

**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)(c), and (k), 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 Data Request 3-24 (“KPSC 3-24”);
- (2) The entirety of Attachment 1 to its response to Commission Staff Data Request 3-42 (“KPSC 3-42”);
- (3) The entirety of Attachments 1, 2, 3, 4, and 5 to its response to Commission Staff Data Request 4-20 (“KPSC 4-20”);
- (4) The entirety of Attachment 2 to its response to Attorney General and Kentucky Industrial Utility Customers, Inc.’s (“AG-KIUC”) Data Request 2-10 (AG-KIUC 2-10); and
- (5) The identified portions of Attachment 2 to its response to 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.

...

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

These exceptions apply to the following information for which Kentucky Power is seeking confidential treatment:

1. **Attachment 1 to KPSC 3-24.**

Attachment 1 to KPSC 3-24 illustrates the calculation of peak and off-peak hedge positions for the month of December 2023. This information includes the Company's projected on- and off-peak loads and the Company's capacity needs and market position.

Public disclosure of the confidential information would allow commercial counterparties of Kentucky Power to derive information about the specific needs and market position of the Company. With this information, the commercial counterparties could increase the price of their

offers to Kentucky Power, resulting in higher rates to be charged to customers and in increased cost of service. Specifically, the information can be used to undermine Kentucky Power's ability to negotiate terms, particularly price, due to the knowledge by sellers about the magnitude of the Company's needs and market position. Additionally, public disclosure of the confidential information could affect participation by counterparties to any solicitation by Kentucky Power for capacity, particularly in light of the relatively concentrated market structure.

The information contained in Attachment 1 to KPSC 3-24 should be kept confidential through December 31, 2023. After such time, there will no longer be any competitive advantage to be gained from the information.

2. Attachment 1 to KPSC 3-42.

Attachment 1 to KPSC 3-42 illustrates the market price for 2024 and 2025 vintage year National Wind and National Solar RECs. The forward price estimates are prepared by a third party and the Company obtains this forecast information as part of a paid service with the third party. The Company is prohibited by its subscription agreement with the third party from disclosing the forecast information publicly. The breach of the subscription agreement by the public disclosure of the information for which confidential treatment is requested could result in competitive commercial injury to Kentucky Power through the Company's loss of the ability to obtain the information in future for use.

In addition, public disclosure of the confidential information could put the Company at a competitive negotiating disadvantage if commercial counterparties (sellers) knew what the Company thought it would pay with respect to these RECs. With this information, the commercial counterparties could modify the price of their offers, ultimately resulting in increased cost of service for Kentucky Power's customers.

The information contained in Attachment 1 to KPSC 3-42 should be kept confidential through December 31, 2029. After such time, there will no longer be any competitive advantage to be gained from the information.

3. Attachment 1 to KPSC 4-20.

Attachment 1 to KPSC 4-20 is comprised of a copy of the engagement agreement between Kentucky Power and Goldman Sachs & Co. LLC (“Goldman”). The agreement is the result of negotiations conducted under obligation of confidentiality. Goldman maintains its engagement agreements as confidential. Kentucky Power likewise maintains these kinds of engagement agreements as confidential. The agreement represents the byproduct of Kentucky Power’s negotiations and the tailored provisions of the agreement. Maintaining the confidentiality of this information provides Kentucky Power with more flexibility in subsequent consultant engagements related to the terms and conditions appropriate for a given project. For these reasons, the public disclosure of this agreement would cause competitive harm to Kentucky Power and may chill or impede the Company’s ability to enter into similar agreements in the future.

The information contained in Attachment 1 to KPSC 4-20 should be kept confidential for a period of five years. After such time, there will no longer be any competitive advantage to be gained from the information.

4. Attachments 2, 3, 4, and 5 to KPSC 4-20.

Attachments 2, 3, 4, and 5 to KPSC 4-20 are comprised of the responses to the Company’s request for proposals for the role of structuring advisor in connection with this proceeding and the securitization process. Kentucky Power competitively bids advisor contracts as needed. These attachments include information, including key pricing and business terms,

provided to the Company in response to written solicitations. The information also provides insight into the manner by which Kentucky Power evaluates bids in response to advisor solicitations. Additionally, the information contained in these 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 advisor solicitations. In addition, 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.

