

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY UTILITIES)
COMPANY FOR APPROVAL OF SPECIAL) CASE NO. 2023-00123
CONTRACT BETWEEN KENTUCKY)
UTILITIES COMPANY AND BLUEOVAL SK,)
LLC)

PETITION OF KENTUCKY UTILITIES COMPANY
FOR CONFIDENTIAL PROTECTION

Kentucky Utilities Company (“KU” or the “Company”) hereby petitions the Kentucky Public Service Commission (“Commission”) pursuant to KRS 278.160(3), KRS 61.878(1)(c), 807 KAR 5:011, Sections 13, 14, and 807 KAR 5:001, Section 13 to grant confidential protection to the information described herein, which the Company seeks to provide in Exhibit 1 to the Application. In support of this Petition, the Company states as follows:

Applicable Standards

1. KRS 278.160, which pertains to public filing and display of rates, specifically provides that “[t]he provisions of this section do not require disclosure or publication of a provision of a special contract that contains rates and conditions of service not filed in a utility’s general schedule if such provision would otherwise be entitled to be excluded from the application of [Kentucky’s Open Records Act] under the provisions of KRS 61.878(1)(c)1.”
2. 807 KAR 5:001, Section 14 permits a utility to request confidential treatment of special contracts filed with the Commission, which are made and reviewed pursuant to 807 KAR 5:001, Section 13(3).
3. Under the Kentucky Open Records Act, the Commission is entitled to withhold from public disclosure commercially sensitive information to the extent that open disclosure would

permit an unfair commercial advantage to competitors of the entity disclosing the information to the Commission. See KRS 61.878(1)(c). Public disclosure of the information identified herein would, in fact, prompt such a result for the reasons set forth below.

Confidential Terms of the Special Contract

4. *The Special Contract for Electric Service Between Kentucky Utilities and BlueOval SK, LLC*, executed February 24, 2023 (the “special contract”) is attached as Exhibit 1 to the Application. The highlighted portions of Appendix A to the special contract contain the agreed upon demand rates BlueOval SK, LLC (“BlueOval SK”) will pay Company for retail electric service to BlueOval SK’s new battery production facilities at the Glendale Megasite located in Hardin County, Kentucky.

5. The highlighted portions of Appendix A to Application Exhibit 1 contain special contract demand rates, which constitute sensitive financial information meriting confidential treatment. The special contract demand charge rates are the product of extensive negotiations between representatives of BlueOval SK and KU and reflect tradeoffs and concessions by both parties.¹

6. Specifically, the negotiated demand rates contained in the special contract are a product of numerous factors unique to this customer and this project, including the expected load profile of the battery plants, variable cost coverage and contribution to fixed costs, and the size of the BlueOval SK load.²

7. The rate information is commercially sensitive and public disclosure of that information would impair KU’s ability to negotiate future customer contracts. If disclosed, KU anticipates the special contract rates would establish a specific target for future negotiations with

¹ Direct Testimony of Michael E. Hornung, at p.11.

² *Id.*

other industrial and commercial enterprises looking to locate in KU's service territory. That data point could impair KU's ability to negotiate future contracts on terms that are advantageous to KU or to KU's other customers.³ Moreover, existing customers with different load characteristics than BlueOval SK could use the special contract rates to seek the same or similar rate treatment. The Commission has regularly granted confidential protection of special contract rate information to prevent other customers of a utility—both new and existing—from gaining unfair commercial advantage in future negotiations with the utility.⁴

8. Public disclosure of the special contract rates would further prejudice KU by allowing its competitors to know the prices at which KU is willing to sell energy and capacity, which they could then use to underbid KU or cause KU to offer a lower rate than would otherwise be required in the absence of public disclosure to secure a prospective customer.⁵ This would, in turn, place KU at a commercial disadvantage in its economic development efforts to attract commercial and industrial customers to its service territory, to the detriment of KU's customers and the residents in its service territory. The Commission has recognized the unfair commercial injury to retail utilities that results from public disclosure of the rates and rate-related information

³ *Id.* at p. 11.

