

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF KENTUCKY	)	
POWER COMPANY FOR AN ORDER	)	
APPROVING THE COMPANY'S AMENDED	)	
TARIFF E.D.R. TO INCREASE CAPACITY	)	CASE NO.
AVAILABLE TO BE SERVICED UNDER THE	)	2022-00181
TARIFF AND FOR REQUIRED DEVIATIONS	)	
FROM THE COMMISSION'S SEPTEMBER 24,	)	
1990 ORDER IN ADMINISTRATIVE CASE NO.	)	
327	)	

ORDER

On July 26, 2022, 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 identified portions of Kentucky Power's responses to the Attorney General of the Commonwealth of Kentucky through the Office of Rate Intervention's (Attorney General) Second Request for information (Attorney General's Second Request), Item 6, Attachment 1. The confidential information identifies Kentucky Power's forecasted capacity position for the 2023-2024, 2024-2025, and 2025-2026 PJM Interconnection LLC (PJM) planning years, along with Kentucky Power's forecasted unforced capacity (UCAP) by resource for each of the three PJM planning years. Kentucky Power requested confidential treatment through the end of each planning year for the relevant information.

In support of its motion, Kentucky Power argued that the public disclosure of the information could allow commercial counterparties of Kentucky Power to derive

information about the specific needs and market position of Kentucky Power for each year. Specifically, Kentucky Power argued that the information could be used to undermine Kentucky Power's ability to negotiate terms, particularly price, due to the knowledge by sellers about the magnitude of Kentucky Power's needs and market position. Kentucky Power argued that this could lead to an increase in costs for Kentucky Power, and higher rates for Kentucky Power customers.

#### 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."<sup>1</sup> In support of its motion, 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.<sup>2</sup> The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.<sup>3</sup>

Having considered the motion and the material at issue, the Commission finds that the forecasted capacity information is generally recognized as confidential or proprietary, because its disclosure could result in competitive harm to Kentucky Power; it therefore

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<sup>1</sup> KRS 61.872(1).

<sup>2</sup> See KRS 61.871.

<sup>3</sup> 807 KAR 5:001, Section 13(2)(c).

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).

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 through the end of each planning year 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

  
Chairman

  
Vice Chairman

  
Commissioner

ENTERED  
DEC 13 2023  
rcs  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
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

\*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

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

\*John Horne  
Office of the Attorney General Office of Rate  
700 Capitol Avenue  
Suite 20  
Frankfort, KENTUCKY 40601-8204

\*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

\*Larry Cook  
Assistant Attorney General  
Office of the Attorney General Office of Rate  
700 Capitol Avenue  
Suite 20  
Frankfort, KENTUCKY 40601-8204