

**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) An Order	)	
Approving Its 2017 Environmental Compliance	)	
Plan; (3) An Order Approving Its Tariffs And	)	Case No. 2017-00179
Riders; (4) An Order Approving Accounting	)	
Practices To Establish Regulatory Assets Or	)	
Liabilities; And (5) An Order Granting All Other	)	
Required Approvals And Relief	)	

**KENTUCKY POWER COMPANY’S MOTION  
FOR CONFIDENTIAL TREATMENT**

Kentucky Power Company (“Kentucky Power” or “Company”) moves the Public Service Commission of Kentucky pursuant to 807 KAR 5:001, Section 13(2), for an Order granting confidential treatment to the identified portions of the following:

- (1) Attachment 1 to its response to Commission Staff Data Request 3-16 (“KPSC 3-16”);
- (2) Attachment 1 to its response to Commission Staff Data Request 3-18 (“KPSC 3-18”);
- (3) Attachment 1 to its response to Attorney General Data Request 2-14 (“AG 2-14”);
- (4) Attachments 1 through 4 to its response to Attorney General Data Request 2-71 (“AG 2-71”);
- (5) Attachment 1 to its response to Attorney General Data Request 2-84 (“AG 2-84”);
- (6) Attachment 1 to its response to Attorney General Data Request 2-85 (“AG 2-85”);
- (7) Attachment 1 to its response to Attorney General Data Request 2-96 (“AG 2-96”);
- (8) Attachment 1 to its response to Attorney General Data Request 2-98 (“AG 2-98”);
- (9) The Company’s response to Attorney General Data Request 2-99;
- (10) The Company’s response to Attorney General Data Request 2-101; and

(11) Attorney General Data Requests 2-84 through 2-101.

Pursuant to 807 KAR 5:001, Section 13, Kentucky Power is filing under seal those portions of its responses containing confidential information with the confidential portions highlighted in yellow. Kentucky Power is also filing redacted versions of the affected documents. Kentucky Power will notify the Commission when it determines the information for which confidential treatment is sought is no longer confidential.

## I. MOTION FOR CONFIDENTIAL TREATMENT

### A. The Requests and the Statutory Standard.

Kentucky Power does not object to filing the identified information for which it is seeking confidential treatment, but requests that the identified portions of the responses be excluded from the public record and public disclosure.

KRS 61.878(1) excludes from the Open Records Act:

(c)(1) Upon and after July 15, 1992, records confidentially disclosed to an agency or required 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;

...

(k) All public records or information the disclosure of which is prohibited by federal law or regulation;

...

(m)(1)(f) Infrastructure records that expose a vulnerability referred to in this subparagraph through the disclosure of the location, configuration, or security of critical systems, including public utility critical systems. These critical systems shall include but not be limited to information technology, communication, electrical, fire suppression, ventilation, water, wastewater, sewage, and gas systems;

These exceptions apply to the following information for which Kentucky Power is seeking confidential treatment:

**1. Attachment 1 to KPSC 3-16 and Attachment 1 to KPSC 3-18.**

Attachment 1 to KPSC 3-16 and Attachment 1 to KPSC 3-18 include information regarding the specific timing of planned maintenance outages for Kentucky Power's generation units through the end of calendar year 2025. The rise of competitive markets such as PJM has placed a premium on generating unit data. Public disclosure of information about unit availability could adversely impact Kentucky Power's customers by providing data that could provide a competitive advantage to Kentucky Power's direct competitors thereby affecting the Company's ability to minimize costs for its rate paying customers.

Unit availability information is especially useful for competition as savvy marketers can estimate Kentucky Power's generation position and raise generation offers if they believe Kentucky Power will be energy short, resulting in the Company paying higher prices to procure energy to serve its customers. This type of data is highly valued by competing energy marketers and traders who speculate in forward energy transactions. Using forecasted unit availability data, other parties could improve their forecast accuracy of future Kentucky Power operations and utilize the resulting intelligence to influence negatively the Company's costs of providing electricity to its customers. Such actions would ultimately raise the cost to Kentucky Power's customers.

The confidential information identified in Attachment 1 to KPSC 3-16 and Attachment 1 to KPSC 3-18 should be kept confidential through the end of calendar year 2025. At such time there will no longer be any competitive advantage to be gained from the information.<sup>1</sup>

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<sup>1</sup> The Commission granted confidential treatment for similar information in Case Nos. 2007-00477, 2010-00490, 2012-00550, and 2017-00001. Kentucky Power is unaware of any instances where the Commission has denied confidential treatment to similar information in other proceedings.

