

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC TARIFF FILING OF KENTUCKY)	
POWER COMPANY FOR APPROVAL OF A)	CASE NO.
SPECIAL CONTRACT WITH EBON)	2022-00387
INTERNATIONAL, LLC)	

ORDER

This matter arises on five motions for confidential treatment filed by Kentucky Power Company (Kentucky Power). On October 28, 2022, Kentucky Power filed a motion,¹ pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for ten years for redacted portions of the direct testimony of Brian K. West and portions of Exhibit 1 to his testimony.

On December 28, 2022, Kentucky Power filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment until December 31, 2037, for its response to Commission Staff's First Request for Information (Staff's First Request), Item 4, Attachment 1; for ten years for its responses to Staff's First Request, Items 9, Attachments 1 and 2; Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention (Attorney General) and Kentucky Industrial Utility Customers' (KIUC) First Request for Information (Attorney General/KIUC's First Request), Items 30, 31, 32, 33, and 34; and Joint

¹ Kentucky Power filed its motion through the Commission's electronic tariff filing system as part of a confidential filing on October 28, 2022 in TFS2022-00529 and subsequently filed publicly on November 4, 2022, on the Commission's website.

Intervenors' First Request for Information (Joint Intervenors' First Request), Item 8, Attachment 1; and for five years for its responses to Attorney General/KIUC's First Request, Items 24, Attachment 1, and 25, Attachment 1.

On January 27, 2023, Kentucky Power filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment until December 31, 2037, for its response to Joint Intervenors' Second Request for Information (Joint Intervenors' Second Request), Item 7, Attachment 1.

On February 13, 2023, Kentucky Power filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment until the end of the special contract term, including any extensions, for its response to Attorney General and KIUC's Supplemental Request for Information (Attorney General/KIUC's Supplemental Request), Item 33.

On March 15, 2023, Kentucky Power filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment until December 31, 2037, for the rebuttal testimony of Brian K. West, Exhibit 1; and until the end of the special contract term, including any extensions, for the rebuttal testimony of Lerah M. Kahn, Exhibit 1.

LEGAL STANDARD

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."² In support of its motions, Kentucky Power argued the application of KRS 61.878(1)(c)(1), which provides an exception to the

² KRS 61.872(1).

requirement for public disclosure for records that are “generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.” Exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.³ The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.⁴

OCTOBER 28, 2022 MOTION

Exhibit 1 to the direct testimony of Brian K. West is a copy of Kentucky Power’s special contract with Ebon International, LLC (Ebon). Kentucky Power redacted rate design provisions from the contract and portions of Mr. West’s direct testimony relating to rate design. Kentucky Power argued that the disclosure of such information would jeopardize its ability to fairly negotiate future special contracts. Kentucky Power asserted that making the negotiated rates public would establish a ceiling for future rates negotiated with other similar customers looking to locate in Kentucky Power’s service territory, or potentially for existing customers asking to establish new rates through special contracts.

Having considered the motion and the material at issue, the Commission finds that Kentucky Power’s October 28, 2022 motion should be granted because disclosure of rate design and pricing could harm Kentucky Power in negotiating future special contracts.⁵ This information is generally recognized as confidential or proprietary; it therefore meets

³ See KRS 61.871.

⁴ 807 KAR 5:001, Section 13(2)(c).

⁵ See Case No. 2016-00117, *Joint Application of Kenergy Corp. and Big Rivers Electric Corporation for Approval of Contracts* (Ky. PSC Dec. 22, 2021), Order at 2.

the criteria for confidential treatment and should be exempted from public disclosure for ten years pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

DECEMBER 28, 2022 MOTION

Kentucky Power's response to Staff's First Request, Item 4, Attachment 1, consists of Ebon's planned load additions through 2037. Kentucky Power argued that it uses this information to better plan for resource needs and if planned load additions were disclosed, Kentucky Power's customers would be reluctant to share such information in the future, which would harm its ability to properly plan to meet customer load.

