

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

Electronic 2019 Integrated Resource Planning Report)
Of Kentucky Power Company To The Public Service) Case No. 2019-00443
Commission Of Kentucky)

* * * * *

MOTION FOR CONFIDENTIAL TREATMENT

Kentucky Power Company moves the Public Service Commission of Kentucky pursuant to 807 KAR 5:001, Section 13 for an Order granting confidential treatment to the identified confidential information and documents (“Confidential Information”) filed in connection with Kentucky Power’s December 20, 2019 Integrated Resource Planning Report (“IRP Report.”) This motion is supported by the Affidavit of Brian West (“West Affidavit”) attached as Exhibit A.

The IRP Report includes confidential and proprietary forecasts regarding Kentucky Power’s future operations, including load and resource forecasts. Kentucky Power also includes in the IRP details concerning the location of transmission facilities in Kentucky and in American Electric Power Company Inc.’s (“AEP”) Eastern region that comprise Critical Electrical Infrastructure Information (“CEII”), or information that Kentucky Power is prohibited by federal law from publicly disclosing. The Confidential Information is being filed as Volume B to the IRP Report.

Specifically, Kentucky Power is seeking confidential treatment for the following information and documents:¹

¹ West Affidavit at ¶ 5.

Item No.	Exhibit Number or Page Number	Description of Confidential and Proprietary Information	Statutory Basis for According Confidential Treatment
1	Exhibit I, Pages 1406-1710, 1714-1717, 1720-1723, 1726-1728, 1730-1732, 1734-1737, 1739-1741, 1743-1746, 1748-1751, 1753-1755, 1758-2089, 2092-2102, 2132-2153, 2156-2160, 2188-2195, 2244-2245, 2247-2268	Confidential historical and forecast non-public customer-specific information; forecast sales to individual wholesale customers; and related forecasted electricity prices through 2054.	KRS 61.878(1)(c)(1)
2	Exhibits G-5, G-7, G-8, pages 267, 269, 270 of 2268	Projected Average Fuel Costs through 2034; Projected Non-fuel O&M through 2034; and Projected Variable Production Costs through 2034	KRS 61.878(1)(c)(1)
3	Exhibits G-2, G-3, G-4, pages 264-266 of 2268	Projected Capacity Factors (steam) through 2034; Projected Availability Factors (steam) through 2034; Projected Average heat Rates through 2034	KRS 61.878(1)(c)(1)
4	Exhibit F, page 260 of 2268	AEP Power System (generation and transmission detail)	KRS 61.878(1)(m)(1)(f); and KRS 61.878(1)(k)
5	Exhibit F, page 261 of 2268	Kentucky Power Transmission Line Network	KRS 61.878(1)(m)(1)(f); and KRS 61.878(1)(k)

Pursuant to 807 KAR 5:001, Section 13, Kentucky Power is filing under seal those portions of the IRP report and exhibits thereto containing confidential information with the confidential portions highlighted in yellow or otherwise indicated as being confidential. Kentucky Power is also filing redacted versions of the filing. Kentucky Power will notify the Commission when it determines the information for which confidential treatment is sought is no longer confidential.

A. The Statutory Standard.

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

"[r]ecords confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would present an unfair commercial advantage to competitors of the entity that disclosed the records.

Items 1 through 3 above satisfy each of the statutory requirements for confidential treatment under KRS 61.878(1)(c)(1).

KRS 61.878(1)(m)(1)(f) exempts records from public inspection that would have a reasonable likelihood of threatening the public safety by exposing a vulnerability in preventing, protecting against, mitigating, or responding to a terrorist act, including:

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;

Items 4 and 5 satisfy each of the statutory requirements for confidential treatment under KRS 61.878(1)(m)(1)(f).

KRS 61.878(1)(k) exempts "all public records or information the disclosure of which is prohibited by federal law or regulation" from disclosure under the Open Records Act. Items 4 and 5 also satisfy the statutory requirements for confidential treatment under KRS 61.878(1)(k).

1. *Applicability of KRS 61.878(1)(c)(2) to Item 1.*

Item 1 consists of historical and forecast customer-specific usage data for certain of Kentucky Power's largest commercial and industrial customers.² Also included is customer-specific information for Kentucky Power's two wholesale customers: the City of Olive Hill and the City of Vanceburg. The Company is seeking confidential treatment only for the Company's forecasted customer-specific information with respect to the City of Olive Hill and the City of Vanceburg. The historical information regarding the Company's two wholesale customers is in the public domain.

