

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN ELECTRONIC EXAMINATION OF THE)	
APPLICATION OF THE FUEL ADJUSTMENT)	CASE NO.
CLAUSE OF KENTUCKY POWER COMPANY)	2022-00036
FROM MAY 1, 2021 THROUGH OCTOBER 31,)	
2021)	

ORDER

This matter arises on four motions filed by Kentucky Power Company (Kentucky Power). On April 14, 2022, 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 five years for redactions from Attachment 2 and 3 to Kentucky Power’s response to Commission Staff’s First Request for Information (Staff’s First Request), Item 4.

On May 18, 2022, 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 five years for redactions from Supplemental Attachment 2 to Kentucky Power’s responses to Commission Staff’s Second Request for Information (Staff’s Second Request), Items 2, 3, and 4(d), and for two years for Attachment 1 to Kentucky Power’s response to Staff’s Second Request, Item 7.

On June 17, 2022, 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 five years for Attachments 1 through 184 to Kentucky Power’s response to Kentucky

Industrial Utility Customers, Inc.'s (KIUC's) Second Request for Information (KIUC's Second Request), Item 1.

On August 18, 2022, Kentucky Power filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment until June 13, 2029, for redactions from Attachment 1 to Kentucky Power's response to KIUC's Post-Hearing Data Request (KIUC's Post-Hearing Request), Item 1.

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 In support of its motions, Kentucky Power argued for the application of KRS 61.878(1)(c)(1), which exempts from disclosure "[r]ecords confidentially disclosed to an agency or required by an agency to be disclosed to it, generally 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

APRIL 14, 2022 MOTION

Attachments 2 and 3 to Kentucky Power's response to Staff's First Request, Item 4, consist of coal solicitation information, including offers. Kentucky Power argued that coal solicitation information contains insights into the manner by which Kentucky

¹ KRS 61.872(1).

² See KRS 61.871.

³ 807 KAR 5:001, Section 13(2)(c).

Power evaluates bids in response to coal-supply solicitations and could affect future coal bids, disadvantaging Kentucky Power with competitors.

Having considered the motion and the material at issue, the Commission finds that Kentucky Power's motion should be granted. Disclosure of coal solicitation information could affect future bidding, allowing competitors and suppliers to gain an unfair advantage by having access to Kentucky Power's offers. This type of information was previously held confidential by the Commission.⁴ The Commission finds that the designated materials are records that meet the criteria for confidential treatment and are exempted from public disclosure for five years pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13.

MAY 18, 2022 MOTION

Supplemental Attachment 2 to Kentucky Power's response to Staff's Second Request, Items 2, 3, and 4(d) is an updated version of Attachment 2 referenced above. Kentucky Power's response to Staff's Second Request, Item 7, is a spreadsheet showing unit commitment information and its associated economic minimum output for the Mitchell Plant generation plant. Kentucky Power argued that disclosure of unit commitment information could assist competitors in the energy market by enhancing their own market offers in such a way that it could displace Kentucky Power's generation.

Having considered the motion and the material at issue, the Commission finds that Kentucky Power's motion should be granted. The updated Attachment 2 should remain confidential for five years as indicated above. Unit commitment information should remain

⁴ Case No. 2018-00019, *Electronic Examination of the Application of the Fuel Adjustment Clause of East Kentucky Power Cooperative, Inc. from May 1, 2017 Through October 31, 2017* (Ky. PSC May 29, 2018), Order at 2.

confidential because competitors could use this information to their advantage in the energy market. This type of information was previously held confidential by the Commission.⁵ The Commission finds that the designated materials are records that meet the criteria for confidential treatment and are exempted from public disclosure for five years for Supplemental Attachment 2 to Kentucky Power's response to Staff's Second Request, Items 2, 3, and 4(d) and two years for Kentucky Power's Responses to Staff's Second Request, Item 7, pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13.

