

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

In the Matter of:

AN ELECTRONIC EXAMINATION OF THE	)	
APPLICATION OF THE FUEL ADJUSTMENT	)	
CLAUSE OF KENTUCKY POWER COMPANY	)	Case No. 2025-00338
FROM NOVEMBER 1, 2022 THROUGH	)	
OCTOBER 31, 2024	)	

**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 identified portions of the following attachments to its data request responses:

- (1) The identified portions of Attachment 2 to its response to Commission Staff Data Request 1-4 (“KPSC 1-4”);
- (2) The identified portions of Attachments 1 and 2 to its response to Commission Staff Data Request 1-32 (“KPSC 1-32”);
- (3) The identified portions of Attachment 1 to its response to Commission Staff Data Request 1-33 (“KPSC 1-33”);
- (4) The identified portions of Attachment 1 to its response to Commission Staff Data Request 1-34 (“KPSC 1-34”);
- (5) The identified portions of Attachments 1 and 2 to its response to Commission Staff Data Request 1-46 (“KPSC 1-46”).

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.

## **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.

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

#### **1. Attachment 2 to KPSC 1-4.**

Kentucky Power seeks confidential treatment for the identified portions of Attachment 2 to KPSC 1-4. This attachment includes information, including key pricing and business terms, provided to the Company by non-selected<sup>1</sup> third parties in response to written solicitations. The information also provides insight into the manner by which Kentucky Power evaluates bids in response to coal-supply solicitations.

Additionally, the information contained in the attachment 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

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<sup>1</sup> The Company is not seeking confidential treatment for the information in green highlight within the attachment, which represents the published Argus market pricing at the time the RFP was issued for the stated specification of coal, as this information is not considered confidential.

maintain this information as confidential may have a chilling effect on the willingness of future bidders to submit responses to Kentucky Power coal-supply solicitations.

The confidential information identified in Attachment 2 to KPSC 1-4 should be kept confidential for five years. After five years, changes in the commodities market will mean that the chilling effect of the disclosure of the information will have passed. Prior disclosure will adversely affect the Company's ability to obtain competitive bids in future coal-supply solicitations to the detriment of the Company and its customers. The Commission granted confidential treatment to similar information in the Company's most recent two-year FAC case.<sup>2</sup>

## **2. Attachment 1 and Attachment 2 to KPSC 1-32.**

Attachment 1 to KPSC 1-32 provides the Company's forecasts of Kentucky Power's undivided share of the coal to be consumed (in tons) in 2026 and 2027 at the Mitchell Generating Station and the corresponding costs. Attachment 2 to KPSC 1-32 provides the Company's forecasts of the natural gas to be consumed (in MMBTU) in 2026 and 2027 at Big Sandy Unit 1 and the corresponding costs. Such forecasts constitute competitively-sensitive, proprietary information used by Kentucky Power in the pricing of its competitive products. Although Kentucky Power's retail rates are regulated by the Commission, the Company makes substantial sales through PJM Interconnection, LLC ("PJM") of electric energy into the competitive interstate wholesale electricity market. If Kentucky Power's operations and cost projections are publicly known, competitors and suppliers can formulate competitive bidding strategies that will hamper the Company's ability to compete against them, cause Kentucky Power's units to operate

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<sup>2</sup> Order, *In the Matter of: Electronic Examination Of The Application Of The Fuel Adjustment Clause Of Kentucky Power Company From November 1, 2020 Through October 31, 2022*, Case No. 2023-00008 (Ky. P.S.C. December 5, 2023).

or sell less, and ultimately cost more to operate, thereby resulting in higher costs for the Company's customers.

