

**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)(a), (c), and (k), for an Order granting confidential treatment to the identified portions of the following attachments to its data request responses:

- (1) Attachment 1 to its response to Commission Staff Data Request 1-4 (“KPSC 1-4”);
- (2) Attachments 1, 2, and 3 to its response to Commission Staff Data Request 1-22 (“KPSC 1-22”);
- (3) Attachment 1 to its response to Commission Staff Data Request 1-24 (“KPSC 1-24”);
- (4) Attachment 1 to its response to Commission Staff Data Request 1-33 (“KPSC 1-33”); and
- (5) Attachments 2 and 3 to its response to Commission Staff Data Request 1-44 (“KPSC 1-44”).

Specifically, Kentucky Power seeks confidential treatment of information relating to:

- (i) confidential and proprietary information regarding the Company’s internal accounting procedures (Attachment 1 to KPSC 1-4);
- (ii) reports summarizing analysis of the Company’s executive compensation (Attachment 1 to KPSC 1-22);

(iii) studies prepared by third-party vendors relating to the market-competitiveness of the Company's compensation packages (Attachments 2 and 3 KPSC 1-22);

(iv) the non-public, personal compensation information for the Company's executive officers and other employees (Attachment 1 to KPSC 1-24 and Attachment 1 to KPSC 1-33); and

(v) the Company's 2021 federal tax return and the Company's 2021 Kentucky state tax return (Attachments 2 and 3 to KPSC 1-44).

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. Kentucky Power is also filing redacted versions of the affected documents. 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 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:

(a) Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.

...

(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 1-4.

Attachment 1 to KPSC 1-4 includes information concerning the Company's internal accounting procedures. The Company's internal accounting procedures constitute proprietary and trade secret information. The procedures embody sensitive business operations procedures, which if made available, would potentially harm American Electric Power Company, Inc. ("AEP") and Kentucky Power. Public disclosure would provide competitors with insight into the internal operations of AEP, which they could then use and incorporate into their own business strategies, to the detriment of AEP and its customers.

Employees are instructed that the information is available only for internal use. The current version of the policies and procedures is published in summarized form only in external financial reports filed with the SEC and/or other required parties.

The Commission previously granted confidential treatment to similar information for other utilities for the reasons set forth above.¹ An earlier version of AEP's internal accounting policies and procedures was publicly filed in Case No. 2017-00179. Since then, the policies and procedures have been revised and supplemented in part and thus differ in material respects from what previously was publicly disclosed. The Company is seeking confidential treatment for the current version of its internal accounting policies and procedures only. The Commission

¹ See Case No. 2019-00271 *In the Matter of: Electronic Application of Duke Energy Kentucky, Inc. for 1) An Adjustment of the Electric Rates; 2) Approval of New Tariffs; 3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; and 4) All Other Required Approvals and Relief* (Ky. PSC April 29, 2020); Case No. 2018-00358 *In the Matter of: Electronic Application of Kentucky American Water Company for an Adjustment of Rates* (Ky. PSC March 14, 2019); Case No. 2017-00321 *In the Matter of: Electronic Application of Duke Energy Kentucky, Inc. for 1) An Adjustment of the Electric Rates; 2) Approval of an Environmental Compliance Plan; 3) Approval of New Tariffs; 3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; and 4) All Other Required Approvals and Relief* (Ky. PSC May 4, 2018).

previously granted confidential treatment to similar information in Kentucky Power's last base rate case for the reasons set forth above.²

Advancements in search technology have made the public posting of the Company's internal accounting policies more accessible and thereby increased the risk of competitive injury. Where, in the past, the information was available only by an item by item search of the Company's data request responses, they are now available through searches performed using internet search engines. Kentucky Power therefore requests that the Commission treat as confidential the entirety of Attachment 1 to KPSC 1-4 for these reasons. Attachment 1 to KPSC 1-4 should remain confidential for 20 years, or until further Order of this Commission.

