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COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

**PUBLIC SERVICE
COMMISSION**

In the Matter of:

AN EXAMINATION BY THE PUBLIC SERVICE)	
COMMISSION OF THE ENVIRONMENTAL)	
SURCHARGE MECHANISM OF KENTUCKY)	
POWER COMPANY FOR THE SIX-MONTH)	
BILLING PERIODS ENDING DECEMBER 31, 2002,)	CASE NO. 2006-00128
DECEMBER 31, 2003, JUNE 30, 2004,)	
DECEMBER 31, 2004, AND DECEMBER 31, 2005,)	
AND FOR THE TWO-YEAR BILLING PERIODS)	
ENDING JUNE 30, 2003 AND JUNE 30, 2005)	

**KENTUCKY POWER COMPANY’S PETITION FOR RECONSIDERATION OF THE
COMMISSION’S DENIAL OF CONFIDENTIAL TREATMENT FOR RESPONSES TO
CERTAIN OF THE COMMISSION STAFF’S DATA REQUESTS**

Kentucky Power Company, by counsel, respectfully requests that the Commission reconsider its decision of June 9, 2006 denying confidential treatment to Kentucky Power’s responses to the Commission Staff’s Data Request Numbers 17(b) and 18. As grounds, Kentucky Power incorporates by reference the positions set forth in the Petition for Confidential Treatment filed on May 23, 2006, and, in addition, offers the following supplemental information showing that disclosure of the information contained in the Kentucky Power’s responses to Data Request Numbers 17(b) and 18 will be harmful to Kentucky Power and its customers.

The Commission Staff’s Data Request Number 17(b) requested the following from Kentucky Power:

Provide the following information concerning Kentucky Power’s inventories of SO2 and NOx emission allowances:

- b. For each year in the period 2006 through 2016,
 - (1) Indicate the number of emission allowances allocated or

- Expected to be allocated by the Environmental Protection Agency for the Big Sandy generating units.
- (2) Indicate the number of emission allowances estimated to be Allocated to Kentucky Power under the Interim Allowance Agreement or other allocation mechanism.
 - (3) Indicate the number of emission allowances Kentucky Power estimates it will utilize in conjunction with the operation of the Big Sandy generating units. Reflect the changes resulting from the adoption of the Clean Air Interstate Rule.
 - (4) If available, indicate any other estimated additions or withdrawals of emission allowances from the Kentucky Power inventories of emission allowances. Include a description of the type of addition or withdrawal.

This Data Request inquires into Kentucky Power's forecasts for its future participation in the highly-competitive emission allowance market. If other participants in that market have access to the information contained in Kentucky Power's response to this Data Request, then they will be able to determine if Kentucky Power is in a "long" position or a "short" position with respect to emission allowances. That is, the other participants in the emission allowance market will be able to determine whether Kentucky Power is in a position where it will be required to purchase additional allowances or in a position where it has excess allowances. Such information in the hands of a buyer or seller of emission allowances undoubtedly will negatively affect the negotiated price of emission allowances Kentucky Power attempts to purchase or sell, because the other participants in the market will know precisely how important it is for Kentucky Power to purchase or sell the allowances. In turn, this pricing effect will unnecessarily increase the cost Kentucky Power's customers pay under the environmental surcharge mechanism.

The Commission Staff's Data Request No. 18 also requested information that, if publicly disclosed, will be detrimental to Kentucky Power's ability to freely participate in the emission allowance market. Specifically, Data Request No. 18 sought the following information:

Through the end of 2016, does Kentucky Power plan on achieving SO₂ and NO_x emission limit compliance for the Big Sandy generating units only through the operation of currently in service emission control equipment and the consumption of emission allowances? If no, describe Kentucky Power's current plans for SO₂ and NO_x emission limit compliance at Big Sandy through the end of 2016.

As with Data Request 17(b), Kentucky Power's response to this Data Request provides participants in the emission allowance market with insight into how Kentucky Power will need to operate in that market in the coming years. Specifically, if a potential purchaser or seller of allowances knows when Kentucky Power plans on adding additional environmental facilities to its generating fleet, that purchaser or seller will be able to use the information to adversely impact the price Kentucky Power is able to receive for allowance sales or is required to pay for allowance purchases. In turn, this will impact the cost of electricity for Kentucky Power's customers since any costs incurred, or profits earned, on the purchase or sale of emission allowances flow through the environmental surcharge mechanism.

As set forth in the Petition for Confidential Treatment previously filed by Kentucky Power with respect to this information, KRS 61.878(c)(1) excludes from the Kentucky Open Records Act "records confidentially disclosed to an agency, generally recognized as confidential or proprietary, which if openly disclosed would present an unfair commercial advantage to competitors of the entity that disclosed the records." In this case, there can be no question about the fact that Kentucky Power treats as confidential the information disclosed in response to the Commission Staff's Data Request Numbers 17(b) and 18. Indeed, Kentucky Power has consistently sought confidential treatment from the Commission for economic forecasts that, if disclosed, would place Kentucky Power at a disadvantage vis-à-vis its competitors. Similarly, it is clear that public disclosure of the information will place Kentucky Power at a competitive disadvantage in the highly-competitive emission allowance market, and will unnecessarily lead

to increased costs for Kentucky Ratepayers. *See Southeastern United Medigroup, Inc. v. Hughes*, 952 S.W.2d 195, 199 (Ky. App. 1997). Indeed, in markets such as the emission allowance market where there is a limited quantity of the item being purchased and sold, any information about the quantity of the item available to or required by one market participant is of tremendous commercial value to the other participants. *See, e.g., Flathead Joint Bd. of Control v. United States DOL*, 309 F.Supp.2d 1217, 1221 (D. Mont. 2004) (Addressing the issue in the context of water rights). Furthermore, no party to this proceeding has offered any objection to Kentucky Power's request for confidential treatment of this information. This issue is of critical importance to Kentucky Power and the Company will be pleased to address any questions the Commission might have for it.

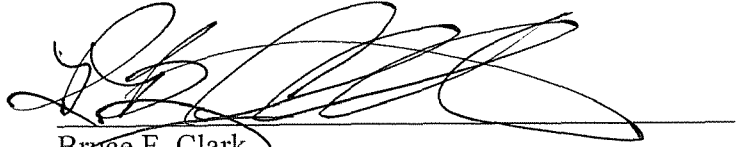
Wherefore, Kentucky Power respectfully requests that the Commission:

- (1) Reconsider its decision of June 9, 2006 denying Kentucky Power's request for confidential treatment of the responses to the Commission Staff's Data Request Numbers 17(b) and 18;
- (2) Grant confidential treatment to the identified responses;
- (3) Withhold from public inspection the identified responses pending the issuance of a final determination of Kentucky Power's confidentiality request; and
- (4) Grant Kentucky Power such further relief as may be appropriate.

Dated: June 29, 2006.

Respectfully submitted;

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served first class mail, postage prepaid, upon the following:

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on this 29th day of June, 2006.



R. Benjamin Crittenden