

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In The Matter Of:

The Electronic Application Of Kentucky Power)	
Company For Approval Of A Contract For)	Case No. 2018-00418
Electric Service With Braidy Industries Inc.)	

MOTION FOR CONFIDENTIAL TREATMENT

Kentucky Power Company moves the Public Service Commission of Kentucky (“Commission”) pursuant to 807 KAR 5:011, Section 13 and Section 14, and 807 KAR 5:001, Section 13 for an order granting confidential treatment of the rate-related terms of the special contract between Kentucky Power Company and Braidy Industries Inc. (“Special Contract”), as well as a confidential exhibit to the testimony of Company Witness Alex E. Vaughan. Specifically, Kentucky Power moves for confidential treatment of the indicated portions of the following documents:

- (1) Table 1 of Article 4.1(B) of the Special Contract;
- (2) The “Bill Illustration Addendum” attached to the Special Contract; and
- (3) Confidential Exhibit AEV-1.

The information for which confidential treatment is sought is collectively referred to as the “Braidy Confidential Rate Information.”

Kentucky Power states in support of its motion:

The Statutory And Regulatory Standard

1. KRS 61.878(1)(c)(1) exempts the following records from public disclosure:
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.
2. Pursuant to 807 KAR 5:011, Section 13, "Each utility shall file a copy of each special contract that establishes rates, charges, or conditions of service not contained in its tariff." Kentucky Power requests that the identified portions of the Contract be excluded from the public record. 807 KAR 5:011, Section 14 provides that a utility may request confidential treatment pursuant to 807 KAR 5:001, Section 13(3) for materials filed pursuant to 807 KAR 5:011, Section 14.

Background

A. The Braidy Industries EastPark Industrial Center Facility.

3. Publicly available information indicates that Braidy Industries Inc. plans to construct a 2.5 million square-foot, fully integrated aluminum rolling mill at 262 Technology Drive in the EastPark Industrial Center ("Braidy Atlas Mill").¹ Public information also indicates the Braidy Atlas Mill will be the most technologically advanced aluminum rolling mill in the United States.²

4. The Braidy Life Center also will be located at 262 Technology Drive in the EastPark Industrial Center. The Braidy Life Center will provide services to Braidy employees.

¹ <https://www.braidyindustries.com/2018/11/29/braidy-industries-says-aluminum-mill-project-is-advancing/> (last visited December 21, 2018).

² <https://www.braidyindustries.com/about/> (last visited December 21, 2018).

5. Veloxint will be located at 149 Commerce Drive in the EastPark Industrial Center. Veloxint is a subsidiary of Braidy Industries; it will manufacture high performance products and parts using nanocrystalline alloys at the EastPark Industrial Center location.

6. Braidy also will operate the Braidy Service Center at 656 Commerce Drive in the EastPark Industrial Center. The Braidy Service Center will be used solely to store maintenance equipment and spare parts used at the Braidy Atlas Mill.

7. The Braidy Atlas Mill, Veloxint, the Braidy Service Center, and the Braidy Life Center comprise the Braidy Facility.

8. The Braidy Industries website further indicates that the \$1.68 billion investment in the Braidy Atlas Mill will generate up to 1,000 jobs during its construction and approximately 600 full-time skilled labor and administrative positions once it is in operation.³

9. Kentucky Power currently is informed that the peak load for the Braidy Facility will be approximately 180 MW. Braidy Industries' website indicates that its annual production goals are 200,000 tons of series 6000 auto body aluminum sheet; 100,000 tons of series 5000 aluminum sheet; and 70,000 tons of series 7000 aerospace aluminum sheet.⁴

10. The Facility, including the Braidy Atlas Mill, is expected to act as a seed industrial development project. It is anticipated that the location of the Facility in Kentucky Power's service territory will provide an economic and commercial basis for support and supply facilities to locate in the Company's service territory.

³ *Id.*

⁴ <https://www.braidyindustries.com/products/> (last visited December 21, 2018).

