

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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)	CASE NO.
PRACTICES TO ESTABLISH REGULATORY)	2023-00159
ASSETS AND LIABILITIES; (4) A)	
SECURITIZATION FINANCING ORDER; AND (5))	
ALL OTHER REQUIRED APPROVALS AND)	
RELIEF)	

ORDER

On September 25, 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 documents submitted in response to Commission Staff's Third Request for Information (Staff's Third Request),¹ Commission Staff's Fourth Request for Information (Staff's Fourth Request),² the Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention (Attorney General), and Kentucky Industrial Utility Customers, Inc.'s (KIUC) (jointly, Attorney General/KIUC) joint Second Request for Information (Attorney General/KIUC's Second Request),³ and Mountain Association, Appalachian Citizens Law Center, Kentuckians for

¹ Staff's Third Request (Ky. PSC Sept. 11, 2023).

² Staff's Fourth Request (Ky. PSC Sept. 11, 2023).

³ Attorney General/KIUC's Second Request (filed Sept. 14, 2023), errata version.

the Commonwealth, and Kentucky Solar Energy Society's (collectively, Joint Intervenors) Second Request for Information (Joint Intervenors' Second Request).⁴

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."⁵ In support of its motion, Kentucky Power argued for the application of KRS 61.878(1)(c)(1) and KRS 61.878(1)(k). KRS 61.878(1)(c)(1) 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." KRS 61.878(1)(k) exempts from disclosure "[a]ll public records or information the disclosure of which is prohibited by federal law or regulation or state law." In support of KRS 61.878(1)(k), Kentucky Power cited 26 U.S.C. 6103(a)(2) and KRS 131.190. Exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.⁶ The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.⁷

⁴ Joint Intervenors' Second Request (filed Sept. 11, 2023).

⁵ KRS 61.872(1).

⁶ See KRS 61.871.

⁷ 807 KAR 5:001, Section 13(2)(c).

DISCUSSION AND FINDINGS

Response to Staff's Third Request, Item 24, Attachment 1

Kentucky Power sought confidential treatment through December 31, 2023, for information concerning Kentucky Power's projected on- and off-peak loads and capacity needs for the month of December 2023, pursuant to KRS 61.878(1)(c)(1).

In support of its motion, Kentucky Power argued that public disclosure of the information would allow commercial counterparties to derive information about the specific need and market position of Kentucky Power. Kentucky Power further stated that the counterparties could increase the price of their offers to Kentucky Power, resulting in higher rates charged to customers.

Having considered the motion and the material at issue, the Commission finds that the document containing information concerning Kentucky Power's on- and off-peak loads and capacity needs for the month of December 2023 is generally recognized as confidential or proprietary because if it is publicly disclosed, it may offer commercial counterparties insight into Kentucky Power's market position; it therefore meets the criteria for confidential treatment and should be exempted from public disclosure through December 31, 2023, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

Response to Staff's Third Request, Item 42, Attachment 1

Kentucky Power sought confidential treatment through December 31, 2029, for information concerning the market price for National Wind and National Solar Renewable Energy Certificates (REC) for 2024 and 2025 pursuant to KRS 61.878(1)(c)(1).

In support of its motion, Kentucky Power argued that public disclosure of the information would put it at a disadvantage when negotiating with sellers. Kentucky Power

stated that the information could allow the sellers to modify the price of their offers, ultimately resulting in increased costs for customers. Kentucky Power further stated that the information was prepared by a third party as part of a paid service that prohibits public disclosure of the information.

Having considered the motion and the material at issue, the Commission finds that the document containing information concerning the market price for National Wind and National Solar RECs for 2024 and 2025 is generally recognized as confidential or proprietary because if it is publicly disclosed, it may allow sellers to modify the price of their offers based on Kentucky Power's projections, thereby increasing costs for customers; it therefore meets the criteria for confidential treatment and should be exempted from public disclosure through December 31, 2029, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

Response to Staff's Fourth Request, Item 20, Attachment 1

Kentucky Power sought confidential treatment for five years for a copy of the engagement agreement between Kentucky Power and Goldman Sachs & Co. LLC (Goldman Sachs) pursuant to KRS 61.878(1)(c)(1).

In support of its motion, Kentucky Power argued that the agreement is the result of negotiations conducted under the obligation of confidentiality. Kentucky Power asserted that maintaining the confidentiality of such agreements provides Kentucky Power with more flexibility in subsequent consultant negotiations and the tailored provisions of the agreement. Kentucky Power further stated that the public disclosure of the agreement would impede its ability to enter into similar agreements in the future.

Having considered the motion and the material at issue, the Commission finds that the engagement agreement is generally recognized as confidential or proprietary because if it is publicly disclosed it may impede Kentucky Power's ability to enter into similar agreements in the future; it therefore meets the criteria for confidential treatment and should be exempted from public disclosure for five years pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

Response to Staff's Fourth Request, Item 20, Attachments 2, 3, 4, and 5

Kentucky Power sought confidential treatment for five years for responses to Kentucky Power's request for proposals for the role of structuring advisor in connection with the securitization process pursuant to KRS 61.878(1)(c)(1).