Kentucky Power's response to Staff's First Request, Item 9, Attachments 1 and 2, are marginal cost study spreadsheets with expected revenues from the Ebon contract. Kentucky Power's response to Attorney General/KIUC's First Request, Items 24, Attachment 1, and 25, Attachment 1, consist of market data related to load and demand used in rate design. Kentucky Power's responses to Attorney General/KIUC's First Request, Items 30, 31, 32, 33, and 34 include redacted rate design material. Kentucky Power's responses to Joint Intervenors' First Request), Item 8, Attachment 1, is a copy of the lease allowing Ebon to erect its crypto mining facility on Kentucky Power property. Kentucky Power argued, as above, that disclosure of such information would jeopardize its ability to fairly negotiate future special contracts. Kentucky Power also argued that the lease should be granted confidential treatment because it is subject to a non-disclosure agreement.

Having considered the motion and the material at issue, the Commission finds that Kentucky Power's December 28, 2022 motion should be granted. Ebon's planned load additions should be granted confidential treatment because disclosure could discourage

companies from locating or expanding in Kentucky Power's territory.⁶ Disclosure of marginal cost study variables, rate design data, and pricing information could harm Kentucky Power in negotiating future special contracts.⁷ Public disclosure of lease terms would jeopardize the Kentucky Power's ability to fairly negotiate such leases or other contracts in the future.⁸ This information is generally recognized as confidential or proprietary; it therefore meets the criteria for confidential treatment and should be exempted from public disclosure for ten years pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1), except that Kentucky Power's response to Staff's First Request, Item 4, Attachment 1, should be exempted through December 31, 2037, when the forecasts become obsolete and Kentucky Power's response to Attorney General/KIUC's First Request, Item 24, Attachment 1; and Item 25, Attachment 1, should be exempted for five years when the market data becomes obsolete according to Kentucky Power.

JANUARY 27, 2023 MOTION

Attachment 1 to Kentucky Power's response to Joint Intervenors' Second Request relates back to planned load additions referenced in Kentucky Power's response to Staff's First Request, Item 4, Attachment 1. As above, Kentucky Power argued that disclosure of such information would jeopardize its ability to fairly negotiate future special contracts.

Having considered the motion and the material at issue, the Commission finds that Kentucky Power's January 27, 2023 motion should be granted because the material at

⁶ See Case No. 2022-00041, *An Electronic Examination of the Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation from May 1, 2021 Through October 31, 2021* (Ky. PSC Jan. 10, 2023), Order at 4.

⁷ See Case No. 2016-00117, Dec. 22, 2021 Order at 2.

⁸ The Commission does not find that the lease is entitled to confidential treatment on the basis that it is protected by a non-disclosure agreement.

issue is additional information related to Ebon’s planned load additions, and disclosure could discourage companies from locating or expanding in Kentucky Power’s territory.⁹ This information is generally recognized as confidential or proprietary; it therefore meets the criteria for confidential treatment and should be exempted from public disclosure through December 31, 2037, when the forecasts become obsolete pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

FEBRUARY 13, 2023 MOTION

Kentucky Power’s redactions to its response to Attorney General/KIUC’s Supplemental Request, Item 33, pertain to pricing terms in the special contract with Ebon. As above, Kentucky Power argued that disclosure of such information would jeopardize its ability to fairly negotiate future special contracts.

Having considered the motion and the material at issue, the Commission finds that Kentucky Power’s February 13, 2023 motion should be granted. Disclosure of pricing information could harm Kentucky Power in negotiating future special contracts.¹⁰ This information is generally recognized as confidential or proprietary; it therefore meets the criteria for confidential treatment and should be exempted from public disclosure for the term of the Ebon special contract and any extensions pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

MARCH 15, 2023 MOTION

Kentucky Power sought confidential treatment for redactions from Exhibit 1 to the rebuttal testimony of Brian K. West, which consist of anticipated load additions. Kentucky

⁹ See Case No. 2022-00041, Jan. 10, 2023 Order at 4.