The information contained in Attachments 2, 3, 4, and 5 to KPSC 4-20 should be kept confidential for a period of five years. After such time, there will no longer be any competitive advantage to be gained from the information.

5. Attachment 2 to AG-KIUC 2-10.

Attachment 2 to AG-KIUC 2-10 contains Kentucky Power's Kentucky taxable income and deductions on the corresponding Kentucky state tax returns, which constitutes confidential tax return information. This information is highly confidential and proprietary to the Company. Tax return information is accorded broad protection from governmental disclosure under both federal, 26 U.S.C. 6103(a)(2), and Kentucky law, KRS 131.190. It thus is exempt from disclosure under the Kentucky Open Records Act by KRS 61.878(k) and KRS 61.878(1)(l). The Commission previously granted confidential treatment to similar information in Kentucky Power's last base rate case for the reasons set forth above.¹

¹ 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).

Given the highly confidential and proprietary nature of tax returns, and the indefinite period of protection provided by federal and state law, Attachment 2 to AG-KIUC 2-10 should remain confidential indefinitely.

6. Attachment 2 to JI 2-11.

Attachment 2 to JI 2-11 includes information related to the need for the Mitchell Unit 2 Air Heater Basket Replacement Project, including a financial analysis summary and economic analysis assumptions. This report provides insight regarding how the Company and its affiliates model the financial value of availability improvements in the Financial Analysis Summary and Economic Analysis Assumptions section. If this information became publicly available, it could give competitors an advantage by providing them with insights into the Company's financial health and strategy. It could also impact the perception of investors and stockholders, potentially influencing stock prices and investment decisions. Maintaining this information as confidential can also give the Company more leverage in the future when negotiating with suppliers, contractors, or other stakeholders for similar projects. Knowledge of this information by other potential transactional parties would establish certain benchmarks in future negotiations, thereby potentially increasing costs incurred by such utilities and passed on to customers. Moreover, the identified confidential information is not generally known or readily ascertainable by other parties through normal or proper means. No reasonable amount of legitimate independent research could yield the identified confidential information to other parties.

The information contained in Attachment 2 to JI 2-11 should be kept confidential for a period of 18 years. A period of 18 years will provide the required time needed to prevent competitors from identifying financial trends and/or projecting the Company's future financial

health. After 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 pursuant to Commission regulations 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 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 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
Fax: (502) 560-5377
kglass@stites.com

Kenneth J. Gish, Jr. (KBA #93970)
K&L GATES LLP
300 South Tryon Street, Suite 1000
Charlotte, North Carolina 28202
Telephone: (704) 331-7424
Fax: (704) 353-3124
ken.gish@klgates.com

COUNSEL FOR KENTUCKY POWER
COMPANY

| Response | Attachment name | Information for which confidential treatment is sought | Time period to be kept confidential |
|-----------------|---------------------------------------------|---------------------------------------------------------------|--------------------------------------------|
| KPSC 3-24 | KPCO_R_KPSC_3_24_ConfidentialAttachment1 | Entire attachment | Through December 31, 2023 |
| KPSC 3-42 | KPCO_R_KPSC_3_42_ConfidentialAttachment1 | Entire attachment | Through December 31, 2029 |
| KPSC 4-20 | KPCO_R_KPSC_4_20_ConfidentialAttachment1 | Entire attachment | 5 years |
| KPSC 4-20 | KPCO_R_KPSC_4_20_ConfidentialAttachment2 | Entire attachment | 5 years |
| KPSC 4-20 | KPCO_R_KPSC_4_20_ConfidentialAttachment3 | Entire attachment | 5 years |
| KPSC 4-20 | KPCO_R_KPSC_4_20_ConfidentialAttachment4 | Entire attachment | 5 years |
| KPSC 4-20 | KPCO_R_KPSC_4_20_ConfidentialAttachment5 | Entire attachment | 5 years |
| AG-KIUC 2-10 | KPCO_R_AG_KIUC_2_10_ConfidentialAttachment2 | Entire attachment | Indefinitely |
| JI 2-11 | KPCO_R_JI_2_11_ConfidentialAttachment2 | Highlighted portions | 18 years |