

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

In the Matter of:

Electronic Investigation Of The Service, Rates And)
Facilities Of Kentucky Power Company) Case No. 2021-00370

**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) and (k) for an Order granting confidential treatment to the identified portions of certain sections of the Sellers Disclosure Letter, which is being produced as part of the Stock Purchase Agreement requested by the Commission as Attachment 1 to its response to Commission Staff Post-Hearing Data Request 1-1 (“KPSC 1-1”).

Pursuant to 807 KAR 5:001, Section 13, Kentucky Power is filing under seal those portions of the Sellers Disclosure Letter containing confidential information with the confidential portions highlighted in yellow. Kentucky Power is also filing redacted versions of the document. 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;

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

1. Sections of the Sellers Disclosure Letter for which confidential treatment is sought.

(i) Portions of Section 2.4(b) - Consents and Approvals; No Violations (Contractual)

The indicated portions of Section 2.4(b) concern certain provisions of the Big Sandy Firm Transportation Service Agreement between Kentucky Power and Columbia Gas Transmission, LLC; references to consent needed for certain Master Lease Agreements; and references to consent needed for certain tower lease arrangements.

(1) Information related to the Big Sandy Firm Transportation Service Agreement

If information concerning the indicated provisions of the Big Sandy Firm Transportation Service Agreement between Kentucky Power and Columbia Gas Transmission, LLC were made public, it could affect Kentucky Power's future negotiations and agreements with third party gas suppliers.

The confidential information identified in portions of Section 2.4(b) related to the Big Sandy Firm Transportation Service Agreement should be kept confidential through the end of September 2022 to allow Kentucky Power to address with Columbia Gas Transmission, LLC any

concerns giving rise to the aforementioned provisions. After such time there will no longer be any potential competitive injury to Kentucky Power as a result of the information.

(2) Information related to Master Lease Agreements

Disclosure of information related to consent needed for certain Master Lease Agreements could undermine commercial negotiations related to the notices and/or consents that need to be obtained. It could also undermine the Company's ability to obtain favorable terms with other providers of similar arrangements and/or other utilities competing for similar arrangements (especially given current supply chain issues for various items) by revealing the potential terms of transactions.

The information identified in portions of Section 2.4(b) related to Master Lease Agreements should be kept confidential for five years, after which time there will no longer be any competitive advantage to be gained.

(3) Information related to tower lease agreements

Disclosure of information related to consents needed for certain tower lease agreements could undermine commercial negotiations related to the notices/consents that need to be obtained. It could also undermine the Company's ability to obtain favorable terms with other providers of similar arrangements and/or other utilities competing for similar arrangements (especially given current supply chain issues for various items) by revealing the potential terms of transactions. The indicated confidential information also identifies specific equipment needed by the company that could provide vendors leverage in commercial negotiations.

The information identified in portions of Section 2.4(b) related to tower lease agreements should be kept confidential for five years, after which time the information will no longer be any competitive advantage to be gained.

(ii) Portions of Section 2.7(c) - Sufficiency of Assets

The indicated portions of Section 2.7(c) contain the respective dollar amount book values of certain coal lands owned by Indiana Michigan Power Company and Kentucky Power. If information concerning the book value of the coal lands were publicly disclosed, it could harm Kentucky Power and Indiana Michigan Power Company's bargaining leverage if the property is offered for sale in the future. Potential third party purchasers could tailor their offers to a lower amount than they otherwise may offer if they knew the companies' respective book values of the properties, resulting in financial harm to Kentucky Power and/or Indiana Michigan Power Company.

The confidential information identified in portions of Section 2.7(c) should be kept confidential through January 2026, at which time the stated book values will be of little or no value to potential purchasers.

(iii) Portions of Section 2.8(a) - Material Contracts of the Acquired Companies

The indicated portions of Section 2.8(a) contain information related to: the development of a solar project; the terms of a sale of a particular piece of real property owned by the Company that are not publically available to date; and the potential sale of an AEP non-utility subsidiary.

