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COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In The Matter Of:

The Application Of Kentucky Power Company For:)	
(1) The Approval Of The Terms And Conditions Of The)	
Renewable Energy Purchase Agreement For Biomass)	
Energy Resources Between The Company And)	Case No. 2013-00144
ecoPower Generation-Hazard LLC; (2) Authorization)	
To Enter Into The Agreement; (3) The Grant Of Certain)	
Declaratory Relief; And (4) The Grant Of All)	
Other Required Approvals and Relief)	

Kentucky Power Company’s Reply To Kentucky Industrial Utility Customers, Inc.’s Response In Opposition To Kentucky Power’s Motion For Confidential Treatment

Kentucky Power Company states for its Reply to Kentucky Industrial Utility Customers, Inc.’s Opposition to Kentucky Power’s motion for confidential treatment:

KIUC’s opposition to Kentucky Power’s motion appears grounded in two arguments. First, KIUC argues that the Company has not produced “tangible evidence” supporting its motion. Second, KIUC urges the Commission to adopt a heightened standard in reviewing the Company’s application given “the circumstances of Kentucky Power’s proposed REPA.”¹ Both arguments are unsupported by law or fact, and neither provides a basis for withholding confidential treatment for the identified information.

A. Factual Background.

Kentucky Power on April 10, 2013 filed its application in this proceeding seeking in part approval of the Renewable Energy Purchase Agreement for Biomass Energy Resources between

¹ Response In Opposition to Kentucky Power Company’s Petition For Confidential Treatment of Kentucky Industrial Utility Customers, Inc., *In The Matter Of: The Application Of Kentucky Power Company For: (1) The Approval Of The Terms And Conditions Of The Renewable Energy Purchase Agreement For Biomass Energy Resources Between The Company And ecoPower Generation-Hazard LLC; (2) Authorization To Enter Into The Agreement; (3) The Grant Of Certain Declaratory Relief; And (4) The Grant Of All Other Required Approvals and Relief*, Case No. 2013-00144 at 2 (Filed April 26, 2013) (“KIUC Opposition”).

ecoPower Generation-Hazard LLC (“ecoPower”) and Kentucky Power Company dated March 15, 2013 (“REPA”). Appended to the application was a copy of the REPA, along with testimony of Messrs. Godfrey, Pauley, and Wohnhas. Portions of the application are confidential and the Company, in conformity with the requirements of 807 KAR 5:001, Section 13, filed its motion for confidential treatment on April 10, 2013 along with the application.

That same day, the Company served by overnight delivery a copy of the application, including the REPA, to both KIUC and the Attorney General. Because neither KIUC nor the Attorney General had intervened or executed a non-disclosure agreement at that time, the application served on April 10, 2013 was redacted in conformity with the Company’s motion for confidential treatment. The following day, Kentucky Power provided both KIUC and the Attorney General with a proposed non-disclosure agreement.

The Company on April 12, 2013 served on KIUC by overnight delivery an unredacted version of the application following KIUC’s April 11, 2012 execution of the nondisclosure agreement. Likewise, Kentucky Power hand-delivered an unredacted version of the REPA to the Attorney General within a day of his office’s execution of the nondisclosure agreement

KIUC was granted intervention in this proceeding by Commission order dated April 17, 2013. Nine days later, on April 26, 2013, KIUC filed its opposition to the Company’s motion for confidential treatment. The Attorney General has not opposed the Company’s motion.

B. Argument.

1. KIUC’s Opposition Is Untimely.

807 KAR 5:001, Section 13(2)(f) requires that any response to a motion for confidential treatment be filed “within seven (7) after it [the motion] is filed with the commission.”

Kentucky Power’s motion was filed on April 10, 2013. Seven days later was April 17, 2013.

Yet, KIUC delayed a total of 16 days (including 11 days after Kentucky Power provided KIUC an unredacted copy of the application)² before filing its opposition. Even if the seven day period commenced upon the Commission’s April 17, 2013 order granting KIUC intervention, and the Commission’s regulation does not so provide, KIUC’s April 26, 2013 opposition still fails to comport with the clear seven-day requirement of the Commission’s regulation. As such, the Commission should disregard KIUC’s opposition and grant the Company’s motion.

2. Kentucky Power Has Satisfied Its Burden Under KRS 61.878 And 807 KAR 5:001, Section 13.

Consistent with practice under the Commission’s former and new regulation governing motions for confidential treatment, the Company’s motion for confidential treatment was supported by specific statements of fact identifying the bases for motion. Specifically, the facts set forth in the motion:

- Identify the statutory basis for withholding the confidential information from the public files;³
- Describe the non-public nature of the information and steps Kentucky Power takes to protect confidentiality of the information;⁴
- Support the fact that, as required by KRS 61.878(1)(c)(1), Kentucky Power is disclosing the information to a public agency pursuant to an agency requirement.⁵
- Identify in detail both the source and nature of the competitive injury that Kentucky Power and its affiliated companies will suffer if the confidential information is made public:
 - The market for renewable energy products is extremely competitive;⁶

² See Exhibit 1.

³ Kentucky Power Company’s Petition [sic] for Confidential Treatment, *In The Matter Of: The Application Of Kentucky Power Company For: (1) The Approval Of The Terms And Conditions Of The Renewable Energy Purchase Agreement For Biomass Energy Resources Between The Company And ecoPower Generation-Hazard LLC; (2) Authorization To Enter Into The Agreement; (3) The Grant Of Certain Declaratory Relief; And (4) The Grant Of All Other Required Approvals and Relief*, Case No. 2013-00144 at 1-2 (Filed April 10, 2013) (“Motion.”)