⁴ See, e.g., *In the Matter of: Valley Gas, Inc. Request for Approval of a Special Contract with Mago Construction Company and a Deviation from the Gas Cost Adjustment Clause*, Case No. 2014-00368, Letter Motion at 1 (Ky. PSC Oct. 3, 2014) (seeking confidential of the rate contained in a special contract in part because public disclosure “would allow other large volume customers to use that information as the ‘ceiling’ in any future contract negotiations that they might have with [the servicing utility]”); *Id.*, Order at 4 (Ky. PSC Oct. 28, 2014) (granting the servicing utility’s request for confidential protection of the special contract rate); *Electronic Application of Kentucky Power Company for Approval of a Contract for Electric Service with Braidy Industries, Inc.*, Case No. 2018-00418, Order at 2 (Ky. PSC Aug. 20, 2019) (granting confidential protection of the rate contained in a special contract where “public disclosure of the contract rate would result in unfair commercial injury to Kentucky Power by establishing a ceiling for future negotiations with industrial and commercial enterprises looking to locate in the company’s service territory”); *Application of East Kentucky Power Cooperative for Approval of Special Contract Between EKPC, Owen Electric Cooperative, and Gallatin Steel Company*, Case No. 2013-00174, Order at 1-2 (Ky. PSC April 8, 2014) (granting confidential information to special contract rate information where disclosure “could provide an unfair commercial advantage to potential new industrial customers of [the servicing utility]”).

⁵ Hornung Direct Testimony, at p. 11.

of special contracts.⁶ The public disclosure of this information would create precisely the kind of competitive harm KRS 61.878(1)(c)(1) intends to prevent. Thus, the Commission should grant confidential protection to this information.

9. The information for which KU is seeking confidential treatment is not publicly available, nor may it be reasonably discerned through lawful means. This information is made available only upon a confidential need-to-know basis that does not extend beyond those employees or representatives of KU and BlueOval SK with a legitimate business need to know and act upon the information.

10. If the Commission disagrees with this request for confidential protection, it must hold an evidentiary hearing (a) to protect KU's due process rights and (b) to supply the Commission with a complete record to enable it to reach a decision with regard to this matter.⁷

11. KU is submitting to the Commission one electronic copy that identifies with highlighting the information for which confidential protection is sought. Pursuant to the Commission's March 24, 2020 Order in Case No. 2020-00085, KU will e-mail the unredacted version noting the confidential information with highlighting to PSCED@ky.gov.

12. KU requests that the information be kept confidential and shielded from public disclosure for a duration of five (5) years from the effective date of the special contract, as that is the amount of time necessary before the confidential information will no longer have special commercial value and need to protect it will cease.


⁶ See, e.g., *Electronic Application of Kentucky Power Company for Approval of a Contract for Electric Service with Braidly Industries, Inc.*, Case No. 2018-00418, Order at 2 (Ky. PSC Aug. 20, 2019); *In the Matter of: The Filing of a Special Contract by Natural Energy Utility Corporation*, Case No. 2018-00164, Order at 2 (Ky. PSC Sep. 6, 2018).

⁷ *Utility Regulatory Commission v. Kentucky Water Service Company, Inc.*, 642 S.W.2d 591, 592-94 (Ky. App. 1982).

WHEREFORE, Kentucky Utilities Company respectfully requests that the Commission grant confidential protection for all of the information described herein for a period of five (5) years from the effective date of the special contract.

Dated: April 14, 2023

Respectfully submitted,

By: 

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CERTIFICATE OF COMPLIANCE

In accordance with the Commission’s Order of July 22, 2021 in Case No. 2020-00085 (Electronic Emergency Docket Related to the Novel Coronavirus COVID-19), this is to certify that the electronic filing has been transmitted to the Commission on April 14, 2023; and that there are currently no parties in this proceeding that the Commission has excused from participation by electronic means.



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