

**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;	)	Case No. 2025-00257
(3) Approval Of Certain Regulatory And Accounting	)	
Treatments; and (4) 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), (k) and (l), for an Order granting confidential treatment to the following attachments to its data request responses:

- (1) Attachment 1 to its response to Commission Staff Data Request 2-61 (“KPSC 2-61”);
- (2) Attachments 1 and 2 to its response to Commission Staff Data Request 2-67 (“KPSC 2-67”);
- (3) Attachment 1 to its response to the Attorney General and Kentucky Industrial Utility Customers, Inc. (“AG-KIUC”) Data Request 1-17 (“AG-KIUC 1-17”);
- (4) Attachment 2 to its response to AG-KIUC Data Request 1-25 (“AG-KIUC 1-25”);
- (5) Attachments 2 and 3 to its response to AG-KIUC Data Request 1-30 (“AG-KIUC 1-30”);
- (6) Attachment 1 to its response to AG-KIUC Data Request 1-60 (“AG-KIUC 1-60”); and
- (7) Attachments 1, 3, 5, and 6 to its response to AG-KIUC Data Request 1-61 (“AG-KIUC 1-61”)

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

- (1) Kentucky Power's credit rating reports (Attachment 1 to KPSC 2-61 and Attachments 2 and 3 to KPSC 2-67);
- (2) budgeted operation and maintenance expense (Attachment 1 to AG-KIUC 1-17);
- (3) the incentive compensation plan of American Electric Power, Inc. ("AEP") (Attachment 2 to AG-KIUC 1-25 and Attachments 2 and 3 to AG-KIUC 1-30); and
- (4) private letter requests made to the Internal Revenue Service (Attachment 1 to AG-KIUC 1-60 and Attachments 1, 3, 5, and 6 to AG-KIUC 1-61).

Pursuant to 807 KAR 5:001, Section 13, Kentucky Power is filing under seal those attachments containing confidential information. 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 attachments 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;

...

(l) Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential by enactment of the General Assembly, including any information acquired by the Department of Revenue in tax administration that is prohibited from divulgence or disclosure under KRS 131.190;

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

1. Attachment 1 to KPSC 2-61 and Attachments 1 and 2 to KPSC 2-67.

Attachment 1 to KPSC 2-61, Attachment 1 to KPSC 2-67, and Attachment 2 to KPSC 2-67 are the Company's most recent credit opinions from S&P, Moody's, and Fitch (the "Credit Agencies"), respectively. The credit opinions are prepared by the Credit Agencies and are available to Kentucky Power pursuant to its paid subscription agreements with the Credit Agencies. The subscription agreements prohibit Kentucky Power from copying, transferring, or disseminating the credit opinions unless authorized under a contract with the Credit Agencies or otherwise authorized in writing by the Credit Agencies. The credit opinions are the property of the Credit Agencies; they are not the property Kentucky Power or its parent, AEP. However, Kentucky Power has been authorized by the Credit Agencies to produce these exhibits if granted confidential treatment. Breach of the subscription agreements through 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 managing its credit metrics.

Kentucky Power seeks confidential treatment of the credit opinions indefinitely. The identified information belongs to the Credit Agencies and not Kentucky Power. Absent a waiver of confidential treatment by the Credit Agencies, the information should remain confidential

indefinitely. The Commission previously granted confidential protection to similar information indefinitely.¹

2. Attachment 1 to AG-KIUC 1-17.

Attachment 1 to AG-KIUC 1-17 includes forecasted operations and maintenance (“O&M”) expenses for the Company’s generating facilities for the years 2025 through 2028. This kind of unit-specific operational data is confidential. The rise of competitive markets such as PJM has placed a premium on generating unit data, including but not limited to, outage rates, heat rates, energy output, fuel costs, and O&M costs. This data could be used by competitors in the PJM energy market to enhance their market offers in such a way that it could displace the Company’s generation.

The detail of the information provides highly sensitive data about the unique operation, costs, and performance of the Company’s generating units. If disclosed publicly, the Company’s competitors would be able to use this information to gain a competitive advantage over the Company in its daily participation in the PJM energy and ancillary service markets, as well as other electricity market activities. The Company’s unit-specific data is not generally known or readily ascertainable by other parties through normal or proper means. No reasonable amount of legitimate independent research could enable other parties to determine it. Kentucky Power derives independent economic value from the subject information not being generally known to, and not being readily ascertainable by other persons who can obtain economic value from its disclosure or use. Accordingly, Kentucky Power would be placed at a competitive disadvantage vis-à-vis other

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. Nov. 16, 2020) (granting confidential treatment indefinitely to credit opinions that were the intellectual property of Moody’s Investor Service).

electric utilities buying and selling in the wholesale market if required to disclose the information publicly.

For reasons stated herein, the identified portions of Attachment 1 to AG-KIUC 1-17 should be kept confidential until December 31, 2028 which is the end of the forecast period. After such time, there will no longer be any competitive advantage to be gained from the information.