⁴ *Id.* at 2-4.

⁵ *Id.* at 4.

- The REPA is the product of extended arms-length negotiations between ecoPower and the Company. Many of the contract terms, including the pricing and other terms for which confidential treatment is sought, are the result of *quid pro quo* concessions or represent the results of negotiating process;⁷
- Public disclosure of the terms will allow other suppliers with whom Kentucky Power and its affiliated companies may negotiate in the future to use the contract terms as the starting point of negotiations, or otherwise establish benchmarks without any *quid pro quo* or negotiation;⁸
- Public disclosure also will allow future competing purchasers to “cherry pick” the most favorable contracts;⁹
- This injury could result in higher prices and less favorable terms for Kentucky Power and its affiliates in connection with future such contracts.¹⁰

KIUC does not seriously challenge these factual bases. Instead, it argues, based on a 15-year old Commission decision involving the fuel adjustment clause, that the Company failed to produce “tangible evidence” in support of its motion.¹¹ Yet, while advancing the argument, KIUC never suggests what constitutes “tangible evidence,” or why (other than to label the Company’s factual statements as speculation) the facts set out in the Company’s motion do not constitute such tangible evidence. At a minimum, and notwithstanding the Company’s burden as the moving party, KIUC must identify why the factual bases in the Company’s motion do not satisfy its “tangible evidence” standard. This it failed to do.

⁶ *Id.* at 2.

⁷ *Id.* ecoPower also would be injured by the disclosure of certain portions of the identified information. As Mr. Godfrey explains in his affidavit filed with this reply, doing so could limit the number of entities willing to contract with Kentucky Power and thereby impede the ability of Kentucky Power and AEPSC to obtain the lowest reasonable cost on the most advantageous terms. Godfrey Affidavit at ¶ 13.

⁸ *Id.* at 3.

⁹ *Id.*

¹⁰ *Id.* at 3-4.

¹¹ KIUC Opposition at 1-4.

Although never explicitly stated, KIUC may be arguing that the Company's motion must be verified, or otherwise supported by an affidavit. The timorous manner in which KIUC advances this apparent argument is well-founded. Neither KRS 61.878, nor 807 KAR 5:001, Section 13, use the term "verified," or in any fashion require that a motion for confidential treatment be supported by an affidavit. To the contrary, the current regulation, like its predecessor, 807 KAR 5:001, Section 7, instead provides that a party seeking confidential protection must establish the "specific grounds" for granting confidential treatment. Kentucky Power did just that in its motion. If the Commission had intended to require verification or the submission of affidavits, it could and would have expressly amended its regulations to require such proof when it revised its procedural regulations in 2012. Instead, both the prior and current regulations require that the movant provide "specific grounds" for the applicability of the exemption to the Open Records Act being invoked. The Company did just that in its motion.

Kentucky Power's motion likewise fully comports with practice before the Commission. Indeed, as recently as last year KIUC sought confidential treatment for information by means of an unverified motion that was unsupported by affidavits.¹² At best, KIUC's unverified two page motion is no more supported by tangible evidence than Kentucky Power's motion in this proceeding. Yet the Commission granted KIUC's motion.¹³

Kentucky Power's motion for confidential treatment sets forth "specific grounds" for the Company's request that the identified portions of its Application be granted confidential treatment. KIUC's claims that the Company's motion is not supported by "tangible evidence,"

¹² Petition of Kentucky Industrial Utility Customers, Inc. for Confidential Treatment of Information, *In the Matter of: The Application of Kentucky Power Company to Withdraw Its Tariff RTP Pending Submission by the Company And Approval by the Commission of A New Real-Time Pricing Tariff*, Case No. 2012-00226 at 5 (Filed September 24, 2012) (**EXHIBIT 2**).

¹³ Letter, *In the Matter of: The Application of Kentucky Power Company to Withdraw Its Tariff RTP Pending Submission by the Company And Approval by the Commission of A New Real-Time Pricing Tariff*, Case No. 2012-00226 at 5 (December 19, 2012) (**EXHIBIT 3**).

or is otherwise deficient, is unsupported and insupportable. To the extent the Commission nevertheless prefers to review an affidavit in further support of the Company's motion, Kentucky Power is filing today the affidavit of Jay F. Godfrey.¹⁴

3. The Confidential Information Satisfies The Requirements Of KRS 61.878(1)(c)(1).

Although KIUC quotes from the Commission's Order in *In Re Kentucky Utilities Company*,¹⁵ it nowhere claims that the record in that case was identical (or even similar) to the record in this proceeding. Nor does KIUC in any fashion argue that the 1990's market for coal and barge transportation was in any way similar to the market for renewable energy products in 2013. Most telling, KIUC nowhere addresses the fact that the Commission in 2010 determined that the terms of a Renewable Energy Purchase Agreement for Wind Resources were entitled to confidential treatment.¹⁶ In short, KIUC's argument is without merit.

4. Kentucky Power's Motion For Confidential Treatment Must Be Reviewed Under The Same Standards Used To Decide All Motions For Confidential Treatment.

KRS 61.878 establishes uniform standards for determining whether information is exempt from the public disclosure requirements of the Open Records Act. Notwithstanding KIUC's unsupported argument, neither the statute nor the Commission's regulation impose special requirements, or require "heightened scrutiny" (whatever that may be), for public utility

¹⁴ (**Exhibit 4**). See also, Kentucky Power Company's Contingent Motion for Leave to File Reply And Supporting Affidavit, *In The Matter Of: The Application Of Kentucky Power Company For: (1) The Approval Of The Terms And Conditions Of The Renewable Energy Purchase Agreement For Biomass Energy Resources Between The Company And ecoPower Generation-Hazard LLC; (2) Authorization To Enter Into The Agreement; (3) The Grant Of Certain Declaratory Relief; And (4) The Grant Of All Other Required Approvals and Relief*, Case No. 2013-00144 (Filed May 1, 2013).

