

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC TARIFF FILING OF KENTUCKY)	
POWER COMPANY FOR APPROVAL OF A)	
SPECIAL CONTRACT UNDER ITS ECONOMIC)	CASE NO.
DEVELOPMENT RIDER AND DEMAND)	2022-00424
RESPONSE SERVICE TARIFFS WITH CYBER)	
INNOVATION GROUP, LLC)	

ORDER

On February 24, 2023, Kentucky Power Company (Kentucky Power) filed a motion, pursuant to 807 KAR 5:001E, Section 13, and KRS 61.878(1)(c)(1), requesting that the Commission grant confidential treatment for the entire term of Kentucky Power's proposed special contract with Cyber Innovation Group, LLC (Cyber Innovation), which will span approximately ten years. Kentucky Power averred in its motion that the special contract at issue in this case could be extended past the initial ten years. The designated material under consideration in Kentucky Power's motion for confidential treatment consist of redactions to Kentucky Power's response to Joint Intervenors'¹ Second Set of Requests for Information (Joint Intervenors' Second Request), Item 1(b). Kentucky Power redacted from its response Cyber Innovation's current load and percentage load factor, as of January 27, 2023.

¹ Joint Intervenors include Mountain Association, Kentuckians for the Commonwealth, Appalachian Citizens' Law Center, Sierra Club, and Kentucky Resources Council, Inc.

BACKGROUND

On December 15, 2022, the Commission entered an Order to open an investigation into the reasonableness of a proposed special contract between Kentucky Power and Cyber Innovation. That Order included a procedural schedule requiring all initial requests for information to Kentucky Power to be filed no later than January 13, 2023, and for Kentucky Power to file its responses to those requests for information no later than January 27, 2023. Kentucky Power contemporaneously filed a motion for confidential treatment along with its responses to the initial requests for information on January 27, 2023. That motion will be addressed by separate Order.

Pursuant to the December 15, 2022 procedural schedule, parties to this case propounded supplemental requests for information on Kentucky Power. On February 24, 2023, Kentucky Power filed a motion seeking confidential treatment of certain information redacted from its response to Joint Intervenors' Second Request, Item 1(b).

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 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 KRS 61.878(1)(c)(1) exempts records that are

² KRS 61.872(1).

³ See KRS 61.871.

⁴ 807 KAR 5:001E, Section 13(2)(c).

“[g]enerally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.” As to proposed special contracts reviewed by the Commission, KRS 278.160(3) also precludes “disclosure or publication of a provision of a special contract that contains rates and conditions of service not filed in a utility's general schedule if such provision would otherwise be entitled to be excluded from the application of KRS 61.870 to 61.884 under the provisions of KRS 61.878(1)(c)1.”

DISCUSSION AND FINDINGS

In support of its motion, Kentucky Power argues that all of the information that it is seeking confidential treatment for is exempt from public disclosure pursuant to KRS 61.878(1)(c)(1). Specifically, Kentucky Power argued against the public disclosure of this Cyber Innovation’s current load and percentage load factor because it would provide Cyber Innovation’s competitors with insight into its operational costs, which are confidential and proprietary. Further, the release of the information, Kentucky Power reasoned, would chill or impede Kentucky Power’s ability to negotiate special contracts with prospective customers in the future if customers feared public release of its usage data.

Having considered the motion and the material at issue, the Commission finds that the designated material at issue here is generally recognized as confidential or proprietary, and it therefore meets the criteria for confidential treatment and should be exempted from public disclosure pursuant to 807 KAR 5:001E, Section 13, and KRS 61.878(1)(c)(1). The Commission has previously granted confidential treatment to

specific customers' usage and load information in a number of cases.⁵ The Commission further finds that the designated material redacted from Kentucky Power's response to Joint Intervenors' Second Request, Item 1(b) should be entitled to confidential treatment for a period of ten years.

IT IS THEREFORE ORDERED that:

1. Kentucky Power's motion for confidential treatment is granted.
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 ten 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 5:001E, Section 13(9).
4. 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.
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

⁵ See Case No. 2020-00041, *Electronic Tariff Filing of Duke Energy Kentucky, Inc. of a Natural Gas Service Minimum Usage Agreement and a Petition for Confidential Treatment* (Ky. PSC Mar. 22, 2021) at 2 (granting confidential treatment to a utility customer's load information, including the amount and pricing of services); Case No. 2017-00441, *Electronic Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for Review, Modification, and Continuation of Certain Existing Demand-Side Management and Energy Efficiency Programs* (Ky. PSC Jan. 25, 2019) at 3 (granting confidential treatment related to Walmart's load factor); Case No. 2012-00221, *Application of Kentucky Utilities Company for an Adjustment of its Electric Rates* (Ky. PSC July 25, 2013) at 1 (granting confidential treatment for customer usage information).

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.

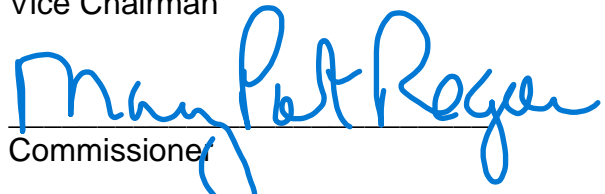
6. The Commission shall not make the requested material available for inspection for 30 days from the date of service of an Order finding that the material no longer qualifies for confidential treatment in order to allow Kentucky Power to seek a remedy afforded by law.

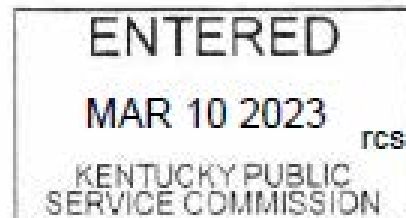
[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

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

*Ashley Wilmes
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

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

*Michael West
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

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

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

*John G Horne, II
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