

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF KENTUCKY	)	
POWER COMPANY FOR: (1) APPROVAL TO	)	
EXPAND ITS TARGETED ENERGY EFFICIENCY	)	
PROGRAM; (2) APPROVAL OF A HOME ENERGY	)	
IMPROVEMENT PROGRAM AND A	)	
COMMERCIAL ENERGY SOLUTIONS PROGRAM;	)	
(3) AUTHORITY TO RECOVER COSTS AND NET	)	CASE NO.
LOST REVENUES, AND TO RECEIVE	)	2024-00115
INCENTIVES ASSOCIATED WITH THE	)	
IMPLEMENTATION OF ITS DEMAND-SIDE	)	
MANAGEMENT/ENERGY EFFICIENCY	)	
PROGRAMS; (4) APPROVAL OF REVISED	)	
TARIFF D.S.M.C.; (5) ACCEPTANCE OF ITS	)	
ANNUAL DSM STATUS REPORT; AND (6) ALL	)	
OTHER REQUIRED APPROVALS AND RELIEF	)	

ORDER

This matter arises upon two motions for confidential treatment filed by Kentucky Power Company (Kentucky Power). On July 19, 2024, Kentucky Power filed a motion pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential protection for an indefinite period for Attachments 2 and 3 filed in response to Joint Intervenors' First Request for Information (Joint Intervenor's First Request), Item 60, and Attachment 3 filed in response to Joint Intervenor's First Request, Item 73. On January 17, 2025, Kentucky Power filed a motion pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential protection for an indefinite period for Attachments 1 and 2 filed in response to Commission Staff's Post-Hearing Request for Information (Staff's Post-Hearing Request), Item 1.

## 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> 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>

In support of its motions, Kentucky Power argued for the application of KRS 61.878(1)(c)(1), which provides an exception to the requirement for public disclosure for records that are “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.”

## JULY 19, 2024 MOTION

Attachments 2 and 3 filed in response to Joint Intervenors’ First Request, Item 60, and Attachment 3 filed in response to Joint Intervenor’s First Request, Item 73, are three spreadsheets consisting of energy efficiency forecasting data and program planning models that Kentucky Power claims are proprietary to GDS Associates.<sup>4</sup>

Having considered the motion and the material at issue, the Commission finds that Kentucky Power’s motion should be granted. Public disclosure could jeopardize

---

<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).

<sup>4</sup> Kentucky Power’s Motion for Confidential Treatment (filed July 19, 2024) at 2.

Kentucky Power's ability to obtain this type of information from third parties in the future and might represent a copyright law violation. Competitors could also use this information for their own benefit without incurring the cost Kentucky Power has incurred to obtain such information.<sup>5</sup> The Commission finds that the designated material meets the criteria for confidential treatment and should be exempted from public disclosure for an indefinite period pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13.

#### JANUARY 17, 2025 MOTION

Attachment 1 filed in response to Staff's Post-Hearing Request, Item 1, is a spreadsheet containing itemized bids for different Demand-Side Management (DSM) programs provided by Kentucky Power's selected DSM implementation contractor, TRC Companies, Inc. (TRC Companies), Attachment 2 filed in response to Staff's Post-Hearing Request, Item 1, consists of data provided by TRC Companies regarding costs and estimated savings under the proposed DSM programs. Kentucky Power argued that public disclosure of bidding data could potentially impair future bid evaluation processes.<sup>6</sup>

Having considered the motion and the material at issue, the Commission finds that Kentucky Power's motion should be granted, in part, and denied, in part. Itemized bidding information should be exempted from public disclosure to prevent its use by future bidders to manipulate the bidding process. However, consistent with recent determinations regarding similar material, the Commission concludes that five years is a sufficient period for bidding information to become obsolete, and thus, finds that the designated material

---

<sup>5</sup> See Case No. 2021-00245, *Electronic 2021 Integrated Resource Plan of Duke Energy Kentucky, Inc.* (Ky. PSC June 13, 2023), Order at 7.