¹⁵ Case No. 97-197 (Ky. P.S.C. March 18, 1998).

¹⁶ Letter, *In the Matter of: The Application For Approval Of Renewable Energy Purchase Agreement For Wind Energy Resources Between Kentucky Power Company and FPL Illinois Wind, LLC.*, Case No. 2009-00545 (Ky. P.S.C. February 11, 2010) (**Exhibit 5**).

contracts, for contracts subject to SB 46,¹⁷ for contracts that were not the result of an RFP, or for contracts of which KIUC disapproves. Indeed, to do so would violate not only KRS 13.130(1)(a), KRS 13A.130(1)(b), and KRS 13A.130(2), but also the separation of powers provisions of Kentucky's Constitution.¹⁸

Nor, even if were otherwise legal to do so, does the public interest require such heightened scrutiny. The Attorney General is a party to this proceeding and has been provided an unredacted copy of the Application. By express terms of KRS 367.150(8), the Attorney General represents the consumers' interests in this proceeding. Thus, the public's representative not only has access to the confidential information, but the public's interest in both this proceeding and the confidential information will be competently and fully vindicated.

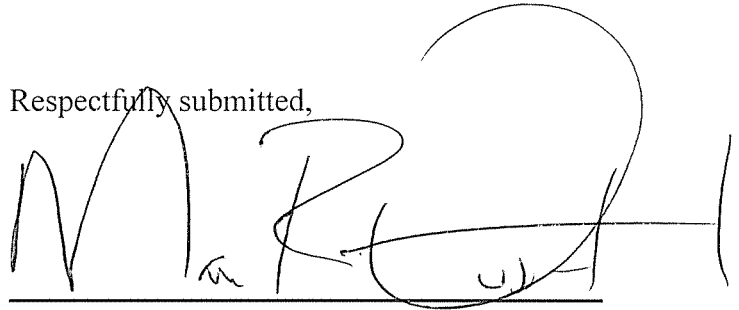
¹⁷ Contrary to KIUC's suggestion, KIUC Opposition at 2, the Company fully complied with SB 46 by providing the full REPA with its application. Thus, while KIUC notes that "Kentucky Power provided a redacted version of the REPA with its Application and seeks confidential treatment of certain portions of the REPA" it omits any mention of the fact that in addition to the redacted version of the REPA, the Company filed under seal, in conformity with 807 KAR 5:001, Section 13(2)(a)(3), the pages of the REPA containing confidential information, highlighted to indicate the material for which confidential treatment is being sought. Thus the entire REPA was filed with the Application.

¹⁸ *Legislative Research Commission v. Brown*, 664 S.W.2d 907, 912 (Ky. 1984).

C. Conclusion.

Kentucky Power Company respectfully requests that its motion for confidential treatment be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Mark R. Overstreet', written over a horizontal line.

Mark R. Overstreet
R. Benjamin Crittenden
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COUNSEL FOR KENTUCKY POWER
COMPANY

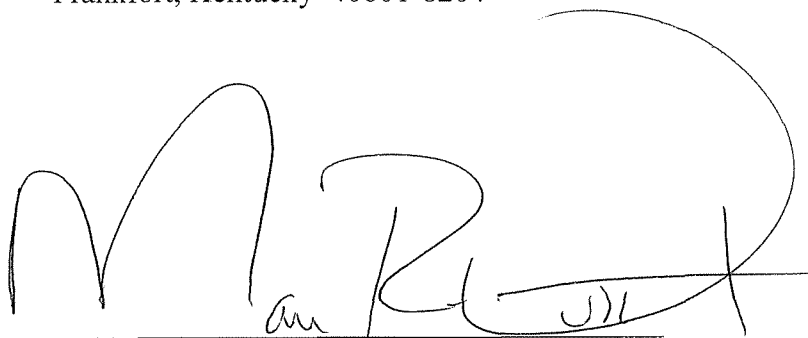
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Dennis G. Howard II
Lawrence W. Cook
Kentucky Attorney General's Office
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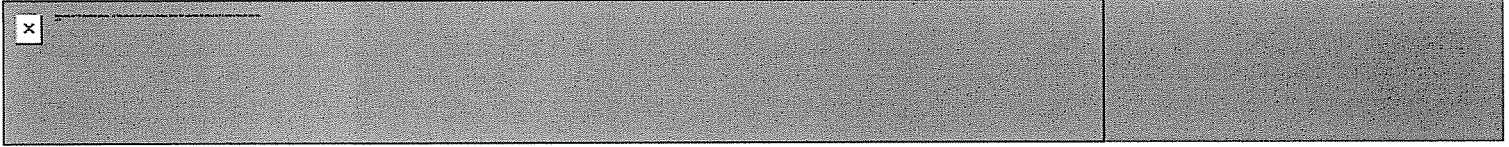
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Mark R. Overstreet

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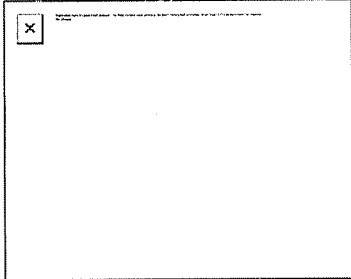
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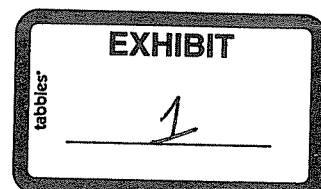
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**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of the:

