

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF DUKE ENERGY)	
KENTUCKY, INC. TO BECOME A FULL)	
PARTICIPANT IN THE PJM INTERCONNECTION)	CASE NO.
LLC, BASE RESIDUAL AND INCREMENTAL)	2024-00285
AUCTION CONSTRUCT FOR THE 2027/2028)	
DELIVERY YEAR AND FOR NECESSARY)	
ACCOUNTING AND TARIFF CHANGES)	

ORDER

On October 18, 2024,¹ November 15, 2024,² and January 3, 2025, Duke Energy Kentucky, Inc. (Duke Kentucky) filed petitions, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment to certain responses to requests for information for ten years.

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.”³ Exceptions to the free and open

¹ Duke Kentucky filed two petitions for confidential treatment on October 18, 2024. One related to Duke Kentucky’s responses to the Attorney General’s First Request for Information (Attorney General’s First Request) and one for its response to Commission Staff’s First Request for Information (Staff’s First Request).

² Duke Kentucky filed two petitions for confidential treatment on November 15, 2024. One related to Duke Kentucky’s responses to the Attorney General’s Second Request for Information (Attorney General’s Second Request) and one for its response to Commission Staff’s Second Request for Information (Staff’s Second Request).

³ KRS 61.872(1).

examination of public records contained in KRS 61.878 should be strictly construed.⁴ The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.⁵ 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.”⁶

DISCUSSION AND FINDINGS

Duke Kentucky’s October 18, 2024 Petition for Confidential Treatment for Certain Responses to the Attorney General’s First Request

In support of its petition, Duke Kentucky argued that the following information in its response to the Attorney General’s First Request, Attachment to Item 4, highlighted information in Item 6, Attachment to Item 7, Attachments 2-4 to Item 37, Attachment 38, Attachment to Item 47(c), and Attachment to Item 49 should be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1). Duke Kentucky stated that

KRS 61.878(1)(c)(1) requires the Commission to consider three criteria in determining confidentiality: (1) whether the record is confidentially disclosed to an agency or required by an agency to be disclosed to it; (2) whether the record is generally recognized as confidential or proprietary; and (3) whether the record, if openly disclosed, would present an unfair commercial advantage to competitors of the entity that disclosed the records.⁷

⁴ See KRS 61.871.

⁵ 807 KAR 5:001, Section 13(2)(c).

⁶ KRS 61.878(1)(c)(1)

⁷ Duke Kentucky’s Petition for Confidential Treatment for Certain Responses to the Attorney General’s First Request (filed Oct. 18, 2024) at 3.

Duke Kentucky argued that these items meet all three prongs for the statutory criteria.⁸

Having considered the petition and the material at issue, the Commission finds that the above information 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).

Duke Kentucky's October 18, 2024 Petition for Confidential Treatment for Certain Responses to Commission Staff's First Request

In support of its petition, Duke Kentucky argued that its response to Commission Staff's First Request, highlighted portions of Items 2 and 7 as well as their attachments should be confidential pursuant to KRS 61.878(1)(c)(1). Duke Kentucky argued that public disclosure of this information would place Duke Kentucky (and its regulated utility affiliates in other states) at a commercial disadvantage as it negotiates contracts with various suppliers and vendors and could potentially harm Duke Kentucky's competitive position in the marketplace, to the detriment of Duke Kentucky and its customers.⁹

Having considered the petition and the material at issue, the Commission finds that the above information 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).

Duke Kentucky's November 15, 2024 Petition for Confidential Treatment for Certain Responses to the Attorney General's Second Request

⁸ Duke Kentucky's Petition for Confidential Treatment for Certain Responses to the Attorney General's First Request at 3.

⁹ Duke Kentucky's Petition for Confidential Treatment for Certain Responses to Staff's First Request at 1-2.

In support of its petition, Duke Kentucky argued that its responses to the Attorney General's Second Request, highlighted information in Items 16, 17, and 21; and attachments to Items 6(b), 7, 8, 16, 21, and 24(b) should be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1).

For Duke Kentucky's response to the Attorney General's Second Request, Attachments to Item 6(b) and Item 7, Duke Kentucky argued that this information shows Duke Kentucky's capacity position in the competitive market during multiple future delivery years, which if released would allow potential competitors to know what the Company's position could be in the future.¹⁰ For Duke Kentucky's response to the Attorney General's Second Request, Attachment to Item 8, Duke Kentucky argued that if this information was released, it would place Duke Kentucky at a competitive disadvantage as competitors would have access to the operations of Duke Kentucky's transmission system investments and the work and ideas developed by Duke Kentucky.¹¹

For Duke Kentucky's response to the Attorney General's Second Request, Item 16 and its attachment, and highlighted portions of Item 17, Duke Kentucky argued that disclosure of this information would result in a commercial disadvantage for Duke Kentucky in which public disclosure would give Duke Kentucky's contractors, vendors and competitor's access to Duke Kentucky's insight into its generation unit management and sales practices.¹² Duke Kentucky argued that such access would impair Duke Kentucky's

¹⁰ Duke Kentucky's Petition for Confidential Treatment for Certain Responses to the Attorney General's Second Request (filed Nov. 15, 2024) at 3-6.