**2. Attachment 1 to AG 2-14.**

Attachment 1 to AG 2-14 includes detailed information about the Company's transmission system that is considered critical electric infrastructure information ("CEII"). FERC regulations define CEII as specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that:

- (i) relates details about the production, generation, transportation, transmission, or distribution of energy;
- (ii) could be useful to a person in planning an attack on critical infrastructure;
- (iii) is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552; and
- (iv) does not simply give the general location of the critical infrastructure.<sup>2</sup>

The FERC definition of CEII includes existing and proposed systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters.<sup>3</sup> Attachment 1 to AG 2-14 constitutes CEII under the FERC definition and is protected from disclosure under the Freedom of Information Act by 18 C.F.R. § 388.112. As a result, the material is protected from disclosure by KRS 61.878(1)(k).

Attachment 1 to AG 2-14 is also protected from disclosure under KRS 61.878(1)(m)(1)(f). In particular, the transmission systems of Kentucky Power and AEP are critical to the ability of Kentucky Power to provide electrical service to its customers. The destruction or disruption of even a small portion of these systems would have a reasonable probability of protecting against, mitigating or responding to a terrorist act, as that term is defined at KRS 61.878(1)(m)(2). Kentucky Power seeks confidential treatment of the identified information in Attachment 1 to AG

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<sup>2</sup> 18 CFR 388.113(c)(2).

<sup>3</sup> *Id*

2-14 for the life of the identified facilities. Once the facilities are retired the information will no longer be CEII.<sup>4</sup>

**3. Attachments 1 through 4 to AG 2-71, Attorney General Data Request 2-101, and the Company's response to AG 2-101.**

Attachments 1 through 4 to AG 2-71, Attorney General Data Request 2-101, and the Company's response to AG 2-101, include non-public compensation information for Kentucky Power's executive officers. With regard to the public dissemination of compensation information, Kentucky Power's executive officers are separated into two broad categories: (1) those for which compensation information is provided in the annual filings with the Securities and Exchange Commission ("SEC") of the Company's parent, American Electric Power Company, Inc. ("AEP"), and (2) those for which compensation information is not publicly disclosed.

(a). Personal Compensation Information Provided in Annual SEC Filings

AEP provides personal compensation information for AEP's Chief Executive Officer, Chief Financial Officer, and the three other AEP executive officers with the highest compensation totals ("Named Executive Officers")<sup>5</sup> as part of its annual filings with the SEC.<sup>6</sup> The compensation information for the Named Executive Officers included in the Attachments for 2017 contains certain assumptions regarding forward-looking earnings-related information and stock-based information, and, accordingly, Kentucky Power is required to maintain the confidentiality of the information under SEC regulations until the information is included in

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<sup>4</sup> The Commission granted confidential treatment for similar information in Case No 2013-00475. Kentucky Power is unaware of any instances where the Commission has denied confidential treatment to similar information in other proceedings.

<sup>5</sup> The individuals who comprise the list of Named Executive Officers can vary from year to year depending on individual compensation levels during the prior calendar year.

<sup>6</sup> 17 C.F.R. 229.402.

public filing documents. Review of this information on a confidential basis subjects the reviewer to confidentiality and insider information obligations and restrictions under SEC rules.<sup>7</sup>

AEP makes its annual filings with the SEC containing prior calendar year compensation information for the Named Executive Officers in March of each year. The test year compensation information requested in AG 2-71 and AG 2-101 includes information regarding the compensation for the months of January and February 2017. The January and February 2017 personal compensation information for the Named Executive Officers will not be publicly disclosed until AEP makes its calendar year 2017 annual filings with the SEC in March 2018. Accordingly, the Company seeks confidential treatment of the January and February 2017 personal compensation information of the Named Executive Officers until it is published in AEP's annual filings in March 2018.<sup>8</sup>

(b). Personal Compensation Information Not Publicly Filed

With the exception of the compensation information for Named Executive Officers described above, personal compensation for the Company's executive officers and other employees is kept confidential. This confidential employee compensation information, if disclosed, would enable competitors to attempt to recruit key Company and AEP personnel, and would compromise AEP's and the Company's position in negotiating employee compensation terms. This is especially true for high-level management and highly specialized personnel. This information is highly sensitive, even internally within the Company, and is only available on a need-to-know basis. Public disclosure of this information is likely to result in increased costs and a loss of negotiating ability for the Company. Disclosure of this information also increases the

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<sup>7</sup> 17 C.F.R. 240.10b-5.

<sup>8</sup> The Commission granted confidential treatment for similar information in its August 23, 2017 Order in this case. Kentucky Power is unaware of any instances where the Commission has denied confidential treatment to similar information in other proceedings.

risk of a higher cost of service resulting from greater employee compensation demands and higher costs to recruit and retain skilled employees and managers.