APPLICATION OF KENTUCKY POWER)	
COMPANY TO WITHDRAW ITS TARIFF RTP)	CASE NO.
PENDING SUBMISSION BY THE COMPANY)	2012-00226
AND APPROVAL BY THE COMMISSION OF A)	
NEW REAL-TIME PRICING TARIFF)	

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**PETITION OF
KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC.
FOR CONFIDENTIAL TREATMENT OF INFORMATION**

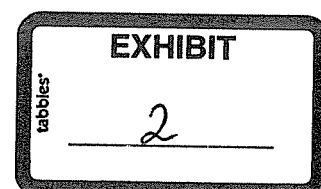
**PUBLIC SERVICE
COMMISSION**

Pursuant to 807 KAR 5:001, Section 7, Kentucky Industrial Utility Customers, Inc. ("KIUC") petitions the Commission for confidential treatment of information provided in response to a number of data requests from Kentucky Power Company ("Kentucky Power").

Kentucky Power Data Requests 1-12, 18-22, 26-29, and 34 ask for information from individual KIUC members related to their evaluation and consideration of Tariff RTP and proposed Rider RTP. Some of the information that KIUC will provide in response to these data requests is commercially sensitive information (pricing information, internal economic analyses, etc.) that would provide an unfair commercial advantage to competitors of the KIUC member companies, if disclosed. This commercially sensitive information is kept confidential by the KIUC members and not disseminated to others unless they have a legitimate need to know and act upon the information. Such information is protected from disclosure even amongst the KIUC members involved in this proceeding.

The KIUC member companies served under Tariff RTP are all energy-intensive. Because the cost of electricity is a very important part of their cost of doing business, if competitors were made aware of such pricing it could provide such competitors with an unfair advantage and harm the Kentucky economy.

Pursuant to KRS 61.878(1)(c)(1), the following records are exempted from disclosure under the Kentucky Open Records Act:

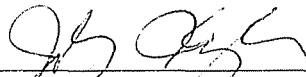


"[R]ecords confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records..."¹

Pursuant to 807 KAR 5:001, Section 7, KIUC has filed with the Commission and served the parties with copies of its data responses. An original of the responses for which confidential treatment is sought is filed with this petition.

Based on the foregoing, KIUC respectfully requests that the Commission grant its Petition for Confidential Treatment of Information. The attached Confidentiality Agreement has been circulated to Kentucky Power, who has already executed the agreement.

Respectfully submitted,



Michael L. Kurtz, Esq.

Kurt J. Boehm, Esq.

Jody M. Kyler, Esq.

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**COUNSEL FOR KENTUCKY INDUSTRIAL UTILITY
CUSTOMERS, INC.**

September 21, 2012

¹ KRS 61.878(1)(c).

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

In The Matter Of:

The Application Of Kentucky Power)	
Company To Withdraw Its Tariff RTP)	
Pending Submission By The Company)	Case No. 2012-00226
And Approval By The Commission Of)	
A New Real-Time Pricing Tariff.)	

NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement ("Agreement") is entered into by and between the Kentucky Industrial Customers, Inc. ("KIUC") and Kentucky Power Company ("Kentucky Power").¹¹

1. This Agreement shall govern the use of all Protected Materials produced by, or on behalf of, KIUC members in: In The Matter Of: The Application Of Kentucky Power Company To Withdraw Its Tariff RTP Pending Submission By The Company And Approval By The Commission Of A New Real-Time Pricing Tariff, Case No. 2012-00226 (the "Proceeding.") Notwithstanding any order terminating this Proceeding this Agreement shall remain in effect until specifically modified or terminated by the Kentucky Public Service Commission ("Commission").

2. "Authorized Representative" shall mean a person who has signed the attached Non-Disclosure Certificate and who is: (a) an attorney who has made an appearance in this Proceeding for Kentucky Power; (b) attorneys, paralegals, and other employees associated for purposes of this case with an attorney described in (a); (c) an employee or independent contractor of Kentucky Power or American Electric Power Service Corporation involved in this case including any expert or employee of an expert retained by Kentucky Power in this Proceeding for the purpose of advising, preparing for or testifying in this Proceeding.

3. "Protected Materials" are materials so designated by KIUC that customarily are treated by KIUC members as sensitive or proprietary, which are not available to the public, and which, if disclosed freely, would subject KIUC members to risk of competitive disadvantage or other business injury. Protected Materials shall

¹ As used in this Agreement, Kentucky Power includes its Authorized Representatives as defined below.

not include the following: (a) any information or document that has been filed with and placed of record in the public files of the Commission, or contained in the public files of any other federal or state agency, or any federal or state court, unless the information or document has been determined to be protected by such agency or court; or (b) information that is public knowledge or becomes public knowledge, other than through disclosure in violation of this Agreement or in violation of a similar agreement executed by KIUC members.

4. "Notes of Protected Materials" means memoranda, handwritten notes, or any other form of information (including electronic information) that copies or discloses Protected Materials. Notes of Protected Materials are subject to the same restrictions provided in this Agreement for Protected Materials except as specifically provided otherwise in this Agreement.

5. Protected Materials shall be made available under the terms of this Agreement to Kentucky Power solely for its use in this Proceeding and any appeals from this Proceeding, and may not be used by Kentucky Power for any commercial, business, or other purpose whatsoever.

