

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF KENTUCKY)	
POWER COMPANY FOR APPROVAL OF A)	CASE NO.
CONTRACT FOR ELECTRIC SERVICE WITH)	2018-00418
BRAIDY INDUSTRIES INC.)	

ORDER

This matter arises from certain motions requesting confidential treatment, pursuant to KRS 61.878 and 807 KAR 5:001, Sections 13 and 14, filed by Kentucky Power Company (Kentucky Power) on December 21, 2018, and February 8, 2019.

December 21, 2018 Motion

In the December 21, 2018 motion, Kentucky Power requests confidential treatment of certain rate-related information contained in the special contract between Kentucky Power and Braidy Industries Inc. (Braidy). The special contract was attached as Exhibit 2 to Kentucky Power's application. In particular, Kentucky Power states that Table 1 of Article 4.1(B) of the special contract and the "Bill Illustration Addendum" attached to the special contract should be exempt from public disclosure pursuant to KRS 61.878(1)(c)(1). Kentucky Power states that Table 1 of the special contract provides the per KWh rate to be used in calculating Braidy's Monthly Energy Charge for the energy associated with the first 180 MW of Braidy's metered demand. Kentucky Power further states that the Bill Illustration Addendum reflects the Year 1 contract rate and that certain calculations in the addendum would allow the reverse-engineering of the Year 1 contract rate.

Kentucky Power notes that the contract rate, which increases annually over the ten-year term of the special contract, is the product of extensive negotiations between Kentucky Power and Braidy. Kentucky Power asserts that the contract rate is confidential and proprietary, reflecting the Kentucky Power's consideration of the size of the Braidy load and the importance of the Braidy facility to Kentucky Power's economic efforts, including the investment to be made by Braidy and resulting jobs in Kentucky Power's service territory, the anticipation that the Braidy facility will act as a seed project to attract suppliers and other support enterprises, and Braidy's unique status as a first-taker. Kentucky Power contends that public disclosure of the contract rate would result in unfair commercial injury to Kentucky Power by establishing a ceiling for future negotiations with industrial and commercial enterprises looking to locate in the company's service territory. Kentucky Power asserts that public disclosure of this information would negatively impact its economic development efforts as it competes with other retail electric utilities and economic development entities in Kentucky and other states to attract new commercial and industrial customers and to retain or expand service to existing commercial and industrial customers.

Kentucky Power avers that public disclosure of the Braidy contract rate would allow competing retail electric utilities to underbid Kentucky Power or force it to bid a lower rate than might otherwise be required in the absence of public disclosure to secure the prospective customer. Kentucky Power argues that industrial customers such as Braidy protect their customer-specific cost information and expects Kentucky Power to do likewise. Disclosure of customer-specific cost information, according to Kentucky Power, would make commercial and industrial prospects less likely to locate in Kentucky Power's

service territory thereby placing Kentucky Power at a commercial disadvantage in attracting potential commercial and industrial customers to its service territory.

Kentucky Power also seeks confidential treatment for Confidential Exhibit AEV-1 attached to the testimony of Alex E. Vaughan. Kentucky Power states that Confidential Exhibit AEV-1 reflects the contract rate as well as Kentucky Power's ten-year fuel forecast. Kentucky Power further states that the exhibit could also be used to discern its confidential strategy in its negotiations with Braidy as well as the confidential basis upon which it designed the rates. Kentucky Power notes that Confidential Exhibit AEV-1 is confidential and proprietary and has not been disclosed to Braidy. Kentucky Power maintains that the exhibit should be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1) because disclosure of this information would jeopardize Kentucky Power's ability to negotiate future contracts.

Kentucky Power requests that Table 1 of Article 4.1(B) of the special contract, the Bill Illustration Addendum attached to the special contract, and Confidential Exhibit AEV-1 be kept confidential for ten years.

February 8, 2019 Motion

In the February 8, 2019 motion, Kentucky Power requests confidential treatment for the information contained in an attachment to its response to Commission Staff's First Request for Information, Item 14. Kentucky Power states that the attachment, labeled KPCO_R_KPSC_1_14_Confidential Attachment1.pdf, contains proprietary forecasts of its net energy costs. Kentucky Power contends that the attachment at issue is exempt from public disclosure under KRS 61.878(1)(c)(1) because it contains information that is generally recognized as confidential and proprietary and its public disclosure would result

in an unfair economic advantage for Kentucky Power's competitors and suppliers. Kentucky Power asserts that the information is used by the company in negotiating contracts with its customers and in connection with its negotiation of fuel, purchase power, and generation supply contracts. Kentucky Power maintains that public dissemination of this information would result in it being required to pay higher prices than it would otherwise be required to pay for fuel, power purchase, and generation supply, which would also result in harm to its ratepayers. Kentucky requests that this information be kept confidential until February 8, 2021.

Having carefully considered the motions and the materials at issue, the Commission finds that the designated materials in the confidentiality motions of Kentucky Power meet the criteria for confidential treatment and are exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13.

IT IS THEREFORE ORDERED that:

1. The motions for confidential treatment filed by Kentucky Power on December 21, 2018, and February 8, 2019, are granted.
2. The designated materials for which Kentucky Power seeks confidential treatment in its December 21, 2018 motion shall not be placed in the public record or made available for public inspection for ten years or until further Orders of this Commission.
3. The designated materials for which Kentucky Power seeks confidential treatment in its February 8, 2019 motion shall not be placed in the public record or made available for public inspection until February 8, 2021, or until further Orders of this Commission.

4. Use of the materials in question in any Commission proceeding shall be in compliance with 807 KAR 5:001, Section 13(9).

5. Kentucky Power shall inform the Commission if the materials in question become publicly available or no longer qualify for confidential treatment.

6. If a non-party to this proceeding requests to inspect the materials granted confidential treatment by this Order and the period during which the materials have been granted confidential treatment has not run, then Kentucky Power shall have 30 days from receipt of written notice of the request to demonstrate that the materials still fall within the exclusions from disclosure requirements established in KRS 61.878. If Kentucky Power is unable to make such demonstration, the requested materials shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

7. The Commission shall not make the requested materials available for inspection for 30 days following an Order finding that the materials no longer qualify for confidential treatment in order to allow Kentucky Power to seek a remedy afforded by law.

By the Commission

ENTERED
AUG 20 2019
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

Case No. 2018-00418

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