

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC TARIFF FILING OF KENTUCKY)	
UTILITIES COMPANY FOR APPROVAL OF AN)	CASE NO.
ECONOMIC DEVELOPMENT RIDER SPECIAL)	2022-00371
CONTRACT WITH BITIKI-KY, LLC)	

ORDER

This matter arises on three petitions for confidential treatment filed by Kentucky Utilities (KU). On December 7, 2022, KU filed a petition, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for five years for information provided in response to Kentuckians For The Commonwealth, Kentucky Solar Energy Society, Mountain Association, and Kentucky Resources Council, Inc.'s (collectively, Joint Intervenors) First Request for Information (Joint Intervenors' First Request), Item 18, Attachments 6, 7, 8, and 9, and Item 24(b).

On January 9, 2023, KU filed a petition, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for five years for information provided in response to Joint Intervenors' Second Request for Information (Joint Intervenors' Second Request), Item 7(a).

On June 14, 2023, KU filed a petition, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for five years for Joint Intervenors' Post-Hearing Request for Information (Joint Intervenors' Post-Hearing Request), Item 1(b).

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

In support of its petitions, KU argued the application of two exceptions to disclosure. KRS 61.878(1)(c)(1) 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.” KRS 61.878(1)(a) exempts “[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.”

DECEMBER 7, 2022 PETITION

KU’s responses to Joint Intervenor’s First Request, Item 18, Attachment 6, and Item 24(b), include marginal cost data, including hourly variable and monthly marginal production cost data broken out by fuel, consumables, and other cost subcategories. KU argued that disclosure of this information could disadvantage KU in negotiating fuel

¹ KRS 61.872(1).

² See KRS 61.871.

³ 807 KAR 5:001, Section 13(2)(c).

contracts in the future, and in the wholesale energy market because fuel costs are important components of energy pricing.

KU's responses to Joint Intervenor's First Request, Item 18, Attachments 7, 8, and 9, include utility construction cost data from the Handy-Whitman Index. KU argued that if this proprietary and copyrighted information were disclosed, Handy-Whitman and other third-party suppliers of the same kinds of information might be less willing to supply reports to KU in the future.

Having considered the motion and the material at issue, the Commission finds that KU's petition for confidential treatment should be granted. Hourly variable and monthly marginal production cost data should remain confidential because disclosure could hinder KU's negotiations with fuel vendors.⁴ The third-party index is proprietary—disclosure could jeopardize KU's ability to obtain this type of information from third parties in the future and might represent a copyright law violation.⁵ This information therefore meets the criteria for confidential treatment and should be exempted from public disclosure for five years pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

JANUARY 9, 2023 PETITION

In response to Joint Intervenors' Second Request for Information (Joint Intervenors' Second Request), Item 7(a), KU provided Bitiki-KY, LLC's (Bitiki's) electric bills. The only redacted information consists of account and contract numbers.

⁴ 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.

⁵ See Case No. 2021-00407, *Electronic Application of South Kentucky Rural Electric Cooperative Corporation for a General Adjustment of Rates, Approval of Depreciation Study, and Other General Relief* (Ky. PSC Mar. 28, 2022), Order at 3.

Having considered the motion and the material at issue, the Commission finds that confidential treatment should be granted. Under 807 KAR 5:001, Section 4(10)(a), a person filing a document including “a business name” in combination with an account number must encrypt or redact the account number. Therefore, KU was required to redact the account numbers. This information should remain confidential indefinitely, as 807 KAR 5:001, Section 4(10)(a), does not permit later public disclosure of this information.

JUNE 14, 2023 PETITION

In response to Joint Intervenors’ Post-Hearing Request for Information (Joint Intervenors’ Post-Hearing Request), Item 1(b), KU provided additional Bitiki electric bills. The only redacted information consists of account and contract numbers.

Having considered the motion and the material at issue, the Commission finds that confidential treatment should be granted. Under 807 KAR 5:001, Section 4(10)(a), a person filing a document including “a business name” in combination with an account number must encrypt or redact the account number. Therefore, KU was required to redact the account numbers. This information should remain confidential indefinitely, as 807 KAR 5:001, Section 4(10)(a) does not permit later public disclosure of this information.

IT IS THEREFORE ORDERED that:

1. KU’s December 7, 2022, January 9, 2023, and June 14, 2023 petitions for confidential treatment are granted.

2. The material designated in the December 7, 2022 petition and granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for five years or until further Order of this Commission.

3. The material designated in the January 9, 2023 and June 14, 2023 petitions and granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for an indefinite period or until further Order of this Commission.

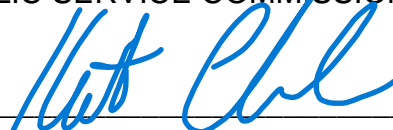
4. Use of the designated material granted confidential treatment by this Order in any Commission proceeding shall comply with 807 KAR 5:001, Section 13(9).

5. KU shall inform the Commission if the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment.

6. 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, KU 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 KU is unable to make such demonstration, the requested material shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

7. 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 KU to seek a remedy afforded by law.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ENTERED
SEP 19 2023 rcs
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SERVICE COMMISSION

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