¹⁰ See Case No. 2016-00117, Dec. 22, 2021 Order at 2.

Power argued, as above, that if planned load additions were disclosed, Kentucky Power's customers would be reluctant to share such information in the future, which would harm its ability to properly plan to meet customer load.

Kentucky Power also asked for confidential treatment for Exhibit 1 to the rebuttal testimony of Lerah M. Kahn, consisting of marginal cost study inputs. Kentucky Power argued, as above, that disclosure of such information would jeopardize its ability to fairly negotiate future special contracts.

Having considered the motion and the material at issue, the Commission finds that Kentucky Power's March 15, 2023 motion should be granted. Planned load additions should be granted confidential treatment because disclosure could discourage companies from locating or expanding in Kentucky Power's territory.¹¹ Disclosure of marginal cost study variables could harm Kentucky Power in negotiating future special contracts.¹² This information is generally recognized as confidential or proprietary; it therefore meets the criteria for confidential treatment and should be exempted from public disclosure through December 31, 2037, for redactions from Exhibit 1 to the rebuttal testimony of Brian K. West and for the term of the Ebon special contract and any extensions for Exhibit 1 to the rebuttal testimony of Lerah M. Kahn pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

¹¹ See Case No. 2022-00041, Jan. 10, 2023 Order at 4.

¹² See Case No. 2016-00117, Dec. 22, 2021 Order at 2.

IT IS THEREFORE ORDERED that:

1. Kentucky Power's motions for confidential treatment filed October 28, 2022, December 28, 2022, January 27, 2023, February 13, 2023, and March 15, 2023, are granted.

2. Designated material from the direct testimony of Brian K. West and Exhibit 1 to Mr. West's testimony, Kentucky Power's responses to Staff's First Request, Item 9, Attachments 1 and 2; Attorney General/KIUC's First Request, Items 30, 31, 32, 33, and 34; and Joint Intervenors' First Request, Item 8, Attachment 1, granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for ten years or until further Order of this Commission.

3. Designated material from Kentucky Power's responses to Attorney General/KIUC's First Request, Item 24, Attachment 1; and Item 25, Attachment 1 granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for five years or until further Order of this Commission.

4. Designated material from the rebuttal testimony of Brian K. West, Exhibit 1; Kentucky Power's responses to Staff's First Request, Item 4, Attachment 1; and Joint Intervenors' Second Request, Item 7, Attachment 1, granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection until December 31, 2037, or until further Order of this Commission.

5. Designated material from the rebuttal testimony of Lerah M. Kahn, Exhibit 1, and Kentucky Power's response to Attorney General/KIUC's Supplemental Request, Item 33, granted confidential treatment by this Order shall not be placed in the public

record or made available for public inspection until the end of the Ebon special contract term and any extensions.

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

7. 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.

8. 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.

9. The Commission shall not make the requested material available for inspection for 30 days from the date of service of an Order finding that the material no longer qualifies for confidential treatment in order to allow Kentucky Power to seek a remedy afforded by law.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner



ATTEST:


Executive Director

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

*Kentucky Power Company
1645 Winchester Avenue
Ashland, KY 41101

*Ashley Wilmes
Kentucky Resources Council, Inc.
Post Office Box 1070
Frankfort, KENTUCKY 40602

*Kentucky Power Company
Kentucky Power Company
1645 Winchester Avenue
Ashland, KY 41101

*Byron Gary
Kentucky Resources Council, Inc.
Post Office Box 1070
Frankfort, KENTUCKY 40602

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

*Tom Fitzgerald
Kentucky Resources Council, Inc.
Post Office Box 1070
Frankfort, KENTUCKY 40602

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

*Hector Garcia
Kentucky Power Company
1645 Winchester Avenue
Ashland, KY 41101

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

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

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

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