

**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 (l) for an Order granting confidential treatment to the identified portions of the following attachments to its data request responses:

(1) Attachments 2 through 7 to its response to Commission Staff Post-Hearing Data Request 17 (“KPSC PHDR 17”); and

(2) Attachment 1 to its response to the Attorney General and Kentucky Industrial Utility Customers, Inc’s (“AG-KIUC”) Post-Hearing Data Request 2 (“AG-KIUC PHDR 2”).

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

(i) the Company’s state income tax returns in Illinois, Michigan, and West Virginia for years 2018 and 2019 (Attachments 2 through 7 to KPSC PHDR 17); and

(ii) a copyrighted and non-public report prepared by a third party and provided to Kentucky Power pursuant to a paid subscription service (Attachment 1 to AG-KIUC PHDR 2).

Pursuant to 807 KAR 5:001, Section 13, Kentucky Power is filing the entirety of the affected documents under seal. Kentucky Power is also filing a public versions indicating the relevant documents are redacted in their entirety. Kentucky Power will notify the Commission in the future if the Company determines the information for which confidential treatment is sought is no longer confidential prior to the end of the period for which confidential treatment is requested herein.

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;

[...]

(l) Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential by enactment of the General Assembly, including any information acquired by the Department of Revenue in tax administration that is prohibited from divulgence or disclosure under KRS 131.190.

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

1. Attachments 2 through 7 to KPSC PHDR 17.

Attachments 2 through 7 to KPSC PHDR 17 are the Company's state income tax returns in Illinois, Michigan, and West Virginia for years 2018 and 2019. 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). Moreover, the Commission previously granted confidential treatment indefinitely to the Company's 2018 federal tax return for the same reasons in this case.¹

Given the highly confidential and proprietary nature of tax returns, and the indefinite period of protection provided by federal and state law, Attachments 2 through 7 to KPSC PHDR 17 should remain confidential indefinitely.

2. Attachment 1 to AG-KIUC PHDR 2.

Kentucky Power seeks confidential treatment for the entirety of the Typical Bills and Average Rates Report – January 1, 2020 prepared by EEI (the "Report"), which the Company is providing in response to AG-KIUC PHDR 2. The Report contains typical bills and average rates for the investor-owned utilities in all 50 states, including the rankings of those rates. The Report is prepared and copyrighted by EEI and provided to Kentucky Power pursuant to a paid subscription service. EEI has not granted Kentucky Power permission to disseminate the Report publicly. The Report is the property of EEI; it is not the property Kentucky Power or its parent, American Electric Power Company, Inc. However, Kentucky Power has been authorized by EEI to provide the report in response to AG-KIUC PHDR 2 if granted confidential treatment.

¹ See Order (Ky. P.S.C. October 26, 2020).

Kentucky Power seeks confidential treatment of the Report for a period of five years. The identified information belongs to EEI and not Kentucky Power and the subscription agreement does not place time limits on the Company's obligations. Absent a waiver of confidential treatment by EEI, the information should remain confidential for a period of five years, after which time the data will become outdated. The Commission, in this case, previously granted confidential treatment indefinitely to similar information provided to the Company as part of a paid subscription service for similar reasons.²

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 PHDR 17 and AG-KIUC PHDR 2 is highly confidential. Dissemination of the information for which confidential treatment is being requested is accorded broad protection from governmental disclosure under both federal and state law, or is restricted from public dissemination by EEI, the third-party vendor that compiles and produces the information. The Company, AEP, and its affiliates (and third party vendor 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, except in accordance with the Company's agreement to do so with EEI. 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.

² See Order (Ky. P.S.C. November 16, 2020).

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 Company's state income tax returns in Illinois, Michigan, and West Virginia for years 2018 and 2019 indefinitely;
2. According confidential status to and withholding from public inspection the Typical Bills and Average Rates Report – January 1, 2020 prepared by EEI for five years; and
3. Granting Kentucky Power all further relief to which it may be entitled.

Respectfully submitted,



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