JUNE 17, 2022 MOTION

Attachments 1 through 184 to Kentucky Power's response to KIUC's Second Request, Item 1 are a series of spreadsheets containing economic analyses of the Kentucky Power's market offers in support of commitment decisions for generating stations. Kentucky Power argued that this information could be used by competitors to identify the forecasted effect of market offers for the generating units for a given set of price expectations, overall load profile, peak demand, time of peak demand, and forecast of PJM Interconnection LLC (PJM) hourly load and could be used by competitors in the PJM energy market to enhance their market offers to displace the Kentucky Power's generation.

Having considered the motion and the material at issue, the Commission finds that Kentucky Power's motion should be granted. These analyses should be granted

⁵ Case No. 2020-00174, *Electronic Application of Kentucky Power Company for (1) A General Adjustment of Its Rates for Electric Service; (2) Approval of Tariffs and Riders; (3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; (4) Approval of a Certificate of Public Convenience and Necessity; and (5) All Other Required Approvals and Relief* (Ky. PSC Oct. 29, 2020), Order at 2.

confidential treatment because competitors could use this information to their advantage in the PJM energy market. This type of information was previously held confidential by the Commission.⁶ The Commission finds that the designated materials are records that meet the criteria for confidential treatment and are exempted from public disclosure for five years pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13.

AUGUST 18, 2022 MOTION

Attachment 1 to Kentucky Power's response to KIUC's Post-Hearing Request, Item 1, is a term sheet provided by a bidder in response a request for proposals for the construction, operation, and maintenance of a natural gas pipeline lateral. Kentucky Power asserted that this documentation was already granted confidential treatment.⁷

Having considered the motion and the material at issue, the Commission finds that Kentucky Power's motion should be granted, as confidential treatment has already been granted. The Commission finds that the designated materials are records that meet the criteria for confidential treatment and are exempted from public disclosure until June 13, 2029 (the date of the expiration of the previous confidential treatment Order) pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13.

IT IS THEREFORE ORDERED that:

1. Kentucky Power's motions for confidential treatment are granted.
2. Redactions from Attachment 2 and 3 to Kentucky Power's response to Commission Staff's First Request for Information (Staff's First Request), Item 4,

⁶ Case No. 2020-00174, (Ky. PSC Oct. 29, 2020), Order at 2.

⁷ Case No. 2013-00430, *Application of Kentucky Power Company for a Certificate of Public Convenience and Necessity Authorizing the Company to Convert Big Sandy Unit 1 to a Natural Gas-Fired Unit and for All Other Required Approvals and Relief* (Ky. PSC Oct. 20, 2015), Order at 1.

redactions from Supplemental Attachment 2 to Kentucky Power's response to Staff's Second Request, Items 2, 3, and 4(d), and Attachments 1 through 184 to Kentucky Power's response to KIUC's Second Request, Item 1, shall not be placed in the public record or made available for public inspection for five years or until further Order of this Commission.

3. Kentucky Power's response to Staff's Second Request, Item 7 shall not be placed in the public record or made available for public inspection for two years or until further Order of this Commission.

4. Redactions from Attachment 1 to Kentucky Power's response to KIUC's Post-Hearing Request, Item 1, shall not be placed in the public record or made available for public inspection until June 13, 2029, or until further Order of this Commission.

5. 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).

6. 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.

7. 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.

8. 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.

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PUBLIC SERVICE COMMISSION



Chairman

Vice Chairman



Commissioner



ATTEST:



Executive Director

*Amy J Elliott
Kentucky Power Company
1645 Winchester Avenue
Ashland, KY 41101

*Honorable Mark R Overstreet
Attorney at Law
Stites & Harbison
421 West Main Street
P. O. Box 634
Frankfort, KENTUCKY 40602-0634

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

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

*Kentucky Power Company
1645 Winchester Avenue
Ashland, KY 41101

*Kenneth J Gish, Jr.
Stites & Harbison
250 West Main Street, Suite 2300
Lexington, KENTUCKY 40507

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

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