With the exception of the information relating to Named Executive Officers described above, personal compensation information should remain confidential for five years. After five years, the labor market will have changed sufficiently and there will no longer be any competitive advantage to gain from the information.<sup>9</sup>

**4. Attorney General Data Requests 2-84 through 2-99; Attachment 1 to AG 2-84; Attachment 1 to AG 2-85; Attachment 1 to AG 2-96; Attachment 1 to AG 2-98; and the Company's response to AG 2-99.**

Attorney General Data Requests 2-84 through 2-99, Attachment 1 to AG 2-84, Attachment 1 to AG 2-85, Attachment 1 to AG 2-96, Attachment 1 to AG 2-98, and the Company's response to AG 2-99 (the "Tax Requests and Responses") contain specific information derived from the Company's 2016 federal tax returns.<sup>10</sup> Tax related documents and information merit confidential protection. 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." Under federal law state officials are prohibited from publicly disclosing any federal income tax return or its contents.<sup>11</sup> Accordingly, federal income tax returns and their content fall within the KRS 61.878(1)(k) exemption from public disclosure.

Because they contain specific information from the Company's 2016 federal tax returns exempt from disclosure under KRS 61.878(1)(k), Kentucky Power seeks confidential treatment of the Tax Requests and Responses for an indefinite period.

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<sup>9</sup> The Commission granted confidential treatment for similar information in its August 23, 2017 Order in this case. Kentucky Power is unaware of any instances where the Commission has denied confidential treatment to similar information in other proceedings.

<sup>10</sup> Kentucky Power sought confidential treatment of the entirety of the 2016 federal tax returns by motion dated September 6, 2017. That motion is pending.

<sup>11</sup> 26 U.S.C. § 6103(a).

**5. Attorney General Data Request 2-100.**

Attorney General Data Request 2-100 includes specific reference to the workers compensation insurance premium rates negotiated by AEP with the Company's insurance provider. Public disclosure of these negotiated rates would provide competitors of the Company's workers compensation insurance provider with information on how the Company's provider negotiates rates. The disclosure of the agreed-upon rate could establish a "floor" in future negotiations. Further, to the extent the Company was able to negotiate discounts or other benefits, failure by the Company to maintain these negotiated rates as confidential could create a chilling effect on the willingness of insurance providers to enter into negotiations with the Company over future premium rates. As a result, the Company's costs to obtain workers compensation insurance could be higher than it otherwise could be if the rates were negotiated.

The identified information in Attorney General Data Request 2-100 should be maintained as confidential for seven years. At such time, the Company will have negotiated new workers compensation insurance premium rates and the current rate information will be outdated.<sup>12</sup>

**B. The Identified Information is Generally Recognized as Confidential and Proprietary and Public Disclosure of it Will Result in an Unfair Commercial Advantage for Kentucky Power's Competitors.**

The identified information required to be disclosed by Kentucky Power in response to KPSC 3-16, KPSC 3-18, AG 2-14, AG 2-71, and AG 2-84 through AG 2-101 is highly confidential. Dissemination of the information for which confidential treatment is being requested is restricted by Kentucky Power, its parent, AEP, and its affiliates (including American Electric Power Service Corporation). The Company, AEP, and its affiliates (and third party vendors where

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<sup>12</sup> The Commission granted confidential treatment for similar information in its August 23, 2017 Order in this case. Kentucky Power is unaware of any instances where the Commission has denied confidential treatment to similar information in other proceedings.

applicable) take all reasonable measures to prevent its disclosure to the public as well as persons within the Company and third-party vendors who do not have a need for the information. The information is not disclosed to persons outside Kentucky Power, AEP, or its affiliates. Within those organizations, the information is available only upon a confidential need-to-know basis that does not extend beyond those employees with a legitimate business need to know and act upon the identified information.

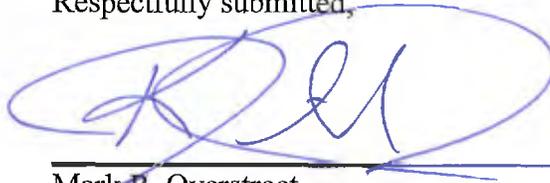
C. The Identified Information is Required to be Disclosed to an Agency.

The identified information is, by the terms of the Commission's Order, required to be disclosed to the Commission. The Commission is a "public agency" as that term is defined in KRS 61.870(1). Any filing should be subject to a confidentiality order and any party requesting such information should be required to enter into an appropriate confidentiality agreement.

WHEREFORE, Kentucky Power Company respectfully requests the Commission to enter an Order:

1. According confidential status to and withholding from public inspection the identified information; and
2. Granting Kentucky Power all further relief to which it may be entitled.

Respectfully submitted,

A handwritten signature in blue ink, appearing to be 'Mark R. Overstreet', is written over a horizontal line.

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