(1) Information related to the solar project

The indicated portions of Section 2.8(a) that relate to a solar project and reference contracts that contain confidential pricing provisions and, as such, are competitively sensitive. Disclosure of the information could harm the Company's ability to negotiate terms for this or similar projects in the future as developers and other utilities looking to build similar facilities could use this information to outbid or undercut future agreements. More specifically,

developers could use the information as a basing point for future negotiations to get more favorable terms, which could increase the Company's cost of providing service. Other entities looking to build similar projects could use this information to undercut the Company's pursuit of renewable projects in the future as they could use the confidential information as a basing point.

The confidential information identified in portions of Section 2.8(a) related to the solar project should be kept confidential for five years, at which time the information will be of little or no competitive value developers and other utilities looking to build similar facilities.

(2) Information related to the sale of a particular piece of real property

The indicated portions of Section 2.8(a) that relate to the sale of a particular piece of real property include references to the terms of a sale of Company-owned real property that are not publically available to date. Disclosure of this information could provide potential future buyers of Company-owned property with a basing point for future negotiations and could enable them to secure more favorable terms when purchasing the Company's property in the future. Disclosure would also undercut any on-going negotiations for the sale of Company property as potential buyers could use these confidential terms to negotiate more favorable terms on their own purchases.

The confidential information identified in portions of Section 2.8(a) related to the sale of a particular piece of real property should be kept confidential for five years, or until the sale becomes public record, whichever is sooner. At such time, the information will be of little or no competitive value to potential future purchasers of Company-owned real property.

(3) Information related to the potential sale of an AEP non-utility subsidiary

The indicated portions of Section 2.8(a) that relate to the potential sale of an AEP non-utility subsidiary include confidential terms of the potential sale, the final terms of which have

not been executed and are not public knowledge. Public disclosure of the potential sale would enable competitors of the non-utility subsidiary to contact the subsidiary's customers and attempt to acquire their business. In turn, such disclosure and its effects could negatively impact AEP, and in turn, Kentucky Power by undermining the sale process. Further, such competitive harm to AEP in connection with the sale could increase Kentucky Power's costs.

The confidential information identified in portions of Section 2.8(a) related to the potential sale of an AEP subsidiary should be kept confidential for one year, or until the sale has closed and becomes public record, whichever is sooner. At such time, the information will be of little or no competitive value to competitors seeking to acquire this subsidiary's customers.

(iv) The Entirety of Section 2.8(b) - Material Contracts – Enforceability

Section 2.8(b) is comprised of information related to a notice received from one of Kentucky Power's suppliers. If the notice and the information contained therein were made public, it could reveal confidential details of the operation of that supplier's business. Other suppliers of the same resource review disclosures like the Seller Disclosure Letter, and if those suppliers have access to the type of information contained in Section 2.8(b), then it could cause such suppliers to price their resources differently for Kentucky Power, to Kentucky Power's and its customers' disadvantage.

The confidential information identified in portions of Section 2.8(b) should be kept confidential indefinitely until such time as the issues contained in the notice can be resolved. Kentucky Power will notify the Commission when this information no longer is considered confidential.

(v) Portions of Section 2.13(f) - Sellers Benefit Plans – Triggering Events Caused by the Agreement

The indicated portions of Section 2.13(f) contain information related certain employee benefits that may be triggered by the sale of Kentucky Power. This information is generally seen as confidential given that disclosure of this information could reveal both individual compensation arrangements and private information, and could trigger an increase in employee attraction and retention costs as well as increase operational risk for the Company, while undermining employee relations.

The large majority of employees who were not party to certain employee benefits such as those indicated in Section 2.13(f), or who received such a benefit at a lesser value, could be more likely to resign if they are not also provided with the same or more of such benefit. This would undermine the objective of this particular employee benefit by increasing employee attrition risk, particularly among key positions and increase costs and risk to the Company. Public disclosure of these employee benefits also could increase future employee attraction and retention costs for the Company due to increased risk that employees' names and compensation will become public information, and removing those who value the privacy of this information from the Company's perspective workforce.

Moreover, providing other employers with access to details of specific employee benefits like those described in Section 2.13(f) could convey certain information regarding the value of certain Kentucky Power employees who the Company considers to be particularly key and/or an attrition risk. Disclosure also could provide specific employment cost details that could be used to less-expensively recruit such employees to other employment opportunities.

