

**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. 2019-00124
Electric Service With M C Mining, LLC)	

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 per-kilowatt-hour (“kWh”) discount rate and Monthly Economic Development Credit limit set forth in Article V of Addendum 2 to the special contract between Kentucky Power Company and M C Mining, LLC (“Special Contract”). The information for which confidential treatment is sought is collectively referred to as the “Monthly Economic Development Credit Information.”

Kentucky Power states in support of its motion:

I. 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. Additionally, Tariff C.S.-Coal (Contract Service – Coal Power), P.S.C. Ky.

No. 11 1st Revised Sheet No. 11-2 provides that “[a]ll terms and conditions of any written contract under [that] Tariff shall be protected from disclosure as confidential, proprietary trade secrets, if either the Customer or the Company requests a Commission determination of confidentiality” and that request is granted.

II. Background

A. Kentucky Power’s Economic Development Efforts.

3. Kentucky Power provides retail electric service in 20 counties in eastern Kentucky. Pike County is located in Kentucky Power’s service territory. Eastern Kentucky, including Kentucky Power’s service territory, is in the midst of a 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.

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

5. 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 “Coal Plus” initiative.

B. “Coal Plus” and Tariff C.S.-Coal

6. The coal extraction and processing industry remains critical to the eastern Kentucky economy. In order to expand its “Coal Plus” economic development efforts and support the revitalization of the coal extraction and processing industry in its service territory, which in turn will provide needed jobs and economic investment in the region, Kentucky Power requested authority to establish Tariff C.S. - Coal in Case No. 2017-00099.¹ The Commission approved the Company’s initial request to establish the rider,² and it has twice-approved the Company’s requests to extend the rider’s expiration date.³

7. Under Tariff C.S.-Coal, the Company may enter into an economic development-based contract for electric service with a new customer engaged in the extraction or processing of coal or an existing coal extraction and processing customer with a load expansion.⁴ Kentucky Power’s Special Contract with M C Mining, LLC (“M C Mining”), which represents a load expansion by an existing customer, furthers the Company’s “Coal Plus” efforts to work with coal companies on alternative means to support the coal industry in Kentucky and present the

¹ *In The Matter Of: Application Of Kentucky Power Company For (1) Authority To Amend Temporarily Tariff C.S. – I.R.P. And Tariff E.D.R.; (2) To Establish Temporarily Tariff C.S. – Coal; (3) For Leave To Deviate From The Notice Requirements Of 807 KAR 5:011, Section 8; (4) For Related Accounting Relief; And 5) For All Other Required Approvals And Relief*, Application, Case No. 2017-00099 (Feb. 23, 2017).

² *In The Matter Of: Application Of Kentucky Power Company For (1) Authority To Amend Temporarily Tariff C.S. – I.R.P. And Tariff E.D.R.; (2) To Establish Temporarily Tariff C.S. – Coal; (3) For Leave To Deviate From The Notice Requirements Of 807 KAR 5:011, Section 8; (4) For Related Accounting Relief; And 5) For All Other Required Approvals And Relief*, Order at 10, Case No. 2017-00099 (Mar. 23, 2017) (approving Tariff C.S. – Coal with a December 31, 2017 expiration date).

³ *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 Riders; (4) An Order Approving Accounting Practices To Establish Regulatory Assets And Liabilities; And (5) An Order Granting All Other Required Approvals And Relief*, Order at 61-62, Case No. 2017-00179 (Jan. 18, 2018) (approving extension of Tariff C.S. – Coal’s expiration date to December 31, 2018); *In The Matter Of: Tariff Filing Of Kentucky Power Company For Proposed Changes To Tariff Sheet 11-2, Tariff Sheet 12-1, And Tariff Sheet 37-6*, Order at 2, Case No. 2018-00426 (Feb. 12, 2019) (approving extension of the rider’s expiration date to December 31, 2019) P.S.C. Ky. No. 11 1st Revised Sheet No. 11-2, Special Terms and Conditions.

⁴ P.S.C. Ky. No. 11 1st Revised Sheet No. 11-1, Availability of Service, Conditions of Service.

Commission with new options to support coal extraction and processing as a means of moderating rates by spreading fixed costs over a greater load.

C. M C Mining, LLC's Excel Mine No. 5

8. Publicly available information indicates that M C Mining plans to open a new mine located at Varney, Right Fork of Brushy Road in Pike County, Kentucky in the Company's service territory.⁵ \$45 to \$50 million will be invested in the development of the new mine, Excel Mine No. 5, in order to begin mining operations of an estimated 15 million tons of coal reserves controlled by M C Mining in 2020.⁶ Kentucky Power understands that the existing mine, Excel Mine No. 4, is reaching the end of its operational life and is expected to close in 2020. The new underground operation will utilize continuous mining units employing room-and-pillar mining techniques.⁷ The annual production capacity of Excel Mine No. 5 is expected to be approximately 1.3 million tons of high BTU, low-sulfur coal.⁸

9. Economic growth and development that is expected as a result of the continuation of coal mining operations in Pike County by M C Mining, and the opening of Excel Mine No. 5 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.