2. Attachment 1 to KPSC 1-22.

Attachment 1 to KPSC 1-22 provides reports summarizing analysis of the Company's executive compensation. This report includes detailed individual executive compensation that is not already public information, including analysis showing how the Company determines compensation for executives. Without the protections afforded by confidential treatment, other businesses could obtain information that would provide an unfair advantage in recruiting and retaining these executives, and current and prospective executives could obtain an advantage in negotiating their compensation with the Company.

This information is highly sensitive, even internally within the Company, and is only available on a need-to-know basis. Public disclosure of this information is likely to result in competitive disadvantage through increased costs and a loss of negotiating ability for the Company. Disclosure of this information increases the risk of a higher cost of service resulting

² 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).

from greater employee compensation demands and higher costs to recruit and retain skilled executives. The Commission previously granted confidential treatment to similar information in Kentucky Power's last base rate case for the reasons set forth above.³

Attachment 1 to KPSC 1-22 should be kept confidential for a period of five years, which should provide sufficient time for market conditions to change and the information to become outdated.

3. Attachments 2 and 3 to KPSC 1-22.

Kentucky Power seeks confidential treatment for the entirety of Attachments 2 and 3 to KPSC 1-22. The Company previously sought confidential treatment of excerpts of Attachments 2 and 3 to KPSC 1-22 (provided as Exhibit ARC-10 and Exhibit ARC-11, respectively, to the Direct Testimony of Company Witness Carlin);⁴ it now seeks confidential treatment of these studies being provided as Attachments 2 and 3 to KPSC 1-22. The Company hereby incorporates the arguments made in its June 29, 2023 Motion for Confidential Treatment with respect to Exhibit ARC-10 and Exhibit ARC-11 as if fully restated herein.

The studies are performed and supporting data obtained by a third party vendor regarding the market-competitiveness of the Company's employee benefit package. The information they contain is highly competitive, confidential and proprietary to a third party, and its disclosure will result in competitive disadvantage by impeding the Company's ability to recruit and retain employees, design and adjust competitive employee benefits, and obtain reliable information in the future about the competitiveness of the Company's employee benefits.

The studies were prepared on behalf of the Company, are confidential and proprietary and protected by non-disclosure agreements and/or intellectual property rights agreements between

³ *Id.*

⁴ *See* Motion for Confidential Treatment filed herein on June 29, 2023.

AEP and the vendors preparing the studies. Failure to keep the studies confidential could limit the Company's ability to maintain access to these vital studies and could result in financial loss to the vendors, which they may seek to recover from the Company.

For each employment position within the Company and AEP there is competition for talent and qualified candidates. It is an industry standard among utilities and other businesses of similar scope and magnitude to protect the confidentiality of information such as that at issue in this response. Without this protection, other businesses will obtain information that will provide an unfair advantage in recruiting and retaining skilled and qualified workers, managers, professionals, and executives without paying for such information. The Commission previously granted confidential treatment to similar information in Kentucky Power's last base rate case for the reasons set forth above.⁵

In addition, pursuant to the vendor agreement, the third party vendor that developed Attachment 3 to KPSC 1-22 has not authorized Kentucky Power to share copy of the information, even confidentially. The third party vendor authorized Kentucky Power to share that attachment confidentially only by making an electronic copy available for viewing by Commission Staff and those intervenors who have executed a non-disclosure agreement with the Company. Those wishing to view Attachment 3 to KPSC 1-22 may make an appointment with the undersigned counsel to view the information electronically at the offices of Stites & Harbison PLLC, 421 W. Main Street, Frankfort, KY 40601.

⁵ 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).

The Company requests that the information contained in Attachments 2 and 3 to KPSC 1-22 be afforded confidential treatment for a period of five years, which should provide sufficient time for market conditions to change and the information to become outdated.