3. Attachment 2 to AG-KIUC 1-25 and Attachments 2 and 3 to AG-KIUC 1-30.

Attachment 2 to AG-KIUC 1-25 is AEP's 2025 Incentive Compensation Plan and Attachments 2 and 3 to AG-KIUC 1-30 are comprised of the short-term incentive ("STI") metrics with current and projected scores and the long-term incentive ("LTI") metrics with current and projected scores applicable to the test year. The identified portions of each of these attachments contain confidential non-public financial and other information that may be material to investors of which the Securities and Exchange Commission ("SEC") prohibits disclosure. Among other requirements, such information is permitted to be disclosed only in certain company statements and SEC filings. Further, Kentucky Power is required to maintain the confidentiality of the information under SEC regulations until the information is included in publicly filed documents. Anyone who views this information and has investable assets may have the ability to profit from it at the expense of other investors by trading AEP stock or other securities with those who are not privy to this information. Thus, the public disclosure of such information could result in SEC fines and significant harm to AEP and/or Kentucky Power's reputation, stock price, and ability to raise capital in public markets at a reasonable cost. Review of this information on a confidential basis also could subject the reviewer to confidentiality and insider information obligations and restrictions under SEC rules.²

² 17 C.F.R. § 240.10b-5.

The identified confidential information contained in Attachment 2 to AG-KIUC 1-25 and Attachments 2 and 3 to AG-KIUC 1-30 should be kept confidential through March 31, 2026, after which time the information will be made publicly available in SEC filings. The Commission previously granted confidential treatment to similar information in Kentucky Power’s last base rate case for the reasons set forth above.³

4. Attachment 1 to AG-KIUC 1-60 and Attachments 1, 3, 5, and 6 to its response to AG-KIUC Data Request 1-61.

Attachment 1 to AG-KIUC 1-60 and Attachments 1, 3, 5, and 6 to its response to AG-KIUC Data Request 1-61 to AG-KIUC 1-61 contain Private Letter Requests filed with the IRS by Kentucky Power (Attachment 1 to AG-KIUC 1-60) and by Kentucky Power’s affiliates (Attachments 1, 3, 5, and 6 to its response to AG-KIUC Data Request 1-61) (collectively, the “PLR Requests”). The PLR Requests are highly confidential and proprietary to Kentucky Power and its affiliates. The PLR Requests 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 (l)(7)(D) who has or had access to returns or return information under this section or section 6104(c)

³ 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. Sept. 12, 2023).

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.⁴

The PLR Requests contain Kentucky Power’s and its affiliates’ taxpayer identity and asset amount information. The PLR Requests therefore constitute “return information,” for which federal law mandates confidential treatment pursuant to 26 § U.S.C. 6103(a). The Commission previously granted confidential treatment to similar information in Kentucky Power’s last base rate case for the reasons set forth above.⁵

Given the highly confidential and proprietary nature of tax return information, and the indefinite period of protection provided by federal and state law, the PLR Requests should remain confidential indefinitely.

⁴ 26 U.S.C. § 6103(b)(2)(A).

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) A Securitization Financing Order; And (5) All Other Required Approvals And Relief*, Case No. 2023-00159 (Ky. P.S.C. Nov. 9, 2023).

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 2-61, KPSC 2-67, AG-KIUC 1-17, AG-KIUC 1-25, AG-KIUC 1-30, AG-KIUC 1-60, and AG-KIUC 1-61 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). Kentucky Power, 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 Kentucky Power 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 on 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 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,



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.
Harlee P. Havens
STITES & HARBISON PLLC
250 West Main Street, Suite 2300
Lexington, Kentucky 40507-1758
Telephone: (859) 226-2300
Fax: (859) 253-9144
kgish@stites.com
hhavens@stites.com
COUNSEL FOR KENTUCKY POWER
COMPANY

EXHIBIT 1

Response	Attachment Name	Information For Which Confidential Treatment is Sought	Time Period to be Kept Confidential
KPSC 2-61	KPCO_R_KPSC_2_61_ConfidentialAttachment1	Entire Attachment	Indefinitely
KPSC 2-67	KPCO_R_KPSC_2_67_ConfidentialAttachment1	Entire Attachment	Indefinitely
KPSC 2-67	KPCO_R_KPSC_2_67_ConfidentialAttachment2	Entire Attachment	Indefinitely
AG-KIUC 1-17	KPCO_R_AG_KIUC_1_17_ConfidentialAttachment1	Identified Portions	Dec 31, 2028
AG-KIUC 1-25	KPCO_R_AG_KIUC_1_25_ConfidentialAttachment2	Entire Attachment	March 31, 2026
AG-KIUC 1-30	KPCO_R_AG_KIUC_1_30_ConfidentialAttachment2	Identified Portions	March 31, 2026
AG-KIUC 1-30	KPCO_R_AG_KIUC_1_30_ConfidentialAttachment3	Identified Portions	March 31, 2026
AG-KIUC 1-60	KPCO_R_AG_KIUC_1_60_ConfidentialAttachment1	Entire Attachment	Indefinitely
AG-KIUC 1-61	KPCO_R_AG_KIUC_1_61_ConfidentialAttachment1	Entire Attachment	Indefinitely
AG-KIUC 1-61	KPCO_R_AG_KIUC_1_61_ConfidentialAttachment3	Entire Attachment	Indefinitely
AG-KIUC 1-61	KPCO_R_AG_KIUC_1_61_ConfidentialAttachment5	Entire Attachment	Indefinitely
AG-KIUC 1-61	KPCO_R_AG_KIUC_1_61_ConfidentialAttachment6	Entire Attachment	Indefinitely