

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF KENTUCKY)	
POWER COMPANY FOR (1) A GENERAL)	
ADJUSTMENT OF ITS RATES FOR ELECTRIC)	
SERVICE; (2) APPROVAL OF TARIFFS AND)	
RIDERS; (3) APPROVAL OF ACCOUNTING)	CASE NO.
PRACTICES TO ESTABLISH REGULATORY)	2020-00174
ASSETS AND LIABILITIES; (4) APPROVAL OF A)	
CERTIFICATE OF PUBLIC CONVENIENCE AND)	
NECESSITY; AND (5) ALL OTHER REQUIRED)	
APPROVALS AND RELIEF)	

ORDER

On June 21, 2020, Kentucky Power Company (Kentucky Power) filed a motion requesting a deviation from the Commission's May 29, 2020 Order and 807 KAR 5:001, Section 13(2)(a)(3), which sets forth the filing requirements when a party files documents for which the party seeks confidential treatment. Kentucky Power's motion contains two requests. The first request is leave to file confidential material contained in Kentucky Power's Response to Commission Staff's Second Request for Information (Staff's Second Request), Item 4, in electronic format, rather than unredacted paper copies. The second request is leave to make confidential material contained in Kentucky Power's Response to Staff's Second Request, Item 22 available for viewing in Kentucky Power's counsel's office in Frankfort, Kentucky, rather than comply with the statutory and

regulatory requirements to file such documents with the Commission.¹

As a basis for filing its Response to Staff's Second Request, Item 4, in electronic format, Kentucky Power asserted that the document contains over 600 pages and thus providing the document in electronic format would be more efficient than providing the voluminous document in paper format. Kentucky Power further asserted that providing the document in electronic format would not hamper Staff's or the parties' review of the designated material.

Having reviewed the motion and being otherwise sufficiently advised, the Commission concludes that Kentucky Power established good cause to permit it to file the designated materials contained in its Response to Staff's Second Request, Item 4, in electronic format instead of paper format. In the past, the Commission allowed voluminous documents to be filed in electronic format in the interest of efficient and prudent practices. Our decision in this matter is consistent with past decision. Based on the above, the Commission finds that Kentucky Power's request to file its response to Staff's Second Request, Item 4, in electronic format should be granted.

Regarding its second request, Kentucky Power stated that the designated material contained in its Response to Staff's Second Request, Item 22, contains wage, compensation, and benefit studies that are proprietary documents that belong to third parties that performed the surveys. As a basis for its request to retain the designated material in its counsel's office rather than file the designated material with the

¹ KRS 278.040(3) authorizes the Commission to adopt reasonable regulations to implement the provisions of KRS Chapter 278. KRS 278.310 authorizes the Commission to adopt rules governing how its proceedings are conducted. 807 KAR 5:001, Section 13 contains the regulations promulgated by the Commission regarding documents that contain material for which a party requests confidential treatment.

Commission, Kentucky Power alleged that it “signed release agreements from the survey authors to allow Commission Staff to view these documents.”² Kentucky Power further alleged that this “has been standard practice historically” and that it would “make the surveys available for viewing by Commission Staff and intervenors who enter into a non-disclosure agreement” at its counsel’s office in Frankfort.³

The Commission finds it incredulous that Kentucky Power would argue that it contracted away statutory and regulatory provisions and thus interfered with Commission Staff’s (Staff) ability to conduct a comprehensive, robust investigation of Kentucky Power’s application on behalf of the Commission by restricting Staff’s access to necessary documents, by requiring Commission Staff to sign nondisclosure agreements, and by expecting Staff to travel to Kentucky Power’s counsel’s office in order to examine necessary documents that should be part of the case record. Further, the Commission has deep concerns regarding Kentucky Power’s efforts to limit the orderly processing of this case via a confidentiality agreement with other parties to this proceeding. Kentucky Power utterly failed to establish good cause to permit it to deviate from the legal requirement that documents contained in case records are filed with and in the physical possession of the Commission. It should go without saying, but apparently must be said: documents contained in the case record must be in the physical possession of the Commission. Otherwise, the documents are outside the case record and thus not evidence that the Commission may evaluate in weighing the reasonableness of Kentucky Power’s request for a general rate adjustment. The Commission finds that Kentucky

² Kentucky Power’s Response to Staff’s Second Request, Item 22.

³ *Id.*

Power's request to avoid filing designated materials contained in its Response to Staff's Second Request, item 22 is denied. However, the Commission will permit Kentucky Power to file the designated materials in electronic format, provided that the materials are appropriately bookmarked as set forth in 807 KAR 5:001, Section 8(4)(b). In its motion, Kentucky Power alleged that this material is voluminous, totaling over 20,000 pages. Thus, consistent with our decision regarding Kentucky Power's Response to Staff's Second Request, Item 4, Kentucky Power should be permitted to file the designated materials in electronic format.

The Commission also finds that Kentucky Power should file a copy of the agreement it signed with the survey authors and any confidentiality agreements that it proposes be signed by other parties to this proceeding. The Commission will review the confidentiality agreements that Kentucky Power proposes apply to the parties to this proceeding and invites the parties to file comments on such agreements.

IT IS THEREFORE ORDERED that:

1. Kentucky Power's motion to deviate from the filing requirements contained in the Commission's May 29, 2020 Order and 807 KAR 5:001, Section 13, is granted in part and denied in part.
2. Kentucky Power's request to file its Response to Staff's Second Request, Item 4 in electronic format is granted.
3. Kentucky Power's request to make its Response to Staff's Second Request, Item 22, available only at its counsel's office in Frankfort, Kentucky, and not file the designated material with the Commission is denied.

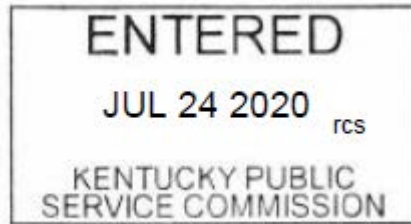
4. Within five days of the date of entry of this Order, Kentucky Power shall file its Response to Staff's Second Request, Item 22, in electronic format.

5. Within five days of the date of entry of this Order, Kentucky Power shall file the agreement that it executed with third party vendors that authored Kentucky Power's wage, compensation, and benefit surveys.

6. Within five days of the date of entry of this Order, Kentucky Power shall file copies of confidentiality agreements that it proposed be executed by parties to this proceeding.

7. Within seven days of the date of this Order, parties to this proceeding may, but are not required to, file comments setting forth their position regarding the confidentiality agreements that Kentucky Power requested the parties sign, including comments on provisions requiring the parties to travel to locations of Kentucky Power's choosing to review materials that Kentucky Power asserts are confidential.

By the Commission



ATTEST:



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