The information comprising Item 1 for which confidential treatment is sought is identified by customer name and account number.³

Also included in Item 1 are forecasted electricity prices through 2054 by customer class.⁴

(a) *The Records Are Being Confidentially Disclosed To The Commission.*

The information contained in Item 1 for which confidential protection is sought is being disclosed to the Public Service Commission pursuant to 807 KAR 5:058. As such, it is both being disclosed to the Commission and is required by the Commission to be disclosed to it.

(b) *The Information Is Generally Recognized As Confidential and Proprietary.*

Historical and forecasted customer-specific usage information is recognized and treated as confidential and proprietary by Kentucky Power and its customers.⁵ It has not been publicly disclosed by Kentucky Power and the Company takes reasonable steps to prevent the disclosure

² *Id.* at ¶ 6.

³ *Id.*

⁴ *Id.* at 6-7.

⁵ *Id.* at ¶ 13.

of such information outside the Company.⁶ The information is disseminated within the Company on a need-to-know basis.⁷ Kentucky Power's customers also take similar measures to protect against the public disclosure of such information.⁸

None of the information for which confidential protection is sought is readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use.⁹ Moreover, the Company believes that independent research by persons not privy to the information would not reveal this level of detailed information.¹⁰

- (c) Disclosure Of The Information Will Result In An Unfair Commercial Advantage.
 - (i) Historical and Forecast Customer Specific Information Regarding Commercial and Industrial Customers.

The cost of electricity constitutes a material part of the cost structure of many of the Company's larger commercial and industrial customers. Such information is routinely protected by its customers from public disclosure because of the competitive disadvantage resulting from such disclosure. The commercial and industrial customers are private entities whose cost of operation or cost of production is not regulated by this Commission or any other government body. The public disclosure of this confidential information will place Kentucky Power's customers at a competitive disadvantage, leading these and similar customers to refrain from locating in Kentucky Power's service territory.¹¹ This, in turn, will result in harm to Kentucky

⁶ *Id.*

⁷ *Id.* at ¶ 17.

⁸ *Id.* at 13.

⁹ *Id.* at ¶ 10.

¹⁰ *Id.* at ¶ 16.

¹¹ *Id.* at ¶ 13.

Power and its customers.¹² Kentucky Power seeks confidential treatment of the historical and forecast information relating to the Company's commercial and industrial customers contained in Item 1 indefinitely. The information will continue to retain its competitive commercial value notwithstanding the passage of time.¹³

(ii) Historical Customer-Specific Information Regarding Wholesale Customers.

Although the City of Vanceburg and the City of Olive Hill are public entities, the forecasted information concerning the two cities contained in Item 1 is not publicly available and was not generated by the cities. Kentucky Power's forecasts regarding these two customers are proprietary to the Company and are not publicly available. The information provides insight into the wholesale customers projected future operational needs as well as Kentucky Power's current forecasting techniques. In addition, the privately-generated forecast information regarding the two wholesale customers should receive the same confidential treatment as similar information concerning the Company's commercial and industrial customers.

The customer-specific forecast information concerning the City of Olive Hill and the City of Vanceburg will be superseded by likely changes in production, operational, and economic circumstances and will no longer require confidential protection at the time new forecasts are filed in 2019 in connection with Kentucky Power's next IRP report. The customer-specific forecast information concerning the City of Olive Hill and the City of Vanceburg should remain confidential until Kentucky Power files its next IRP report.

¹² *Id.*

¹³ *Id.* at ¶ 18.

(iii) Forecasted Electricity Prices Through 2054.

Pages 2247-2268 of 2268 contains the Company's forecast by customer sector of electricity prices through 2054. The price forecasts are confidential commercial information. The public disclosure of the information would result in competitive commercial disadvantage to Kentucky Power, and resultant harm to its customers, for the same reasons described at pages 8-9 *supra* in connection with Items 2 and 3. In fact, the confidential information contained in Items 2 and 3 derives its competitive economic value from the fact that it can be used to calculate the forecast electricity prices in Item 1.¹⁴

2. *Applicability of KRS 61.878(1)(c)(1) to Items 2 And 3.*

(a) The Records Are Being Confidentially Disclosed To The Commission.

The information contained in Items 2 and 3 for which confidential protection is sought is being disclosed to the Public Service Commission pursuant to 807 KAR 5:058. As such, the Confidential Information comprising Items 2 and 3 is both being disclosed to the Commission and is required by the Commission to be disclosed to it.

(b) The Information Is Generally Recognized As Confidential and Proprietary.

The Company's financial and operating projections, including those set out in Items 2 and 3, are treated as proprietary and confidential by Kentucky Power and have not been publicly disclosed by the Company.¹⁵ The Company takes reasonable steps to prevent the disclosure of such information outside the Company, and the information is disseminated within the Company on a need-to-know basis.¹⁶

¹⁴ *Id.* at ¶ 7.

