

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

In the Matter of:

Electronic 2022 Integrated Resource Planning Report )	Case No. 2023-00092
Of Kentucky Power Company )	

**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 or data request responses themselves:

- (1) the identified portions of Attachment 1 to its response to Commission Staff Data Request 2-7 (“KPSC 2-7”);
- (2) the entirety of Attachment 1 to its response to Attorney General and Kentucky Industrial Utility Customers, Inc.’s (“AG-KIUC”) Data Request 2-7 (“AG-KIUC 2-7”);
- (3) the identified portions of Attachment 2 to its response to AG-KIUC 2-7;
- (4) the identified portions of Attachment 1 to its response to AG-KIUC Data Request 2-13 (“AG-KIUC 2-13”); and
- (5) the identified portions of the Company’s written response to Joint Intervenors, Mountain Association, Appalachian Citizens Law Center, Kentuckians for the Commonwealth, and Kentucky Solar Energy Society (“Joint Intervenors”) Data Request 2-11 (“JI 2-11”).

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:

#### **1. Attachment 1 to KPSC 2-7.**

Attachment 1 to KPSC 2-7 contains customer-specific projected demand and energy information. This information constitutes confidential information regarding future customer operations that Kentucky Power obtains through communication with the customer(s). 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, these customers are in competitive industries, and must plan appropriately to continue providing services and attracting and retaining business in their respective markets,

including competitors outside of Kentucky Power's service territory. If competitors were to know the future expansion/reduction plans of these customers, 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 these customers.

The confidential information identified in Attachment 1 to KPSC 2-7 should be kept confidential for a period of 10 years. At such time there will no longer be any competitive advantage to be gained from the information.

**2. Attachment 1 to AG-KIUC 2-7.**

Attachment 1 to AG-KIUC 2-7 is comprised of a copy of the bilateral capacity contract between Kentucky Power and a third party seller for PJM delivery years 2024/25 and 2025/26. Although the Company has made public the cost per MW of capacity to be purchased during the 2024/25 and 2025/26 PJM delivery years, this contract document and all of its other terms are confidential. The contract is the result of contract negotiations conducted under obligation of confidentiality. The seller is the owner of a competitive generation resource within PJM, and maintains, as a matter of course, all of its energy contracts as confidential. Kentucky Power also maintains its energy agreements as confidential, which is customary for the power industry. The contract represents the byproduct of Kentucky Power's lengthy negotiations and specifically tailored provisions in this agreement that are unique to this particular generation resource and Kentucky's capacity plan. Maintaining the confidentiality of this information provides Kentucky Power with more flexibility in subsequent RFPs, related to the terms and conditions appropriate for a given product and the credit requirements associated therewith. For these reasons, the public disclosure of this contract would cause competitive harm to Kentucky Power and may chill or impede the Company's ability to enter into similar contracts in the future.

The information contained in the contract specific to the 2024/25 PJM delivery year should be kept confidential until the end of that delivery year, or until June 1, 2025. The information contained in the contract specific to the 2025/26 PJM delivery year and all other remaining information in the contract should be kept confidential until the end of that delivery year, or until June 1, 2026. After that time, the information will become publicly available or otherwise discernible and the need for confidential protection by this Commission will no longer exist.

**3. Attachment 2 to AG-KIUC 2-7.**

Attachment 2 to AG-KIUC 2-7 contains information, including key pricing and business terms, provided to the Company by third parties in response to written solicitations for short-term capacity market solicitations. The information also provides insight into the manner by which Kentucky Power evaluates responses to such solicitations.

Additionally, the information contained in the attachment 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 is vital, because if it were to be made public, any owner of capacity in the relevant markets could potentially utilize this data to influence their offers in future solicitations. Public disclosure may also have a chilling effect on the willingness of future bidders to submit responses to Kentucky Power short-term capacity market solicitations. In either event, public disclosure could increase the Company's cost of service and have adverse impacts on ratepayers.