In support of its motion, Kentucky Power argued that the information provides insight into the manner by which Kentucky Power evaluates bids in response to advisor solicitations. Kentucky Power asserted that public disclosure of the information may have a chilling effect on the willingness of future bidders to submit responses to Kentucky Power advisor solicitations, therefore leading to fewer competitive bids and higher prices for Kentucky Power and its customers.

Having considered the motion and the material at issue, the Commission finds that the responses to Kentucky Power's request for proposals for the role of structuring advisor are generally recognized as confidential or proprietary because if they are publicly disclosed it may impede Kentucky Power's ability to solicit bids in the future; it therefore meets the criteria for confidential treatment and should be exempted from public disclosure for five years pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

Response to Attorney General/KIUC's Second Request, Item 10, Attachment 2

Kentucky Power sought confidential treatment for an indefinite period for its Kentucky state tax returns pursuant to KRS 61.878(1)(k).

In support of its motion, Kentucky Power argued that tax return information is afforded broad protection from governmental disclosure under both federal and state law, pursuant to 26 U.S.C. 6103(a)(2) and KRS 131.190, respectively.

Having considered the motion and the material at issue, the Commission finds that Kentucky Power's state tax returns are generally recognized as confidential or proprietary because they are granted broad protection from governmental disclosure pursuant to federal and state law; it therefore meets the criteria for confidential treatment and should be exempted from public disclosure for an indefinite period pursuant to 807 KAR 5:001, Section 13, 26 U.S.C. 6103(a)(2), KRS 131.190 and KRS 61.878(1)(k).

Response to Joint Intervenors' Second Request, Item 11, Attachment 2

Kentucky Power sought confidential treatment for 18 years for the Financial Analysis Summary and Economic Analysis Assumptions sections of a report related to the need for the Mitchell Unit 2 Air Heater Basket Replacement Project pursuant to KRS 61.878(1)(c)(1).

In support of its motion, Kentucky Power argued that the report provides insight regarding how Kentucky Power and its affiliates model the financial value of availability of improvements in the Financial Analysis Summary and Economic Analysis Assumptions section in Attachment 2 to Joint Intervenors' Second Request, Item 11. Kentucky Power further asserted that the public disclosure of the information could give competitors an advantage by providing them insight into Kentucky Power's financial health and strategy,

establishing benchmarks in future negotiations, and driving up costs for Kentucky Power and its customers.

Having considered the motion and the material at issue, the Commission finds that the Financial Analysis Summary and Economic Analysis Assumptions sections in the Mitchell Unit 2 Air Heater Basket Replacement Project are generally recognized as confidential or proprietary because if they are publicly disclosed it may provide insight into Kentucky Power's financial health and strategy; it therefore meets the criteria for confidential treatment and should be exempted from public disclosure for 18 years pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

IT IS THEREFORE ORDERED that:

1. Kentucky Power's September 25, 2023 motion for confidential treatment is granted.
2. The information concerning Kentucky Power's projected on- and off-peak loads and capacity needs for the month of December 2023 in Kentucky Power's response to Staff's Third Request, Item 24, Attachment 1, granted confidential treatment by this Order, 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 information concerning the market price for National Wind and National Solar Energy RECs for 2024 and 2025 in response to Staff's Third Request, Item 42, Attachment 1, granted confidential treatment by this Order, shall not be placed in the public record or made available for public inspection through December 31, 2029, or until further order of this Commission.

4. The engagement agreement between Kentucky Power and Goldman Sachs & Co. LLC filed in response to Staff's Fourth Request, Item 20, Attachment 1, granted confidential treatment by this Order, shall not be placed in the public record or made available for public inspection for five years, or until further order of this Commission.

5. The responses to Kentucky Power's request for proposals for the role of structuring advisor in connection with the securitization process in response to Staff's Fourth Request, Item 20, Attachments 2, 3, 4, and 5, granted confidential treatment by this Order, shall not be placed in the public record or made available for public inspection for five years, or until further order of this Commission.

6. Kentucky Power's Kentucky state tax returns filed in response to Attorney General/KIUC's Second Request, Item 10, Attachment 2, granted confidential treatment by this Order, shall not be placed in the public record or made available for public inspection for an indefinite period, or until further order of this Commission.

7. The Financial Analysis Summary and Economic Analysis Assumptions sections of the report filed in response to Joint Intervenors' Second Request, Item 11, identified portions of Attachment 2, granted confidential treatment by this Order, shall not be placed in the public record or made available for public inspection for 18 years, or until further order of this Commission.

8. 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).

9. 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.

10. 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.

11. 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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ATTEST:



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