

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 August 4, 2023, Kentucky Power Company (Kentucky Power) filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1), requesting that the Commission grant confidential treatment to Attachment 1 to Kentucky Power’s response to Commission Staff’s Post-Hearing Request for Information (Staff’s Post-Hearing Request), Item 9 and Attachment 1 to Kentucky Power’s response to Staff’s Post-Hearing Request, Item 11 for ten years; Attachment 1 to Kentucky Power’s response to Joint Intervenors’¹ Post-Hearing Request for Information (Joint Intervenors’ Post-Hearing Request), Item 1 for five years; and a bilateral capacity contract between Kentucky Power and a third party provided in Kentucky Power’s response to Joint Intervenors’ Post-Hearing Request, Item 2 for three years.

Attachment 1 to Kentucky Power’s response to Staff’s Post-Hearing Request, Item 9, and Attachment 1 to Kentucky Power’s response to Staff’s Post-Hearing Request,

¹ Joint Intervenors are Mountain Association, Kentuckians for the Commonwealth, Appalachian Citizens’ Law Center, Sierra Club, and Kentucky Resource Council. They intervened jointly and acted as a single party throughout the proceedings.

Item 11 contain calculations supporting Kentucky Power's cost benefit analysis, which include expected sales to and revenue from the facility proposed by Cyber Innovation Group, LLC (Cyber Innovation). Attachment 1 to Kentucky Power's response to Joint Intervenors' Post-Hearing Request, Item 1 contains the load and load factor for Cyber Innovation's existing Rockport Facility for each month from January 2023 to the present.

In support of its motion, Kentucky Power argued that release of the information provided in response to Staff's Post-Hearing Request, Items 9 and 11 for which confidential treatment is sought would grant the competitors of Kentucky Power an unfair commercial advantage in that it would put Kentucky Power at a disadvantage in securing future economic development opportunities. Kentucky Power also noted that this information was also provided and granted confidential treatment previously.²

Kentucky Power argued that the public disclosure of the load and load factor information for the Rockhouse Facility provided in response to Joint Intervenors' Post-Hearing Request would grant Kentucky Power's competitors an unfair commercial advantage in that this information can be used to influence market pricing. Kentucky Power also noted that similar information was granted confidential treatment by the Commission earlier in this case.³

Kentucky Power argued that the release of the bilateral capacity contract between Kentucky Power and a third-party seller would reveal confidential negotiated terms, that these terms are generally treated as confidential, and release of this information would

² Order (Ky. PSC Mar. 10, 2023).

³ Order (Ky. PSC Mar. 10, 2023).

give Kentucky Power's competitors an unfair commercial advantage as it would put Kentucky Power at a disadvantage in negotiating such contracts in the future.

Having considered the motion and the material at issue, the Commission finds that the material for which confidential treatment was requested is generally recognized as confidential or proprietary and that disclosure would permit an unfair commercial advantage to competitors of Kentucky Power and Cyber Innovation. The material 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).

The Commission also notes that Joint Intervenors filed a post-hearing brief on August 28, 2023, which included information regarding the load factor of the Rockhouse Facility for which Kentucky Power had requested confidential treatment. Joint Intervenors properly redacted that information from its public filing pursuant to 807 KAR 5:001, Section 13(4) and filed a confidential brief with the load factor information unredacted. Because the load factor information is being granted confidential treatment for five years as requested in Kentucky Power's August 4, 2023 motion, the Commission, on its own motion, finds that Joint Intervenors' confidential brief should also be granted confidential treatment for five years.

IT IS THEREFORE ORDERED that:

1. Kentucky Power's August 4, 2023 motion for confidential treatment is granted.
2. The designated material filed shall not be placed in the public record or made available for public inspection for the periods requested by Kentucky Power or until further order of this Commission.

3. Joint Intervenors' unredacted, confidential brief is granted confidential treatment and 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. 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).

5. 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.

6. 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.

7. 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



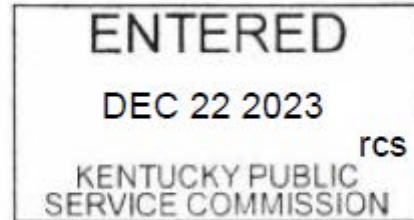
Chairman



Vice Chairman



Commissioner



ATTEST:


_____ For
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

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

*Byron Gary
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