6. Protected Materials shall remain available to Kentucky Power until an order terminating this Proceeding becomes no longer subject to judicial review. If requested to do so in writing after that date, Kentucky Power shall, within fifteen days of such request, return the Protected Materials (excluding Notes of Protected Materials) to KIUC, or shall destroy the materials, except that copies of filings, official transcripts and exhibits in this Proceeding that contain Protected Materials and Notes of Protected Materials may be retained, if they are maintained in accordance with Paragraph 7 of this Agreement. Within such time period, Kentucky Power, if requested to do so, shall also submit to KIUC an affidavit stating that, to the best of its knowledge, all Protected Materials and all Notes of Protected Materials have been returned or have been destroyed or will be maintained in accordance with Paragraph 7 below. To the extent Protected Materials are not returned or destroyed, they shall remain subject to this Agreement.

7. All Protected Materials shall be maintained by Kentucky Power in a secure place. Access to those materials shall be limited to Authorized Representatives. Protected Materials shall be treated as confidential by Kentucky Power and the Authorized Representatives in accordance with the certificate executed pursuant to Paragraph 8 below. Protected Materials shall not be used except as necessary for the conduct of this

Proceeding, nor shall they be disclosed in any manner to any person except an Authorized Representative who is engaged in the conduct of this Proceeding and who needs to know the information in order to carry out that person's responsibilities in this Proceeding. Authorized Representative may make notes of Protected Materials, which shall be treated as Notes of Protected Materials if they disclose the contents of Protected Materials. Authorized Representatives may not use information contained in any Protected Materials obtained through this Proceeding to give Kentucky Power or any competitor or potential competitor of KIUC members a commercial advantage or otherwise economically disadvantage KIUC members based on disclosure of the Protected Materials.

8. An Authorized Representative shall not be permitted to inspect, participate in discussion regarding, or otherwise be permitted access to Protected Materials unless that Authorized Representative has first executed the attached Non-Disclosure Certificate, provided that if an attorney qualified as an Authorized Representative has executed such a certificate, the paralegals, secretarial and clerical personnel under the attorney's instruction, supervision or control need not do so. Attorneys qualified as Authorized Representatives are responsible for ensuring that persons under their supervision or control comply with this order. A copy of each Non-Disclosure Certificate shall be provided to KIUC prior to disclosure of any Protected Materials to an Authorized Representative.

9. Any Authorized Representative may disclose Protected Materials to any other Authorized Representative as long as the disclosing Authorized Representative and the receiving Authorized Representative have both executed a Non-Disclosure Certificate. In the event that any Authorized Representative to whom the Protected Materials are disclosed ceases to be engaged in these proceedings, access to Protected Materials by that person shall be terminated. Even if no longer engaged in this Proceeding, every person who has executed a Non-Disclosure Certificate shall continue to be bound by the provisions of this Agreement and the Non-Disclosure Certificate.

10. Kentucky Power shall take all reasonable precautions necessary to assure that Protected Materials are not distributed to unauthorized persons.

11. All copies of all documents reflecting Protected Materials, including the portion of the hearing

testimony, exhibits, transcripts, briefs and other documents that refer to Protected Materials, shall be filed and served in compliance with the applicable procedures for filing confidential information in this Proceeding. If Kentucky Power seeks to make use of or reference to Protected Materials, it must do so in conformity with 807 KAR 5:001, Section 7. Nothing in this Agreement shall be construed as precluding KIUC from objecting to the use of Protected Materials on any legal grounds. Moreover, nothing in this Agreement shall be construed as a waiver of KIUC's right to object to data requests or other requests for information or documents from Kentucky Power.

12. Nothing in this Agreement shall preclude Kentucky Power from requesting that the Commission find that this Agreement should not apply to all or any materials designated as Protected Materials pursuant to this Agreement. However, Kentucky Power shall continue to treat any Protected Materials as Protected Materials under this Agreement until the conclusion of all appeals from a Commission order finding that such materials should not be designated as Protected Materials. Neither Kentucky Power nor KIUC waives its rights to seek additional administrative or judicial remedies following a Commission finding that Protected Materials are not subject to protection.

13. The parties and Authorized Representatives agree by execution of this Agreement that the sole and exclusive remedy for any alleged breach of this Agreement by Kentucky Power shall be an injunctive proceeding pursuant to CR 65 et seq. of the Kentucky Rules of Civil Procedure brought in the Franklin Circuit Court and the appellate courts of Kentucky, with each party bearing its own costs. The parties further agree to waive any other remedies that may be available outside of injunctive relief from the Franklin Circuit Court. Each person signing the Non-Disclosure Certificate agrees to submit to the jurisdiction of the Franklin Circuit Court and the appellate courts of Kentucky with respect to any action alleging a breach of this Agreement. The parties and each Authorized Representative further agree that the disclosure of any information in violation of this Agreement shall result in immediate and irreparable injury to KIUC for which there is no remedy at law. The contents of Protected Materials or any other form of information that copies or discloses Protected Materials, including Notes of Protected Materials, shall not be disclosed to anyone other than in accordance with this Non-Disclosure Agreement and shall be used only in connection with this Proceeding.

14. If KIUC inadvertently provides documents or information protected by the attorney-client privilege, work product doctrine, or other legal privilege, or otherwise fails to designate materials as Protected Materials at the time they are provided to Kentucky Power or its Authorized Representative (“the Receiving Party”), KIUC shall notify the Receiving Party promptly upon discovery of the inadvertent disclosure. The Receiving Party agrees that such inadvertent disclosure does not waive the confidentiality or privilege protecting the information, agrees to immediately return the privileged information, to protect the confidential materials as Protected Materials, and to not use any information derived from such inadvertent disclosure in a manner inconsistent with the preservation of the privileged or confidential nature of the materials unless the materials were publicly disclosed prior to the notice being delivered to Kentucky Power or its Authorized Representative. Nothing in this paragraph shall be construed as precluding the right of Kentucky Power to challenge any claim of confidentiality or privileged status.