⁵ Press Release, *Alliance Resource Partners, L.P. Announces Agreement to Acquire Oil and Gas Mineral Interests and Development of Excel Mine No. 5* (Dec. 16, 2018), available at <http://www.arlp.com/file/Index?KeyFile=396120950> (last visited April 11, 2019).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

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

A. The Monthly Economic Development Credit Information

10. Article V of Addendum 2 to the Special Contract sets forth both the per-kWh rate to be used in calculating the Monthly Economic Development Credit that Kentucky Power will provide to M C Mining under the agreement and the limit or cap on the amount of any month's Monthly Economic Development Credit to be provided under the agreement. The Monthly Economic Development Credit Information is the product of lengthy negotiations between representatives of M C Mining and Kentucky Power and reflects a compromise between the parties. The Monthly Economic Development Credit Information reflects on Kentucky Powers' part the Company's consideration of the size of M C Mining's Excel Mine No. 5's load and the importance of the new mine to Kentucky Power's economic development efforts, including the investment to be made by M C Mining and the resulting retained and created jobs in Kentucky Power's service territory.

B. The Monthly Economic Development Credit Information Is Confidential And Proprietary Information That Is Not Otherwise Publicly Available.

11. The Monthly Economic Development Credit Information is confidential and proprietary. Dissemination of the Monthly Economic Development Credit Information 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.

12. Kentucky Power provided the Monthly Economic Development Credit Information to M C Mining. It is Kentucky Power's understanding that M C Mining similarly protects the Monthly Economic Development Credit Information.⁹

13. The Company's initial economic development credit rate and amount were confidentially provided in M C Mining in November 2017. Kentucky Power and M C Mining then confidentially negotiated the final terms of the Special Contract.

14. The Monthly Economic Development Credit Information is not publicly available and cannot be reasonably discerned through lawful methods. No public purpose is served by the disclosure of the Monthly Economic Development Credit Information.

C. Public Disclosure Of The Monthly Economic Development Credit Information Will Provide An Unfair Commercial Advantage To Economic Development Competitors Of Kentucky Power, And To Customers Of Kentucky Power Seeking To Negotiate Special Contracts.

15. Public disclosure of the Monthly Economic Development Credit Information would hamper future negotiations with other coal mining companies looking to establish or expand load in Kentucky Power's service territory, as well as with other industrial and commercial enterprises looking to locate in the Company's service territory. Kentucky Power anticipates that the Monthly Economic Development Credit Information 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 Monthly Economic Development Credit Information to seek similar or lower rate treatment. The disclosure of the Monthly Economic Development Credit would jeopardize the Company's future ability to negotiate future economic development opportunities.

⁹ Affidavit of Jeffrey Brock at ¶¶ 4-6.

16. Public disclosure of the Monthly Economic Development Credit 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.

17. Public disclosure of the Monthly Economic Development Credit Information would hinder Kentucky Power's economic development efforts by allowing retail electric utilities to underbid Kentucky Power in connection with retaining and attracting economic development prospects, 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.

D. Kentucky Power Is Required To Disclose The Monthly Economic Development Credit Information To The Commission.

18. Kentucky Power is required by 807 KAR 5:011, Section 13 to file the Contract, including the Monthly Economic Development Credit Information, with the Commission.

E. The Commission Previously Has Accorded Confidential Treatment To Information Similar To The Monthly Economic Development Credit Information.

19. 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.

20. 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

21. 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

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.

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).

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

22. 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 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

23. 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

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.

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.

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

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

24. 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*.

F. The Monthly Economic Development Credit Information Should Remain Confidential For The Term Of The Special Contract.

25. Kentucky Power requests that the Monthly Economic Development Credit Information remain confidential and withheld from public disclosure for the term of the Special Contract (approximately fourteen years from its effective date, through May 31, 2033), after

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).

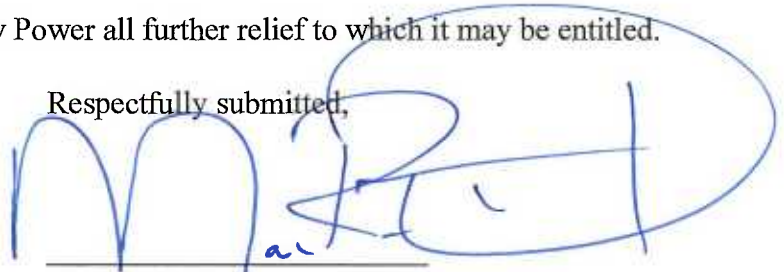
²⁰ Letter Ruling, *In the Matter of: The Filing Of A Special Contract By Natural Energy Utility Corporation*, Case No. 2018-00164 at 2 (Ky. P.S.C. June 8, 2018).

which the Monthly Economic Development Credit Information 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 Monthly Economic Development Credit Information; and
2. Granting Kentucky Power all further relief to which it may be entitled.

Respectfully submitted,



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