

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF)	
KENTUCKY POWER COMPANY FOR 1))	
AUTHORITY UNDER KRS 278.2207(2) AND)	CASE NO.
KRS 278.2219 TO THE EXTENT)	2018-00287
REQUIRED TO ENABLE THE COMPANY)	
TO PAY FEES AND COSTS IMPOSED BY)	
THE GRID ASSURANCE, LLC)	
SUBSCRIPTION AGREEMENT; 2) THE)	
GRANT OF ALL OTHER REQUIRED)	
APPROVALS AND RELIEF)	

ORDER

On September 10, 2018, Kentucky Power Company (Kentucky Power) filed a motion, pursuant to 807 KAR 5:001, Section 13(2), requesting the Commission grant confidential protection to certain designated portions of Exhibits 2 and 3 to its Application.¹ Specifically, Kentucky Power requests confidential treatment for the following information:

1. Information identified in Exhibit 2, pages 88, 90, and 93–94: Kentucky Power states that Exhibit 2 is Grid Assurance, LLC’s Subscription Agreement and Multi-Subscriber Addendum (Subscription Agreement). According to Kentucky Power, the portions of Exhibit 2 designated as confidential quantify specific transmission equipment nominated by Kentucky Power and others, which Kentucky Power and others deem critical to the operation of their electric transmission systems. Kentucky Power claims this information could be useful to those planning an attack on critical infrastructure, is

¹ Filed September 10, 2018.

exempt from public disclosure by the Federal Energy Regulatory Commission (FERC) as Confidential Electrical Infrastructure Information (CEII) and is therefore exempt from disclosure under FERC rules, and is exempt from mandatory disclosure under 5 U.S.C. § 552.

2. Information identified in Exhibit 3, pages 2–4: According to Kentucky Power, the information designated as confidential in Exhibit 3 “would permit competitors to discern Grid Assurance’s pricing structure, modeling framework, optimized transformer specifications, and supporting pricing details.”² Kentucky Power further claims this information constitutes “trade secrets developed through the equity contribution of AEP Transmission Holding Company, LLC and Grid Assurance’s other five founding equity contributors.”³ Finally, Kentucky Power states, “Disclosure of the Grid Assurance pricing information will result in competitive injury to the Company, as well as Grid Assurance, by giving an insight into key pricing components of Grid Assurance.”⁴

Kentucky Power argues the materials designated and described above should be treated as confidential pursuant to KRS 61.878(1)(c)1., KRS 61.878(1)(m)(1)f., and KRS 61.878(1)(k) for an indefinite period.

The Commission is a public agency subject to Kentucky’s Open Records Act, which requires all public records to “be open for inspection by any person, except as otherwise provided by KRS 61.870 to 61.884.”⁵ Exceptions to the free and open

² Motion at 3.

³ *Id.*

⁴ *Id.*

⁵ KRS 61.872(1).

examination of public records contained in KRS 61.878 should be strictly construed.⁶ The party requesting materials be treated confidentially has the burden of establishing one of the exceptions is applicable.⁷

Having carefully considered the Motion and materials at issue, the Commission finds the designated materials, except for the pricing information included in Exhibit 3, meet the criteria for confidential treatment and are exempt from public disclosure pursuant to KRS 61.878(1) and 807 KAR 5:001, Section 13, for an indefinite period.

Although Kentucky Power treats all information in Exhibit 3 as the same, a review of the material designated as confidential in that exhibit shows two types of information. The first category contains information identifying (by description, equipment class, and quantity) specific transmission equipment nominated by Kentucky Power and others under the Subscription Agreement. This information is of the same type as that contained in Exhibit 2, which, as previously stated meets the criteria for confidential treatment and is exempt from public disclosure.

The second category contains only pricing information. More specifically, Kentucky Power has requested confidential treatment of the fee amounts on pages 3 and 4 of Exhibit 3. Kentucky Power does not appear to claim disclosing this pricing information would threaten public safety, which would exempt it from disclosure under KRS 61.878(1)(m)(1)f., or is prohibited by federal law, which would exempt it from disclosure under in KRS 61.878(1)(k). At most, Kentucky Power states disclosing this information “will result in competitive injury to the Company, as well as Grid Assurance, by giving an

⁶ See KRS 61.871.

