

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In The Matter Of:

Electronic Application Of Kentucky Power)	
Company For Approval Of A Contract For)	Case No. 2020-00019
Electric Service With Air Products and)	
Chemicals, Inc.)	

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 Exhibit 1 and Exhibit 2 to the Company’s 2023 Air Products and Chemicals, Inc. Annual Report. Pursuant to 807 KAR 5:001, Section 13, Kentucky Power is filing under seal those portions of Exhibit 1 containing confidential information with the confidential portions highlighted in yellow. Kentucky Power also is filing a redacted version of Exhibit 1 and Exhibit 2. Kentucky Power will notify the Commission when it determines the information for which confidential treatment is sought is no longer confidential.

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 Exhibit 1 and Exhibit 2 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.

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

1. Exhibit 1.

Exhibit 1 provides the 2023 monthly revenue amount for Air Products and Chemicals, Inc. (“Air Products”), or more generally, confidential customer-specific billing information. Kentucky Power does not release this type of customer-specific information to the public, and Air Products expects the Company to protect the confidentiality of the information. Air Products operates in competitive national markets. Releasing Air Products’ billing information will allow competitors to gain specific information regarding the production costs of Air Products’ goods and services.

This information would not otherwise be known in the competitive marketplace, and the public disclosure would place Air Products at a distinct competitive disadvantage. As a result of this competitive disadvantage, commercial and industrial customers, like Air Products, will be less likely to locate in Kentucky Power’s service territory, which will result in harm to Kentucky Power.

The Commission has recognized the confidentiality of customer information in previous cases¹ and the Company asks that it follow that precedent here. Moreover, the Commission has previously granted confidential protection to this same kind of information filed in conjunction

¹ See Order, *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*, Case No. 2017-00179 at p. 4 ¶ 8, p. 6 ¶ 1 (Ky. P.S.C. Oct. 5, 2017).

with the Company's previous annual report in this case.² Specifically, Kentucky Power requests that this information be afforded confidential treatment for a period of at least ten years, after which time the information will no longer have commercial benefit.

2. Exhibit 2.

Exhibit 2 is comprised entirely of the marginal cost study, which includes confidential rate information that was previously granted confidential treatment as part of the initial special contract filing. Public disclosure of the Air Products 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 Air Products confidential rate information would be the starting point for such negotiations and that other prospective enterprises could seek the same or lower rates. Existing customers also could use the Air Products confidential rate information to seek similar or lower rate treatment.

Public disclosure of the Air Products 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. Public disclosure of the Air Products 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.

² See Order, *In the Matter of: Electronic Application Of Kentucky Power Company For Approval Of A Contract For Electric Service With Air Products And Chemicals, Inc.*, Case No. 2020-00019 (Ky. P.S.C. Apr. 8, 2021).

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

Kentucky Power requests that this information be afforded confidential treatment for a period of at least ten years, after which time the information will no longer have commercial benefit.

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 Exhibit 1 and Exhibit 2 to the 2023 Air Products and Chemicals, Inc. Annual Report 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), and Air Products. The Company, AEP, and its affiliates (and third party vendors where 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.

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 contained in Exhibit 1 and Exhibit 2 for a period of ten years; and
2. Granting Kentucky Power all further relief to which it may be entitled.

Respectfully submitted,



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