

**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)(c),(k), and (m) 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 4-102 ("KPSC 4-102");
- (2) Attachment 1 to its response to Kentucky Industrial Utility Customers, Inc. and Attorney General's Joint Data Request 1-28 ("KIUC-AG 1-28");
- (3) Attachment 1 and Attachment 2 to its response to Kentucky Industrial Utility Customers, Inc. and Attorney General's Joint Data Request 1-93 ("KIUC-AG 1-93");
- (4) Attachment 1 to its response to Kentucky Industrial Utility Customers, Inc. and Attorney General's Joint Data Request 1-97 ("KIUC-AG 1-97");
- (5) Attachment 1 to its response to Kentucky Solar Industries Association, Inc.'s Data Request 1-7 ("KYSEIA 1-7"); and
- (6) Attachment 1 to its response to Kentucky Solar Industries Association, Inc.'s Data Request 1-28 ("KYSEIA 1-28").

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

(i) competitively sensitive pricing information (Attachment 1 to KPSC 4-102 and Attachment 1 to KIUC-AG 1-97);

(ii) competitively sensitive and non-public investment information (Attachment 1 to KIUC-AG 1-28);

(iii) competitively sensitive third-party data and reports (Attachment 1 KYSEIA 1-7 and Attachment 1 KYSEIA 1-28); and

(iv) GPS coordinate locations of the Company's communications towers (Attachment 1 and Attachment 2 to KIUC-AG 1-93).

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:

(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;

(m) (1) Public records the disclosure of which 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 and limited to:

...

(f) 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;

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

1. **Attachment 1 to KPSC 4-102, Attachment 1 to KIUC-AG 1-97, Attachment 1 to KIUC-AG 1-28, Attachment 1 KYSEIA 1-7, and Attachment 1 KYSEIA 1-28.**

(i) KPSC 4-102

Attachment 1 to KPSC 4-102 contains forecasted forward pricing information that the Company utilized to determine the avoided energy costs included in its Tariff COGEN/SPP I and Tariff COGEN/SPP II. If Kentucky Power's pricing forecasts were publicly disseminated, competitors could formulate competitive bidding strategies that would hamper the Company's ability to compete, 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. 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.

Kentucky Power also 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.

The confidential information identified in Attachment 1 to KPSC 4-102 should be kept confidential through the end of 2023 (the forecast period). At such time there will no longer be any competitive advantage to be gained from the information.

(ii) KIUC-AG 1-97

Attachment 1 to KIUC-AG 1-97 contains AMI meter pricing information provided by prospective vendors, some of which already supply AMI meters to Kentucky Power affiliates. These companies offer volume discounts to the Company and its affiliates that are not generally available. The public disclosure of such confidential discounted pricing information would adversely affect the willingness of the Company's suppliers to provide discounts to the Company in the future. Competitors of the Company's suppliers could use the information to underbid the supplier while other customers could use it to demand similar discounts. Allowing competing companies to see each other's confidentially discounted prices removes the incentive to provide such competitive prices and may require that the Company and its customers pay higher costs going forward.

The confidential information identified in Attachment 1 to KIUC-AG 1-97 should be kept confidential for a period of 10 years. At such time there will no longer be any competitive advantage to be gained from the information.

(iii) KIUC-AG 1-28

Attachment 1 to KIUC-AG 1-28 contains non-public investment information and information related to prospective generation decisions, including potential plant investments and closures, that the Company used to set the non-emitting generation capacity performance measures for performance shares. Unit availability information is especially useful for competition as savvy

marketers can estimate Kentucky Power's generation position and raise generation offers if they believe Kentucky Power will be energy short, resulting in the Company paying higher prices to procure energy to serve its customers. This type of data is highly valued by competing energy marketers and traders who speculate in forward energy transactions. Using forecasted unit availability data, other parties could improve their forecast accuracy of future Kentucky Power operations and utilize the resulting intelligence to influence negatively the Company's costs of providing electricity to its customers. Such actions would ultimately raise the cost to Kentucky Power's customers.

The confidential information identified in Attachment 1 to KIUC-AG 1-28 should be kept confidential for a period of three years. At such time there will no longer be any competitive advantage to be gained from the information.

(iv) KYSEIA 1-7

Attachment 1 to KYSEIA 1-7 contains hourly solar production data provided to Kentucky Power by the developer of a potential, now-cancelled solar project in Kentucky Power's service territory. The information is proprietary to the vendor and competitively sensitive, and it was provided to Kentucky Power pursuant to a confidentiality agreement and a commitment by Kentucky Power in the RFP, in response to which the information was provided, to treat the information confidentially.

The information contained in this attachment is highly competitive and confidential, and its disclosure will result in competitive disadvantage by limiting the Company's ability to obtain valuable study data from third party vendors and maintain relationships with third party vendors. Further, this information prepared on behalf of the Company is confidential and proprietary and protected by non-disclosure agreements between AEP and the vendors preparing the data. Failure

to keep the data contained in these attachments confidential could limit the Company's ability to maintain access to this vital information.

The confidential information identified in Attachment 1 to KYSEIA 1-7 should be kept confidential for a period of two years. At such time there will no longer be any competitive advantage to be gained from the information.