¹⁵ *Id.* at ¶¶ 10, 12, 14.

¹⁶ *Id.* at 17.

None of the information for which confidential protection is sought is readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use.¹⁷ Independent research by persons not privy to the information would not reveal this level of detailed information.¹⁸

The public disclosure of the Confidential Information contained in Items 2 and 3 is likely to provide an unfair competitive advantage to the Company's competitors.¹⁹ Item 2 (Exhibit G-5; Exhibit G-7; and G-8) includes the projected average fuel costs, projected non-fuel generation O&M, and projected variable production costs through 2031. Item 3 (Exhibit G-2; Exhibit G-3; and Exhibit G-4) includes forecasted operating information concerning Kentucky Power's generating units. Information similar to that contained in Items 2 and 3 was accorded confidential treatment by Order of the Commission in Case No. 2016-00413.²⁰

(c) Disclosure Of The Information Will Result In An Unfair Commercial Advantage.

Although Kentucky Power's retail rates are regulated by the Commission, the Company makes substantial sales through PJM Interconnection, LLC of electric energy into the competitive interstate wholesale electricity market. The disclosure of the projections in Items 2 and 3 would permit an unfair commercial advantage to Kentucky Power's competitors and suppliers.²¹ Public disclosure of such cost data and operating information could prove damaging to the Company in both current and future competitive marketplaces, and would place Kentucky

¹⁷ *Id.* at ¶¶ 16-17.

¹⁸ *Id.* at ¶ 16.

¹⁹ *Id.* at ¶¶ 10, 14.

²⁰ *Id.* at ¶ 10.

²¹ *Id.* at ¶¶ 10, 14.

Power at a significant disadvantage in the marketplace.²² If Kentucky Power's costs and operating projections are publicly known, competitors and suppliers can formulate competitive bidding strategies that will hamper the Company's ability to compete against them, cause Kentucky Power's units to operate/sell less, and ultimately cost more to operate, thereby resulting in higher costs for the Company's customers.²³ Such information might permit a competitor to underbid Kentucky Power based on an unfair commercial advantage. Such a result which would be detrimental not only to Kentucky Power but to the marketplace as well.²⁴

Finally, Kentucky Power derives independent economic value from the subject information not being generally known to, and not being readily ascertainable by other persons who can obtain economic value from its disclosure or use. Accordingly, Kentucky Power would be placed at a competitive disadvantage vis-à-vis other electric utilities buying and selling in the wholesale market if required to disclose the information publicly.²⁵ Kentucky Power requests that the Confidential Information comprising Items 2 and 3 be treated as confidential and withheld from public disclosure until the Company files its next IRP. At that time, the Confidential Information comprising Items 2 and 3 will be dated and its public disclosure will no longer result in competitive commercial injury.²⁶

3. *Applicability of KRS 61.878(1)(m)(1)(f) and KRS 61.878(1)(k) to Items 5 and 6.*

The maps constituting Items 5 and 6 include details of Kentucky Power's transmission facilities should be treated as confidential CEII.²⁷ FERC regulations define CEII as specific

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at ¶ 20.

²⁷ *Id.* at ¶¶ 11, 15.

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.

18 CFR 388.113(c)(2).

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. 18 CFR § 388.113(C)(2). Items 5 and 6 constitute CEII under the FERC definition and is protected from disclosure under the Freedom of Information Act by 18 C.F.R. § 388.112.²⁸

Items 5 and 6 also are 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.²⁹ 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). Moreover, the information is exempted by KRS 61.878(1)(k) as information exempted from disclosure under federal law. Kentucky Power seeks confidential treatment of the identified

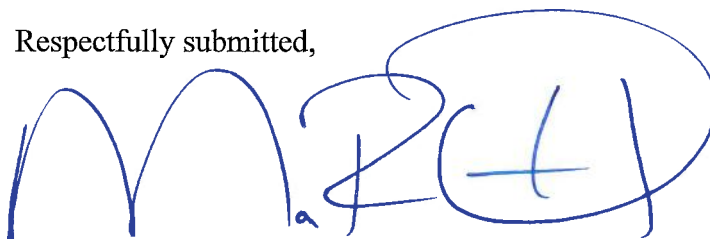
²⁸ *Id.*

²⁹ *Id.*

information in Items 5 and 6 for the life of the identified facilities. Once the facilities are retired the information will no longer be CEII.³⁰

For the foregoing reasons, Kentucky Power requests that the Kentucky Public Service Commission to afford confidential treatment to Items 1 through 5 described above.

Respectfully submitted,



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³⁰ *Id.* at 21.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by first class mail, postage prepaid, this 20th day of December, 2019.


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