

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF KENTUCKY)	
POWER COMPANY FOR APPROVAL OF A)	CASE NO.
CONTRACT FOR ELECTRIC SERVICE WITH AIR)	2020-00019
PRODUCTS AND CHEMICALS, INC.)	

ORDER

On March 31, 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 ten years for portions of Kentucky Power’s annual report of revenues received from and marginal costs of providing service to Air Products and Chemicals (Air Products) under the terms of a special contract. The designated material consists of customer-specific billing information.

Kentucky Power requested confidential treatment of the designated material pursuant to KRS 61.878(1)(c)(1), which prohibits public disclosure of material that is confidential or proprietary and, if publicly disclosed, would result in a competitive advantage to competitors.

In support of its motion, Kentucky Power asserted that Air Products expects Kentucky Power to protect the confidentiality of the information. Kentucky Power explained that Air Products operates in a competitive national market and that public disclosure of the designated material would provide Air Products’ competitors with an unfair commercial advantage. Kentucky Power contended that, as a result of public disclosure of confidential information that could result in a commercial disadvantage,

other commercial and industrial customers would be less likely to locate their businesses in Kentucky Power's service territory, which would result in harm to Kentucky Power and its customers from a declining customer base. Kentucky Power stated that the Commission granted confidential treatment to the same information previously filed in this case in an Order issued on April 8, 2021.¹

Having considered the motion and the material at issue, the Commission finds that the designated material is generally recognized as confidential or proprietary because public disclosure could ultimately result in a competitive disadvantage to Kentucky Power. This is because public disclosure of information that impact a utility customer's position in the marketplace could result in businesses being less likely to locate in the utility's service territory. Kentucky Power files this information on an annual basis pursuant to an April 23, 2020 Order entered in this proceeding.² The Commission notes that it granted confidential treatment to the same information contained in Kentucky Power's annual filings in Orders dated April 8, 2021,³ and March 16, 2022.⁴ 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).

¹ Order (Ky. PSC Apr. 8, 2021).

² Order (Ky. PSC Apr. 23, 2020).

³ Order (Ky. PSC Apr. 8, 2021).

⁴ Order (Ky. PSC Mar. 16, 2022).

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 5:001, 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 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

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Chairman

MRP signing with PSC

Angie Hatton

Vice Chairman

MaPat Regan

Commissioner

ENTERED
AUG 08 2023 rcs
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:

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