<sup>6</sup> Kentucky Power's Motion for Confidential Treatment (filed Jan. 17, 2025) at 2.

in is granted confidential treatment for a period of five years.<sup>7</sup> In addition, the Commission has determined that the total cost of selected bids should be publicly disclosed for revenue requirement transparency purposes.<sup>8</sup> Therefore, confidential treatment should be denied for the total bid amount for each individual program. The Commission finds that, with the exception of the total amount of the selected bids for each program, the designated material meets the criteria for confidential treatment and should be exempted from public disclosure for five years pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13.

IT IS THEREFORE ORDERED that:

1. Kentucky Power's July 19, 2024 motion is granted.
2. The material described in the July 19, 2024 motion shall be granted confidential treatment and 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.
3. Kentucky Power's January 17, 2025 motion for confidential treatment for is granted, in part, and denied, in part.
4. The material described in the January 17, 2025 motion, with the exception of the total amount of the selected bids for each program, shall be granted confidential

---

<sup>7</sup> Case No. 2022-00084, *Electronic Application of Duke Energy Kentucky, Inc. for a Certificate of Public Convenience and Necessity Authorizing the Phase One Replacement of the AM07 Pipeline* (Ky. PSC July 18, 2022), Order at 3; Case No. 2019-00269, *Electronic Application of Big Rivers Electric Corporation for Enforcement of Rate and Service Standards* (Ky. PSC Dec. 8, 2021), Order at 2-3; Case No. 2021-00462, *Electronic Joint Application of Kentucky Utilities Company, Nolin Rural Electric Cooperative Corporation, and East Kentucky Power Cooperative, Inc. for Approval of an Agreement Modifying an Existing Territorial Boundary Map and Establishing the Retail Electric Supplier for Glendale Megasite in Hardin County, Kentucky* (Ky. PSC Feb. 9, 2022), Order at 2-3.

<sup>8</sup> Case No. 2021-00183, *Electronic Application of Columbia Gas of Kentucky, Inc. for an Adjustment of Rates; Approval of Depreciation Study; Approval of Tariff Revisions; Issuance of a Certificate of Public Convenience and Necessity; and Other Relief* (Ky. PSC May 15, 2023), Order at 9.

treatment and 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 January 17, 2025 motion is denied for the total amount of the selected bids for each program.

6. 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).

7. If the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment, Kentucky Power shall inform the Commission and file with the Commission an unredacted copy of the designated material.

8. 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.

9. The Commission shall not make the requested material for which confidential treatment was granted 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.

10. The designated material denied confidential treatment by this Order is not exempt from public disclosure and shall be placed in the public record and made available for public inspection.

11. If Kentucky Power objects to the Commission's determination that the requested material not be granted confidential treatment, it must seek either rehearing pursuant to KRS 278.400 or judicial review of this Order pursuant to KRS 278.410. Failure to exercise either of these statutory rights will be deemed as agreement with the Commission's determination of which materials shall be granted confidential treatment.

12. Within 30 days of the date of service of this Order, Kentucky Power shall file a revised version of the designated material for which confidential treatment was denied, reflecting as unredacted the information that has been denied confidential treatment.

13. The designated material for which Kentucky Power's request for confidential treatment has been denied shall neither be placed in the public record nor made available for inspection for 30 days from the date of service of this Order to allow Kentucky Power to seek a remedy afforded by law.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Commissioner

  
Commissioner

ATTEST:

 *rp*  
Executive Director

ENTERED  
FEB 07 2025 AH  
KENTUCKY PUBLIC  
SERVICE COMMISSION

\*Ashley Wilmes  
Kentucky Resources Council, Inc.  
Post Office Box 1070  
Frankfort, KENTUCKY 40602

\*Tanner Wolfram  
American Electric Power Service Corporation  
1 Riverside Plaza, 29th Floor  
Post Office Box 16631  
Columbus, OHIO 43216

\*Byron Gary  
Kentucky Resources Council, Inc.  
Post Office Box 1070  
Frankfort, KENTUCKY 40602

\*Tom Fitzgerald  
Kentucky Resources Council, Inc.  
Post Office Box 1070  
Frankfort, KENTUCKY 40602

\*Hector Garcia  
Kentucky Power Company  
1645 Winchester Avenue  
Ashland, KY 41101

\*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