

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 July 21, 2020, Kentucky Power Company (Kentucky Power) filed a motion pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential protection for portions of its responses to Commission Staff's Second Request for Information (Staff's Second Request) as follows:

- Staff's Second Request, Item 4, Attachment 1, which contains Kentucky Power's internal accounting procedures. Kentucky Power requested confidential treatment for 20 years. Kentucky Power explained that the designated material contains sensitive business operations procedures. Kentucky Power asserted that public disclosure would result in commercial harm to Kentucky Power and its ratepayers because competitors could incorporate the information into their own business strategies. Kentucky Power noted that the Commission granted confidential treatment to similar information.

- Staff's Second Request, Item 21, Attachment 1, which consists of a report that compares American Electric Power Company, Inc.'s (AEP) salaried benefits to comparable businesses for use by employees. Kentucky Power alleged that public disclosure would result in commercial harm to Kentucky Power because competitors would use the information to attempt to recruit key employees and compromise Kentucky Power's position in negotiating employee compensation. Kentucky Power requested that the designated material be held confidential for five years.

- Staff's Second Request, Item 22,¹ Attachments 1–8, which contain third party vendor studies and analyses relating to the market competitiveness of and potential changes to Kentucky Power's compensation system. Kentucky Power asserted that the designated material is proprietary and subject to non-disclosure agreements and intellectual property rights agreements between AEP and the third party vendors who conducted the studies. Kentucky Power alleged that public disclosure of the designated material could result in commercial harm because it would limit Kentucky Power's ability to maintain access to such studies. Kentucky Power further alleged that public disclosure could result in competitive disadvantage by limiting Kentucky Power's ability to recruit and retain employees. Kentucky Power requested that the designated material in its response to Staff's Second Request, Item 22, Attachments 1–4 and 7–8 be held confidential for five years because the underlying information regarding market conditions are likely to become outdated in that time period. Kentucky Power requests that the designated material in its response to Staff's Second Request, Item 22, Attachments 5–6 be held

¹ Kentucky Power requested confidential treatment for its response to Staff's Second Request, Item 21, Attachments 1–4 and 7–8 on pages 9 and 12 of its motion. However, elsewhere in the motion and in a review of the documents, it appears that Kentucky Power had a typo in its motion and was referring to Item 22, Attachments 1–4 and 7–8.

confidential for an indefinite period until Kentucky Power's compensation system is changed, at which point the information regarding potential changes will no longer require confidential treatment.

- Staff's Second Request, Item 24, Attachment 1, and Staff's Second Request, Item 33, Attachment 1, which contains compensation information for AEP and Kentucky Power executives. Kentucky Power alleged that public disclosure would result in commercial harm because competitors would gain a competitive advantage by using the information to attempt to recruit key employees and compromise Kentucky Power's position in negotiating employee compensation. Kentucky Power requested that the designated material be held confidential until March 31, 2021, when AEP makes its annual filings with the SEC and the information will be public. As a basis for that time period, Kentucky Power stated that the compensation information for the executives contains forward-looking earnings and stock-related information that Kentucky Power is required to maintain as confidential until the information is included in public filings.

- Staff's Second Request, Item 36, Attachment 1, which contains the employer contribution amounts for life insurance premiums that Kentucky Power negotiated with its life insurance provider. Kentucky Power asserted that public disclosure would result in competitive harm because competitors of Kentucky Power's life insurance provider would use the information to undercut Kentucky Power's provider in a competitive bidding process. Kentucky Power further asserted that public disclosure would cause insurance providers to be unwilling to enter into negotiations with Kentucky Power in the future, resulting in higher costs. Kentucky Power requested that the designated material be held confidential for seven years.

- Staff's Second Request, Item 42, Attachment 1, which contains compensation information for a Kentucky Power employee who is a registered lobbyist, broken out by annual salary and wages related to lobbying activities. Kentucky Power alleged that public disclosure would result in commercial harm to Kentucky Power because competitors would gain commercial advantage by using the information to attempt to recruit key employees and compromise Kentucky Power's position in negotiating employee compensation. Kentucky Power further alleged that the information was of a personal nature and Kentucky Power employees have a reasonable expectation of privacy. Kentucky Power requested that the designated material be held confidential for five years.