EXECUTED THIS ____ DAY OF September, 2012.

BY: KENTUCKY POWER COMPANY

BY: KENTUCKY INDUSTRIAL UTILITY
CUSTOMERS, INC.

Counsel

Counsel

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

In The Matter Of:

The Application Of Kentucky Power)	
Company To Withdraw Its Tariff RTP)	
Pending Submission By The Company)	Case No. 2012-00226
And Approval By The Commission Of)	
A New Real-Time Pricing Tariff.)	

NON-DISCLOSURE CERTIFICATE

I hereby certify my understanding that access to Protected Materials is provided to me pursuant to the terms and restrictions of the Non-Disclosure Agreement between Kentucky Industrial Customers, Inc. and Kentucky Power Company in this Proceeding, that I have been given a copy of and have read the Non-Disclosure Agreement, and that I agree to be bound by it. I understand that the contents of the Protected Materials, any notes or other memoranda, or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with that Protective Agreement, and will be used only for the purposes of this Proceeding.

Print and Sign Name

Address



Steven L. Beshear
Governor

Leonard K. Peters
Secretary
Energy and Environment Cabinet

Commonwealth of Kentucky
Public Service Commission
211 Sower Blvd
P O Box 615
Frankfort, Kentucky 40602-0615
Telephone. (502) 564-3940
Fax. (502) 564-3460
psc.ky.gov

David L. Armstrong
Chairman

James W. Gardner
Vice Chairman

Linda K. Breathitt
Commissioner

December 19, 2012

Boehm, Kurtz & Lowry
Attention: Michael Kurtz
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202

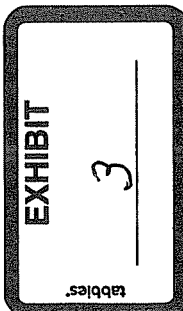
Re: Kentucky Power Company
KIUC's Petition for Confidential Treatment received 9/24/12
PSC Reference – Case No. 2012-00226

Dear Mr. Kurtz:

The Public Service Commission has received the Petition for Confidential Treatment you filed on September 24, 2012 on behalf of Kentucky Industrial Utility Customers, Inc. ("KIUC") to protect certain information filed with the Commission as confidential pursuant to Section 7 of 807 KAR 5:001 and KRS 61.878. The information you seek to have treated as confidential is identified as being contained in KIUC's Responses to Ky Power's Data Request Nos. 1-12, 18-22, 26-29 and 34. The information is described as evaluation and consideration of Tariff RTP and proposed Rider RTP containing pricing information, and internal economic analyses, etc.

Your justification for having the Commission handle this material as confidential is that the public disclosure of the information could result in an unfair commercial advantage to competitors, and violate the terms of a confidentiality agreement.

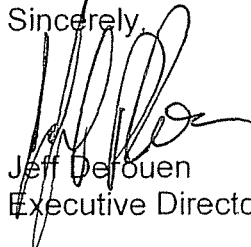
Based on a review of the information and pursuant to KRS 61.878 and 807 KAR 5:001, Section 7, the Commission has determined that the information requested to be held confidential is of a proprietary nature, which if publicly disclosed would permit an unfair commercial advantage to Ky Power's competitors, and could violate the terms of a confidentiality agreement. Therefore, the information requested to be treated as confidential **meets the criteria for confidential protection** and will be maintained as a nonpublic part of the Commission's file in this case. The procedure for usage of confidential materials during formal proceedings may be found at Section 7(8) of 807 KAR 5:001.



Mr. Kurtz
December 19, 2012
Page 2

If the information becomes publicly available or no longer warrants confidential treatment, Kentucky Industrial Utility Customers, Inc. is required by Section 8(9)(a) of 807 KAR 5:001 to inform the Commission so that the information may be placed in the public record.

Sincerely,



Jeff Derouen
Executive Director

kg/

cc: Parties of Record

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

In The Matter Of:

The Application Of Kentucky Power Company For:)
(1) The Approval Of The Terms And Conditions Of The)
Renewable Energy Purchase Agreement For Biomass)
Energy Resources Between The Company And) Case No. 2013-00144
ecoPower Generation-Hazard LLC; (2) Authorization)
To Enter Into The Agreement; (3) The Grant Of Certain)
Declaratory Relief; And (4) The Grant Of All)
Other Required Approvals and Relief)

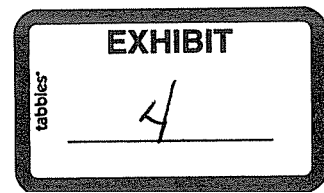
AFFIDAVIT OF JAY F. GODFREY

Jay F. Godfrey, first being duly sworn, states:

Background

1. I am of the age of majority and competent to make this affidavit. I have personal knowledge of the matters set forth in this affidavit.

2 I am employed by American Electric Power Service Corporation (AEPSC), a wholly owned subsidiary of American Electric Power Company, Inc. (AEP). AEP is the parent company of Kentucky Power Company (Kentucky Power). I am employed as Managing Director - Renewable Energy for AEPSC. In that capacity, I manage AEP's and its subsidiaries' portfolio of Renewable Energy Purchase Agreements (REPAs) and related long-term structured emission reduction offset agreements. As part of these duties I am responsible for negotiating, in conjunction with AEP and operating company management, the terms of the REPAs entered into by AEP's operating companies and subsidiaries. I also have personal knowledge of the



negotiations concerning other purchase power agreements (PPAs) entered into by AEP operating companies and subsidiaries.