The confidential information identified in portions of Section 2.13(f) should be kept confidential for five years, after which time the information will be of little or no competitive value.

(vi) The Entirety of Section 2.15 - Taxes

Section 2.15 is comprised of information related to Kentucky Power's income taxes and other tax information. 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 return¹ and the Company's state income tax returns in Illinois, Michigan, and West Virginia for years 2018 and 2019² for the same reasons in Case No. 2020-00174.

Given the highly confidential and proprietary nature of tax returns, and the indefinite period of protection provided by federal and state law, the information comprising Section 2.15 should remain confidential indefinitely.

(vii) Portions of Section 4.1(a) - Conduct of Business

The indicated portions of Section 4.1(a) includes: terms of a sale of a particular piece of real property owned by the Company that is not publically available to date; forecasted fuel

¹ Order, *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 Regulatory Assets And Liabilities; (4) Approval Of A Certificate Of Public Convenience And Necessity; And (5) All Other Required Approvals And Relief*, Case No. 2020-00174 (Ky. P.S.C. October 26, 2020).

² Order, *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 Regulatory Assets And Liabilities; (4) Approval Of A Certificate Of Public Convenience And Necessity; And (5) All Other Required Approvals And Relief*, Case No. 2020-00174 (Ky. P.S.C. December 23, 2020).

needs and fuel costs; information related to the development of a solar project; and tax-related information of Kentucky Power and Wheeling Power Company.

(1) Information related to the sale of a particular piece of real property

The information contained in Section 4.1(a) related to the sale of a particular piece of real property is the same type of information contained in Section 2.8(a) of the Seller Disclosure Letter, for which confidential protection is sought herein above (in Section A(1)(iii)(2)). In the interest of the Commission's time and resources, the arguments contained in that section above are incorporated herein by reference.

(2) Information related to forecasted fuel needs and fuel costs

The indicated portions of Section 4.1(a) that relate to forecasted fuel needs and fuel costs contain details of certain contracts that provide highly sensitive data about the costs of the Company's generating units. If disclosed publically, the Company's competitors could use this information to gain a competitive advantage over the Company in its daily participation of the in the PJM energy and ancillary service markets, as well as the PJM capacity auctions and other electricity market activities. This detailed information is not provided publically and could lead to direct harm to the Company and its customers in the form of higher energy costs and capacity costs.

The confidential information identified in portions of Section 4.1(a) related to forecasted fuel needs and fuels costs should be kept confidential for five years, after which the information will be of little or no competitive value in PJM auctions and markets.

(3) Information related to the solar project

The information contained in Section 4.1(a) related to the solar project is the same type of information contained in Section 2.8(a) of the Seller Disclosure Letter, for which confidential

protection is sought herein above (in Section A(1)(iii)(1)). In the interest of the Commission's time and resources, the arguments contained in that section above are incorporated herein by reference.

(4) Information related to tax-related information of Kentucky Power and Wheeling Power Company

The information contained in Section 4.1(a) related to tax-related information of Kentucky Power and Wheeling Power Company is the same type of information contained in Section 2.15 of the Seller Disclosure Letter, for which confidential protection is sought herein above (in Section A(1)(vi)). In the interest of the Commission's time and resources, the arguments contained in that section above are incorporated herein by reference.

(viii) Portions of Section 4.8(b) - Intercompany Arrangements – Power Coordination

The indicated portions of Section 4.8(b) contain the estimated capacity position of Kentucky Power as part of the Bridge Power Coordination Agreement. If this information is made publicly available, it could put Kentucky Power at a competitive disadvantage if it becomes necessary to purchase third party capacity. Third parties could price capacity purchased through PPAs higher if they have access to information concerning the Company's actual capacity position or its needs in PJM for certain years. These potential additional capacity costs also could increase costs for customers.

The confidential information identified in portions of Section 4.8(b) should be kept confidential through May 2024, which is the end of the 2023/2024 PJM Capacity Period, after which the information will be of little or no competitive value.