(v) KYSEIA 1-28

Attachment 1 to KYSEIA 1-28 contains information relating to forecasted compliance costs associated with environmental regulations. The estimated compliance costs associated with environmental regulations represent the Company's estimate of the costs associated with possible compliance scenarios under these regulations. The cost estimates were developed using knowledge that is not readily available outside the Company, including engineering studies and pilot projects conducted for the Company by third parties at significant cost. Such information could be used by other parties to develop their own cost estimates without performing the same analysis, and incurring the same costs, that the Company performed and incurred to obtain the information. Such actions would add disproportionately to the Company's compliance costs when compared to similar companies, thus disadvantaging Kentucky Power and its customers. Competitors could also use these compliance costs to estimate the effect of compliance on Kentucky Power's costs. In the competitive PJM market, information about Kentucky Power's costs could be used by competitors to gain a competitive advantage over the Company in its daily participation in the PJM energy and ancillary services markets as well as the PJM capacity auctions, to the detriment of the Company's customers.

The Company's forecasted environmental compliance costs are not generally known or readily ascertainable by other parties through normal or proper means, and no reasonable amount of legitimate independent research could enable other parties to determine them. The confidential

nature of this data should be maintained until the compliance requirements are certain and the earlier of the date the costs are publicly disclosed or are actually incurred. The Commission previously afforded this information confidential treatment in Case No. 2019-00443.¹

Therefore, the Company requests that the identified information in its response to KYSEIA 1-28 remain confidential for 10 years, at which time the forecast will be sufficiently old as to be of little competitive value.

2. Attachment 1 and Attachment 2 to KIUC-AG 1-93.

Attachments 1 and 2 to KIUC-AG 1-93 contain GPS coordinate locations of Kentucky Power's communication towers which, if publicly disclosed, could enable third parties to disrupt the Company's ability to communicate during outages/etc. and/or present a safety hazard to Company employees (if the towers are tampered with, etc.). These attachments essentially compile the location of Kentucky Power's entire communications infrastructure in one document, similar to an index. Such an index is not otherwise publicly available or would take a significant amount of time to compile from information that is publicly available.

This information about the Company's communication system is also considered critical electric infrastructure information ("CEII"). FERC regulations define CEII as specific 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;

¹ *In the Matter of: Electronic 2019 Integrated Resource Planning Report of Kentucky Power Company*, Case No. 2019-00443, Order at 3 (July 2, 2020) (granting Kentucky Power's request for confidential treatment of the same information filed in response to the Attorney General of the Commonwealth of Kentucky's First Request for Information, Item 10).

(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.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.³ Attachments 1 and 2 to KIUC-AG 1-93 constitute CEII under the FERC definition and are protected from disclosure under the Freedom of Information Act by 18 C.F.R. § 388.112. As a result, the material is protected from disclosure by KRS 61.878(1)(k).

Attachments 1 and 2 to KIUC-AG 1-93 are also protected from disclosure under KRS 61.878(1)(m)(1)(f). In particular, the communication systems of Kentucky Power and AEP are critical to the ability of Kentucky Power to provide electrical service to its customers. 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)(1)(f). Kentucky Power seeks confidential treatment of the identified information in Attachments 1 and 2 to KIUC-AG 1-93 for an indefinite period of time, or until further order of the Commission.⁴

² 18 CFR 388.113(c)(2).

³ *Id.*

⁴ The Commission previously granted confidential treatment for an indefinite period of time, or until further order of the Commission, for similar infrastructure information. *See 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*, Case No. 2019-00443, Order at 5 (July 20, 2018) (granting Kentucky Power's request for confidential treatment of similar infrastructure information filed in response to the Attorney General of the Commonwealth of Kentucky's Second Request for Information, Item 14).

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 4-102, KIUC-AG 1-28, KIUC-AG 1-93, KIUC-AG 1-93, KIUC-AG 1-97, KYSEIA 1-7, and KYSEIA 1-28 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). In addition, dissemination of the identified information contained in Attachment 1 to KYSEIA 1-7 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.

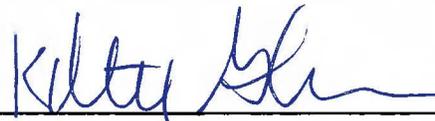
C. The Identified Information is Required to be Disclosed to an Agency.

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 for the periods indicated on **Exhibit 1** the information identified on the exhibit; 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

Response	Attachment name	Information for which confidential treatment is sought	Time period to be kept confidential
KPSC 4-102	KPCO_R_KPSC_4_102_ConfidentialAttachment1	Highlighted portions	Through the end of 2023
KIUC-AG 1-28	KPCO_R_KIUC_AG_1_28_ConfidentialAttachment1	Highlighted portions	3 years
KIUC-AG 1-93	KPCO_R_KIUC_AG_1_93_ConfidentialAttachment1	Highlighted portions	5 years
KIUC-AG 1-93	KPCO_R_KIUC_AG_1_93_ConfidentialAttachment2	Highlighted portions	Indefinitely, or until further order of the Commission
KIUC-AG 1-97	KPCO_R_KIUC_AG_1_97_ConfidentialAttachment1	Highlighted portions	10 years
KYSEIA 1-7	KPCO_R_KYSEIA_1_7_ConfidentialAttachment1	Entire attachment	2 years
KYSEIA 1-28	KPCO_R_KYSEIA_1_28_ConfidentialAttachment1	Highlighted portions	10 years