

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

On July 28, 2023, 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 treatment for the ten-year term of the proposed special contract for Kentucky Power’s response to Commission Staff’s Post-Hearing Request for Information, Item 4, Attachment 1.

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.”<sup>1</sup> Exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.<sup>2</sup> The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.<sup>3</sup> Kentucky Power sought application of KRS 61.878(1)(c)(1), which exempts records that are “[g]enerally recognized as

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<sup>1</sup> KRS 61.872(1).

<sup>2</sup> See KRS 61.871.

<sup>3</sup> 807 KAR 5:001, Section 13(2)(c).

confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.”

The material at issue consists of a spreadsheet detailing the calculation of the marginal and incremental costs of serving the proposed special contract partner, along with rates and projected revenues. Kentucky Power argued that disclosure of this information would jeopardize its ability to fairly negotiate future special contracts.<sup>4</sup>

Having considered the motion and the material at issue, the Commission finds that Kentucky Power’s motion should be granted, although for only five years as opposed to the requested ten years. Competitors could use this information to undercut Kentucky Power for potential special contract partners and potential partners could use this information to unfairly negotiate special contracts, disadvantaging Kentucky Power compared to competitors.<sup>5</sup> The request for ten years to match the contract term is moot since the contract was not approved, and the later contract years will not be representative of market conditions in ten years. The designated material is generally recognized as confidential or proprietary; it therefore meets the criteria for confidential treatment and should be exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

IT IS THEREFORE ORDERED that:

1. Kentucky Power’s July 28, 2023 motion for confidential treatment is granted.

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<sup>4</sup> Motion at 3.

<sup>5</sup> Order (Ky. PSC July 21, 2023) at 4-5.

2. The designated material 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.

3. 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).

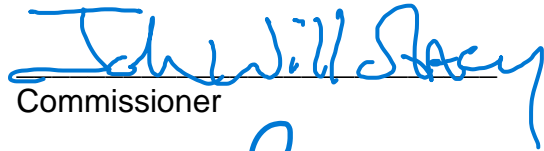
4. If the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment, Kentucky Power shall inform the Commission and file with the Commission an unredacted copy of the designated material.

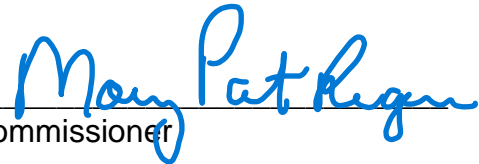
5. If a nonparty to this proceeding requests to inspect the material granted confidential treatment by this Order and the period during which the material has been granted confidential treatment has not expired, Kentucky Power shall have 30 days from receipt of written notice of the request to demonstrate 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.

6. 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

  
Commissioner

  
Commissioner

ATTEST:

  
Executive Director

ENTERED  
DEC 04 2024 AH  
KENTUCKY PUBLIC  
SERVICE COMMISSION

\*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