- Staff's Second Request, Item 44, Attachments 2–3, which contain Kentucky Power's 2018 federal and state income tax returns. Kentucky Power explained that tax return information is accorded protection from governmental disclosure under 26 USC § 6103(a)(2) and KRS 131.190, and therefore is exempt from disclosure under KRS 61.878(1)(k) and KRS 61.878(1)(l), which prohibit public disclosure of designated material that are exempt from public disclosure by federal or state law.

Having considered the motion and the material at issue, the Commission finds as follows:

1. The designated material in Kentucky Power's response to Staff's Second Request, Item 4, Attachment 1; Item 22, Attachments 1–8; Item 24, Attachment 1; Item 33, Attachment 1; Item 36, Attachment 1; and Item 42, Attachment 1 are generally recognized as confidential or proprietary, and therefore meet the criteria for confidential

treatment and are exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

2. The designated material in Kentucky Power's response to Staff's Second Request, Item 44, Attachments 2 and 3 are records for which federal or state law prohibit public disclosure, and thus are exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, KRS 61.878(1)(k), and KRS 61.878(1)(l).

3. The designated material in Kentucky Power's response to Staff's Second Request, Item 42 regarding an employee's annual salary is generally recognized as confidential and contain information of a personal nature that, if publicly disclosed, would constitute a clearly unwarranted invasion of personal privacy, and thus is exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, KRS 61.878(a), and KRS 61.878(1)(c).

4. The designated material in Kentucky Power's response to Staff's Second Request, Item 42, regarding the portion of an employee's annual salary attributed to lobbying does not meet the criteria for confidential treatment. Lobby expenses, including compensation paid to legislative agents, are public records available through the Kentucky Legislative Ethics Commission, and therefore the amount of an employee's salary attributed to lobbying activities is not exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, KRS 61.878(a), and KRS 61.878(1)(c).

5. The designated material in Kentucky Power's response to Staff's Second Request, Items 21, Attachment 1; do not meet the criteria for confidential treatment and is not exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1). The material contained in Kentucky Power's response to Staff's

Request, Item 21, Attachment 1, while designed to be provided to employees, does not contain employee-specific information, but instead includes generalized information on how benefits provided by AEP compare to unnamed comparative businesses.

IT IS THEREFORE ORDERED that:

1. Kentucky Power's July 21, 2020 motion for confidential protection is granted in part and denied in part.

2. Kentucky Power's motion for confidential protection for its response to Staff's Second Request, Item 4, Attachment 1; Item 22, Attachment 1–8; Item 24, Attachment 1; Item 33, Attachment 1; Item 36, Attachment 1; the annual salary amount in Item 42, Attachment 1; and Item 44, Attachments 2–3 is granted.

3. Kentucky Power's motion for confidential protection for its response to Staff's Second Request, Item 21, Attachment 1; and the portion of an employee's salary attributed to lobbying activities in Item 42, Attachment 1 is denied.

4. The designated information contained in Kentucky Power's response to Staff's Second Request, Item 24, Attachment 1, and Item 33, Attachment 1 shall not be placed in the public record or made available for public inspection until March 31, 2021, or until further Order of this Commission.

5. The designated information contained in Kentucky Power's response to Staff's Second Request, Item 22, Attachments 1–4 and 7–8; and the annual salary amount in Item 42, Attachment 1 shall not be placed in the public record or made available for public inspection for five years or until further Order of this Commission.

6. The designated information contained in Kentucky Power's response to Staff's Second Request, Item 36, Attachment 1 shall not be placed in the public record or

made available for public inspection for seven years or until further Order of this Commission.

7. The designated material contained in Kentucky Power's response to Staff's Second Request, Item 4, Attachment 1 shall not be placed in the public record or made available for public inspection for 20 years or until further Order of this Commission.

8. The designated information contained in Kentucky Power's response to Staff's Second Request, Item 22, Attachment 5–6 shall not be placed in the public record or made available for public inspection for an indefinite period or until further Order of this Commission.

9. Use of the designated material granted confidential treatment by this Order in any Commission proceeding shall be in compliance with 807 KAR 5:001, Section 13(9).