The confidential information identified in Attachment 2 to AG-KIUC 2-7 should be kept confidential for five years. After five years, changes in the capacity 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 short-term capacity market solicitations to the detriment of the Company and its customers.

**4. Attachment 1 to AG-KIUC 2-13.**

Attachment 1 to AG-KIUC 2-13 contains confidential unit specific operational data including items such as coal contract costs, outage rates, heat rates, energy output, fuel costs, O&M costs, and other rates that could result in the associated identification of confidential data.

The rise of competitive markets such as PJM has placed a premium on generating unit data, including but not limited to, outage rates, heat rates, energy output, fuel costs, and O&M costs. This data could be used by competitors in the PJM energy market to enhance their market offers in such a way that it could displace the Company's generation. The detail of the information provides highly sensitive data about the unique operation, costs, and performance of the Company's generating units. If disclosed publicly, the Company's competitors would be able to use this information to gain a competitive advantage over the Company in its daily participation in the PJM energy and ancillary service markets, as well as other electricity market activities. The Company's unit-specific performance data is not generally known or readily ascertainable by other parties through normal or proper means. No reasonable amount of legitimate independent research could enable other parties to determine it.

Additionally, Kentucky Power competitively bids coal contracts as needed, and to the extent a supplier knows what Kentucky Power's coal price forecast is, that knowledge could enable a supplier to make a less competitive coal offer in response to a future request for proposals that it otherwise would. If offers are less competitive than they otherwise would be, Kentucky Power and its customers will be harmed through higher costs than would otherwise be incurred.

Finally, Kentucky Power derives independent economic value from the subject information not being generally known to, and not being readily ascertainable by other persons who can obtain economic value from its disclosure or use. Accordingly, Kentucky Power would be placed at a competitive disadvantage vis-à-vis other electric utilities buying and selling in the wholesale market if required to disclose the information publicly.

The confidential information identified in Section 1 should be kept confidential for the forecast period, or through 2037. After such time, there will no longer be any competitive advantage to be gained from the information.

#### **5. The Company's Written Response To JI 2-11.**

The identified portions of the request and the identified portions of the Company's written response to subparts (a), (b), and (c) of JI 2-11 contain a discussion of the confidential material provided previously in Attachments 1 and 2 to JI 1-18.<sup>1</sup> Those attachments, and the identified portions of the Company's response to JI 2-11, contain customer-specific projected load information. This information constitutes confidential information regarding future customer operations that Kentucky Power obtains through communication with the customer(s). 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, these customers are in competitive industries, and must plan appropriately to continue providing services and attracting and retaining business in their respective markets,

---

<sup>1</sup> The Company sought confidential treatment of this information by its Motion for Confidential Treatment filed herein on June 23, 2023.

including competitors outside of Kentucky Power's service territory. If competitors were to know the future expansion/reduction plans of these customers, 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 these customers.

The confidential information identified in the Company's written response to subparts (a), (b), and (c) of JI 2-11 should be kept confidential for a period of 10 years. At 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 required to be disclosed by Kentucky Power in the above-referenced responses and attachments 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 ("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 as detailed in the table in **Exhibit 1** attached hereto; and
2. 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  
[kglass@stites.com](mailto:kglass@stites.com)

COUNSEL FOR KENTUCKY POWER  
COMPANY



<b>Response</b>	<b>Attachment name</b>	<b>Information for which confidential treatment is sought</b>	<b>Time period to be kept confidential</b>
KPSC 2-7	KPCO_R_KPSC_2_7_ConfidentialAttachment1	Highlighted portions	10 years
AG-KIUC 2-7	KPCO_R_AG-KIUC_2_7_ConfidentialAttachment1	Entire document	See Motion for Confidential Treatment at 4.
AG-KIUC 2-7	KPCO_R_AG-KIUC_2_7_ConfidentialAttachment2	Highlighted portions	5 years
AG-KIUC 2-13	KPCO_R_AG-KIUC_2_13_ConfidentialAttachment1	Highlighted portions	Through December 31, 2037
JI 2-11(a), (b), and (c)	N/A	Highlighted portions	10 years