

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

| | | |
|-------------------------------------|---|------------|
| ELECTRONIC INVESTIGATION OF THE |) | CASE NO. |
| PROPOSED POLE ATTACHMENT TARIFFS OF |) | 2022-00105 |
| INVESTOR OWNED ELECTRIC UTILITIES |) | |

ORDER

This Order arises from two petitions and one motion for confidential treatment filed by separate parties in the above referenced matter on June 2, 2022. First, 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 treatment for an indefinite period for joint use pole attachment agreements provided in response to Commission Staff's Second Request for Information (Staff's Second Request), Item 5. Second, Louisville Gas and Electric Company (LG&E) and Kentucky Utilities Company (KU) (jointly, LG&E/KU), filed a petition pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for a period of five years for joint use pole attachment agreements provided in response to Staff's Second Request, Item 7. Third, Kentucky Power Company (Kentucky Power) filed a motion pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for a period of ten years for redacted portions of joint use pole attachment agreements provided in paragraph 5 of Marc A. Feeney's Affidavit.

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 Exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.² The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.³ 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.”⁴

DISCUSSION AND FINDINGS

Duke Kentucky’s June 2, 2022 Petition

Duke Kentucky provided a joint use pole attachment agreement between itself and pole owner in response to Staff’s Second Request, Item 5. In support of its petition, Duke Kentucky argued that the information is not known outside of Duke Kentucky, is proprietary, and is a key part of Duke Kentucky’s business decisions.⁵

Having considered the petition and the material at issue, the Commission finds that Duke Kentucky’s petition should be granted, in part, and denied, in part. The Commission finds that the material terms of the contract, including negotiated terms and financing

¹ KRS 61.872(1).

² See KRS 61.871.

³ 807 KAR 5:001, Section 13(2)(c).

⁴ KRS 61.878(1)(c)(1).

⁵ Duke Kentucky’s Petition for Confidential Treatment (filed June 2, 2022) at 2.

information, is generally recognized as confidential or proprietary; and disclosure of the joint use pole attachment agreement would result in a commercial disadvantage to Duke Kentucky. Therefore, the joint use pole attachment agreement meets the criteria for confidential treatment and should be exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878 (1)(c)(1). However, the Commission finds that any non-material terms or boilerplate language do 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.

LG&E/KU's June 2, 2022 Petition

LG&E/KU provided multiple joint use pole attachment agreements in response to Staff's Second Request, Item 7. LG&E/KU argued that each agreement has specific negotiated terms that are different in each agreement.⁶ LG&E/KU further argued that the Commission's new pole attachment regulation does not apply to the joint use agreements.⁷ LG&E/KU argued that the agreement is proprietary, and disclosure of terms could harm the relationships between the parties and could disadvantage the company in future negotiations.⁸ LG&E/KU stated that the Commission has previously granted confidential treatment to the joint use agreements.⁹

⁶ LG&E/KU's Petition for Confidential Treatment (filed June 2, 2022) at 2.

⁷ LG&E/KU's Petition for Confidential Treatment at 2.

⁸ LG&E/KU's Petition for Confidential Treatment at 2.

⁹ See Case No. 2016-00370, *In the Matter of: Electronic Application of Kentucky Utilities Company for an Adjustment of Its Electric Rates and for Certificates of Public Convenience and Necessity*, (Ky. PSC Dec. 10, 2018), Order; Case No. 2016-00371, *In the Matter of: Electronic Application of Louisville Gas and Electric Company for an Adjustment of Its Electric and Gas Rates and for Certificates of Convenience and Necessity*, (Ky. PSC Dec. 10, 2018) Order; Case No. 2014-00371 *In the Matter of: Application of Kentucky Utilities Company for an Adjustment of its Electric Rates*, (Ky. PSC Dec. 2, 2015), Order.

Having considered the petition and the material at issue, the Commission finds that LG&E/KU's petition should be granted, in part, and denied, in part. The Commission finds that negotiated terms, pricing and financial information, and term differences related to cost-sharing, space allocation, processes, and risk allocation are generally recognized as confidential or proprietary; it therefore meets the criteria for confidential treatment and should be exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878 (1)(c)(1). Disclosure of the specific terms of joint agreements would put LG&E/KU at a commercial disadvantage and could hinder their current and future business relationships. However, the Commission finds that any non-material terms or boilerplate language do 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.

Kentucky Power's June 2, 2022 Motion

Kentucky Power redacted parts of several joint use pole attachment agreements and provided these in response to Staff's Second Request , Item 12, Attachment.¹⁰ Kentucky Power argued that KRS 61.878(1)(c)(1) applies to the redacted portions of the joint use pole attachment agreements.¹¹ Kentucky Power argued that it negotiated both terms and pricing, and disclosure of information would give suppliers and providers

¹⁰ Kentucky Power referenced in paragraph 5 of the Affidavit of Marc A. Feeney that the confidential information was related to private terms and pricing information.

¹¹ Kentucky Power's Motion for Confidential Treatment (filed June 2, 2022) at 2.

competitive advantage with future requests for proposals.¹² Kentucky Power stated that the information is not otherwise public.¹³

Having considered the motion and the material at issue, the Commission finds that designated material is generally recognized as confidential or proprietary; it therefore meets the criteria for confidential treatment and should be exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878 (1)(c)(1). Disclosure of the specific terms and pricing of joint agreements would put Kentucky Power at a commercial disadvantage and could hinder its current and future business relationships. The Commission has previously granted confidential treatment for similar information.¹⁴

Generally, having considered each motion and the material at issue, the Commission finds that the material granted confidential treatment in this Order shall be given such treatment for a period of ten years. The Commission believes that a ten-year period is appropriate considering that some of these agreements will be renegotiated and circumstances will change.

