

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.	)	2023-00012
FROM NOVEMBER 1, 2020 THROUGH	)	
OCTOBER 31, 2022	)	

ORDER

This matter arises upon three petitions for confidential treatment filed by Duke Energy Kentucky, Inc. (Duke Kentucky). On September 22, 2023, 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 portions of Duke Kentucky's response to Commission Staff's First Request for Information (Staff's First Request), Items 4, 5, 17, 32, 33, 34, and 37.

On October 20, 2023, 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 portions of Duke Kentucky's response to Commission Staff's Second Request for Information (Staff's Second Request), Item 21.

On November 29, 2023, 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 portions of Duke Kentucky's revised response to Staff's First Request, Item 4.

## 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.”<sup>1</sup> Exceptions to the free and open examination of public records contained in 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>

In support of its motions, Duke Kentucky argued the application of KRS 61.878(1)(c)(1), which 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.”

## SEPTEMBER 22, 2023 PETITION

Duke Kentucky’s responses to Staff’s First Request, Items 4, 5, and 37, include attachments consisting of coal bid information. Duke Kentucky argued that disclosure of this information would give potential competitors and fuel vendors in the energy markets inside information about Duke Kentucky’s fuel procurement strategy, risk mitigation actions, and tolerances.

Duke Kentucky’s response to Staff’s First Request, Item 17, includes an attachment showing generating unit availability history. Duke Kentucky argued that disclosure of this information could grant vendors a distinct advantage in that they would

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

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

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

be able to anticipate how Duke Kentucky utilizes its generating fleet in the competitive markets.

Duke Kentucky's response to Staff's First Request, Item 32, includes an attachment showing forecasted fuel consumption requirements through 2024. Duke Kentucky argued that disclosure of this information could be used by potential vendors to manipulate prices.

Duke Kentucky's response to Staff's First Request, Item 33, includes an attachment showing forecasted sales and revenue through 2024. Duke Kentucky argued that disclosure of this information would give competitors, marketers, and vendors a competitive advantage in any existing or prospective commercial relationship involving Duke Kentucky.

Duke Kentucky's response to Staff's First Request, Item 34, includes an attachment consisting of a planned maintenance schedule through 2024. Duke Kentucky argued that disclosure of this information, including the number, duration, and timing of outages, would give prospective contractors and vendors a distinct advantage in negotiations with those contractors and vendors.

Having considered the petition and the material at issue, the Commission finds that Duke Kentucky's September 22, 2023 petition for confidential treatment should be granted. Non-selected coal bid information and fuel consumption forecasts should remain confidential because of potential manipulation of future coal bids based on this data.<sup>4</sup> Revenue forecasts should be granted confidential treatment because this

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<sup>4</sup> See 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.

information would allow competitors to determine Duke Kentucky's pricing and affect bidding in energy markets.<sup>5</sup> Timing of planned outages and generation unit availability information should be confidential because disclosure of this information would allow other energy market participants to know when Duke Kentucky's need for purchased power would spike.<sup>6</sup> The designated material 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).

#### OCTOBER 20, 2023 PETITION

Duke Kentucky's response to Staff's Second Request, Item 21, includes three spreadsheets including daily bid status of generating units into the PJM Interconnection, LLC (PJM) day ahead energy market, price per megawatt-hour, and the corresponding Locational Marginal Pricing (LMP) indicating whether or not the unit cleared the market. Duke Kentucky argued that publicly disclosing this information would reveal its operating characteristics for its generation in wholesale power markets and give an unfair advantage to market participants and fuel vendors.

Having considered the petition and the material at issue, the Commission finds that Duke Kentucky's October 20, 2023 petition for confidential treatment should be granted. Generation unit information relating to PJM should remain confidential because competitors could use this information to their advantage in the PJM energy

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<sup>5</sup> 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.

<sup>6</sup> See Administrative Case No. 20000387, *Electronic Review of the Adequacy of Kentucky's Generation Capacity and Transmission System* (Ky. PSC May 28, 2013), Order at 2.

market.<sup>7</sup> The designated material 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).

#### NOVEMBER 29, 2023 PETITION

Duke Kentucky's revised response to Staff's First Request, Item 4, is an update to correct information in the coal bid spreadsheet previously provided in response to this request.

Having considered the petition and the material at issue, the Commission finds that Duke Kentucky's November 29, 2023 petition for confidential treatment should be granted. Non-selected coal bid information and fuel consumption forecasts should remain confidential because of potential manipulation of future coal bids based on this data.<sup>8</sup> The designated material 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).

IT IS THEREFORE ORDERED that:

1. Duke Kentucky's September 22, 2023, October 20, 2023, and November 29, 2023 petitions for confidential treatment are granted.
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.

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<sup>7</sup> See Case No. 2023-00264, *An Electronic Examination of the Application of the Fuel Adjustment Clause of East Kentucky Power Cooperative, Inc. from November 1, 2020 Through April 30, 2022* (Ky. PSC Feb. 14, 2023), Order at 2.

<sup>8</sup> See Case No. 2018-00019, May 29, 2018 Order at 2.

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.

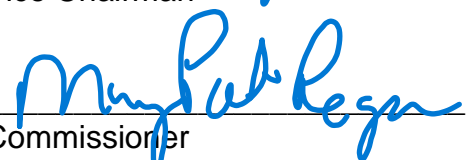
5. If a nonparty to this proceeding requests to inspect the material granted confidential treatment by this Order and the period during which the material has been granted confidential treatment has not expired, Duke Kentucky shall have 30 days from receipt of written notice of the request to demonstrate 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

ENTERED  
DEC 20 2023 bsb  
KENTUCKY PUBLIC  
SERVICE COMMISSION

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