11. The Commission conditionally granted Kentucky Power a certificate of public convenience and necessity by order dated October 5, 2018 in Case No. 2018-00072⁵ to construct a 2.7 mile 138 kV transmission line and a 138 kV substation to provide electrical service to the EastPark Industrial Center, including Braidy Industries.

12. Braidy faces substantial competition in the market for its products, including from Arconic, Novellis, Constellium, UACJ, TaChen, and their affiliates.⁶

B. Kentucky Power's Economic Development Efforts.

13. Kentucky Power provides retail electric service in 20 counties in eastern Kentucky. The EastPark Industrial Center is located in Kentucky Power's service territory. Eastern Kentucky, including Kentucky Power's service territory, is in the midst of a fundamental transformation of its economy that in large part is driven by forces outside its control. The coal mining economy, once a primary driver of the Eastern Kentucky economy, has declined. While there have been some recent improvements in coal mining activity, the direct and indirect job losses over the past few years resulting from the downturn in coal mining activity continue to be felt throughout the Company's service territory.

14. Within the past decade Kentucky Power's load, total number of customers, and the number of commercial and industrial customers has declined. The decline in industrial and

⁵ Order, *In the Matter of: Electronic Application Of Kentucky Power Company For A Certificate Of Public Convenience And Necessity To Construct A 138 kV Transmission Line In Boyd County, Kentucky (EastPark 138 kV Transmission Line (Phase 1))*, Case No. 2018-00072 (Ky. P.S.C. October 5, 2018). Subsequent to the October 5, 2018 order Braidy Industries informed Kentucky Power that total load for Braidy Industry facilities was projected to be 180 MW. Kentucky Power updated its responses to staff discovery on December 13, 2018 to reflect the increased projected peak load.

⁶ Affidavit of Steven Miller at ¶ 5.

commercial customers also adversely affects Kentucky Power's residential customers who must seek employment elsewhere.

15. To address the challenges facing Kentucky Power's service territory the Company has made significant investments in promoting economic development in its service territory. These include Kentucky Power's customer experience focus and its "Appalachian Sky" initiative.

16. The Company's Appalachian Sky initiative is a plan to promote central Appalachia as the premier region in the United States for aerospace manufacturing. This plan was developed over time through the work of Kentucky Power in partnership with key local economic development agencies in the area. Eastern Kentucky and all of central Appalachia contain a highly skilled and available workforce. Kentucky Power and the economic development agencies it supports developed a workforce study that demonstrates the aptitude and skill set of Appalachian workers, particularly coal miners and steel workers. This study showed that central Appalachia has eight times the national per capita average of metal fabricators, the key skill set needed in aerospace manufacturing, making the region a potential leader in the industry. The Appalachian Sky initiative seeks to leverage this existing skilled workforce into a dynamic new diversified economy for the region and thereby "grow the denominator" to limit upward pressure on the Company's rates.

17. The decision by Braidy Industries to invest \$1.68 billion in the EastPark Industrial Center is a cornerstone of Kentucky Power's Appalachian Sky initiative and can help transform northeastern Kentucky.

18. Economic growth and development that is expected to follow the establishment of the Braidy Facility directly benefits all of Kentucky Power's customers by spreading the Company's fixed costs of providing retail electric service over a larger number of customers and load and thereby limiting upward pressure on the Company's rates.

C. The Information For Which Confidential Treatment Is Requested Is Exempted From Public Disclosure By KRS 61.878(1)(c)(1).

