

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 KENTUCKY POWER COMPANY)	2023-00008
FROM NOVEMBER 1, 2020 THROUGH)	
OCTOBER 31, 2022)	

ORDER

On October 6, 2023, Kentucky Power Company (Kentucky Power) filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for five years for its response to Commission Staff's First Request for Information (Staff's First Request), Item 4, Attachment 2; and until January 1, 2025, for its responses to Staff's First Request, Items 33, Attachments 1 and 2; 34, Attachment 1; and 35, Attachment 1.

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

¹ KRS 61.872(1).

² See KRS 61.871.

³ 807 KAR 5:001, Section 13(2)(c).

In support of its motion, Kentucky Power argued for 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.”

Attachment 2 to Kentucky Power’s response to Staff’s First Request, Item 4, is a series of lists of non-selected coal bids and associated information such as quantity, quality, and transportation terms. Kentucky Power argued that failure to maintain this information as confidential may have a chilling effect on the willingness of future bidders to submit responses to coal-supply solicitations. Kentucky Power indicated that this information will be obsolete within five years.

Attachment 1 to Kentucky Power’s response to Staff’s First Request, Item 33, consists of coal consumption forecasts for the Mitchell generating station through 2024. Attachment 2 consists of natural gas consumption forecasts for the Big Sandy generating station through 2024. Kentucky Power argued that these projections are a significant factor in pricing, and if publicly known, competitors and suppliers could formulate competitive bidding strategies that will hamper Kentucky Power’s ability to compete against them.

Attachment 1 to Kentucky Power’s response to Staff’s First Request, Item 34, includes redacted revenue forecasts through 2024. Kentucky Power argued that this information could be used to determine pricing and allow energy market competitors to unfairly compete.

Attachment 1 to Kentucky Power's response to Staff's First Request, Item 35, consists of planned outages for generating units through 2024. Kentucky Power argued that unit availability information could be used by energy market participants to raise generation offers when Kentucky Power will be energy short. Kentucky Power noted that all these forecasts and planned outage information will be obsolete after 2024.

Having considered the motion and the material at issue, the Commission finds that Kentucky Power's motion for confidential treatment should be granted. Non-selected coal bid information and fuel consumption forecasts should remain confidential because of potential manipulation of future fuel bids based on this data.⁴ Revenue forecasts should be confidential because this information would allow competitors to determine Kentucky Power's pricing and affect bidding in the energy market.⁵ Timing of planned outages should be granted confidential treatment because disclosure of this information would allow other energy market participants to know when Kentucky Power's need for purchased power would spike.⁶ Therefore, the designated material is generally recognized as confidential or proprietary, 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).

⁴ 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.

⁵ 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.

⁶ 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.

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 shall not be placed in the public record or made available for public inspection for five years for Kentucky Power's response to Staff's First Request, Item 4, Attachment 2; and until January 1, 2025, for its responses to Staff's First Request, Items 33, Attachments 1 and 2; 34, Attachment 1; and 35, Attachment 1; 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. 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.
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, 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.
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 to allow Kentucky Power to seek a remedy afforded by law.

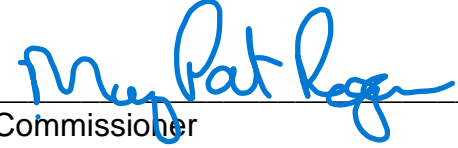
PUBLIC SERVICE COMMISSION



Chairman



Vice Chairman



Commissioner

ENTERED
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SERVICE COMMISSION

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