

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 UTILITIES COMPANY)	2023-00010
FROM NOVEMBER 1, 2020 THROUGH)	
OCTOBER 31, 2022)	

ORDER

On September 22, 2023, Kentucky Utilities Company (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 from KU's responses to Commission Staff's First Request for Information (Staff's First Request), Items 4 and 34.

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 motion, KU 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

¹ KRS 61.872(1).

² See KRS 61.871.

³ 807 KAR 5:001, Section 13(2)(c).

“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.”

KU’s response to Staff’s First Request, Item 4, included an attachment consisting of coal bid information. KU argued that this information should remain confidential because if disclosed, potential bidders could manipulate the bid solicitation by tailoring bids to correspond to and comport with KU’s bidding criteria and process.

KU’s response to Staff’s First Request, Item 34, included redacted future planned outage dates. KU argued that confidential treatment should apply to this information because energy suppliers could use the information to gain an unfair advantage during periods when KU may need to purchase power.

Having considered the petition and the material at issue, the Commission finds that KU’s petition for confidential treatment should be granted. Non-selected⁴ coal bids should be afforded confidential treatment because disclosure could result in coal suppliers manipulating future coal bids based on this data.⁵ Timing of planned outages should also remain confidential because disclosure of this information would allow other energy market participants to know KU’s need for purchased power would spike.⁶ The designated material therefore meets the criteria for confidential treatment and should be

⁴ Confidential treatment should be denied for any coal bids that were selected, because electric utilities are required to publicly file copies of coal contracts pursuant to 807 KAR 5:056, Section 2(1).

⁵ 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.

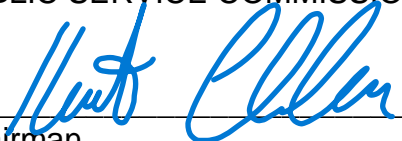
⁶ See Administrative Case No. 20000387, *Electronic Review of the Adequacy of Kentucky’s Generation Capacity and Transmission System* (Ky. PSC May 28, 2013), Order at 2.

exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

IT IS THEREFORE ORDERED that:

1. KU's September 22, 2023 petition 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 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. 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.
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, 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.
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 KU to seek a remedy afforded by law.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ENTERED
DEC 15 2023
KENTUCKY PUBLIC SERVICE COMMISSION rCS

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