

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF KENTUCKY)	
UTILITIES COMPANY FOR AN ORDER)	
AUTHORIZING THE ISSUANCE OF SECURITIES)	CASE NO.
AND ASSUMPTION OF OBLIGATIONS AND AN)	2018-00153
ORDER AMENDING AND EXTENDING EXISTING)	
AUTHORITY WITH RESPECT TO REVOLVING LINE)	
OF CREDIT)	

ORDER

On May 11, 2018, Kentucky Utilities Company (KU) filed a petition, pursuant to KRS 61.878(1) and 807 KAR 5:001, Section 13, requesting that the Commission grant confidential protection for a period of five years to designated material contained in seven contracts for the construction of environmental facilities to address coal combustion residuals. Under the contracts, which are filed as Exhibits 4–10 to the Application, KU anticipates incurring \$135 million in 2018 and \$35 million in 2019.

As a basis for its request, KU states that the designated information in the contracts contain pricing information, insurance provisions, and commercially sensitive terms which are generally recognized as confidential or proprietary, and if openly disclosed would permit an unfair commercial advantage to competitors. KU argues that disclosure of the confidential information would hinder KU's ability to receive the best proposals and procure the best contract terms in future negotiations. KU asserts that counterparties in a competitive market do not want confidential information or concessions they have privately made publicly disclosed because such information could be used against them

in future negotiations with other customers or by their competitors. Finally, KU contends that if the confidential information in the contracts are made public then it will diminish KU's ability to receive the best proposals and contracts for the best possible terms, which will harm both KU and its customers through increased costs of service.

The Commission is a public agency subject to Kentucky's Open Records Act, which requires that all public records "be open for inspection by any person, except as otherwise provided by KRS 61.870 to 61.884."¹ The exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.² The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.³ In determining whether materials should be exempt from disclosure, the Commission must balance the potential harm from disclosure with "the effect of protecting a given document from scrutiny by the public and potential intervenors."⁴

Having considered the petition and the material at issue, the Commission finds that the designated information contained in the contracts concerning pricing information, insurance provisions, and commercially sensitive terms are generally recognized as confidential or proprietary; it therefore meets the criteria for confidential treatment and is exempted from public disclosure pursuant to KRS 61.878(1)(c) and 807 KAR 5:001, Section 13.

¹ KRS 61.872(1).

² See KRS § 61.871.

³ 807 KAR 5:001, Section 13(2)(c).

⁴ *Southeastern United Medigroup, Inc. v. Hughes*, 952 S.W.2d 195, 199 (Ky. 1997), *abrogated on other grounds by Hoskins v. Maricle*, 150 S.W.3d 1 (Ky. 2004).

IT IS THEREFORE ORDERED that:

1. KU's petition for confidential protection for the designated material contained in seven construction contracts, which are filed as Exhibits 4–10 to the Application, is granted.

2. The designated confidential material contained in KU's Exhibits 4–10 to the Application, shall not be placed in the public record or made available for public inspection for a period of five years from the date of this Order.

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

4. KU shall inform the Commission if the material in question becomes publicly available or no longer qualifies for confidential treatment.

5. If a non-party 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, KU shall have 20 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 KU 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 20 days following an Order finding that the material no longer qualifies for confidential treatment in order to allow KU to seek a remedy afforded by law.

By the Commission



ATTEST:


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