

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC TARIFF FILING OF KENTUCKY	)	
POWER COMPANY FOR APPROVAL OF A	)	
SPECIAL CONTRACT UNDER ITS ECONOMIC	)	CASE NO.
DEVELOPMENT RIDER AND DEMAND	)	2022-00424
RESPONSE SERVICE TARIFFS WITH CYBER	)	
INNOVATION GROUP, LLC	)	

ORDER

On January 27, 2023, Kentucky Power Company (Kentucky Power) filed a motion, pursuant to 807 KAR 5:001E, Section 13, and KRS 61.878(1)(c)(1), requesting that the Commission grant confidential treatment for the entire term of Kentucky Power’s proposed special contract with Cyber Innovation Group, LLC (Cyber Innovation), which will span ten years, or for a period of five years, depending on the type of designated material at issue. The designated material under consideration in Kentucky Power’s motion for confidential treatment will be discussed for more fully below.

BACKGROUND

On December 15, 2022, the Commission entered an Order to open an investigation into the reasonableness of a proposed special contract between Kentucky Power and Cyber Innovation. That Order included a procedural schedule requiring all requests for information to Kentucky Power to be filed no later than January 13, 2023, and for Kentucky Power to file its responses to those requests for information no later than January 27, 2023. Kentucky Power contemporaneously filed a motion for confidential treatment along with its responses to the requests for information on January

27, 2023. In summary, Kentucky Power has moved for confidential treatment of the following information:

1. Identified portions of its response to Commission Staff's First Request for Information (Staff's First Request), Item 1, Attachment 1. This attachment includes a spreadsheet containing the supporting calculations to Kentucky Power's Errata Attachment 3 filing,<sup>1</sup> which, in turn, includes the estimated expected revenues from Cyber Innovation over the life of the contract. Kentucky Power has requested confidential treatment of the designated material for the entire life of the contract, including any extensions of the contract.

2. The entirety of its response to the Attorney General's First Request for Information (Attorney General's First Request), Item 9(b), Attachment 1. This response contains Cyber Innovation's billing history at the Rockhouse Facility,<sup>2</sup> including the meter number, total monthly electric bill amounts, the average electric bill amount, the average cost per kWh, and usage and demand history. Kentucky Power has requested confidential treatment of the designated material for the entire life of the contract, including any extensions of the contract.

3. Identified portions of its response to Attorney General's First Request, Item 10(b), Attachment 1. This attachment contains a list of Cyber Innovation's full-time employee positions and their associated salaries at two Kentucky cryptocurrency mining facilities, including the Rockhouse Facility. Kentucky Power has requested confidential

---

<sup>1</sup> See Kentucky Power's Notice of Filing (filed Jan. 10, 2023).

<sup>2</sup> The Rockhouse Facility is a site located in Pike County, Kentucky where Cyber Innovation conducts cryptocurrency mining, which forms the basis of the special contract now under review by the Commission.

treatment of the designated material for the entire life of the contract, including any extensions of the contract.

4. Identified portions of its response to Attorney General's First Request, Item 19, Attachment 1. The identified portions of this response include Kentucky Power's competitive market information related to customer loads and demand. Kentucky Power argues that this information can be used to determine market pricing. Kentucky Power has requested confidentiality for a period of five years.

5. Identified portions of its response to Attorney General's First Request, Item 20, Attachment 1. The identified portions of this response likewise include Kentucky Power's competitive market information related to customer loads and demand. Kentucky Power argues that this information can be used to determine market pricing. Kentucky Power has requested confidentiality for a period of five 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."<sup>3</sup> Exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.<sup>4</sup> The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.<sup>5</sup> KRS 61.878(1)(c)(1) exempts records that are "[g]enerally recognized as confidential or proprietary, which if openly disclosed would

---

<sup>3</sup> KRS 61.872(1).

<sup>4</sup> See KRS 61.871.

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

permit an unfair commercial advantage to competitors of the entity that disclosed the records.” As to proposed special contracts reviewed by the Commission, KRS 278.160(3) also precludes “disclosure or publication of a provision of a special contract that contains rates and conditions of service not filed in a utility's general schedule if such provision would otherwise be entitled to be excluded from the application of KRS 61.870 to 61.884 under the provisions of KRS 61.878(1)(c)1.”

### DISCUSSION AND FINDINGS

In support of its motion, Kentucky Power argues that all of the information that it is seeking confidential treatment for is exempt from public disclosure pursuant to KRS 61.878(1)(c)(1).

Having considered the motion and the material at issue, the Commission finds that the designated material at issue here is generally recognized as confidential or proprietary, and it therefore meets the criteria for confidential treatment and should be exempted from public disclosure pursuant to 807 KAR 5:001E, Section 13, and KRS 61.878(1)(c)(1) for the reasons discussed below:

1. Kentucky Power’s Response to Staff’s First Request, Item 1, Attachment 1.

The Commission finds that confidential treatment should be granted with respect to the redacted portions of Kentucky Power’s response to Staff’s First Request, Item 1, Attachment 1 for ten years, which is the current term of Kentucky Power’s contract with Cyber Innovation. In Case No. 2021-00282, the Commission granted confidential treatment for the negotiated terms of a retail agreement between Blockware Mining, LLC

