

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

In the Matter of:

Electronic Application Of Kentucky Power Company)	
For (1) An Order Approving The Terms And)	
Conditions Of The Renewable Energy Purchase)	
Agreement For Solar Energy Resources Between)	
Kentucky Power Company And Bright Mountain)	Case No. 2024-00243
Solar, LLC; (2) Authorization To Enter Into The)	
Agreement; (3) Recovery Of Costs Through Tariff)	
P.P.A.; (4) Approval Of Accounting Practices To)	
Establish A Regulatory Asset; 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), for an Order granting confidential treatment to the following:

- the identified portions of Exhibit ZMY-2 to the Direct Testimony of Zachary M. Yetzer (“Exhibit ZMY-2”);
- the entirety of Exhibit ZMY-3 to the Direct Testimony of Zachary M. Yetzer (“Exhibit ZMY-3”);
- the identified portions of Exhibit ZMY-4 to the Direct Testimony of Zachary M. Yetzer (“Exhibit ZMY-4”); and
- the identified portions of Exhibit ZMY-5 to the Direct Testimony of Zachary M. Yetzer (“Exhibit ZMY-5”).

Exhibit ZMY-2 and Exhibit ZMY-3 include detailed information regarding the bids Kentucky Power received in response to its September 22, 2023 requests for proposals for generation resources (“2023 All Source RFP”) and the Company’s analysis of the same. Exhibit ZMY-4 is

the Renewable Energy Purchase Agreement for Solar Energy Resources between Kentucky Power Company and Bright Mountain Solar, LLC (the “REPA”) that is the subject of this proceeding. Exhibit ZMY-5 is a summary of key terms of the REPA.

Pursuant to 807 KAR 5:001, Section 13, Kentucky Power is filing the entirety of Exhibit ZMY-2, Exhibit ZMY-3, Exhibit ZMY-4, and Exhibit ZMY-5 under seal. Kentucky Power is also filing a redacted version of the 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 documents 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.

This exception applies to the following information for which Kentucky Power is seeking confidential treatment:

1. Exhibit ZMY-2 and Exhibit ZMY-3.

Exhibit ZMY-2 is an independent assessment of Kentucky Power’s 2023 All Source RFP prepared by Charles River Associates which includes confidential responses to the 2023 All Source RFP and the Company’s evaluation of the same. Exhibit ZMY-3 is also comprised of confidential responses to the Company’s 2023 All Source RFP and the Company’s evaluation of the same. The responses to the 2023 All Source RFP were provided to the Company on a confidential basis by

the respondents pursuant to a non-disclosure agreement. The Company is continuing to evaluate responses to the 2023 All Source RFP and may enter into agreements in addition to the REPA that is the subject of this proceeding.

Public disclosure of this information could provide insight into the manner by which Kentucky Power evaluates bids in response to the 2023 All Source RFP, as well as the confidential preliminary terms of potential future agreements resulting from the RFP process. Such public disclosure could potentially impair the current evaluation process or future processes, thus harming Kentucky Power and its customers. Disclosure of this information also could result in potential bidders pulling their bids and dropping out from consideration, or otherwise frustrating or impairing the Company's ongoing evaluation. Failure to maintain this information as confidential may have a chilling effect on the willingness of future bidders to submit responses to Kentucky Power RFPs.

The Commission previously granted confidential treatment for this information in the Company's most recent base rate case, Case No. 2023-00159, when it granted confidential treatment for the portion of the hearing transcript in that case that discussed the responses to the 2023 All Source RFP.¹ The Commission also treated this information confidentially during the June 12, 2023 hearing in the Company's most recent Integrated Resource Plan proceeding, Case No. 2023-00092, when the Commission went into confidential session to discuss the Company's evaluation of responses to the 2023 All Source RFP.² For the reasons stated herein, the identified

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) A Securitization Financing Order; And (5) All Other Required Approvals And Relief*, Case No. 2023-00159 (Ky. P.S.C. June 4, 2024).

² See, *In the Matter Of: Electronic 2022 Integrated Resource Planning Report Of Kentucky Power Company*, Case No. 2023-00092.

portions of Exhibit ZMY-2 and the entirety of Exhibit ZMY-3 should be accorded confidential treatment indefinitely.

2. Exhibit ZMY-4 and Exhibit ZMY-5.

Exhibit ZMY-4 is comprised of the REPA that is the subject of this proceeding. Exhibit ZMY-5 is a summary of key terms of the REPA. Kentucky Power is seeking confidential treatment of certain, non-price, negotiated terms of the REPA both in the REPA itself (Exhibit ZMY-4) and in the summary (Exhibit ZMY-5). Based on recent Commission precedent³ Kentucky Power is not seeking confidential treatment of the Contract Rate; however, the Contract Rate is only a portion of the negotiated terms in the REPA. Other key commercial terms in the REPA, including provisions relating to performance guarantees, credit requirements, and liquidated damages, reflect the results of arm's length negotiations between the parties to the REPA.

Disclosure of this information would give insight, not publicly available, into contract terms and conditions that Kentucky Power would agree to and would place the Company at a commercial disadvantage in future, similar negotiations. Additionally, contract counterparties expect that the sort of information for which Kentucky Power seeks confidential treatment will be kept from public disclosure. A failure to keep this information confidential would create a chilling effect in the market, limiting the number of companies willing to respond to RFPs or negotiate with the Company, resulting in less competitive options for the Company and higher costs for customers.

³ See *In the Matter of: Electric Application of Big Rivers Electric Cooperation for Approval of Amendment to Power Purchase Agreement*, Case No. 2022-00296.

The Commission has recently granted indefinite confidential treatment of similar, non-price, negotiated commercial terms in agreements similar to the REPA.⁴ For the reasons stated herein, the identified portions of Exhibit ZMY-4 and the identified portions of Exhibit ZMY-5 should be accorded confidential treatment 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 in Exhibit ZMY-2, Exhibit ZMY-3, Exhibit ZMY-4, and Exhibit ZMY-5 that is required to be disclosed by Kentucky Power under 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 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.

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

⁴ See Order, *In the Matter of: Electric Application of Big Rivers Electric Cooperation for Approval of Amendment to Power Purchase Agreement*, Case No. 2022-00296 (Ky. P.S.C. November 3, 2023).

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 respectfully requests the Commission to enter an Order:

1. According confidential status to and withholding from public inspection indefinitely the identified portions of Exhibit ZMY-2, the entirety of Exhibit ZMY-3, the identified portions of Exhibit ZMY-4, and the identified portions of Exhibit ZMY-5; and
2. Granting Kentucky Power all further relief to which it may be entitled.

Respectfully submitted,



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