3. Attachment 1 to KPSC 1-24 and Attachment 1 to KPSC 1-33.

Attachment 1 to KPSC 1-24 and Attachment 1 to KPSC 1-33 include non-public compensation information for Kentucky Power's executive officers and other employees. There are timing and methodology differences between Attachment 1 to KPSC 1-24 and the compensation information provided in annual filings with the Securities and Exchange Commission ("SEC") of the Company's parent, American Electric Power Company, Inc. ("AEP") for executive officers of AEP. Therefore, the Company is requesting confidential treatment for the compensation of "Named Executive Officers" in the Company's past proxy statements as well as that of other executives and other employees. The compensation information for the Named Executive Officers included in Attachment 1 to KPSC 1-24 and Attachment 1 to KPSC 1-33 for 2023 also may contain certain assumptions regarding forward-looking earnings-related information and stock-based information, and, accordingly, Kentucky Power is required to maintain the confidentiality of the information under SEC regulations until the information is included in publicly filed documents. Review of this information on a confidential basis could subject the reviewer to confidentiality and insider information obligations and restrictions under SEC rules.⁶

In addition, personal compensation for the Company's executive officers and other employees is kept confidential. This confidential employee compensation information, if disclosed, would enable competitors to attempt to recruit key Company and AEP personnel and

⁶ 17 C.F.R. 240.10b-5.

would compromise AEP's and the Company's position in negotiating employee compensation terms. This is especially true for high-level management and highly specialized personnel. This information is highly sensitive, even internally within the Company, and is only available on a need-to-know basis. Public disclosure of this information is likely to result in increased costs and a loss of negotiating ability for the Company. Disclosure of this information also increases the risk of a higher cost of service resulting from greater employee compensation demands and higher costs to recruit and retain skilled employees and managers. The Commission previously granted confidential treatment to similar information in Kentucky Power's last base rate case for the reasons set forth above.⁷

The personal compensation information in Attachment 1 to KPSC 1-24 and Attachment 1 to KPSC 1-33 should remain confidential for five years. After five years, the labor market will have changed sufficiently and there will no longer be any competitive advantage to gain from the information. The Commission previously granted confidential treatment to similar information in Kentucky Power's last base rate case for the reasons set forth above.⁸

5. Attachments 2 and 3 to KPSC 1-44.

Attachment 2 to KPSC 1-44 is the Company's 2021 federal tax return. Attachment 3 to KPSC 1-44 is the Company's 2021 Kentucky state tax return. 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

⁷ 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).

⁸ 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).

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.⁹

Given the highly confidential and proprietary nature of tax returns, and the indefinite period of protection provided by federal and state law, Attachments 2 and 3 to KPSC 1-44 should remain confidential indefinitely.

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 response to KPSC 1-4, KPSC 1-22, KPSC 1-24, KPSC 1-33, and KPSC 1-44 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")). In addition, dissemination of the identified information contained in Attachment 2 of KPSC 1-22 is restricted by the third-party vendors that compile and produce the information. The Company, AEP, and its affiliates (and third party vendors where applicable) 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.

⁹ *Id.*

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,



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COUNSEL FOR KENTUCKY POWER
COMPANY

Response	Attachment name	Information for which confidential treatment is sought	Time period to be kept confidential
KPSC 1-4	KPCO_R_KPSC_1_4_ConfidentialAttachment1	Entire attachment	20 years
KPSC 1-22	KPCO_R_KPSC_1_22_ConfidentialAttachment1	Entire attachment	5 years
KPSC 1-22	KPCO_R_KPSC_1_22_ConfidentialAttachment2	Entire attachment	5 years
KPSC 1-22	KPCO_R_KPSC_1_22_ConfidentialAttachment3	Entire attachment	5 years
KPSC 1-24	KPCO_R_KPSC_1_24_ConfidentialAttachment1	Highlighted portions	5 years
KPSC 1-33	KPCO_R_KPSC_1_33_ConfidentialAttachment1	Highlighted portions	5 years
KPSC 1-44	KPCO_R_KPSC_2_44_ConfidentialAttachment2	Entire attachment	Indefinitely
KPSC 1-44	KPCO_R_KPSC_2_44_ConfidentialAttachment3	Entire attachment	Indefinitely