3. In close consultation with Kentucky Power management, I headed the team that negotiated the March 15, 2013 Biomass REPA between Kentucky Power and ecoPower Generation-Hazard, LLC (ecoPower) that is the subject of the Company's application in Commission Case No. 2013-00144.

4. I am familiar with the negotiations leading to the Biomass REPA between Kentucky Power and ecoPower, its terms, and other confidential information relating to the Biomass REPA that the Company seeks to protect from public disclosure. I am also familiar with the terms of REPAs entered into between other AEP affiliate operating companies and various renewable and non-renewable project owners (Projects.) Kentucky Power is not a party to these other Project REPAs. However, other AEP affiliate operating companies will be at risk if confidential information about the other Projects is disclosed because they have entered into confidentiality agreements with the Project owners. Accordingly, the confidential treatment AEP affiliates have sought, and received in other jurisdictions, has also benefitted Kentucky Power and its customers in the same manner.

5. I have specific personal knowledge of the confidential, proprietary, and competitively sensitive nature of the confidential information that is the subject of Kentucky Power's petition (Confidential Information) through direct contact with this information and through my investigation with other AEPSC and Kentucky Power employees who work directly with the confidential information. I also have personal knowledge of efforts taken by Kentucky Power and AEPSC to maintain the secrecy of the Confidential Information through direct

involvement in these efforts, and through my investigation of these efforts with other employees who work directly with these procedures. Finally, I have personal knowledge through my investigation, along with other AEPSC and Kentucky Power employees who work directly with the Confidential Information, of the effect the public disclosure of the Confidential Information would have on the Company's competitive efforts in securing such contracts.

ecoPower REPA

6. The ecoPower Biomass REPA is the result of extended arms-length negotiations between two unaffiliated entities for the purchase by Kentucky Power of renewable energy resources. In negotiating renewable energy purchase power agreements such as the ecoPower Biomass REPA, AEPSC and Kentucky Power seek to obtain the lowest reasonable cost and risk for the Company's customers upon the most advantageous terms. Suppliers, on the other hand, are interested in obtaining the highest price possible for their commodity, and seek to push additional risks from themselves onto buyers such as Kentucky Power.

7. In the course of the negotiations that resulted in the ecoPower Biomass REPA each side made concessions to the other concerning the terms of the REPA. These concessions were based upon the particulars of the transaction, or in response to concessions received. Many of the REPA's terms thus are unique to this particular transaction and represent the results of this *quid pro quo* process.

The Information For Which Confidential Treatment Is Being Sought

8. Kentucky Power seeks confidential protection for three categories of confidential treatment:

- (a) Specific Pricing information;

- (b) Specific terms of material contract provisions, including risk allocation;
- and
- (c) The existence of certain contract provisions.

This information is confidential, proprietary, competitively sensitive, and a trade secret. Similar information in other REPAs entered into by AEP subsidiaries is confidential and protected from public disclosure.

**Public Disclosure Of The Confidential Information
Will Provide An Unfair Commercial Advantage To Competitors Of Kentucky Power**

9. The market for REPAs is extremely competitive. There are multiple sellers of renewable energy seeking the highest prices and most advantageous terms for their capacity and energy. Likewise, with the advent of renewable portfolio standards in many states, Kentucky Power and its affiliates face competition among purchasers of renewable energy products.

10. Kentucky Power and the other AEP operating affiliates may negotiate similar contracts with other suppliers of both renewable and non-renewable energy in the future, including the current Kentucky Power All-Source RFP for generation and other resources. If the Confidential Information became publicly known or available, parties with which Kentucky Power and the other AEP affiliate operating companies may negotiate could use this knowledge to the detriment of Kentucky Power, its customers, and affiliates. Knowledge of the terms of the ecoPower Biomass REPA for which confidential protection is sought by other potential suppliers would establish certain benchmarks in future negotiations, thereby potentially increasing costs incurred by customers of Kentucky Power and its affiliates. In other words, other suppliers would insist on the same or better terms as those negotiated in this purchase agreement.

11. Knowledge of the provisions by potential power supply competitors could enable them to gain an unfair advantage in future competitive situations. For example, the Confidential Information also could be used by other purchasers competing for such contracts to “cherry-pick” the most favorable contracts, thereby depriving Kentucky Power of the ability to obtain the most advantageous prices for its customers. In sum, the public disclosure of the information for which confidential treatment is sought will result in Kentucky Power’ competitors gaining an unfair commercial advantage. Likewise it will result in the other AEP affiliate operating companies and the Project owners with whom they’ve contracted being subject to an unfair commercial disadvantage.

12. In negotiating renewable energy purchase power agreements, AEPSC and Kentucky Power seek to obtain the lowest reasonable cost and risk for the Company’s customers. Suppliers, on the other hand, are interested in obtaining the highest price possible for their commodity, and seek to push additional risks from themselves to Kentucky Power and other purchasers. Thus, disclosure of the pricing terms could likewise serve to establish a floor for future agreements.

13. Sellers of renewable energy products such as ecoPower likewise seek to protect the terms of the agreements. The public disclosure of the Confidential Information will impede the ability of Kentucky Power and AEPSC to obtain the lowest reasonable cost on the most advantageous terms for Kentucky Power’s customers by discouraging potential future bidders from submitting bids because of concern that confidential terms will become public knowledge. As such, the public dissemination of the Confidential Information will provide an unfair economic advantage to Kentucky Power's competitors.

The Confidential Information Is Not Available Or Ascertainable By Other Parties

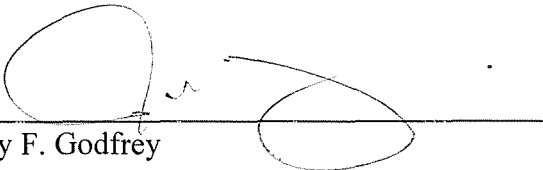
14. The Confidential Information is not available or ascertainable by other parties through normal or proper means. No reasonable amount of independent research could yield this information to other parties.

