

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC REVIEW OF THE ADEQUACY OF) ADMINISTRATIVE
KENTUCKY'S GENERATION CAPACITY AND) CASE NO. 387
TRANSMISSION SYSTEM)

ORDER

This matter arises on two motions for confidential treatment, one filed by Kentucky Power Company (Kentucky Power) on April 30, 2019, and the second filed by Duke Energy Kentucky (Duke Kentucky) on March 30, 2020. Both motions were filed pursuant to 807 KAR 5:001, Section 13.

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 KRS 61.878(1)(c)(1) exempts records that are “[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.” 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 that one of the exceptions is applicable.³

¹ KRS 61.872(1).

² See KRS 61.871.

³ 807 KAR 5:001, Section 13(2)(c).

KENTUCKY POWER'S APRIL 30, 2019 MOTION

On April 30, 2019, Kentucky Power filed a motion for confidential treatment, requesting that the Commission grant confidential treatment for information contained in Kentucky Power's responses to Data Request No. 6 and Data Request No. 9. Kentucky Power requested that the designated material included in its response to Data Request No. 6 be granted confidential treatment through December 31, 2023. Kentucky Power requested that the designated material included in its response to Data Request No. 9 be granted confidential treatment until the information is made publicly available through the PJM Interconnection, LLC transmission planning process but did not provide a specific timeframe.

In support of its motion, Kentucky Power argued that the public disclosure of its planned maintenance outages and unit availability could negatively affect Kentucky Power and its customers because other energy market participants could use that information to manipulate the market and potentially cause Kentucky Power to pay higher prices to procure energy for its customers. Further, Kentucky Power argued that the disclosure of its planned transmission projects could negatively affect Kentucky Power's position in the wholesale power market.

Having considered the motion and the material at issue, the Commission finds that Kentucky Power's motion should be granted with respect to the designated material in Kentucky Power's response to Data Request No. 6. The designated material is generally recognized as confidential or proprietary; it therefore meets the criteria for confidential treatment and is exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

With respect to the designated material in Kentucky Power's response to Data Request No. 9, the Commission finds that Kentucky Power's motion should also be granted. However, Kentucky Power should first determine whether the information contained in its response to Data Request No. 9 has already been publicly disclosed given the lapse in time since Kentucky Power filed its motion. If the designated material has not already been publicly disclosed, then it meets the criteria for confidential treatment and is exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

DUKE KENTUCKY'S MARCH 30, 2020 PETITION

On March 30, 2020, Duke Kentucky filed a petition for confidential treatment requesting that information contained in its response to Data Request No. 11 be granted confidential treatment for ten years.

In support of its petition, Duke Kentucky argued that the public disclosure of its scheduled maintenance outages or retirements of generating capacity would provide competitors with sensitive data that could allow the marketplace to be manipulated, increasing costs to Duke Kentucky and its customers.

Having considered the petition and the material at issue, the Commission finds that Duke Kentucky's petition should be granted. The designated material is generally recognized as confidential or proprietary; it therefore meets the criteria for confidential treatment and is 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 motion for confidential treatment is granted.

2. The designated material granted confidential treatment by this Order with respect to Kentucky Power's response to Data Request No. 6 shall not be placed in the public record or made available for public inspection through December 31, 2023, or until further Order of this Commission.

3. The designated material granted confidential treatment by this Order with respect to Kentucky Power's response to Data Request No. 9 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. Duke Kentucky's petition for confidential treatment is granted.

5. The designated material granted confidential treatment by this Order with respect to Duke Kentucky's response to Data Request No. 11 shall not be placed in the public record or made available for public inspection for ten years or until further Order of this Commission.

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 and Duke Kentucky 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 ordering paragraphs 1–3 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. If a nonparty to this proceeding requests to inspect the material granted confidential treatment by ordering paragraphs 4–5 and the period during which the material has been granted confidential treatment has not expired, Duke Kentucky 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 Duke Kentucky is unable to make such demonstration, the requested material shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

10. 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 the applicable utility to seek a remedy afforded by law.

PUBLIC SERVICE COMMISSION



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Vice Chairman



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ATTEST:



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