Kentucky Power requests that the forecasts in Attachment 1 and Attachment 2 to KPSC 1-32 be treated as confidential and withheld from public disclosure until January 1, 2028, when the forecasts will be superseded by time. The Commission previously granted confidential treatment to similar information for a like period in the Company's last two-year FAC investigation.<sup>3</sup>

### **3. Attachment 1 to KPSC 1-33.**

Attachment 1 to KPSC 1-33 includes the Company's revenue forecasts. These revenue forecasts are confidential commercial information. The revenue forecasts, if disclosed in conjunction with the public disclosure of forecasted sales, would enable persons to "reverse-engineer" the Company's price forecasts. Such price forecasts constitute competitively-sensitive, proprietary information used by Kentucky Power in the pricing of its competitive products. Although Kentucky Power's retail rates are regulated by the Commission, the Company makes substantial sales through PJM of electric energy into the competitive interstate wholesale electricity market. If Kentucky Power's price projections are publicly known, competitors and suppliers can formulate competitive bidding strategies that will hamper the Company's ability to compete against them, cause Kentucky Power's units to operate/sell less, and ultimately cost more to operate, thereby resulting in higher costs for the Company's customers.

Kentucky Power requests that the revenue forecasts in Attachment 1 to KPSC 1-33 be treated as confidential and withheld from public disclosure until January 1, 2028, when the information is superseded by subsequent forecasts. The Commission previously granted

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<sup>3</sup> *Id.*

confidential treatment to similar information for a like period in the Company's last two-year FAC investigation.<sup>4</sup>

#### **4. Attachment 1 to KPSC 1-34.**

Attachment 1 to KPSC 1-34 details information regarding the specific timing of planned maintenance outages for Kentucky Power's generation units. The rise of competitive markets such as PJM has placed a premium on generating unit data. Public disclosure of information about unit availability could adversely impact Kentucky Power's customers by providing data that could provide a competitive advantage to Kentucky Power's direct competitors thereby affecting Kentucky Power's ability to minimize costs for its rate paying customers.

Unit availability information is especially useful for competition as savvy marketers can estimate Kentucky Power's generation position and raise generation offers if the marketers believe Kentucky Power will be energy short or long, resulting in the Company paying higher prices to procure energy to serve its customers. This type of data also is highly valued by competing energy marketers and traders who speculate in forward energy transactions. Using forecasted unit availability data, other parties could improve their forecast accuracy of future Kentucky Power operations and utilize the resulting intelligence to influence negatively the Company's costs of providing electricity to its customers. Such actions would ultimately raise the cost to Kentucky Power's customers.

Attachment 1 to KPSC 1-34 should be kept confidential until January 1, 2028. At such time there will no longer provide any competitive advantage to competitors The Commission

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<sup>4</sup> *Id.*

previously granted confidential treatment to similar information for a like period in the Company's last two-year FAC investigation.<sup>5</sup>

**5. Attachments 1 and 2 to KPSC 1-46.**

Attachments 1 and 2 to KPSC 1-46 contain confidential, unit-specific information relating to the operation of the Company's generating units, their costs, and the Company's strategy for bidding these units into the PJM market.

The rise of competitive markets such as PJM has placed a premium on generating unit data, including but not limited to, outage 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 performance 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.

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

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<sup>5</sup> *Id.*

The confidential information identified in Attachments 1 and 2 to KPSC 1-46 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. The Commission has afforded confidential treatment to similar information in the past.<sup>6</sup>

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 the confidential attachments identified above 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 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 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 orders required to be disclosed to the Commission. The Commission is a "public agency" as that term is defined at 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.

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<sup>6</sup> See, *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*

WHEREFORE, Kentucky Power Company respectfully requests the Commission to enter an Order:

1. According confidential status and withholding Attachment 2 to KPSC 1-4 and Attachments 1 and 2 to KPSC 1-46 from public inspection for a period of five years;
2. According confidential status and withholding Attachments 1 and 2 to KPSC 1-32, Attachment 1 to KPSC 1-33, and Attachment 1 to KPSC 1-34 from public inspection until January 1, 2028; and
4. Granting Kentucky Power all further relief to which it may be entitled.

Respectfully submitted,



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*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, Order at 3 (October 27, 2023).*