

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF KENTUCKY)	
POWER COMPANY FOR (1) A GENERAL)	
ADJUSTMENT OF ITS RATES FOR ELECTRIC)	
SERVICE; (2) APPROVAL OF TARIFFS AND)	
RIDERS; (3) APPROVAL OF ACCOUNTING)	CASE NO.
PRACTICES TO ESTABLISH REGULATORY)	2023-00159
ASSETS AND LIABILITIES; (4) A)	
SECURITIZATION FINANCING ORDER; AND (5))	
ALL OTHER REQUIRED APPROVALS AND)	
RELIEF)	

ORDER

On October 13, 2023, Kentucky Power Company (Kentucky Power) filed a motion, pursuant to KRS 278.400, requesting reconsideration of the Order entered October 2, 2023, that denied confidential treatment to Attachment 1 filed with Kentucky Power’s response to Staff’s First Request for Information (Staff’s First Request), Item 22. Kentucky Power also requested that if the Commission did not grant rehearing and allow confidential treatment for the document, Kentucky Power be permitted to withdraw the document from the record.

LEGAL STANDARD

KRS 278.400, which establishes the standard of review for motions for rehearing, limits rehearing to new evidence not readily discoverable at the time of the original hearings, to correct any material errors or omissions, or to correct findings that are unreasonable or unlawful. A Commission Order is deemed unreasonable only when “the

evidence presented leaves no room for difference of opinion among reasonable minds.”¹
An order can only be unlawful if it violates a state or federal statute or constitutional provision.²

By limiting rehearing to correct material errors or omissions, and findings that are unreasonable or unlawful, or to weigh new evidence not readily discoverable at the time of the original hearings, KRS 278.400 is intended to provide closure to Commission proceedings. Rehearing does not present parties with the opportunity to relitigate a matter fully addressed in the original Order.

MOTION

Kentucky Power requested rehearing on one item that was denied confidential treatment in the Commission’s October 2, 2023 Order. Kentucky Power argued that Attachment 1 to Kentucky Power’s response to Staff’s First Request, Item 22, is a third-party report that contains an analysis of the market-competitiveness of senior employees of Kentucky Power and American Electric Power (AEP) and should have received confidential treatment pursuant to KRS 61.878(1)(c)(1). Kentucky Power argued the information is kept confidential within Kentucky Power and AEP and is only shared as needed with Human Resources.³ Kentucky Power stated the same type of studies were provided confidential protection in its last two requests for an adjustment of rates, and Kentucky Power provided the information with the expectation of confidential protection

¹ *Energy Regulatory Comm’n v. Kentucky Power Co.*, 605 S.W.2d 46 (Ky. App. 1980).

² *Public Service Comm’n v. Conway*, 324 S.W.3d 373, 377 (Ky. 2010); *Public Service Comm’n v. Jackson County Rural Elec. Coop. Corp.*, 50 S.W.3d 764, 766 (Ky. App. 2000); *National Southwire Aluminum Co. v. Big Rivers Elec. Corp.*, 785 S.W.2d 503, 509 (Ky. App. 1990).

³ Kentucky Power Company’s Motion for Partial Rehearing or, in the Alternative, to Withdraw Document at 2 (filed Oct. 13, 2023).

in this case.⁴ Kentucky Power requested that if the Commission does not grant rehearing on the issue of confidentiality, it be permitted to withdraw the document from the case record. Kentucky Power stated that the document is not necessary for the Commission to determine the issues in the current case.⁵

DISCUSSION AND FINDINGS

Having considered the motion and the material at issue, the Commission finds that Kentucky Power's motion for rehearing should be granted. Further, the Commission finds that Attachment 1 provided in response to Staff's First Request, Item 22, should receive confidential protection pursuant to KRS 61.878(1)(c)(1). The third-party study contains information that could provide competitors a competitive advantage over Kentucky Power. In the initial request for confidential treatment, Kentucky Power merely stated the documents contained executive compensation and should be granted confidential treatment.⁶ Kentucky Power did not provide an argument as to why that information should be held confidential, when the Commission has a long precedent of not granting confidential protection to executive compensation. Kentucky Power has now provided further arguments in support of its position that the document should receive confidential treatment.

IT IS THEREFORE ORDERED that:

1. Kentucky Power's motion for rehearing is granted.

⁴ Kentucky Power Company's Motion for Partial Rehearing or, in the Alternative, to Withdraw Document at 3.

⁵ Kentucky Power Company's Motion for Partial Rehearing or, in the Alternative, to Withdraw Document at 4.

⁶ Kentucky Power Motion for Confidential Treatment (filed July 13, 2023) at 4.

2. Attachment 1 provided in response to Staff's First Request, Item 22, should receive confidential protection pursuant to KRS 61.878(1)(c)(1) and shall not be placed in the public record for five years.

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 in order to allow Kentucky Power to seek a remedy afforded by law.

7. The remainder of the October 2, 2023 Order not in conflict with this Order remains in effect.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ENTERED
OCT 31 2023 bsb
KENTUCKY PUBLIC
SERVICE COMMISSION

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