

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF KENTUCKY)	
UTILITIES COMPANY FOR APPROVAL OF)	CASE NO.
SPECIAL CONTRACT BETWEEN KENTUCKY)	2023-00123
UTILITIES COMPANY AND BLUEOVAL SK, LLC)	

ORDER

This matter is before the Commission on two petitions for confidential treatment filed by Kentucky Utilities Company (KU), pursuant to 807 KAR 5:001, Section 13 and 14, and KRS 61.878. In its April 14, 2023 petition, KU requested that the Commission grant confidential treatment for the terms of the special contract provided as Exhibit 1, Appendix A to KU's application. In its June 23, 2023 petition, KU requested confidential treatment for its response to Commission Staff's First Request for Information (Staff's First Request) Items 1 and 4.

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."¹ Exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.² The party requesting that materials be treated confidentially has the burden of establishing

¹ KRS 61.872(1).

² See KRS 61.871.

that one of the exceptions is applicable.³ KRS 61.878(1)(c)(1) provides an exception to the requirement for public disclosure of records that are “generally recognized as confidential and proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.”⁴ KRS 278.160(3) provides that “the provisions of [section 278.160] do not require 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.”⁵

APRIL 14, 2023 PETITION FOR CONFIDENTIAL TREATMENT

In support of its petition, KU argued that the terms of the special contract provided as Exhibit 1, Appendix A to KU's application be afford confidential treatment under KRS 61.878(1)(c)(1) and KRS 278.160(3) for a period of five years from the effective date of the contract. KU further argued that the specific terms contain sensitive financial information relating to demand charge rates. KU argued that the rates are based on extensive negotiations with BlueOval SK, LLC, and disclosure would put KU at a negotiation disadvantage in future customer contracts. KU argued that the Commission

³ 807 KAR 5:001, Section 12(2)(c).

⁴ KRS 61.878(1)(c)(1).

⁵ KRS 278.160(3).

has previously granted confidential treatment to special contract information.⁶ Finally, KU argued that disclosure of the special contract rates would give competitors insight into its prices, which in turn could result in KU being at a commercial disadvantage.

Having considered the petition and the material at issue, the Commission finds that terms of the special contract provided as Exhibit 1, Appendix A to KU's application is generally recognized as confidential or proprietary, and disclosure could be used to disadvantage KU in the negotiations of future special contracts. The Commission has previously held that terms of a special contract should be afforded confidential treatment.⁷ Additionally, KRS 278.160(3) allows for confidential treatment for provisions of a special contract that otherwise would be exempt from public disclosure under KRS 61.878(1)(c)(1). For these reasons, the Commission further finds that the designated material 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) for a period of five years from the effective date of the contract.

JUNE 23, 2023 PETITION FOR CONFIDENTIAL TREATMENT

In KU's response to Staff's First Request, Items 1 and 4, KU provided sample bills and work papers that were used to produce them. KU argued that this information be

⁶ KU cited several cases including: Case No. 2014-00368, *Valley Gas, Inc. Request for Approval of a Special Contract with Mago Construction Company and a Deviation from the Gas Cost Adjustment Clause*, (Ky. PSC Oct. 28, 2014), Order at 4; Case No. 2018-00418, *Electronic Application of Kentucky Power Company for Approval of a Contract for Electric Service with Braidy Industries, Inc* (Ky. PSC Aug. 20, 2019), Order at 2; Case No. 2013-00174, *Application of East Kentucky Power Cooperative for Approval of Special Contract Between EKPC, Owen Electric Cooperative, and Gallatin Steel Company*, (Ky. PSC Apr. 8, 2014), Order at 1-2.

⁷ See Case No. 2019-00365, *Electronic Application for Big Rivers Electric Corporation and Meade County Rural Electric Cooperative Corporation for (1) Approval of Contracts for Electric Service with Nucor Corporation; and (2) Approval of Tariff* (Ky. PSC Sept. 30, 2020), Order; Case No. 2023-00045, *Electronic Tariff Filing Of Big Rivers Electric Corporation and Kenergy Corp. for Approval of a Special Contract with Economic Development Rates with Pratt Paper (KY), LLC* (Ky. PSC Feb. 23, 2023), Order.

afford confidential treatment under KRS 61.878(1)(c)(1) and KRS 278.160(3) for a period of five years from the effective date of the contract. KU argued that that disclosure would put KU at a disadvantage in negotiating contracts or buying and selling commodities like fuel and coal combustion residuals. KU further argued that disclose could put it at a disadvantage in the wholesale energy market. KU argued that the Commission has previously granted confidential treatment to similar information.⁸

Having considered the petition and the material at issue, the Commission finds that KU's response to Staff's First Request, Items 1 and 4 are generally recognized as confidential or proprietary. Disclosure of this information would result in a commercial disadvantage to KU in negotiations and in the wholesale energy market. The Commission has previously found that internal projections, similar to the work papers, be afforded confidential treatment.⁹ The Commission further finds that the designated material 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) for a period of five years from the effective date of the contract.

⁸ KU cited to several cases including the following: Case No. 2017-00321, *Application of Duke Energy Kentucky, Inc. for: (1) An Adjustment of the Electric Rates; (2) Approval of an Environmental Compliance Plan and Surcharge Mechanism; (3) Approval of New Tariffs; (4) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; and (5) All Other Required Approvals and Relief* (Ky. PSC May 3, 2018), Order; Case No. 2012-000221, *Application of Kentucky Utilities Company for an Adjustment of its Electric Rates* (Ky. PSC July 25, 2013), Order at 1-2; Case No. 2018-00348, *Electronic 2018 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company* (Ky. PSC Nov. 16, 2018), Order.

⁹ See Case No. 2021-00282, *Electronic Tariff Filing of Big Rivers Electric Corporation and Jackson Purchase Energy Corporation for Approval and Confidential Treatment of a Special Contract and Cost Analysis Information and a Request for Deviation from the Commission's September 24, 1990 Order in Administrative Case No. 327* (Ky. PSC Oct. 14, 2021), Order

IT IS THEREFORE ORDERED that:

1. KU's April 14, 2023 and June 23, 2023 petitions for confidential treatment are 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 five years from the effective date of the contract 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. KU 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, KU 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 KU 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 KU to seek a remedy afforded by law.

PUBLIC SERVICE COMMISSION


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ATTEST:


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