

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)	2022-00263
FROM NOVEMBER 1, 2021 THROUGH APRIL 30,)	
2022)	

ORDER

On September 30, 2022, Kentucky Power Company (Kentucky Power) filed a motion, pursuant to 807 KAR 5:001E, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for five years for redactions from Kentucky Power's response to Commission Staff's First Request for Information (Staff's First Request), Item 4 and for four years for documents provided in response to Staff's First Request, Item 31.

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

¹ KRS 61.872(1).

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

Kentucky Power's response to Staff's First Request, Item 4, consists of redacted, non-selected coal solicitation information, including bids. Kentucky Power argued that disclosure of coal bids may have a chilling effect on the willingness of future bidders to submit responses to coal-supply solicitations. The response to Item 31 included market offers of energy, commitment status, and incremental costs data for certain generating units. Kentucky Power argued that this data could be used by competitors in the PJM Interconnection, LLC (PJM) energy market to shape and enhance their market offers in such a way as to 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. Disclosure of coal solicitation information could affect future bidding, allowing competitors 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 In addition, generation unit information could be used by competitors to their advantage in the PJM energy market.⁵ The Commission finds that the designated materials are records that meet the criteria for confidential treatment and

² See KRS 61.871.

³ 807 KAR 5:001E, Section 13(2)(c).

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.

⁵ See 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.

are exempted from public disclosure for five years pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001E, Section 13.

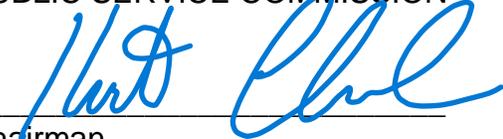
IT IS THEREFORE ORDERED that:

1. Kentucky Power's motion for confidential treatment is granted.
2. Kentucky Power's response to Staff's First Request, Item 4 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 31 shall not be placed in the public record or made available for public inspection for four years or until further Order of this Commission.
4. Use of the designated material granted confidential treatment by this Order in any Commission proceeding shall comply with 807 KAR 5:001E, Section 13(9).
5. 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.
6. 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.

7. 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

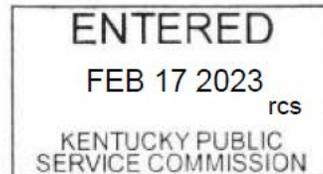


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