

**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) Approval Of Tariffs And Riders; (3) )  
Approval Of Accounting Practices To Establish ) Case No. 2020-00174  
Regulatory Assets And Liabilities; (4) Approval Of A )  
Certificate Of Public Convenience And Necessity; )  
And (5) 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 (“Commission”) pursuant to 807 KAR 5:001, Section 13(2), and KRS 61.878(1)(a),(c),(k), and (l) for an Order granting confidential treatment to the identified portions of the following attachments to its data request responses:

- (1) Attachment 1 to its response to Commission Staff Data Request 2-4 (“KPSC 2-4”);
- (2) Attachment 1 to its response to Commission Staff Data Request 2-21 (“KPSC 2-21”);
- (3) Attachments 1 through 8 to its response to Commission Staff Data Request 2-22 (“KPSC 2-22”);
- (4) Attachment 1 to its response to Commission Staff Data Request 2-24 (“KPSC 2-24”);
- (5) Attachment 1 to its response to Commission Staff Data Request 2-33 (“KPSC 2-33”);
- (6) Attachment 1 to its response to Commission Staff Data Request 2-36 (“KPSC 2-36”);
- (7) Attachment 1 to its response to Commission Staff Data Request 2-42 (“KPSC 2-42”); and
- (8) Attachments 2 and 3 to its response to Commission Staff Data Request 2-44 (“KPSC 2-44”).

Specifically, Kentucky Power seeks confidential treatment of information relating to:

- (i) confidential and proprietary information regarding the Company's internal accounting procedures (Attachment 1 to KPSC 2-4);
- (ii) the non-public, personal compensation information for the Company's executive officers and other employees (Attachment 1 to KPSC 2-21, Attachment 1 to KPSC 2-24, Attachment 1 to KPSC 2-33, and Attachment 1 to KPSC 2-42);
- (iii) studies prepared by third-party vendors relating to the market-competitiveness of the Company's compensation packages (Attachments 1 and 2 to KPSC 2-21 and Attachments 1 through 4 and 7 through 8 to KPSC 2-22);
- (iv) third-party vendor analyses of the Company's compensation system (Attachments 5 and 6 to KPSC 2-22);
- (v) information relating to negotiated rates for insurance premiums (Attachment 1 to KPSC 2-36); and
- (vi) the Company's 2018 federal tax return and the Company's 2018 Kentucky state tax return (Attachments 2 and 3 to KPSC 2-44).

Pursuant to 807 KAR 5:001, Section 13, Kentucky Power is filing under seal those portions of the attachments 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 it 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:

(a) Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.

...

(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. Attachment 1 to KPSC 2-4.**

Attachment 1 to KPSC 2-4 includes information concerning the Company's internal accounting procedures. The Company's internal accounting procedures constitute proprietary and trade secret information. The procedures embody sensitive business operations procedures, which if made available, would potentially harm American Electric Power Company, Inc. ("AEP") and Kentucky Power. Public disclosure would provide competitors with insight into the internal operations of AEP, which they could then use and incorporate into their own business strategies, to the detriment of AEP and its customers.

Employees are instructed that the information is available only for internal use. The current version of the policies and procedures is published in summarized form only in external financial reports filed with the SEC and/or other required parties.

The Commission previously granted confidential treatment to similar information for other utilities for the reasons set forth above.<sup>1</sup> An earlier version of AEP's internal accounting policies and procedures was publicly filed in Case No. 2017-00179. Since then, the policies and procedures have been revised and supplemented in part and thus differ in material respects from what previously was publicly disclosed. The Company is seeking confidential treatment for the current version of its internal accounting policies and procedures only.

Advancements in search technology have made the public posting of the Company's internal accounting policies more accessible and thereby increased the risk of competitive injury. Where, in the past, the information was available only by an item by item search of the Company's data request responses, they are now available through searches performed using internet search engines. Kentucky Power therefore requests that the Commission treat as confidential the entirety of Attachment 1 to KPSC 2-4 for these reasons. Attachment 1 to KPSC 2-4 should remain confidential for 20 years, or until further Order of this Commission.

