

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

In the Matter of:

Electronic Tariff Filing Of Kentucky Power Company)
For Approval Of A Special Contract With Ebon) Case No. 2022-00387
International, LLC)

**Kentucky Power Company's Motion
For Confidential Treatment**

Kentucky Power 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 following:

- a) the identified portions of KPCO_R_KPSC_1_4_Attachment1 (Attachment 1 to KPSC 1-4);
- b) the identified portions of KPCO_R_KPSC_1_9_Attachment1 (Attachment 1 to KPSC 1-9);
- c) the identified portions of KPCO_R_KPSC_1_9_Attachment2 (Attachment 2 to KPSC 1-9);
- (d the identified portions of the Company's written responses to AG-KIUC 1-30, 1-31, 1-32, 1-33, and 1-34;
- e) the identified portions of KPCO_R_AG_KIUC_1_24_Attachment1 (Attachment 1 to AG-KIUC 1-24);
- f) the identified portions of KPCO_R_AG_KIUC_1_25_Attachment1 (Attachment 1 to AG-KIUC 1-25); and
- g) the entirety of KPCO_R_JI_1_8_Attachment1 (Attachment 1 to JI 1-8).

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 or, where an entire document is confidential, is filing the entire document under seal. Kentucky Power is also filing public versions of the relevant documents. 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.

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

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

Attachment 1 to KPSC 1-4 contains Ebon International, LLC's ("Ebon") anticipated planned additions in load for the years 2023 through 2037. This is confidential information regarding future customer operations that Kentucky Power obtains through communication with the customer. The information is used by the Company to better plan for resource needs. If this information were disclosed, Kentucky Power's customers would be reluctant to share such information in the future, which would harm Kentucky Power's ability to properly plan to meet customer load. This would lead to inefficient planning and more expensive service for all customers as a result.

In addition to the potential harm to Kentucky Power associated with disclosure of this information, Ebon is in a competitive industry, and it must plan appropriately to continue

providing services and attracting and retaining business in its respective market, including its competitors outside of Kentucky Power's service territory. If competitors were to know the future expansion/reduction plans of Ebon, competitors could use that information (which is not otherwise publicly disclosed) to plan their own expansions/reductions in a way that would not be possible in the absence of such disclosure, or to otherwise unfairly compete with Ebon.

The Commission has granted confidential protection to similar information in the past.¹ The Company requests that the identified information in Attachment 1 to KPSC 1-4 remain confidential through December 31, 2037, at which time the information will no longer be of any competitive value.

2. Attachment 1 to KPSC 1-9, Attachment 2 to KPSC 1-9, and the Company's written responses to AG-KIUC 1-30, 1-31, 1-32, 1-33, and 1-34.

Attachment 1 to KPSC 1-9 and Attachment 2 to KPSC 1-9 provide the supporting calculations to ERRATA BKW-Exhibit 2 (marginal cost study), which include the estimated expected revenues from Ebon for Phase 1 and Phase 2 of the proposed Special Contract, as well as the Floor Price (as defined in the proposed Special Contract). The Company's written responses to AG-KIUC 1-30, 1-31, 1-32, 1-33, and 1-34 contain confidential responses to AG-KIUC's data requests that reference confidential pricing information contained in the Special Contract and the West Testimony.

Kentucky Power sought confidential treatment as part of its initial filing of all confidential pricing information contained in the Special Contract between the Company and Ebon, Exhibit 1 to the Special Contract, and the Direct Testimony of Brian K. West ("West Testimony"). Kentucky Power now seeks confidential treatment of the identified information

¹ See Order, *In the Matter of: Electronic 2019 Integrated Resource Planning Report Of Kentucky Power Company*, Case No. 2019-00443 (Ky. P.S.C. July 2, 2020).

contained in Attachment 1 to KPSC 1-9 and Attachment 2 to KPSC 1-9 for those same reasons, as the estimated expected revenues from Ebon for Phase 1 and Phase 2 and the Floor Price also constitute confidential pricing information. Kentucky Power likewise now seeks confidential treatment of the identified information contained the Company's written responses to AG-KIUC 1-30, 1-31, 1-32, 1-33, and 1-34 , as they also constitute confidential pricing information

As further supported by the West Testimony at pages 13-16, both Kentucky Power and Ebon seek confidential treatment of the confidential pricing information identified in Attachment 1 to KPSC 1-9, Attachment 2 to KPSC 1-9, and the Company's written responses to AG-KIUC 1-30, 1-31, 1-32, 1-33, and 1-34. Whether mining cryptocurrencies or providing data processing services to other high-tech business described above, Ebon operates in a highly competitive industry in which cost information is highly protected for competitive advantage. The cryptocurrency mining and data services industry is driven by access to power with the cost of electric power accounting for over 90 percent of the operational costs of providing such services.² Consequently, Ebon seeks to maintain confidentiality regarding the cost of power it obtains from Kentucky Power under the Special Contract. Similar to other industrial customers (steel, aluminum, pulp and paper), Ebon needs to maintain confidentiality regarding the cost of the commodities and services it competes to sell. Ebon will suffer injury by any public release of the confidential portions of the Special Contract because its competitors will gain access to the most sensitive information regarding its cost of operations.

