

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC REVIEW OF THE ADEQUACY OF )  
KENTUCKY'S GENERATION CAPACITY AND ) ADMINISTRATIVE  
TRANSMISSION SYSTEM ) CASE NO. 387

ORDER

This matter arises on eleven motions for confidential treatment filed by several electric utilities on April 1, 2020, April 30, 2020, March 31, 2021, April 28, 2021, February 28, 2022, and March 31, 2022. On April 1, 2020, Louisville Gas & Electric Company (LG&E) and Kentucky Utilities Company (KU), each filed petitions pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for ten years for forecasted outage schedules for the following ten years.

On April 30, 2020, Kentucky Power Company (Kentucky Power) filed a motion pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for an unspecified period for forecasted outage schedules and planned capacity projects.

On March 31, 2021, Duke Energy Kentucky Inc. (Duke Kentucky), LG&E, and KU each filed petitions pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for ten years for forecasted outage schedules and planned capacity projects.

On April 28, 2021, Kentucky Power filed a motion pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for an unspecified period for forecasted outage schedules.

On February 28, 2022, Big Rivers Electric Corporation (BREC) filed a motion pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for five years for projected energy purchases, forecasted outage schedules, and planned capacity projects.

On March 31, 2022, Duke Kentucky, LG&E, and KU each filed petitions pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for ten years for forecasted outage schedules and planned capacity projects.

The Commission is a public agency subject to Kentucky's Open Records Act, which requires that all public records “be open for inspection by any person, except as otherwise provided by KRS 61.870 to 61.884.”<sup>1</sup> The referenced confidential treatment motions sought the application of KRS 61.878(1)(c)(1), which exempts records that are “[g]enerally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.” Exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.<sup>2</sup> The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.<sup>3</sup>

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<sup>1</sup> KRS 61.872(1).

<sup>2</sup> See KRS 61.871.

<sup>3</sup> 807 KAR 5:001, Section 13(2)(c).

Having considered the motion and the material at issue, the Commission finds that the motions are granted. Disclosure of forecasted outage schedules would harm utilities because other energy market participants would know when movants' need for purchased power would spike. This information was granted confidential treatment upon BREC's motion in the present case.<sup>4</sup> Planned capacity projects should remain confidential because disclosure would disadvantage utilities with contractors when these future construction projects are bid.<sup>5</sup> Projected power purchases should remain confidential because disclosure would harm the movants because other energy market participants would know movants' demand level.<sup>6</sup> The designated material is generally recognized as confidential or proprietary and would permit an unfair commercial advantage to competitors if publicly disclosed; it therefore meets the criteria for confidential treatment and is exempted from public disclosure for ten years pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

IT IS THEREFORE ORDERED that:

1. The following petitions and motions for confidential treatment are granted:
  - a. LG&E's April 1, 2020 petition;
  - b. KU's April 1, 2020 petition;
  - c. Kentucky Power's April 30, 2020 motion;
  - d. Duke Kentucky's March 31, 2021 petition;

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<sup>4</sup> Order (Ky. PSC May 28, 2013) at 2.

<sup>5</sup> See Case No. 2012-00535, *Application of Big Rivers Electric Corporation for an Adjustment of Rates* (Ky. PSC May 6, 2013), Order at 1–2.

<sup>6</sup> See Case No. 2018-00146, *Application of Big Rivers Electric Corporation for Termination of Contracts and a Declaratory Order and for Authority to Establish a Regulatory Asset* (Ky. PSC Jan. 14, 2019), Order at 1 and 3.

- e. LG&E's March 31, 2021 petition;
- f. KU's March 31, 2021 petition;
- g. Kentucky Power's April 28, 2021 motion;
- h. BREC's February 28, 2022 motion;
- i. Duke Kentucky's March 31, 2022 petition;
- j. LG&E's March 31, 2022 petition;
- k. KU's March 31, 2022 petition.

2. The designated material granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for ten years or until further Order of this Commission.

3. Use of the designated material granted confidential treatment by this Order in any Commission proceeding shall comply with 807 KAR 5:001, Section 13(9).

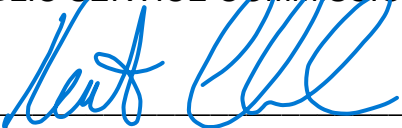
4. Movants shall inform the Commission if the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment.

5. If a nonparty to this proceeding requests to inspect the material granted confidential treatment by this Order and the period during which the material has been granted confidential treatment has not expired, movants shall have 30 days from receipt of written notice of the request to demonstrate that the material still falls within the exclusions from disclosure requirements established in KRS 61.878. If movants is unable to make such demonstration, the requested material shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

6. The Commission shall not make the requested material available for inspection for 30 days from the date of service of an Order finding that the material no longer qualifies for confidential treatment in order to allow movants to seek a remedy afforded by law.

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\_\_\_\_\_  
Chairman

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Vice Chairman

\_\_\_\_\_  
Commissioner

ENTERED  
MAY 09 2022  
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SERVICE COMMISSION

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