**2. Attachment 1 to KPSC 2-21, Attachment 1 to KPSC 2-24, Attachment 1 to KPSC 2-33, and Attachment 1 to KPSC 2-42.**

Attachment 1 to KPSC 2-21, Attachment 1 to KPSC 2-24, Attachment 1 to KPSC 2-33, and Attachment 1 to KPSC 2-42 include non-public compensation information for Kentucky Power's executive officers and other employees. With regard to the public dissemination of compensation information, Kentucky Power's executive officers and other employees are separated into two broad categories: (1) those for which compensation information is provided in

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<sup>1</sup> See Case No. 2019-00271 *In the Matter of: Electronic Application of Duke Energy Kentucky, Inc. for 1) An Adjustment of the Electric Rates; 2) Approval of New Tariffs; 3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; and 4) All Other Required Approvals and Relief* (Ky. PSC April 29, 2020); Case No. 2018-00358 *In the Matter of: Electronic Application of Kentucky American Water Company for an Adjustment of Rates* (Ky. PSC March 14, 2019); Case No. 2017-00321 *In the Matter of: Electronic Application of Duke Energy Kentucky, Inc. for 1) An Adjustment of the Electric Rates; 2) Approval of an Environmental Compliance Plan; 3) Approval of New Tariffs; 3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; and 4) All Other Required Approvals and Relief* (Ky. PSC May 4, 2018).

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>2</sup> as part of its annual filings with the SEC.<sup>3</sup> The compensation information for the Named Executive Officers included in the Attachments for 2020 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 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>4</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 KPSC 2-24 and KPSC 2-33 includes the compensation for the months of January, February, and March 2020. The January, February, and March 2020 personal compensation information for the Named Executive Officers will not be publicly disclosed until AEP makes its calendar year 2020 annual filings with the SEC in March 2021. Accordingly, the Company seeks confidential treatment of the January, February, and March 2020 personal

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<sup>2</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>3</sup> 17 C.F.R. 229.402.

<sup>4</sup> 17 C.F.R. 240.10b-5.

compensation information of the Named Executive Officers until it is published in AEP's annual filings in March 2021.

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

Specifically, the information contained in Attachment 1 to KPSC 2-42 is information for Amy Elliott, who is a registered lobbyist with the Kentucky Legislative Ethics Commission. This information should be afforded confidential treatment for several reasons. First, Ms. Elliott is not an executive officer of AEP, and her compensation is therefore not included in the above-mentioned SEC filings, nor is it otherwise publicly disclosed. Second, this salary information is of a personal nature, and Ms. Elliott has a reasonable expectation of privacy with regard to this information. Third, disclosure of this information will have no public benefit. The public's interest in the lobbying of public officials, and particularly the amounts paid by or to a particular employer or agent related to lobbying activities is already satisfied by required disclosures of such

information in public filings with the Kentucky Legislative Branch Ethics Commission. The difference here is that the request asks for the Company to produce Ms. Elliott's entire salary, and Ms. Elliott's lobbying activities constitute less than three percent of her working hours during the test period. Thus, the request necessitates a response that would disclose Ms. Elliott's entire salary, even for activities not involving lobbying.

KRS 61.878(1)(a) excludes from the Open Records Act: "Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy..." When determining whether an open records request constitutes a clearly unwarranted invasion of personal privacy prohibited by KRS 61.878, courts first examine "whether the subject information is of a 'personal nature.'" *Zink v. Dep't of Workers' Claims, Labor Cabinet*, 902 S.W.2d 825, 828 (Ky. Ct. App. 1994). If the court "find[s] that it is, [the court] must then determine whether public disclosure 'would constitute a clearly unwarranted invasion of personal privacy.'" *Id.* In *Zink*, the Court of Appeals held that information such as "marital status, number of dependents, wage rate, social security number, home address and telephone number" were "generally accepted by society as details in which an individual has at least some expectation of privacy." *Id.* (emphasis added). It held as much despite the fact that much of that information was "contained in other public documents which are made available for public inspection" and sources that are "often publicly available through sources such as telephone directories or voter registration lists." *Id.* The court held that such personal information "is no less private simply because that information is available someplace." Thus, information "of a personal nature" is not confined to such highly confidential information such as one's social security number or financial account number, or even information that is publicly available elsewhere.



Here, Ms. Elliott's salary, especially the portions of her salary not attributable to lobbying activities, is private and of a personal nature, exactly like the "wage rate" that *Zink* held should be withheld from disclosure under the Open Records Act.