⁷ 807 KAR 5:001, Section 13(2)(c).

insight into key pricing components of Grid Assurance.”⁸ The exemption from open record requirements found in KRS 61.878(1)(c)1. is available for information “which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.” Kentucky Power does not demonstrate with any particularity how disclosing pricing information—without reference to quantities or classes of equipment—would permit an unfair commercial advantage to Kentucky Power’s competitors.⁹ Kentucky Power does not clearly define who its competitors would be and does not describe how the disclosure of such information would enable such competitors to have an unfair commercial advantage over Kentucky Power for similar types of services in the future. Such a showing is especially important where “[t]here currently is no established market for the types of services to be provided to Kentucky Power under the Subscription Agreement,” as Kentucky Power asserts is the case here.¹⁰

Moreover, Kentucky Power’s Application specifically asks the Commission to find Grid Assurance’s fee is reasonable under KRS 278.2207(2),¹¹ which necessarily includes a review of the pricing information contained in Exhibit 3.¹² As the Commission has

⁸ Motion at 3.

⁹ See KRS 61.878(1)(c)(1). As the Commission has previously noted, the exemption in KRS 61.878(1)(c)1. cannot be claimed by an entity “disclosing the information” on behalf of another entity. See Case No. 2017-00419, *Application of Grayson Rural Electric Cooperative Corporation of Grayson, Kentucky, for Commission Approval Pursuant to 807 KAR 5:001 and KRS 278.020 For a Certificate of Public Convenience and Necessity to Install an Advanced Metering Infrastructure (AMI) System* (Ky. PSC April 17, 2018), Order at 3.

¹⁰ Application at 14.

¹¹ *Id.* at 16.

¹² See, e.g., Case No. 2018-00050, *Electronic Application of South Kentucky Rural Electric Cooperative Corporation for Approval of Master Power Purchase & Sale Agreement & Transactions Thereunder* (Ky. PSC May 8, 2018), Order at 4 (noting need for information to determine reasonableness as partial basis for denying confidentiality).

previously held, ratepayers have a right to know the evidence upon which the Commission relies in reaching its decision.¹³

For these reasons, the Commission finds Kentucky Power failed to establish the pricing information on pages 3 and 4 of Exhibit 3 meets the criteria for confidential treatment and, therefore, these materials are not exempt from public disclosure pursuant to KRS 61.878(1) and 807 KAR 5:001, Section 13.

IT IS THEREFORE ORDERED that:

1. Kentucky Power's September 10, 2018 motion for confidential treatment is granted, in part, and denied, in part.
2. Kentucky Power failed to establish the pricing information on pages 3 and 4 of Exhibit 3 to its Application meet the criteria for confidential treatment and, therefore, those materials shall be made available to the public.
3. The remaining materials for which confidential treatment was sought meet the criteria for confidential treatment and, therefore, shall not be made available to the public for an indefinite period unless the Commission orders otherwise.
4. Kentucky Power shall inform the Commission if the materials granted confidential protection become publicly available or no longer qualify for confidential treatment.

¹³ See, e.g., Case No. 2016-00220, *Application of Clark Energy Cooperative, Inc. for a Certificate of Public Convenience and Necessity to Install an Advanced Metering Infrastructure (AMI) System* (Ky. PSC Dec. 22, 2016), Order at 1–2 (denying a request to treat costs of a project for which a CPCN was requested as confidential, in part, because the ratepayers “have the right to know the costs of the assets that Clark Energy is proposing to purchase and they have a right to know the evidence upon which the Commission relied in determining that such costs are fair, just, and reasonable”); Case No. 2013-00219, *Application of Jackson Energy Cooperative Corporation for an Adjustment of Rates* (Ky. PSC Feb. 14, 2014), Order at 2–3 (“Jackson Energy’s ratepayers have a right to know the actual costs of the power that they are purchasing, and they have a right to know the evidence upon which the Commission relied in determining that the costs of the Wellhead contract are fair, just, and reasonable.”).

5. If a non-party to this proceeding requests to inspect materials granted confidential treatment by this Order, Kentucky Power shall have 20 days from receipt of written notice of the request to demonstrate the materials are exempt from disclosure, pursuant to KRS 61.878. If Kentucky Power is unable to make such demonstration or the non-party establishes an exemption does not apply, the requested materials shall be made available for inspection.

6. The Commission shall not place the documents and materials for which confidential treatment was denied into the public record for a period of 30 days pursuant to 807 KAR 5:001, Section 13(5).

7. Nothing in this Order shall be construed as preventing the Commission from revisiting the confidential treatment of documents and materials.

By the Commission

ENTERED
OCT 16 2018
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

Case No. 2018-00287

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