

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY UTILITIES)	
COMPANY FOR AN ORDER AUTHORIZING THE)	CASE NO.
ISSUANCE OF SECURITIES AND THE)	2014-00082
ASSUMPTION OF OBLIGATIONS)	

ORDER

On March 20, 2014, Kentucky Utilities Company (“KU”) electronically filed an Application requesting that the Commission: (1) authorize KU to incur debt in the form of First Mortgage Bonds in a principal amount not to exceed \$500,000,000; and (2) amend and extend KU’s existing authority to allow for replacing or extending the term of KU’s existing multi-year revolving line of credit through December 31, 2019.¹ KU has also filed a petition requesting that: (1) certain information contained in five contracts attached to its Application as Exhibit 3 be afforded confidential treatment; (2) a deviation from the requirement to file a paper copy of the five contracts attached to its Application as Exhibit 3; and (3) its Engineering, Procurement and Construction Agreement with TIC-The Industrial Company, which was filed in Case No. 2012-00232,² be incorporated by reference into this case.

CONFIDENTIALITY

With respect to confidentiality, KU’s petition cites 807 KAR 5:001, Section 13, KRS 61.878(1)(c), and KRS 61.878(1)(m) to support its request that certain information

¹ Application at p. 1.

² Case No. 2012-00232, *Application of Kentucky Utilities Company for an Order Authorizing the Issuance of Securities and Assumption of Obligation* (Ky. PSC Aug. 3, 2012).

contained in five contracts attached to its Application as Exhibit 3 be afforded confidential treatment and not be placed in the public record subject to public inspection for an indefinite period of time. KU seeks confidentiality for prices, concessions, terms, and conditions that it has been able to negotiate in the five contracts, which are with AMEC KAMTECH, INC., Industrial Contractors Skansa, Inc., Kellogg Brown and Root, PCL Industrial Construction Co., and Overland Contractors, Inc. (collectively the "Contracts").³ KU states that making these provisions of the Contracts public will allow its competitors, who also seek to negotiate the best construction contracts possible, to take advantage of the Contracts' favorable terms and conditions that KU has been able to negotiate.

Having carefully considered the petition and the materials at issue, the Commission finds that the information for which KU seeks confidential treatment, except for the Appendices discussed below, meets the criteria for confidential treatment and is exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, KRS 621.878(1)(c), and KRS 61.878(1)(m). The Commission further finds that the material for which KU seeks confidential treatment should not be placed in the public record or made available for public inspection for an indefinite period of time.

DEVIATIONS

KU also requests two deviations, pursuant to 807 KAR 5:001, Section 22,⁴ from the filing requirements in Commission regulation 807 KAR 5:001. The first deviation is

³ Petition of Kentucky Utilities Company for Confidential Protection Pursuant to 807 KAR 5:001, Section 13, for Deviation from Commission Rules and for Incorporation by Reference, pp. 1-2 (filed Mar. 20, 2014).

⁴ 807 KAR 5:001, Section 22 allows the Commission to "[i]n special cases, for good cause shown . . . permit deviation from these rules [of procedure]."

from 807 KAR 5:001, Section 8(3), which requires an applicant in an electronically filed case, as is this case, to file one copy in paper medium of all papers filed electronically. KU seeks to be relieved of the obligation to file one paper copy of the Contracts due to their voluminous nature, totaling approximately 8,000 pages. KU has filed on a compact disc ("CD") the unredacted versions of the Contracts, except for the Appendices as noted below. Based on our decision herein to grant confidentiality to the Contracts, except for the Appendices, we find it reasonable to relieve KU of the requirement to file one paper copy of the unredacted Contracts, since they will not be accessible for public view. However, even though this is an electronically filed case, the Commission's official record consists of the paper filed pages. Since there are portions of the Contracts that are not confidential, one paper copy of the redacted versions of the Contracts must be filed to ensure that the public version of the record is complete.

The second request for a deviation is from the confidentiality regulation, 807 KAR 5:001, Section 13(2)(a)(3), which requires one unredacted copy of the material for which confidentiality is requested. Although KU has provided a CD containing the Contracts in an unredacted form, KU has omitted Appendices A, S, and T to each of those Contracts. KU states that these exhibits "contain extensive technical information" for which confidential treatment is being requested, and it avers that the remainder of these exhibits, "if publically disclosed, would largely be nonsensical and would not aid in the consideration of KU's Application."⁵ The Commission finds that it cannot make any definitive decision on whether the material contained in these Appendices should be granted confidential treatment without the ability to review the Appendices. Thus, we

⁵ Petition of Kentucky Utilities Company for Confidential Protection Pursuant to 807 KAR 5:001, Section 13, for Deviation from Commission Rules and for Incorporation, see Fn. 3, p. 3 (filed Mar. 20, 2014).

will defer a decision on this portion of KU's petition until such time as the Appendices are actually submitted in this case. Since KU is seeking confidentiality for the Appendices, we will allow KU to file the Appendices on a CD.

INCORPORATION BY REFERENCE

KU's last request is that its Engineering, Procurement and Construction Agreement with TIC-The Industrial Company as submitted in Case No. 2012-00232⁶ be incorporated into this case.⁷ The Commission finds this request to be reasonable and will grant the incorporation by reference.

IT IS THEREFORE ORDERED that:

1. KU's motion for confidential protection is hereby granted in part.
2. The information for which KU seeks confidential treatment, excepting Appendices A, S and T, shall not be placed in the public record or made available for public inspection for an indefinite period of time or until further Order of this Commission.
3. Use of the materials in question in any Commission proceeding shall be in compliance with 807 KAR 5:001, Section 13(9).
4. KU shall inform the Commission if the information in question becomes publicly available or no longer qualifies for confidential treatment.
5. If a non-party to this proceeding requests to inspect materials granted confidential treatment by this Order and the period during which the materials have been granted confidential treatment has not run, then KU shall have 20 days from

⁶ Case No. 2012-00232, *Application of Kentucky Utilities Company for an Order Authorizing the Issuance of Securities and Assumption of Obligation* (Ky. PSC Aug. 3, 2012).

⁷ KU's Petition for Confidential Protection of the TIC Documentation remains pending. *Id.*

receipt of written notice of the request to demonstrate that the materials still fall within the exclusions from disclosure requirements established in KRS 61.878. If KU is unable to make such demonstration, the requested materials shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

6. The Commission shall not make the requested materials available for inspection for 20 days following an Order finding the materials no longer qualify for confidential treatment in order to allow KU to seek a remedy afforded by law.

7. KU's request for a deviation from confidentially filing the material contained in Appendices A, S, and T is denied.

8. KU's request for confidential protection of the material contained in Appendices A, S, and T shall be held in abeyance pending the confidential filing of Appendices A, S, and T.

9. KU's request for a deviation from 807 KAR 5:001, Section 8, for authorization to file copies of its Contracts on a CD is denied in part and granted in part. KU shall file a single original redacted, paper copy of its Contracts and shall confidentially file a complete copy of its Contracts on a CD, to include Appendices A, S, and T.

10. KU's request to incorporate the record of Case No. 2012-00232 into this case is granted.

11. The Application tendered by KU on March 20, 2014, shall not be considered filed until KU files a redacted paper copy of its Contracts and a complete CD containing an unredacted, highlighted copy of its Contracts in their entirety, including unredacted copies of the material contained within Appendices A, S, and T.

By the Commission

ENTERED ^{ap}
APR 14 2014
KENTUCKY PUBLIC
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