1. The Braidy Confidential Rate Information.

19. Table 1 of Article 4.1(B) of the Contract provides the per kWh rate to be used in calculating Braidy's Monthly Energy Charge for the energy usage associated with the first 180 MW of Braidy's metered demand ("Braidy Contract Rate"). The rate, which increases annually over the ten-year term of the Contract, is the product of extensive negotiations between representatives of Braidy and Kentucky Power and reflects tradeoffs by both parties. The rate reflects on Kentucky Powers' part the Company's consideration of the size of Braidy's Contract load; the importance of the Braidy facility to Kentucky Power's economic development efforts, including the investment to be made by Braidy and resulting jobs in Kentucky Power's service territory; the anticipation that the Braidy facility will act as a "seed" project to attract suppliers and other support enterprises; and Braidy's unique status as a "first-taker."

20. The Bill Illustration Addendum attached to the Contract reflects the Year 1 Contract rate. Further, certain calculations shown in the Addendum would allow the "reverse-engineering" of the Year 1 Contract rate.

21. Confidential Exhibit AEV-1 reflects the Braidy Contract Rate as well as the Company's ten-year fuel forecast. The exhibit also could be used to discern the Company's

confidential strategy in its negotiations with Braidy as well as the confidential basis upon which it designed the rates.

2. The Braidy Confidential Rate Information Is Confidential And Proprietary Information That Is Not Otherwise Publicly Available.

22. The Braidy Contract Rates are confidential and proprietary. Dissemination of the Braidy Contract Rates is restricted by Kentucky Power, its parent, American Electric Power Company, Inc., and American Electric Power Service Corporation. The Company, AEP, and AEPSC take all reasonable measures to prevent its disclosure to the public as well as to persons within the Company and third-party vendors who do not have a need for the information. 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.

23. Kentucky Power provided the Braidy Contract Rates to Braidy. It is Kentucky Power's understanding that Braidy similarly protects the Braidy Contract Rates.⁷

24. Braidy was only provided Table 1 of Article 4.1.A. and the Bill Illustration Addendum to the Special Contract. Braidy has not been provided Confidential Exhibit AEV-1. Confidential Exhibit AEV-1 is subject to the same protections by the Company, AEP, and AEPSC against public disclosure as the Braidy Contract Rates.

25. The Company's initial rate proposal was confidentially included in the joint package assembled by Kentucky Power, state and local economic development officials, and

⁷ Affidavit of Steven Miller at ¶¶ 8-9.

other participants in the effort to recruit Braidy. Kentucky Power and Braidy then confidentially negotiated the final terms of the Special Contract.

26. The Braidy Confidential Rate Information is not publicly available, and cannot be reasonably discerned through lawful methods. No public purpose is served by the disclosure of the Braidy Confidential Rate Information.

3. Public Disclosure Of The Braidy Confidential Rate Information Will Provide An Unfair Commercial Advantage To Economic Development Competitors Of Kentucky Power, To Customers Of Kentucky Power Seeking To Negotiate Special Contracts, And To Competitors Of Braidy.

27. Public disclosure of the Braidy Confidential Rate Information would establish a ceiling for future negotiations with industrial and commercial enterprises looking to locate in the Company's service territory. Kentucky Power anticipates that the Braidy Contract Rates would be the starting point for such negotiations and that the prospective enterprises would seek the same or lower rates. Existing customers also could use the Braidy Contract Rates to seek similar or lower rate treatment.

28. Public disclosure of the Braidy Confidential Rate Information also would result in unfair commercial injury to Kentucky Power in connection with its economic development efforts. Kentucky Power competes with other retail electric utilities and economic development entities in the Commonwealth of Kentucky, as well as in other states to attract new commercial and industrial economic prospects, and to retain or expand service to existing commercial and industrial customers. The competition for large "transformative" industrial projects such as that

proposed by Braidy Industries is particularly intense. For example, Kentucky Power is informed that at least 24 locations vied for the Braidy Industries facility.⁸

29. Public disclosure of the Braidy Confidential Rate Information would hinder Kentucky Power's economic development efforts by allowing competing retail electric utilities to underbid Kentucky Power, or force Kentucky Power to bid a lower rate than might otherwise be required in the absence of the public disclosure to secure the prospective customer. Kentucky Power would suffer unfair commercial injury in either case.

