.

10. If Duke Kentucky does not refile the requests for confidential treatment as set forth in the body of this Order, 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.

11. If Duke Kentucky does not refile the requests for confidential treatment as set forth in the body of this Order, 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.

12. If Duke Kentucky does not refile the requests for confidential treatment as set forth in the body of this Order, 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.

13. If Duke Kentucky does not refile the requests for confidential treatment as set forth in the body of this Order, 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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