

**COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

Electronic Application of Kentucky Power	)	
Company To Amend The Settlement Agreement	)	
Approved in Case No 2018-00035 To Provide	)	
For The One-Time Amortization Of Unprotected	)	Case No. 2020-00176
Accumulated Deferred Federal Income Tax	)	
In An Amount Sufficient To Eliminate Customer	)	
Delinquencies Greater Than 30 Days As Of May	)	
28, 2020	)	

**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 customer names as presented on the following attachment to its data request responses: KPCO\_R\_AG\_1\_1\_ConfidentialAttachment1 ("AG 1-1");

Pursuant to 807 KAR 5:001, Section 13, and the Commission's March 16, 2020 and June 16, 2020 Orders in Case No. 2020-00085, Kentucky Power separately is filing under seal those portions of the attachment containing confidential information with the confidential portions highlighted in yellow. Kentucky Power is also filing a redacted version of AG 1-1 in the public file. Kentucky Power will notify the Commission if it determines the information for which confidential treatment is sought is no longer confidential.

## **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 requests that the identified portions of AG 1-1 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;

These exceptions apply to the following information in AG 1-1, for which Kentucky Power is seeking confidential treatment:

### **B. AG 1-1.**

AG 1-1 contains the name and account number of each delinquent customer account that would be eliminated if the Company's proposal in this case is approved, along with the amount of the delinquency to be eliminated. Customer names and account numbers, and their associated delinquent amounts as of May 28, 2020, are included for each customer class: residential, commercial, and industrial. The Company seeks only to protect the customer names associated with the account numbers and delinquent amounts.

C. The Identified Residential Customer Information Contains Information of a Personal Nature Where the Public Disclosure Thereof Would Constitute a Clearly Unwarranted Invasion of Personal Privacy of Residential Customers.

The public disclosure of residential customers' names, in connection with their account numbers and bill delinquencies, would result in an unwarranted invasion of personal privacy for those customers.<sup>1</sup> Moreover, the public disclosure of residential customer names, in connection with the to-be disclosed account numbers and delinquencies, would not advance any legitimate public interest.

When determining whether an open records request constitutes a clearly unwarranted invasion of personal privacy prohibited by KRS 61.878, courts in the Commonwealth 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.* 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,

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<sup>1</sup> The confidential version of AG 1-1 is being provided to the Attorney General and Kentucky Industrial Utility Customers, Inc. pursuant to previously executed non-disclosure agreements in this case.

information “of a personal nature” is not confined to such highly confidential information such as one’s social security number or financial account number.

Here, the customer name, when associated with their account number and delinquency, is private and of a personal nature, much like, if not more so than, an individual marital status, wage rate, home address, or telephone number. Moreover, unlike the information in *Zink*, the confidential information that is the subject to this motion is not otherwise publicly available.

As to the second inquiry regarding whether the public disclosure would constitute a clearly unwarranted invasion of personal privacy, it is to be expected that residential customers would not want their financial status, including their past due debts, shared with their neighbors or the public at large. The “only relevant public interest in disclosure to be considered 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 customer names, when linked to their account numbers and associated delinquencies, is likewise nominal at best. Disclosing such information about private citizens maintained in Kentucky Power’s files reveals nothing about Kentucky Power’s own conduct, nor would it 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.

For these reasons, the identified residential customer information in AG 1-1 should be excluded from disclosure under KRS 61.878 and should therefore be afforded confidential treatment.

D. The Identified Commercial And Industrial Information is Generally Recognized as Confidential and Proprietary and its Public Disclosure Could Result in an Unfair Commercial Advantage for Competitors of Kentucky Power's Commercial and Industrial Customers And the Company.

The identified commercial and industrial customer information required to be disclosed by Kentucky Power in AG 1-1 likewise is confidential. Many of the Company's commercial and industrial customers operate in competitive national and/or global markets. Releasing the identity and associated delinquencies of specific customers could allow competitors to gain specific information regarding these customers' business operations and potentially infer information regarding these customers' finances. This information would not otherwise be known in the competitive marketplace, and the public disclosure could place Kentucky Power's commercial and industrial customers at a distinct competitive disadvantage. As a result of this competitive disadvantage, commercial and industrial customers may be less likely to locate in Kentucky Power's service territory, which will result in harm to Kentucky Power.

The Company, AEP, and their affiliates take all reasonable measures to prevent disclosure of this type of information 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.

The Commission has recognized the confidentiality of similar customer information in previous cases<sup>2</sup> and the Company asks that it follow that precedent here. Specifically, Kentucky Power requests that subject information for commercial and industrial customers be afforded confidential treatment for a period of at least ten years. After that period, the information will not longer provide commercial advantage. Kentucky Power further requests that the subject residential customer information be maintained confidentially for an indefinite period. The personal and private nature of the information will not change with the passage of time.

E. 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.

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<sup>2</sup> The Commission granted confidential treatment to similar commercial and industrial customer-specific information in its September 16, 2015 order in Case No. 2014-00396, and its October 5, 2017 order in Case No. 2017-00179. Kentucky Power is unaware of any instances where the Commission has denied confidential treatment to similar commercial and industrial customer information in other proceedings. The Commission accorded confidential treatment to residential customers' account number, usage information, and payment history in Case No. 2015-00136. The Commission denied the Company's request in that case to the extent it sought to protect the residential customers' "billing amounts for outdoor lights" because, although of a personal nature, would not result in an unwarranted invasion of the customers' privacy. The Commission's determination that the disclosure would not result in an unwarranted invasion was premised on the fact that "the relief requested by the Morrisons is a refund of the monies they paid for outdoor lighting and the Commission could be required to address this information in its final determination." Here, by contrast, the Commission can fully address the Company's application without including individual customer-specific information in its Order. Moreover, and although not specifically addressed by the Commission in its Order, the customers in Case No. 2015-00136 initiated the Commission's inquiry into their billings by filing their complaint, and thereby reasonably could anticipate the need for the Commission to address their monthly billing amounts in its Order. Here, by contrast, this matter was initiated by Kentucky Power and none of the customers could anticipate the need for the public disclosure of their names and associated account number and delinquency.

WHEREFORE, Kentucky Power Company respectfully requests the Commission to enter an Order:

1. According confidential status to and withholding for the periods indicated above the identified information from public inspection; and
2. Granting Kentucky Power all further relief to which it may be entitled.

Respectfully submitted,



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