

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY POWER)	
COMPANY FOR APPROVAL OF THE TERMS)	
AND CONDITIONS OF THE RENEWABLE)	
ENERGY PURCHASE AGREEMENT FOR)	CASE NO.
BIOMASS ENERGY RESOURCES BETWEEN)	2013-00144
THE COMPANY AND ECOPOWER)	
GENERATION-HAZARD LLC; AUTHORIZATION)	
TO ENTER INTO THE AGREEMENT; GRANT)	
OF CERTAIN DECLARATORY RELIEF; AND)	
GRANT OF ALL OTHER REQUIRED)	
APPROVALS AND RELIEF)	

ORDER

The matter is before the Commission upon a petition filed by Kentucky Power Company ("Kentucky Power"), pursuant to 807 KAR 5:001, Section 13, seeking confidential treatment of certain terms and provisions of a Renewable Energy Purchase Agreement for Biomass Energy Resources ("REPA") entered into between Kentucky Power and ecoPower Generation-Hazard LLC ("ecoPower"). The terms and provisions at issue in this petition include the rates to be paid by Kentucky Power over the 20-year term of the contract. Kentucky power contends that the information sought to be kept confidential is generally recognized as confidential and would permit an unfair commercial advantage to competitors if the information were required to be disclosed. Thus, Kentucky Power argues that the subject information is exempt from public disclosure pursuant to KRS 61.878(1)(c)(1).

Kentucky Power asserts that the market for renewable energy purchase power agreements is extremely competitive and that it faces strong competition for the most

advantageous agreements. Kentucky Power points out that pricing and other contract terms are vigorously negotiated by suppliers and purchasers and that, in negotiating such agreements, Kentucky Power seeks to obtain the lowest reasonable cost upon the most advantageous terms.

Kentucky Power contends that the information at issue is highly confidential, noting that it takes all reasonable measures to prevent its disclosure to the public, as well as to persons within the company who do not have a need for the information. Kentucky Power also contends that disclosure of the price and terms included in the REPA would allow other potential suppliers to establish benchmarks in future negotiations and enable those suppliers to gain an unfair advantage to the detriment of Kentucky Power and its customers. Kentucky Power argues that disclosure of such terms would compromise its ability to negotiate and obtain the lowest reasonable cost for its customers on the most favorable terms.

KIUC filed a response objecting to Kentucky Power's request that the designated terms and conditions of the REPA be granted confidentiality. Citing to Case No. 97-197,¹ KIUC contends that Kentucky Power bears the burden of producing tangible evidence demonstrating unfair competitive advantage to justify an exemption from the public disclosure requirements. KIUC argues that Kentucky Power has failed to produce tangible evidence of competitive harm if such information were to be publicly disclosed and has brought forward mere conjectures as to the company's being potentially disadvantaged by public disclosure of the REPA price and conditions. Lastly, KIUC asserts that the circumstances of Kentucky Power's proposed REPA make it

¹ Case No. 97-197, *Petition of Kentucky Utilities Company for Confidential Protection of Certain Information Contained in Barge Transportation and Coal Purchase Contracts* (Ky. PSC Mar. 18, 1998).

particularly important for the entire record to be publicly available. KIUC notes that, if approved, Kentucky Power would be able to recover the cost of the REPA over the entire 20-year term pursuant to KRS 278.271. KIUC also notes that the REPA was not obtained through a Request for Proposal, but instead was a product of negotiations between a single seller and a single buyer.

In its reply, Kentucky Power argues that KIUC's objection was not timely filed in accordance with 807 KAR 5:001, Section 13(2)(f), which requires any response to a petition for confidentiality be filed within seven days from the date the motion was filed. Kentucky Power also contends that it provided specific grounds as to why those identified portions of the REPA should be entitled to confidential treatment in accordance with the requirements of 807 KAR 5:001, Section 7. As further support for its request, Kentucky Power cites to the Commission's approval of its request for confidential treatment of a purchase power agreement for wind resources in Case No. 2009-00545.²

Having reviewed the pleadings, the relevant record, and being otherwise sufficiently advised, the Commission finds that Kentucky Power has failed to establish that the information identified in its petition is entitled to confidential treatment pursuant to KRS 61.878(1)(c)(1). Although Kentucky Power proffers that such information is confidential and that disclosure of such information would place it at a competitive disadvantage in negotiating future similar contracts, the Commission finds disclosure of the terms and provisions of the proposed REPA would not subject Kentucky Power to an unfair competitive advantage in the future, given the highly unique circumstances

² Case No. 2009-00545, *Application for Approval of Renewable Energy Purchase Agreement for Wind Energy Resources Between Kentucky Power Company and FPL Illinois Wind, LLC* (Ky. PSC Feb. 11, 2010).

surrounding the execution of the REPA. As revealed in discovery responses, Kentucky Power was approached by ecoPower over a period of two plus years regarding the willingness of Kentucky Power to purchase power from the proposed biomass facility. After the enactment of KRS 278.271, which authorizes a utility to request full cost recovery over the entire REPA term and after evaluating the financial and accounting impacts of the REPA, as well as the economic development and fuel diversity benefits of the project, Kentucky Power agreed to enter into the purchase power agreement with ecoPower.

Notwithstanding Kentucky Power's characterization of the market for renewable energy purchase power agreements as being extremely competitive and occasioned by multiple sellers of renewable energy seeking the highest prices for their power, the transaction at bar is that of one seller and one buyer. The uniqueness of this REPA is also reflected in the fact that Kentucky Power did not issue a request for proposal for such renewable resource, but was instead approached by ecoPower. Further, as indicated by Kentucky Power, the REPA was consummated, in large part, due to the perceived economic benefits associated with the facility's being a biomass plant located in Kentucky and within Kentucky Power's service territory.

In light of the unique facts and circumstances which led to the execution of the REPA, the Commission finds that disclosure of the terms and conditions of the REPA would not impose upon Kentucky Power any unfair competitive advantage in future negotiations involving renewable energy purchase power agreements. This is particularly so given the Commission's need to be able to fully and specifically address the cost impact of the REPA in its final determination of this matter.

By the Commission

ENTERED
AUG 27 2013
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:

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Case No. 2013-00144

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