

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

In the Matter of:

An Electronic Examination Of The Application Of)	
The Fuel Adjustment Clause Of Kentucky Power)	
Company From November 1, 2020 Through October)	Case No. 2023-00008
31, 2022)	

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

- (1) The entirety of Attachment 1 to its response to Commission Staff Post Hearing Data Request 1 (“PHDR-1”);
- (2) The identified portions of Attachment 1 to its response to Commission Staff Post Hearing Data Request 8 (“PHDR-8”);
- (3) The identified portions of Attachment 2 to its response to Commission Staff PHDR-8;
- (4) The identified portions of Attachment 3 to its response to Commission Staff PHDR-8;
- (5) The identified portions of Attachment 1 to its response to Commission Staff Post Hearing Data Request 9 (“PHDR-9”);
- (6) The identified portions of Attachment 2 to its response to Commission Staff PHDR-9; and
- (7) The identified portions of Attachment 3 to its response to Commission Staff PHDR-9.

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.

This exception applies to the following information for which Kentucky Power is seeking confidential treatment:

2 Attachment 1 to PHDR-1.

Attachment 1 to PHDR-1 includes information identifying the Company's operational and marketing strategy including forecasts of Kentucky Power's undivided share of the coal to be consumed (in tons) at the Mitchell generating station and the corresponding costs. Such information is competitively-sensitive, proprietary, and used by Kentucky Power in the pricing of its competitive products. Although Kentucky Power's retail rates are regulated by the Commission, the Company makes substantial sales through PJM Interconnection, LLC of

electric energy into the competitive interstate wholesale electricity market. If Kentucky Power's operation and cost projections are publicly known, competitors and suppliers can formulate competitive bidding strategies that will hamper the Company's ability to compete against them, cause Kentucky Power's units to operate or sell less, and ultimately cost more to operate, thereby resulting in higher costs for the Company's customers.

Kentucky Power requests that the information in Attachment 1 to PHDR-1 be treated as confidential and withheld from public disclosure for two years when the information will be superseded by time.

2. Attachment 1, Attachment 2, and Attachment 3 to PHDR-8.

Kentucky Power seeks confidential treatment for the identified portions of Attachment 1, Attachment 2, and Attachment 3 to PHDR-8. These attachments include information and analysis used by the Company as part of its coal procurement strategy. Such information is competitively-sensitive, proprietary, and used by Kentucky Power in determining timing of requests for proposals for coal and the amount sought in such requests. If this information were publicly disclosed, coal suppliers can formulate competitive bidding strategies that will hamper the Company's ability to obtain the best prices for coal, thereby resulting in higher costs for the Company's customers.

The confidential information identified in Attachment 1, Attachment 2, and Attachment 3 to PHDR-8 should be kept confidential indefinitely. The information in Attachment 1, Attachment 2, and Attachment 3 to PHDR-8 provide insight into the manner in which the company strategically determines to seek coal from the market. Disclosure of the strategic process at any time will provide coal suppliers with information that could be used to develop

bidding strategies that harm the Company's customers. The Company will inform the Commission if confidential treatment of this information is no longer required.

3. Attachment 1, Attachment 2, and Attachment 3 to PHDR-9.

Kentucky Power seeks confidential treatment for the identified portions of Attachment 1, Attachment 2, and Attachment 3 to PHDR-9. These attachments include information, including key pricing and business terms, provided to the Company by non-selected¹ third parties in response to written solicitations. The information also provides insight into the manner by which Kentucky Power evaluates bids in response to coal-supply solicitations.

Additionally, the information contained in the attachments was designated as confidential by the bidders responding to the solicitations. Disclosure of this information to the Commission is not prohibited, but the protections afforded by confidential treatment are required. Failure to maintain this information as confidential may have a chilling effect on the willingness of future bidders to submit responses to Kentucky Power coal-supply solicitations.

The confidential information identified in Attachment 1, Attachment 2, and Attachment 3 to PHDR-9 should be kept confidential for five years. After five years, changes in the commodities market will mean that the chilling effect of the disclosure of the information will have passed. Prior disclosure will adversely affect the Company's ability to obtain competitive bids in future coal-supply solicitations to the detriment of the Company and its customers. The Commission granted confidential treatment to similar information in past cases² and most recently in the Company's last 6-month FAC review case.³

¹ The Company is not seeking confidential treatment for the information in green highlight within the attachment, which represents the published Argus market pricing at the time the RFP was issued for the stated specification of coal, as this information is not considered confidential.

² Order, *In the Matter of: Electronic Examination Of The Application Of The Fuel Adjustment Clause Of Kentucky*

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 the confidential attachments identified above 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 AEPSC). 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 at 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.

Power Company From November 1, 2016 Through October 31, 2018, Case No. 2019-00002 (Ky. P.S.C. January 7, 2020); Order, *In the Matter of: Electronic Examination Of The Application Of The Fuel Adjustment Clause Of Kentucky Power Company From November 1, 2018 Through April 30, 2019*, Case No. 2019-00226 (Ky. P.S.C. March 30, 2020).

³ Order, *In the Matter of: Electronic Examination Of The Application Of The Fuel Adjustment Clause Of Kentucky Power Company From November 1, 2021 Through April 30, 2022*, Case No. 2022-00263 (Ky. P.S.C. February 17, 2023).

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

1. According confidential status and withholding Attachment 1 to PHDR-1 from public inspection for a period of two years;
2. According confidential status and withholding Attachment 1, Attachment 2, and Attachment 3 to PHDR-8 from public inspection indefinitely;
3. According confidential status and withholding Attachment 1, Attachment 2, and Attachment 3 to PHDR-9 from public inspection for a period of five years; and
4. Granting Kentucky Power all further relief to which it may be entitled.

Respectfully submitted,



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