10. Kentucky Power shall inform the Commission if the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment.

11. If a nonparty 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, Kentucky Power shall have 30 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 Kentucky Power is unable to make such demonstration, the requested material shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

12. The Commission shall not make the designated material for which confidential treatment was granted available for inspection for 30 days from the date of

service of an Order finding that the designated material no longer qualifies for confidential treatment in order to allow Kentucky Power to seek a remedy afforded by law.

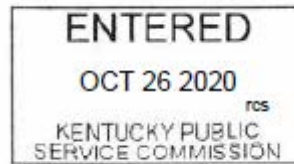
13. The designated material for which confidential treatment was denied is not exempt from public disclosure and shall be placed in the public record and made available for public inspection.

14. If Kentucky Power objects to the Commission's determination that the designated material denied confidential treatment by this Order, it must seek either a rehearing pursuant to KRS 278.400 or judicial review of this Order pursuant to KRS 278.410. Failure to exercise either of these statutory rights will be deemed as agreement with the Commission's determination of which materials should be granted confidential treatment.

15. Within 30 days of the date of service of this Order, Kentucky Power shall file a revised version of the designated material for which confidential treatment was denied, reflecting as unredacted the information that has been denied confidential treatment.

16. The designated material for which Kentucky Power's request for confidential treatment has been denied shall neither be placed in the public record nor made available for inspection for 30 days from the date of service of this Order in order to allow Kentucky Power to seek a remedy afforded by law.

By the Commission



ATTEST:



Deputy Executive Director

Case No. 2020-00174

*Angela M Goad
Assistant Attorney General
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Thomas J FitzGerald
Counsel & Director
Kentucky Resources Council, Inc.
Post Office Box 1070
Frankfort, KENTUCKY 40602

*Lisa A. Lucas
Administrative Assistant
Jenkins Fenstermaker, PLLC
325 Eighth Street
Huntington, WEST VIRGINIA 25701

*Barry Alan Naum
Spilman Thomas & Battle, PLLC
1100 Brent Creek Blvd., Suite 101
Mechanicsburg, PENNSYLVANIA 17050

*Jody Kyler Cohn
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OHIO 45202

*Larry Cook
Assistant Attorney General
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Clay A. Barkley
Strobo Barkley PLLC
239 South 5th Street
Ste 917
Louisville, KENTUCKY 40202

*Joe F Childers
Joe F. Childers & Associates
300 Lexington Building
201 West Short Street
Lexington, KENTUCKY 40507

*Michael A Frye
Honorable
Jenkins Fenstermaker, PLLC
325 Eighth Street
Huntington, WEST VIRGINIA 25701

*Carrie H Grundmann
Spilman Thomas & Battle, PLLC
110 Oakwood Drive, Suite 500
Winston-Salem, NORTH CAROLINA 27103

*John Horne
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Matt Partymiller
President
Kentucky Solar Industries Association
1038 Brentwood Court
Suite B
Lexington, KENTUCKY 40511

*Christen M Blend
American Electric Power Service Corporation
1 Riverside Plaza, 29th Floor
Post Office Box 16631
Columbus, OHIO 43216

*Honorable Kurt J Boehm
Attorney at Law
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OHIO 45202

*J. Michael West
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Don C Parker
Spilman Thomas & Battle, PLLC
300 Kanawha Blvd, East
Charleston, WEST VIRGINIA 25301

*Kentucky Power Company
1645 Winchester Avenue
Ashland, KY 41101

*Honorable Michael L Kurtz
Attorney at Law
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OHIO 45202

*Honorable David Edward Spenard
Strobo Barkley PLLC
239 South 5th Street
Ste 917
Louisville, KENTUCKY 40202

*Katie M Glass
Stites & Harbison
421 West Main Street
P. O. Box 634
Frankfort, KENTUCKY 40602-0634

*Honorable Mark R Overstreet
Attorney at Law
Stites & Harbison
421 West Main Street
P. O. Box 634
Frankfort, KENTUCKY 40602-0634

*Robert D. Gladman
American Electric Power Service Corporation
1 Riverside Plaza, 29th Floor
Post Office Box 16631
Columbus, OHIO 43216

*Randal A. Strobo
Strobo Barkley PLLC
239 South 5th Street
Ste 917
Louisville, KENTUCKY 40202