

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 response to the Commission’s Data Requests 1-1 and 1-4. 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 Data in the Responses to the Commission's
First Requests for Information Dated June 5, 2023**

4. The Excel files attached to KU's responses Commission data requests numbered 1-1 and 1-4 and all tabs therein contain BlueOval SK, LLC (BlueOval SK)'s billing determinants and billing calculations for the individual projected 12 months of 2026 and demand revenues, and other customer-specific information, including projected demand and usage, from which billing determinants or pricing can be derived. Such customer-specific information is personal information the public disclosure of which would result in an unwarranted invasion of privacy.

5. The Excel file attached to KU's response to Commission data request numbered 1-4 also contains financial modeling using projections of what the Company expects to pay and receive for commodities they buy and sell like fuel and coal combustion residuals. If the Commission grants public access to this information, KU could be disadvantaged in negotiating contracts to buy or sell these commodities in the future. The Company could also be disadvantaged in the wholesale energy market because fuel costs are important components of energy pricing. All such commercial harms would ultimately harm KU's customers, who would have to pay higher rates if the disclosed information resulted in higher fuel prices or adversely affected the Company's off-system energy sales.

6. The Commission has recently and consistently given confidential treatment to similar customer specific information¹ and commercially-sensitive pricing forecast information.²

7. 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.

8. 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.³

9. Pursuant to 807 KAR 5:001, Section 13(2)(b), for the Excel files attached to Commission request numbers 1-1 and 1-4, KU is providing written notification that the entire documents are confidential. Pursuant to the Commission's March 24, 2020 Order in Case No. 2020-00085, KU will file copies of the confidential attachments by e-mail to PSCED@ky.gov.

10. 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

¹ See, e.g., Case Nos. 2020-00349 and 2020-00350, Order at 10 (Ky. PSC Dec. 7, 2021) (granting confidential protection for customer-specific usage information); *Application of Duke Energy Kentucky, Inc. for: (1) An Adjustment of the Electric Rates; (2) Approval of an Environmental Compliance Plan and Surcharge Mechanism; (3) Approval of New Tariffs; (4) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; and (5) All Other Required Approvals and Relief*, Case No. 2017-00321, Order (Ky. PSC May 3, 2018) (granting confidential protection to specific customer account information, including account numbers and billing data); *Application of Kentucky Utilities Company for an Adjustment of its Electric Rates*, Case No. 2012-000221, Order at 1-2 (Ky. PSC July 25, 2013) (granting confidential protection to customer names, account numbers, and usage information).

² See, e.g., Case Nos. 2020-00349 and 2020-00350, Order (PSC Ky. Dec. 7, 2021) (granting confidential protection for fuel prices and variable O&M data); *Electronic 2018 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company*, Case No. 2018-00348, Order (Ky. PSC Nov. 16, 2018).


³ *Utility Regulatory Commission v. Kentucky Water Service Company, Inc.*, 642 S.W.2d 591, 592-94 (Ky. App. 1982).

the amount of time necessary before the confidential information will no longer have special commercial value and need to protect it will cease.

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: June 23, 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 June 23, 2023; and that there are currently no parties in this proceeding that the Commission has excused from participation by electronic means.



Gerald R. Niess
Counsel for Kentucky Utilities Company