15. The Confidential Information has been the subject of efforts that are reasonable under the circumstances to maintain its secrecy. Kentucky Power and AEPSC limit public access to buildings housing the Confidential Information by use of security guards. Persons not employed by Kentucky Power and AEPSC who are allowed past security guards at buildings where Confidential Information is kept are not permitted to walk within such buildings without an escort. Kentucky Power's and AEPSC's files containing the Confidential Information are maintained separately from Kentucky Power's and AEPSC's general records and access to those files is restricted. Within Kentucky Power and AEPSC, access to this information has been and will continue to be disclosed only to those employees, officers and representatives of Kentucky Power and AEPSC who have a need to know about such information due to their job and management responsibilities. Outside Kentucky Power and AEPSC, this information is only provided to certain persons who have a legitimate need to review the information to participate in this Cause and who sign a confidentiality agreement.

16. In connection with the Biomass REPA and other PPAs, AEPSC on behalf of itself and its affiliates, entered into confidentiality agreements with each party submitting a response. Such agreements are customary in the industry, and are a necessary prerequisite to AEPSC and Kentucky Power being able to solicit the widest possible response to the request for proposal. Under the confidentiality agreements, AEPSC on behalf of itself and its affiliates including

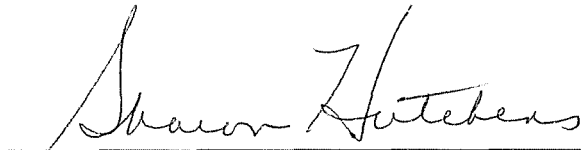
Kentucky Power, agreed to restrict the access of information to only those employees, officers and representatives of Kentucky Power and AEPSC who have a need to know about such information due to their job and management responsibilities. ecoPower and Kentucky Power entered into such a confidentiality agreement with respect to the Confidential Information and other information contained in my testimony and the exhibits thereto. Likewise, the Project owners for all of the transactions involving the other AEP affiliate operating companies entered into such agreements. Kentucky Power and AEPSC have an obligation under these agreements to protect Confidential Information about the other Projects from public disclosure.

17. Further the Affiant sayeth naught.


Jay F. Godfrey

STATE OF OHIO)
) SS:
COUNTY OF FRANKLIN)

Subscribed and sworn to before me, a Notary Public, in and for said County and State this 30th day of April 2013.


Notary Public

 Sharon Hutchens
Notary Public - State of Ohio
Commission Expires
September 17, 2014



Steven L. Beshear
Governor

Leonard K. Peters
Secretary
Energy and Environment Cabinet

Commonwealth of Kentucky
Public Service Commission
211 Sower Blvd.
P O Box 615
Frankfort, Kentucky 40602-0615
Telephone. (502) 564-3940
Fax. (502) 564-3460
psc.ky.gov

David L. Armstrong
Chairman

James W. Gardner
Vice Chairman

Charles R. Borders
Commissioner

February 11, 2010

Stites & Harbison PLLC
Attention: Mark R. Overstreet
421 West Main Street
P.O. Box 634
Frankfort, Kentucky 40602-0634

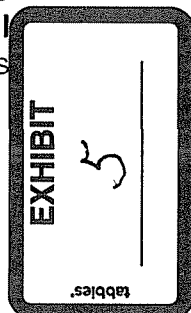
Re: Kentucky Power Company
Petition for Confidential Treatment received 12/29/09
PSC Reference – Case No. 2009-00545

Dear Mr. Overstreet:

The Public Service Commission has received the Petition for Confidential Treatment you filed on December 29, 2009 on behalf of Kentucky Power Company to protect certain information filed with the Commission as confidential pursuant to Section 7 of 807 KAR 5:001 and KRS 61.870. The information you seek to have treated as confidential is identified as information contained in its Exhibits filed in connection with testimonies of Scott Weaver and Jay Godfrey. The information is more particularly described as Exhibit JFG-1 ("REPA" between Kentucky Power and "FPL"); Exhibit JFG-2 ("REPA"); Exhibit JFG-3 ("Comparison of bids – "REPA"); and Exhibit SCW-3 (relative change in annual revenue requirement\project comparison costs).

Your justification for having the Commission handle this material as confidential is that the public disclosure of the information would compromise Kentucky Power Company's competitive position in the industry and result in an unfair commercial advantage to its competitors.

Based on a review of the information and pursuant to KRS 61.878 and 807 KAR 5:001, Section 7, the Commission has determined that the information you seek to keep confidential is of a proprietary nature, which if publicly disclosed would permit an unfair commercial advantage to Kentucky Power Company's competitors. Therefore, the information requested to be treated as confidential **meets the criteria for confidential protection** and will be maintained as a nonpublic part of the Commission's file in this

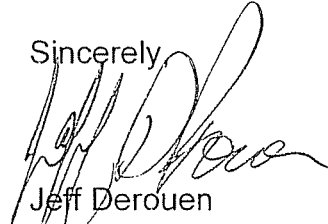


Mr. Overstreet
February 11, 2010
Page 2

case. The procedure for usage of confidential materials during formal proceedings may be found at Section 7(8) of 807 KAR 5:001.

If the information becomes publicly available or no longer warrants confidential treatment, Kentucky Power Company is required by Section 8(9)(a) of 807 KAR 5:001 to inform the Commission so that the information may be placed in the public record.

Sincerely,



Jeff Derouen
Executive Director

kg/

cc: Parties of Record