As to the second inquiry regarding whether the public disclosure would constitute a clearly unwarranted invasion of personal privacy, the analysis is "the extent to which disclosure would serve the principal purpose of the Open Records Act." *Id.*

[T]he public's 'right to know' under the Open Records Act is premised upon the public's right to expect its agencies properly to execute their statutory functions. In general, inspection of records may reveal whether the public servants are indeed serving the public, and the policy of disclosure provides impetus for an agency steadfastly to pursue the public good. At its most basic level, the purpose of disclosure focuses on the citizens' right to be informed *as to what their government is doing*. That purpose is not fostered however by disclosure of *information about private citizens* that is accumulated in various government files *that reveals little or nothing about an agency's own conduct*. The relevant public interest supporting disclosure in this instance is nominal at best.

*Id.* at 828-29 (emphasis added) (internal quotations and citations omitted).

Here, the public interest in publicly disclosing Ms. Elliott's salary is likewise nominal at best. Disclosing such information to the public would not support or detract from Kentucky Power's request for relief in this case. Therefore, such private information would not serve the public interest as required under the Open Records Act.

With the exception of the information relating to Named Executive Officers described above, the remaining personal compensation information in Attachment 1 to KPSC 2-21, Attachment 1 to KPSC 2-24, Attachment 1 to KPSC 2-33, and Attachment 1 to KPSC 2-42 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.



**3. Attachments 1 through 4 and 7 through 8 to KPSC 2-21 and Attachments 1 and 2 to KPSC 2-33.**

Kentucky Power seeks confidential treatment for the entirety of Attachments 7 and 8 to KPSC 2-21, the highlighted portions of Attachment 1 to KPSC 2-33, and the entirety of Attachments 1 through 4 to KPSC 2-21 (“Third Party Market Studies”).<sup>5</sup> The Third Party Market Studies are studies performed and supporting data obtained by third party vendors on the market-competitiveness of the Company’s compensation packages. The information contained in the Third Party Market Studies is highly competitive and confidential, and its disclosure will result in competitive disadvantage by limiting the Company’s ability to recruit and retain employees, set compensation levels, and obtain reliable information in the future about the competitiveness of the Company’s employee compensation levels.

The Third Party Market Studies prepared on behalf of the Company are confidential and proprietary and protected by non-disclosure agreements and/or intellectual property rights agreements between AEP and the vendors preparing the studies. Failure to keep the Third Party Market Studies confidential could limit the Company’s ability to maintain access to these vital studies.

For each employment position within the Company and AEP there is competition for talent and qualified candidates. It is an industry standard among utilities and other businesses of similar scope and magnitude to protect the confidentiality of information such as that at issue in this response. Without this protection, other businesses will obtain information that will provide an unfair advantage in recruiting and retaining skilled and qualified workers, managers, professionals, and executives. The Company asks that this information be afforded confidential treatment for a

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<sup>5</sup> In addition to the bases set forth in this section, Attachment 1 to KPSC 2-21 includes personal compensation information for which confidential treatment is also being sought on the bases described in Section I.A.1 above.

period of five years, which should provide sufficient time for market conditions to change and the information to become outdated.

**4. Attachments 5 and 6 to KPSC 2-22.**

Attachments 5 and 6 to KPSC 2-22 provide reports summarizing analysis of potential changes to the Company's compensation system. These reports include a detailed discussion of the Company's compensation system including a review of how the Company determines compensation for employee groups. Without the protections afforded by confidential treatment, other businesses will obtain information that will provide an unfair advantage in recruiting and retaining skilled and qualified workers, managers, professionals, and executives.

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 competitive disadvantage through increased costs and a loss of negotiating ability for the Company. Disclosure of this information increases the risk of a higher cost of service resulting from greater employee compensation demands and higher costs to recruit and retain skilled employees and managers.

Attachments 5 and 6 to KPSC 2-22 should be kept confidential indefinitely until such time as the Company's compensation system is changed. At such time there will no longer be any competitive advantage to be gained from the information.

**5. Attachment 1 to KPSC 2-36.**

Attachment 1 to KPSC 2-36 includes life insurance premium rates negotiated by AEP with the Company's life insurance provider. Public disclosure of these negotiated rates would provide competitors of the Company's life insurance provider with information on how the Company's provider negotiates rates allowing those competitors to undercut the Company's provider in competitive bidding processes. 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 life insurance for its employees could be higher than it otherwise could be if the rates were negotiated.

The identified information in Attachment 1 to KPSC 2-36 should be maintained as confidential for seven years. At such time, the Company will have negotiated new life insurance premium rates and the current rates will be outdated.