30. Kentucky Power is informed that public disclosure of the Braidy Contract Rates could be used by competitors and customers of Braidy to gain otherwise non-public information regarding Braidy Industries' production costs and place Braidy Industries at a commercial disadvantage vis-à-vis its competitors and customers.⁹

31. Disclosure of Confidential Exhibit AEV-1 would reveal Kentucky Power's ten-year fuel forecast as well as the confidential strategy Kentucky Power used to negotiate the Special Contract and design the Braidy Contract Rates. The disclosure of such information would jeopardize the Company's ability to negotiate future contracts.

32. Industrial customers such as Braidy protect their customer-specific cost information, and expect Kentucky Power to do likewise, because of the adverse effect that public disclosure of such information would have on the customers' competitiveness. Required public disclosure of such information will make commercial and industrial prospects less likely to

⁸ <https://www.forbes.com/sites/moiravetter/2018/06/28/entrepreneurship-unbelievable-bi-partisanship-making-aluminum-great-again-in-ashland-kentucky/#1bc34ddd4d2d> (last visited December 17, 2018).

⁹ Affidavit of Steven Miller at ¶¶ 5-6.

locate in Kentucky Power's service territory. This in turn would place Kentucky Power at a commercial disadvantage in its economic development efforts to attract commercial and industrial customers to its service territory.

4. Kentucky Power Is Required To Disclose The Braidy Contract Rates To The Commission.

33. Kentucky Power is required by 807 KAR 5:011, Section 13 to file the Contract, including the Braidy Contract Rates, with the Commission.

5. The Commission Previously Has Accorded Confidential Treatment To Information Similar To The Braidy Confidential Rate Information.

34. The Commission previously has recognized the unfair commercial injury to retail utilities, including retail electric suppliers, and their special contract counterparties, that results from the public disclosure of the rate and other terms of special contracts.

35. In *In the Matter of: Application Of Atmos Energy Corporation For An Adjustment Of Rates And Tariff Modifications*,¹⁰ Atmos Energy sought confidential treatment of the contract terms because public disclosure of the terms would give competitors of Atmos, and competitors of the counterparties, "information that could be used to negotiate favorable terms for them as well as develop marketing strategies harmful to ... [Atmos] or those specific customers."¹¹ Based on the identified injury the Commission concluded that the information Atmos sought to protect met "the criteria for confidential treatment and are exempted from public disclosure...."¹²

¹⁰ Case No. 2013-00148.

¹¹ Order, *In the Matter of: Application Of Atmos Energy Corporation For An Adjustment Of Rates And Tariff Modifications*, Case No. 2013-00148 at 3 (Ky. P.S.C. November 25, 2013).

¹² *Id.* at 5.

36. Confidential treatment also has been accorded special contract rate information to prevent other customers of the utility from gaining an unfair commercial advantage in negotiations with the utility. In *In the Matter of: Valley Gas, Inc. Request For Approval Of A Special Contract With Mago Construction Company And A Deviation From The Gas Cost Adjustment Clause*, Valley Gas sought confidential treatment of the pricing information because public disclosure of the information would provide competitors of Valley Gas (other energy suppliers) as well as other customers of Valley Gas to gain an unfair commercial advantage:

Public disclosure of the price would allow other large volume customers to use that information as the “ceiling” in any future contract negotiations that they might have with Valley. Knowledge of this information would give those customers to drive a “harder bargain” for terms more advantageous to them than terms in this agreement. This in turn, would be less advantageous to Valley and its tariffed customers.¹³

The Commission granted Valley Gas’ motion for confidential treatment, and on its own motion found that the contract rate filed in response to a staff data request also was “entitled to confidential protection pursuant to KRS 61.878(1)(c)(1).”¹⁴

37. The Commission similarly recognized that the public disclosure of special contract terms could result in an unfair commercial advantage to new customers of a retail electric utility in *In the Matter of: Application Of East Kentucky Power Cooperative For Approval Of Special Contract Between EKPC, Owen Electric Cooperative, And Gallatin Steel Company*.¹⁵ There, East Kentucky Power sought confidential treatment of “the maximum

¹³ Letter Motion, *In the Matter of: Valley Gas, Inc. Request For Approval Of A Special Contract With Mago Construction Company And A Deviation From The Gas Cost Adjustment Clause*, Case No. 2014-00328 at 1 (Ky. P.S.C. Filed October 3, 2014).