(ix) Portions of Section 4.20(a) - Mitchell Operator Assets

The indicated portions of Section 4.20(a) contain information related to a third party letter agreement. The public disclosure of the existence and terms of this third party letter

agreement could negatively impact ongoing negotiations between Kentucky Power and another entity, harming Kentucky Power's ability to engage in fair and competitive transactions to the benefit of both parties to the negotiations and, ultimately, to the Company's customers.

The confidential information identified in portions of Section 4.20(a) should be kept confidential for five years or until the date the letter agreement is terminated, whichever is earlier, after which time the negotiations should be complete and an agreement is anticipated to be reached with this entity.

(x) The Entirety of Section 4.20(e)

Section 4.20(e) is comprised of information related to agreements made between Kentucky Power and AEP Generation Resources Inc. in the event Kentucky Power's interest in the Mitchell Plant is transferred to Wheeling Power Company in accordance with the New Mitchell Plant Ownership Agreement.³ Public disclosure of the existence and terms of these agreements could lead to entities with which Kentucky Power has contracted in the past seeking additional consideration for those past agreements without any basis to do so. It could also lead those entities to seek modification(s) to past agreements, which could become more costly to Kentucky Power to the disadvantage of Kentucky Power and its customers.

The confidential information identified in Section 4.20(e) should be kept confidential through December 31, 2028, after which Kentucky Power will no longer have an ownership interest in the Mitchell Plant.

³ Kentucky Power currently is seeking all necessary approvals from the Commission for the New Mitchell Plant Operating Agreement and New Mitchell Plant Operations and Maintenance Agreement in Case No. 2021-00421.

(xi) The Entirety of Section 9.2(a) - Certain Indemnification

Matters

Section 9.2(a) is comprised of information related to potential claims with respect to the matters identified regarding Kentucky Power and/or its affiliates. Information regarding potential claims against Kentucky Power, or any company, is generally considered to be confidential and could contain information regarding legal positions, which is also considered confidential and/or privileged. Disclosure of the information could harm the company's legal position or make it more likely that legal action will be taken against the Company or its affiliates. The matters could also be misinterpreted as representing admissions, which they are not, which could negatively affect the reputation of Kentucky Power or its affiliates.

The confidential information identified in Section 9.2(a) should remain confidential for a period of five years, after which time the matters described therein should be fully resolved.

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 1-1 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). The Company, AEP, and its affiliates 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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Section of Seller Disclosure Letter	Brief description of confidential material	Information for which confidential treatment is sought	Time period to be kept confidential
2.4(b)	Information related to Big Sandy Firm Transportation Service Agreement	Highlighted portions	Through September 2022
2.4(b)	Information related to Master Lease Agreements	Highlighted portions	5 years
2.4(b)	Information related to tower lease agreements	Highlighted portions	5 years
2.7(c)	Book value of certain coal lands	Highlighted portions	Through January 2026
2.8(a) 4.1(a)	Information related to the development of a solar project	Highlighted portions	5 years
2.8(a) 4.1(a)	Information related to the sale of a particular piece of real property	Highlighted portions	5 years or until the sale becomes public record
2.8(a)	Information related to the potential sale of an AEP non-utility subsidiary	Highlighted portions	1 year or until the sale becomes public record
2.8(b)	Notice received from Kentucky Power supplier	Entire section	Until such time as the issue can be resolved. Kentucky Power will notify.
2.13(f)	Information related to employee benefits	Highlighted portions	5 years

Section of Seller Disclosure Letter	Brief description of confidential material	Information for which confidential treatment is sought	Time period to be kept confidential
2.15 4.1(a)	Tax information	Entire section	Indefinitely
4.1(a)	Information related to forecasted fuel needs and fuel costs	Highlighted portions	5 years
4.8(b)	Estimated capacity position of Kentucky Power	Highlighted portions	Through May 2024
4.20(a)	Information related to a third party letter agreement	Highlighted portions	5 years, or until the date the letter agreement is terminated
4.20(e)	Information related to agreements made between Kentucky Power and AEP Generation Resources Inc.	Entire section	Through December 31, 2028
9.2(a)	Potential claims against Kentucky Power and/or affiliates	Entire section	5 years