IT IS THEREFORE ORDERED that:

1. The petitions for confidential treatment filed by Duke Kentucky and LG&E/KU, and the motion filed by Kentucky Power on June 2, 2022, for their joint use agreements are granted, in part, for all material, negotiated, or pricing terms as set forth above.

¹² Kentucky Power's Motion for Confidential Treatment at 2.

¹³ Kentucky Power's Motion for Confidential Treatment at 1.

¹⁴ 2018-00157, *CMN-RUS, Inc., v. Windstream Kentucky East, LLC* (Ky. PSC Jan. 10, 2023), Order.

2. The petitions for confidential treatment filed by Duke Kentucky and LG&E/KU and the motion filed by Kentucky Power on June 2, 2022, for their joint use agreements are denied for any non-material or boiler plate terms.

3. 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.

4. 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).

5. 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.

6. If Duke Kentucky, LG&E/KU, or Kentucky Power 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.

7. Within 30 days of the date of service of this Order, Duke Kentucky, LG&E/KU, or Kentucky Power 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.

8. The designated material for which Duke Kentucky, LG&E/KU, or Kentucky Power'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 in order to allow Duke Kentucky, LG&E/KU, or Kentucky Power to seek a remedy afforded by law.

9. Duke Kentucky, LG&E/KU, and Kentucky Power shall inform the Commission if the designated material relevant to them and granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment.

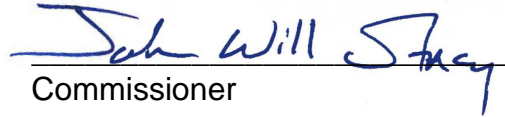
10. If a nonparty to this proceeding requests to inspect the material granted confidential treatment by this Order and the period during which the material has been granted confidential treatment has not expired, Duke Kentucky, LG&E/KU, or Kentucky Power shall have 30 days from receipt of written notice of the request to demonstrate that the material relevant to them still falls within the exclusions from disclosure requirements established in KRS 61.878. If Duke Kentucky, LG&E/KU, or Kentucky Power 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 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, LG&E/KU, or Kentucky Power to seek a remedy afforded by law for the material relevant to them.

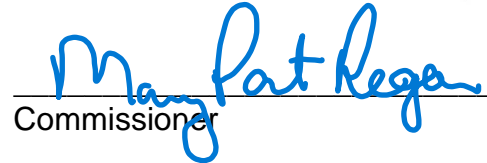
PUBLIC SERVICE COMMISSION



Chairman



Commissioner



Commissioner

ATTEST:



Executive Director

ENTERED
SEP 13 2024
rcs
KENTUCKY PUBLIC
SERVICE COMMISSION

*Amy B Spiller
Associate General Counsel
Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45201

*Duke Energy Kentucky, Inc.
Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45202

*Rebecca C. Price
Sturgill, Turner, Barker & Moloney
155 East Main Street
Lexington, KENTUCKY 40507

*Honorable Allyson K Sturgeon
Vice President and Deputy General Counsel-
LG&E and KU Energy LLC
220 West Main Street
Louisville, KENTUCKY 40202

*Larisa Vaysman
Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45201

*Louisville Gas and Electric Company
Louisville Gas and Electric Company
220 W. Main Street
P. O. Box 32010
Louisville, KY 40232-2010

*Hannah Wigger
Sheppard Mullin Richter & Hampton LLP
2099 Pennsylvania Avenue NW, Suite 1
Washington, DISTRICT OF COLUMBIA 20006

*Michael Hornung
Manager, Pricing/Tariffs
Louisville Gas and Electric Company
220 W. Main Street
P. O. Box 32010
Louisville, KY 40202

*Kentucky Utilities Company
Kentucky Utilities Company
220 W. Main Street
P. O. Box 32010
Louisville, KY 40232-2010

*James W Gardner
Sturgill, Turner, Barker & Moloney, PLLC
333 West Vine Street
Suite 1400
Lexington, KENTUCKY 40507

*Minna Sunderman
Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45201

*Sara Judd
Senior Corporate Attorney
LG&E and KU Energy LLC
220 West Main Street
Louisville, KENTUCKY 40202

*John Tyler
BellSouth Telecommunications, LLC dba AT&T
P. O. Box 436885
Louisville, KY 40253

*Paul Werner
Sheppard Mullin Richter & Hampton LLP
2099 Pennsylvania Avenue NW, Suite 1
Washington, DISTRICT OF COLUMBIA 20006

*M. Todd Osterloh
Sturgill, Turner, Barker & Moloney, PLLC
333 West Vine Street
Suite 1400
Lexington, KENTUCKY 40507

*Kentucky Power Company
Kentucky Power Company
1645 Winchester Avenue
Ashland, KY 41101

*Honorable Robert J Patton
Attorney at Law
Kinner & Patton Law Offices
328 East Court Street
Prestonsburg, KENTUCKY 41653

*Katie M Glass
Stites & Harbison
421 West Main Street
P. O. Box 634
Frankfort, KENTUCKY 40602-0634

*Rocco O D'Ascenzo
Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45201