

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

In the Matter of:

Electronic Application Of Kentucky Power Company	)	
For 1) A Certificate Of Public Convenience And	)	
Necessity To Construct A Mechanical Draft Cooling	)	Case No. 2026-00001
Tower At The Mitchell Plant 2) Approval Of Certain	)	
Regulatory And Accounting Treatments, And 3) All	)	
Other Required Approvals And Relief	)	

**MOTION FOR CONFIDENTIAL TREATMENT**

Kentucky Power Company (“Kentucky Power” or the “Company”) moves the Public Service Commission of Kentucky (“Commission”) pursuant to 807 KAR 5:001, Section 13(2), and KRS 61.878(1) for an Order granting confidential treatment to the following:

1. the entirety of Exhibit 3 to the Application (“Application Exhibit 3”);
2. the identified portions of Exhibit TSW-1 to the testimony of Company Witness Wolfram (“Exhibit TSW-1”);
3. the identified portions of Exhibit SPM-1 to the testimony of Company Witness Malone (“Exhibit SPM-1”); and
4. the entirety of Exhibit DPW-1 to the testimony of Company Witness Pizzino (“Exhibit DPW-1”).

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

1. critical energy infrastructure information (“CEII”) (Application Exhibit 3, Exhibit DPW-1, and Appendices A, D, F, G and H to Exhibit SPM-1(together, the “CEII Exhibits”));
2. the future operations of Kentucky Power’s generation fleet (Exhibit TSW-1 and Appendix C to Exhibit SPM-1); and
3. the development of the cost estimate for the construction of a new mechanical draft cooling tower and partial demolition of the existing cooling tower at Mitchell Unit 2 (the “Mitchell Cooling Tower Project”) found in the identified portions of Exhibit SPM-1 that are not in Appendices A, D, F, G and H (the “Estimate Support”).

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

## I. MOTION FOR CONFIDENTIAL TREATMENT

### A. The Request 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 information 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.

The identified portions of Exhibit TSW-1, Appendix C to Exhibit SPM-1, and the Estimate Support satisfy the requirements for confidential treatment under KRS 61.878(1)(c)(1).

KRS 61.878(1)(k) exempts “all public records or information the disclosure of which is prohibited by federal law or regulation” from disclosure under the Open Records Act. The CEII Exhibits satisfy the statutory requirements for confidential treatment under KRS 61.878(1)(k).

KRS 61.878(1)(m)(1)(f) exempts records from public inspection that would have a reasonable likelihood of threatening the public safety by exposing a vulnerability in preventing, protecting against, mitigating, or responding to a terrorist act, including:

Infrastructure records that expose a vulnerability referred to in this subparagraph through the disclosure of the location, configuration, or security of critical systems, including public utility critical systems. These critical systems shall include but not be limited to information technology, communication, electrical, fire suppression, ventilation, water, wastewater, sewage, and gas systems;

The CEII Exhibits also satisfy each of the statutory requirements for confidential treatment under KRS 61.878(1)(m)(1)(f).

### **1. CEII Exhibits**

The CEII Exhibits include detailed information regarding the location, design, and engineering of the Company's Mitchell Generating Station and the proposed Mitchell Cooling Tower Project and should be treated as confidential CEII. Federal Energy Regulatory Commission ("FERC") regulations define CEII as:

specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that:

- (i) Relates details about the production, generation, transportation, transmission, or distribution of energy;
- (ii) Could be useful to a person in planning an attack on critical infrastructure;
- (iii) Is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552; and
- (iv) Does not simply give the general location of the critical infrastructure.<sup>1</sup>

The FERC definition of CEII includes existing and proposed systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters.<sup>2</sup> The CEII Exhibits constitute CEII under the FERC definition and are protected from disclosure under the Freedom of Information Act by 18 C.F.R. § 388.112.

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<sup>1</sup> 18 CFR § 388.113(c)(2).

<sup>2</sup> *Id.*

The CEII Exhibits also are protected from disclosure under KRS 61.878(1)(m)(1)(f). In particular, the Mitchell Generation Station is critical to the ability of Kentucky Power to provide electrical service to its customers. Prohibiting public disclosure of the CEII Exhibits would have a reasonable probability of protecting against, mitigating, or responding to a terrorist act, as that term is defined at KRS 61.878(1)(m)(2). Moreover, the information is exempted by KRS 61.878(1)(k) as information exempted from disclosure under federal law.

Kentucky Power seeks confidential treatment of the CEII Exhibits for the life of the Mitchell Plant. Once the Mitchell Plant is retired the information will no longer be CEII.

## **2. Exhibit TSW-1 and Appendix C to Exhibit SPM-1**

Exhibit TSW-1 is comprised of the November 6, 2025 Mitchell Operating Committee meeting minutes. These minutes include a summary of the evaluation of the options to address the structural issues associated with the Mitchell Unit 2 Cooling Tower. This evaluation included specific information relating to potential derates of Mitchell Unit 2 resulting from the various options. Appendix C to Exhibit SPM-1 provides the estimated construction schedule for the Mitchell Cooling Tower Project including required plant outages. This kind of unit-specific operational and planning 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, scheduled outages, heat rates, energy output, fuel costs, and the timing of planned capital expenditures. 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 electric utilities buying and selling in the wholesale market if required to disclose the information publicly.

For reasons stated herein, the identified portions of Exhibit TSW-1 and Appendix C to Exhibit SPM-1 should be kept confidential until such time as construction on the Mitchell Cooling Tower Project is complete. After such time, there will no longer be any competitive advantage to be gained from the information.

### **3. Estimate Support**

The identified portions of Exhibit SPM-1 comprising the Estimate Support contain detailed budgetary estimates on a cost-category basis used to estimate the total cost of the Mitchell Cooling Tower Project. While Kentucky Power is not seeking confidential treatment for the total estimated cost of the Mitchell Cooling Tower Project, confidential treatment is appropriate for the cost-category level estimates in the Estimate Support.

The Company will seek bids from contractors and suppliers for the individual project components included in the Estimate Support. Disclosure of the cost estimates in the Estimate Support would create a "price floor" for contractors and equipment suppliers bidding in response

to requests for proposals to implement a chosen alternative. This could make the construction and implementation project more expensive to the detriment of Kentucky Power's customers.

For the reasons stated herein, the Estimate Support should be kept confidential until such time as construction on the Mitchell Cooling Tower Project is complete. 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 and Violate Federal Law.

The identified information in the CEII Exhibits, Exhibit TSW-1, Appendix C to Exhibit SPM-1, and the Estimate Support 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 in the CEII Exhibits, Exhibit TSW-1, Appendix C to Exhibit SPM-1, and the Estimate Support will be submitted as part of the Company's Application in this case. 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 for the life of the Mitchell Plant the CEII Exhibits;
2. According confidential status to and withholding from public inspection until construction of the Mitchell Cooling Tower Project is complete the identified portions of Exhibit TSW-1, Appendix C to Exhibit SPM-1, and the Estimate Support; and
3. Granting Kentucky Power all further relief to which it may be entitled.

Respectfully submitted,



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Katie M. Glass  
STITES & HARBISON PLLC  
400 W Market Street  
Suite 1800  
Louisville, Kentucky 40202-3352  
Telephone: (502) 587-3400  
Fax: (502) 587-6391  
[kglass@stites.com](mailto: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](mailto:kgish@stites.com)  
[hhavens@stites.com](mailto:hhavens@stites.com)  
COUNSEL FOR KENTUCKY POWER  
COMPANY