**6. Attachments 2 and 3 to KPSC 2-44.**

Attachment 2 to KPSC 2-44 is the Company's 2018 federal tax return. Attachment 3 to KPSC 2-44 is the Company's 2018 Kentucky state tax return. This information is highly confidential and proprietary to the Company. Tax return information is accorded broad protection from governmental disclosure under both federal, 26 U.S.C. 6103(a)(2), and Kentucky law, KRS 131.190. It thus is exempt from disclosure under the Kentucky Open Records Act by KRS 61.878(k) and KRS 61.878(1)(l).

Given the highly confidential and proprietary nature of tax returns, and the indefinite period of protection provided by federal and state law, Attachments 2 and 3 to KPSC 2-44 should remain confidential indefinitely.

**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 2-4, KPSC 2-21, KPSC 2-22, KPSC 2-24, KPSC 2-33, KPSC 2-36, KPSC 2-42, and KPSC 2-44 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 ("AEPSC")). In addition, dissemination of the

identified information contained in Attachments 1 through 4 and 7 through 8 to KPSC 2-21 and Attachments 1 and 2 to KPSC 2-33 is restricted by the third-party vendors that compile and produce the information. 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.

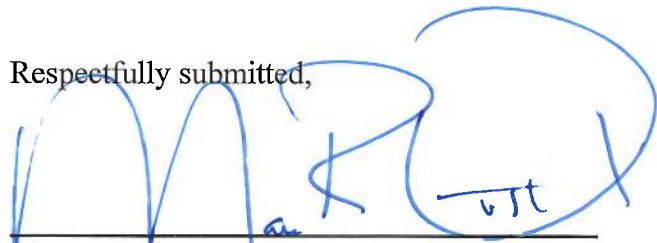
C. The Identified Information is Required to be Disclosed to an Agency.

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 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 as detailed in the table in Exhibit 1 attached hereto; and
2. Granting Kentucky Power all further relief to which it may be entitled.

Respectfully submitted,



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COUNSEL FOR KENTUCKY POWER  
COMPANY

<b>Response</b>	<b>Attachment name</b>	<b>Information for which confidential treatment is sought</b>	<b>Time period to be kept confidential</b>
KPSC 2-4	KPCO_R_KPSC_2_4_ConfidentialAttachment1	Entire attachment	20 years
KPSC 2-21	KPCO_R_KPSC_2_21_ConfidentialAttachment1	Entire attachment	5 years
KPSC 2-22	KPCO_R_KPSC_2_22_ConfidentialAttachment1	Entire attachment	5 years
KPSC 2-22	KPCO_R_KPSC_2_22_ConfidentialAttachment2	Entire attachment	5 years
KPSC 2-22	KPCO_R_KPSC_2_22_ConfidentialAttachment3	Entire attachment	5 years
KPSC 2-22	KPCO_R_KPSC_2_22_ConfidentialAttachment4	Entire attachment	5 years
KPSC 2-22	KPCO_R_KPSC_2_22_ConfidentialAttachment5	Entire attachment	Indefinitely
KPSC 2-22	KPCO_R_KPSC_2_22_ConfidentialAttachment6	Entire attachment	Indefinitely
KPSC 2-22	KPCO_R_KPSC_2_22_ConfidentialAttachment7	Entire attachment	5 years
KPSC 2-22	KPCO_R_KPSC_2_22_ConfidentialAttachment8	Entire attachment	5 years
KPSC 2-24	KPCO_R_KPSC_2_24_ConfidentialAttachment1	Highlighted portions	5 years <sup>1</sup>
KPSC 2-33	KPCO_R_KPSC_2_33_ConfidentialAttachment1	Highlighted portions	5 years <sup>2</sup>

<sup>1</sup> Kentucky Power requests that the compensation information for Named Executive Officers (as defined in the Motion for Confidential Treatment) remain confidential until it is published in AEP's annual SEC filings in March 2021. Kentucky Power requests that the remainder of the compensation information in this response attachment remain confidential for 5 years.

<sup>2</sup> See footnote 1.

## EXHIBIT 1

<b>Response</b>	<b>Attachment name</b>	<b>Information for which confidential treatment is sought</b>	<b>Time period to be kept confidential</b>
KPSC 2-36	KPCO_R_KPSC_2_36_ConfidentialAttachment1	Highlighted portions	7 years
KPSC 2-42	KPCO_R_KPSC_2_42_ConfidentialAttachment1	Highlighted portions	5 years
KPSC 2-44	KPCO_R_KPSC_2_44_ConfidentialAttachment2	Entire attachment	Indefinitely
KPSC 2-44	KPCO_R_KPSC_2_44_ConfidentialAttachment3	Entire attachment	Indefinitely