¹¹ Duke Kentucky's Petition for Confidential Treatment for Certain Responses to the Attorney General's Second Request at 7.

¹² Duke Kentucky's Petition for Confidential Treatment for Certain Responses to the Attorney General's Second Request at 7-11.

ability to negotiate with prospective contractors and vendors and could harm Duke Kentucky's competitive position in the power market, ultimately affecting the costs to serve customers.¹³

For Duke Kentucky's response to the Attorney General's Second Request, highlighted portions of Item 21 and its Attachment, Duke Kentucky argued that the public disclosure of the information described above would place Duke Kentucky (and its regulated utility affiliates in other states) at a commercial disadvantage as it negotiates contracts with various suppliers and vendors and could potentially harm Duke Kentucky's competitive position in the marketplace, to the detriment of Duke Kentucky and its customers.¹⁴

For Duke Kentucky's response to the Attorney General's Second Request, attachment to Item 24(b), Duke Kentucky argued that the information shows its capacity position in the competitive market during multiple delivery years, which if released would allow potential competitors to know what its position could be in the future.¹⁵

Having considered the petition and the material at issue, the Commission finds that the above-described information 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).

¹³ Duke Kentucky's Petition for Confidential Treatment for Certain Responses to the Attorney General's Second Request at 7-11.

¹⁴ Duke Kentucky's Petition for Confidential Treatment for Certain Responses to the Attorney General's Second Request at 11.

¹⁵ Duke Kentucky's Petition for Confidential Treatment for Certain Responses to the Attorney General's Second Request at 13.

Duke Kentucky's November 15, 2024 Petition for Confidential Treatment for its Response to Staff's Second Request

In support of its petition, Duke Kentucky argued that its response to Commission Staff's Second Request, highlighted portions of Item 3 and its attachment, be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1). Duke Kentucky argued that public disclosure would place it at a commercial disadvantage as it manages its business in the wholesale power markets, negotiates contracts with various suppliers and vendors and attempts to serve its load, which could potentially harm Duke Kentucky's competitive position in the marketplace, to the detriment of Duke Kentucky and its customers. Disclosure of this information would be in violation of licensing agreements.¹⁶

Having considered the petition and the material at issue, the Commission finds that the above information 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).

Duke Kentucky's January 3, 2025 Petition for Confidential Treatment for Certain Responses to Commission Staff's Third Request for Information

In support of its petition, Duke Kentucky argued that its response to Commission Staff's Third Request for Information (Staff's Third Request), highlighted portions of its responses to Items 3 and 6 be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1).

¹⁶ Duke Kentucky's Petition for Confidential Treatment for Certain Responses to Staff's Second Request at 1-2.

For the highlighted portions of Duke Kentucky's response to Staff's Third Request Item 3, Duke Kentucky argued that public disclosure of the information would place Duke Kentucky (and its regulated affiliates in other states) at a commercial disadvantage as it could potentially harm Duke Kentucky's competitive position in the marketplace, to the detriment of Duke Kentucky and its customers.¹⁷ Duke Kentucky argued that public disclosure would give Duke Kentucky's competitor's access to Duke Kentucky's capacity values and operational parameters, and such access would impair Duke Kentucky's competitive position in the power market, ultimately affecting the costs to serve customers.¹⁸

For the highlighted portions of Duke Kentucky's response to Staff's Third Request, Item 6, Duke Kentucky argued that disclosure of the information would place it (and its regulated utility affiliates in other states) at a commercial disadvantage as it negotiates contracts with various bilateral capacity suppliers and could potentially harm Duke Kentucky's competitive position in the marketplace, to the detriment of Duke Kentucky and its customers.¹⁹

Having considered the petition and the material at issue, the Commission finds that the above-described information 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).

¹⁷ Duke Kentucky's Petition for Confidential Treatment for Certain Responses to Staff's Third Request (filed Jan. 3, 2025) at 3.

¹⁸ Duke Kentucky's Petition for Confidential Treatment for Certain Responses to Staff's Third Request at 4.

¹⁹ Duke Kentucky's Petition for Confidential Treatment for Certain Responses to Staff's Third Request at 5.

IT IS THEREFORE ORDERED that:

1. Duke Kentucky's October 18, 2024, November 15, 2024, and January 1, 2025 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.

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. If the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment, Duke Kentucky shall inform the Commission and file with the Commission an unredacted copy of the designated material.

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

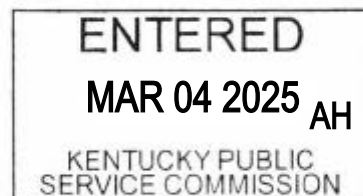
Chairman

Commissioner

Commissioner

ATTEST:

Executive Director



*Angela M Goad
Assistant Attorney General
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

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

*Debbie Gates
Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45201

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

*John G Horne, II
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Sarah Lawler
Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45201

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

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

*Larry Cook
Assistant Attorney General
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*J. Michael West
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204