Moreover, the identified confidential information reflects the confidential strategy Kentucky Power used to negotiate the Special Contract and design its rates. The disclosure of such information would jeopardize the Company's ability to fairly negotiate future special

² See <https://www.reuters.com/article/us-markets-bitcoin-mining-idUSKCN0ZO2CW> (last accessed December 28, 2022).

contracts. Making the negotiated rates public would establish a ceiling for future rates negotiated with other similar customers looking to locate in Kentucky Power's service territory, or potentially for existing customers asking to establish new rates through special contracts. Common sense and experience teach that future prospects will demand rates that meet or are less than the Ebon rates. Kentucky Power might be faced with meeting or beating the rates in the Special Contract or risk losing the prospective new business. In addition, existing customers also could seek similar rates with respect to both existing and any expanded load. This means that the confidential rate information cannot be disclosed to existing customers or to the more general public.

The confidential information identified in Attachment 1 to KPSC 1-9, Attachment 2 to KPSC 1-9, and the Company's written responses to AG-KIUC 1-30, 1-31, 1-32, 1-33, and 1-34 should be kept confidential for the entire term of the Special Contract, including any extensions of the contract term. After such time there will no longer be any competitive advantage to be gained from the information.

3. Attachment 1 to AG-KIUC 1-24 and Attachment 1 to AG-KIUC 1-25.

Attachment 1 to AG-KIUC 1-24 and Attachment 1 to AG-KIUC 1-25 contain competitive market information related to customer loads and company demand. This information can be used to determine market pricing, as competitors of Kentucky Power can use this information to alter their prices based on load data.

Public disclosure of this information could adversely affect Kentucky Power and its customers by providing data that could provide a competitive advantage to Kentucky Power's direct competitors thereby affecting Kentucky Power's ability to minimize costs for its rate paying customers.

The confidential information identified in Attachment 1 to AG-KIUC 1-24 and Attachment 1 to AG-KIUC 1-25 should be kept confidential for a period of five years. After such time there will no longer be any competitive advantage to be gained from the information.

4. Attachment 1 to JI 1-8.

Attachment 1 to JI 1-8 is comprised of the lease between Kentucky Power and Ebon for the proposed Ebon Facility. The lease should be granted confidential protection in its entirety for two reasons. First, the lease is subject to a non-disclosure agreement between Kentucky Power and Ebon. Second, the lease contains confidential pricing information, the public disclosure of which would jeopardize the Company's ability to fairly negotiate such leases or other contracts in the future.

The Company incorporates its arguments detailed in Section 2, *supra*, in support of its request for confidential treatment of the lease because it contains confidential pricing information.

The Company also would suffer competitive injury if the lease were to be disclosed publicly because it is subject to a non-disclosure agreement between the Company and Ebon. If the Commission were to deny confidential protection to the lease, Ebon, and other potential future customers, will be less likely to engage in confidential negotiations with the Company in the future because those negotiations may later be disclosed publicly, regardless of the existence of a non-disclosure agreement. As such, public disclosure could impede Kentucky Power's ability to fairly negotiate contracts and other agreements in the future, thereby reducing Kentucky Power's bargaining position and causing entities to be less likely to engage in discussions to locate in the Company's service territory in the future.

The entirety of Attachment 1 to JI 1-8 should be kept confidential for the entire term of the Special Contract, including any extensions of the contract term. After such time there will no longer be any competitive advantage to be gained from the information.

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 contained in the attachments detailed herein is highly confidential and competitively sensitive. 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") and the affected operating company affiliates). The Company, AEP, and its affiliates take all reasonable measures to prevent its disclosure to the public as well as persons within the Company 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 in Attachment 1 to KPSC 1-4 through December 31, 2037;
2. According confidential status to and withholding from public inspection the identified information in Attachment 1 to KPSC 1-9, Attachment 2 to KPSC 1-9, and the Company's written responses to AG-KIUC 1-30, 1-31, 1-32, 1-33, and 1-34 for the entire term of the Special Contract, including any extensions of the contract term;
3. According confidential status to and withholding from public inspection the identified information in Attachment 1 to AG-KIUC 1-24 and Attachment 1 to AG-KIUC 1-25 for a period of five years;
4. According confidential status to and withholding from public inspection the entirety of Attachment 1 to JI 1-8 for the entire term of the Special Contract, including any extensions of the contract term; and
5. Granting Kentucky Power all further relief to which it may be entitled.

Respectfully submitted,



Katie M. Glass
STITES & HARBISON PLLC
421 West Main Street
P. O. Box 634
Frankfort, Kentucky 40602-0634
Telephone: (502) 223-3477
Facsimile: (502) 223-4124
kglass@stites.com
COUNSEL FOR KENTUCKY POWER
COMPANY