(Blockware) and Jackson Purchase Energy Corporation (Jackson Purchase).<sup>6</sup> Like Kentucky Power in this case, Jackson Purchase argued that the release of such information could place the utility at a competitive disadvantage in securing future economic development opportunities. Likewise, in Case No. 2020-00317, the Commission also granted confidential treatment for the billing discount terms involving an Industrial Power Agreement between East Kentucky Power Cooperative, Inc. and Nucor Steel Gallatin, LLC.<sup>7</sup>

2. Kentucky Power's Response to Attorney General's First Request, Item 9, Attachment 1. The Commission finds that confidential treatment should be granted for Kentucky Power's response to the Attorney General's First Request, Item 9, Attachment 1 for ten years, which is the current term of Kentucky Power's contract with Cyber Innovation. In Case No. 2021-00282, the Commission granted confidential treatment for a similar request to prohibit the public disclosure of information related to Blockware's private information, including its projected energy usage and changes in the load requirements for its planned commercial cryptocurrency mining facility and the cost it will pay for power.<sup>8</sup>

---

<sup>6</sup> Case No. 2021-00282, *Electronic Tariff Filing of Big Rivers Electric Corporation and Jackson Purchase Energy Corporation for Approval and Confidential Treatment of a Special Contract and Cost Analysis Information and a Request for Deviation from the Commission's September 24, 1990 Order in Administrative Case No. 327* (Ky. PSC Oct. 14, 2021).

<sup>7</sup> Case No. 2020-00317, *Electronic Tariff Filing of East Kentucky Power Cooperative, Inc. of an Amendment to an Industrial Power Agreement with Interruptible Service between East Kentucky Power Cooperative, Inc., Owen Electric Corporation, Inc. and Nucor Steel Gallatin, LLC F/K/A Gallatin Steel Company* (Ky. PSC Mar. 9, 2021).

<sup>8</sup> Case No. 2021-00282, *Electronic Tariff Filing of Big Rivers Electric Corporation and Jackson Purchase Energy Corporation for Approval and Confidential Treatment of a Special Contract and Cost Analysis Information and a Request for Deviation from the Commission's September 24, 1990 Order in Administrative Case No. 327* (Ky. PSC Oct. 14, 2021); see also Ky. Op. Atty. Gen. 96-ORD-176 (1996), which also stated that specific customer billing information does not fall under the domain of the open records law.

3. Kentucky Power's Response to Attorney General's First Request, Item 10, Attachment 1. The Commission finds that confidential treatment should be granted for Kentucky Power's response to the Attorney General's First Request, Item 10(b), Attachment 1 for ten years, which is the current term of Kentucky Power's contract with Cyber Innovation. The Commission has previously found in numerous cases that employee job titles and, in particular, each job title's associated salary or wages are entitled to confidential treatment. The disclosure of this information could affect Cyber Innovation's ability to compete for labor with other competitors in the marketplace. Additionally, Kentucky Power asserted that seven of the ten projected employment positions had been filled, and thus the release of the information could allow individuals to be identified by job title. While Kentucky Power did not cite this particular statute, the disclosure of this information may also be protected from disclosure by KRS 61.878(1)(a).

4. Kentucky Power's Responses to Attorney General's First Request, Items 19 and 20. The Commission finds that confidential treatment should be granted with respect to Kentucky Power's responses to the Attorney General's First Request, Item 19, Attachment 1, and Attorney General's First Request Item 20, Attachment 1. The release of the material in question could potentially permit an unfair advantage to Kentucky Power's competitors. In particular, the release of this sensitive data related to Kentucky Power's customer load and demand could be used by Kentucky Power's competitors to influence market pricing and is therefore exempt from disclosure under KRS 61.878(1)(c)(1).

IT IS THEREFORE ORDERED that:

1. Kentucky Power's motion for confidential treatment is granted.
2. The designated material granted confidential treatment by this Order included in Kentucky Power's responses to Staff's First Request Item 1, Attachment 1, Attorney General's First Request, Item 9(b), Attachment 1, and Attorney General's First Request, Item 10(b), Attachment 1 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. The designated material granted confidential treatment by this Order included in Kentucky Power's responses to Attorney General's First Request Item 19, Attachment 1 and Attorney General's First Request, Item 20, Attachment 1 shall not be placed in the public record or made available for public inspection for five 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 5:001E, Section 13(9).
5. Kentucky Power 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, Kentucky Power 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 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.

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 Kentucky Power to seek a remedy afforded by law.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

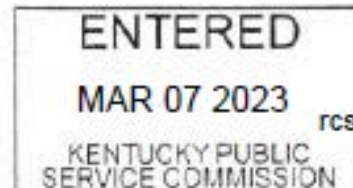


PUBLIC SERVICE COMMISSION

  
Chairman

\_\_\_\_\_  
Vice Chairman

  
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

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

\*Ashley Wilmes  
Kentucky Resources Council, Inc.  
Post Office Box 1070  
Frankfort, KENTUCKY 40602

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

\*Tom Fitzgerald  
Kentucky Resources Council, Inc.  
Post Office Box 1070  
Frankfort, KENTUCKY 40602

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

\*Hector Garcia  
Kentucky Power Company  
1645 Winchester Avenue  
Ashland, KY 41101

\*Honorable Michael L Kurtz  
Attorney at Law  
Boehm, Kurtz & Lowry  
36 East Seventh Street  
Suite 1510  
Cincinnati, OHIO 45202

\*Jody Kyler Cohn  
Boehm, Kurtz & Lowry  
36 East Seventh Street  
Suite 1510  
Cincinnati, OHIO 45202

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

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