¹⁴ Order, *In the Matter of: Valley Gas, Inc. Request For Approval Of A Special Contract With Mago Construction Company And A Deviation From The Gas Cost Adjustment Clause*, Case No. 2014-00328 at 1 (Ky. P.S.C. October 28, 2014).

¹⁵ Case No. 2013-00174.

amount which Gallatin Steel Company [the special contract counterparty] would pay for any load forecast error adjustments” under the special contract because public disclosure “could provide an unfair commercial advantage to potential new industrial customers of ... [the utility] and to competitors of Gallatin Steel.”¹⁶ Based upon the allegations of commercial injury to both the utility and its customer that would result from the public disclosure of the information for which confidential treatment was sought the Commission granted confidential treatment to the requested information pursuant to KRS 61.878(1)(c)(1).¹⁷

38. Most recently, the Commission granted confidential treatment to, *inter alia*, the financial terms (including the rates) of a gas supply agreement between Natural Energy Utility Corporation and an unnamed customer.¹⁸ Natural Energy argued that public disclosure of the special contract terms would result in unfair commercial advantage to the competitors of the utility:

NEUC has active competitors who could use this information to their advantage and to the direct disadvantage of Atmos [*sic*]. NEUC would be at a competitive threat of loss of business due to the ability of its competitors to leverage the information to their advantage. The public disclosure of the customer name, customer identifiable information, monetary terms negotiated with the customer and critical monetary terms would permit an unfair advantage those competitors.¹⁹

¹⁶ Order, *In the Matter of: Application Of East Kentucky Power Cooperative For Approval Of Special Contract Between EKPC, Owen Electric Cooperative, And Gallatin Steel Company*, Case No. 2013-00174 at 1 (Ky. P.S.C. April 8, 2014).

¹⁷ *Id.* at 2.

¹⁸ See Order, *In the Matter of: The Filing Of A Special Contract By Natural Energy Utility Corporation*, Case No. 2018-00164 at 2 & n3. (Ky. P.S.C. September 6, 2018).

¹⁹ Petition for Confidentiality, *In the Matter of: The Filing Of A Special Contract By Natural Energy Utility Corporation*, Case No. 2018-00164 at 2 (Ky. P.S.C. Filed May 1, 2018).

The Commission concluded that the public disclosure of the contract terms could result in an “unfair commercial advantage” to the utilities competitors and granted the petition for confidential treatment.²⁰

39. Kentucky Power faces direct competition in connection from other retail electric utilities in Kentucky and other states in recruiting commercial and industrial customers to its service territory, and in connection with efforts by such competitors to recruit its existing customers or its existing customers’ expansion facilities. Thus, although Kentucky Power does not face direct competition in providing retail electric service to customers located within its service territory, it is subject to the same sort of unfair commercial disadvantage faced by the utilities in *Atmos*, *Valley Gas*, and *Natural Energy*.

D. The Braidy Confidential Rate Information Should Remain Confidential For The Term Of The Special Contract.

40. Kentucky Power requests that the Braidy Confidential Rate Information remain confidential and withheld from public disclosure for the term of the Braidy Contract (ten years from its effective date) after which the Braidy Contract rates will no longer have commercial value.

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

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

²⁰ Letter Ruling, *In the Matter of: The Filing Of A Special Contract By Natural Energy Utility Corporation*, Case No. 2018-00164 at 2 (Ky. P.S.C. June 8, 2018).

Respectfully submitted,



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