

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

In the Matter of:

Electronic Application Of Kentucky Power Company	)	
For (1) A General Adjustment Of Its Rates For	)	
Electric Service; (2) Approval Of Tariffs And Riders;	)	
(3) Approval Of Accounting Practices To Establish	)	Case No. 2023-00159
Regulatory Assets And Liabilities; (4) A	)	
Securitization Financing Order; And (5) All Other	)	
Required Approvals And Relief	)	

**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)(k), for an Order granting confidential treatment to the entirety of Exhibit LMS-R3 to the Rebuttal Testimony of Linda M. Schlessman, which is comprised of the statement filed by American Electric Power Company, Inc. (“AEP”) on behalf of itself and its affiliates, including Kentucky Power, with the Internal Revenue Service (“IRS”) pursuant to Revenue Procedure 2017-47 concerning the Company’s standalone net operating loss (“NOL”) deferred tax asset at issue in this case.

Pursuant to 807 KAR 5:001, Section 13, Kentucky Power is filing the confidential exhibit under seal. Kentucky Power is also filing a public version of the exhibit. Kentucky Power will notify the Commission when it determines the information for which confidential treatment is sought is no longer confidential.

**I. MOTION FOR CONFIDENTIAL TREATMENT**

A. 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 exhibit be excluded from the public record and public disclosure.

KRS 61.878(1) excludes from the Open Records Act:

(k) All public records or information the disclosure of which is prohibited by federal law or regulation;

This exception applies to Exhibit LMS-R3, for which Kentucky Power is seeking confidential treatment.

**1. Exhibit LMS-R3.**

Exhibit LMS-R3 is comprised of the statement filed by AEP on behalf of itself and its affiliates, including Kentucky Power, with the IRS pursuant to Revenue Procedure 2017-47 concerning the Company’s standalone NOL deferred tax asset at issue in this case. This information is highly confidential and proprietary to AEP, Kentucky Power, and its affiliates. The statement filed pursuant to Revenue Procedure 2017-47 (Exhibit LMS R-2) constitutes “tax return information” under federal law. Tax return information is accorded broad protection from governmental disclosure, including by state officers and employees, under federal law, 26 U.S.C. 6103(a)(2). It thus is exempt from disclosure under the Kentucky Open Records Act by KRS 61.878(k).

Specifically, 26 U.S.C. 6103(a) mandates:

Returns and return information shall be confidential, and except as authorized by this title—

(2) no officer or employee of any State, any local law enforcement agency receiving information under subsection (i)(1)(C) or (7)(A), any local child support enforcement agency, or any local agency

administering a program listed in subsection (1)(7)(D) who has or had access to returns or return information under this section or section 6104(c)

shall disclose any return or return information obtained by him in any manner in connection with his service as such an officer or an employee or otherwise or under the provisions of this section. For purposes of this subsection, the term “officer or employee” includes a former officer or employee.

“Return information” is defined by federal law as:

a taxpayer’s identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer’s return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense.<sup>1</sup>

The statement filed pursuant to Revenue Procedure 2017-47 that comprises Exhibit LMS R-3 contains Kentucky Power and its affiliates’ respective taxpayer identities and other return information. The information comprising Exhibit LMS-R3 therefore constitutes “return information,” for which federal law mandates confidential treatment pursuant to 26 U.S.C. 6103(a). The Commission has previously granted confidential treatment to similar tax return information in Kentucky Power’s last base rate case for reasons similar to those set forth above.<sup>2</sup>

Given the highly confidential and proprietary nature of tax returns and return information, and the indefinite period of protection provided by federal and state law, the information contained in Exhibit LMS-R3 should remain confidential indefinitely.

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<sup>1</sup> 26 U.S.C. 6103(b)(2)(A).

<sup>2</sup> See Order, *In The Matter Of: Electronic Application Of Kentucky Power Company For (1) A General Adjustment Of Its Rates For Electric Service; (2) Approval Of Tariffs And Riders; (3) Approval Of Accounting Practices To Establish Regulatory Assets And Liabilities; (4) Approval Of A Certificate Of Public Convenience And Necessity; And (5) All Other Required Approvals And Relief*, Case No. 2020-00174 (Ky. P.S.C. October 26, 2020).

B. The Identified Information is Generally Recognized as Confidential and Proprietary.

The identified information required to be disclosed by Kentucky Power in this case 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”). The Company, AEP, and its affiliates take all reasonable measures to prevent its disclosure to the public as well as persons within the Company and third-party vendors 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 regulations 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 information contained in Exhibit LMS-R3 indefinitely; and
2. Granting Kentucky Power all further relief to which it may be entitled.

Respectfully submitted,



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