

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC REVIEW OF THE ADEQUACY OF)	ADMINISTRATIVE
KENTUCKY'S GENERATION CAPACITY AND)	CASE NO. 387
TRANSMISSION SYSTEM)	

ORDER

On April 29, 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 through December 31, 2026, for information redacted from its Annual Resource Assessment, Item 6, Confidential Attachment 2.

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 Kentucky Power sought application of KRS 61.878(1)(c)(1), which exempts records that are “[g]enerally 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.² The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.³

¹ KRS 61.872(1).

² See KRS 61.871.

³ 807 KAR 5:001, Section 13(2)(c).

The redacted information consists of forecasted outage schedules for electric generation facilities. Kentucky Power argued that unit availability information is especially useful to competitors, as energy market participants could estimate Kentucky Power's generation position and raise generation offers if they believe Kentucky Power will be energy short, resulting in the Kentucky Power paying higher prices to procure energy to serve its customers.

Having considered the motion and the material at issue, the Commission finds that the motion is granted. Disclosure of forecasted outage schedules would harm Kentucky Power because other energy market participants would know when its need for purchased power would spike. This information was granted confidential treatment upon several motions in the present case.⁴ The designated material is generally recognized as confidential or proprietary and would permit an unfair commercial advantage to competitors if publicly disclosed; it, therefore, meets the criteria for confidential treatment and is exempted from public disclosure through December 31, 2026, 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 until after December 31, 2026, 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 Order (Ky. PSC May 28, 2013) at 2; Order (Ky. PSC May 9, 2022).

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.

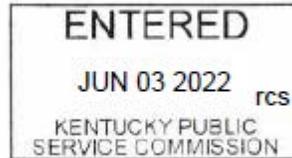
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