

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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**PUBLIC SERVICE
COMMISSION**

In the Matter of:

THE APPLICATION OF KENTUCKY)
POWER FOR A GENERAL ADJUSTMENT) Case No. 2009-00459
OF ITS RATES)

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**REPLY IN SUPPORT OF MOTION FOR CONFIDENTIAL TREATMENT
AND RESPONSE IN OPPOSITION TO ATTORNEY GENERAL'S MOTION TO
DISCLOSE CONFIDENTIAL INFORMATION**

Introduction

Kentucky Power Company ("Kentucky Power" or "the Company"), offers this response to the Attorney General's motion to disclose and reply in support of its motion for confidential treatment to clear up what appear to be simple misunderstandings about the nature of limited disclosures the Company has made to certain credit rating agencies. Federal regulations recognize the confidential nature of such information, and Kentucky Power simply asks for the similar treatment in this proceeding.

The Company limited its motion for confidential treatment to information otherwise exempted from federal disclosure requirements. Because of an apparent misapprehension of what relief the Company is seeking, the Attorney General devotes the majority of his motion and response to addressing the fact that information that *is not* the subject of the Company's motion is in the public domain. Respectfully, such a tautology is not a basis for denying confidential treatment for the information that *is* the subject of the Company's motion.

Kentucky Power requests that the Attorney General's motion be denied and that its motion for confidential treatment be granted.

A. Information Disclosed To Credit Rating Agencies Is Protected From The Disclosure Requirements Of Federal Law And Its Release Would Visit Competitive Injury On Kentucky Power In The Financial Marketplaces.

1. Disclosure Of The Information To Be Protected Will Result In Competitive Injury To Kentucky Power.

The Attorney General seeks public disclosure of financial forecasts. Kentucky Power doesn't publicly release this type of forecasted information. Occasionally, such information becomes superseded by later events, such as the filing of this rate case. The 2010 forecast number set forth on pages 62 and 67 of 79 of Kentucky Power's response to AG 1-51 is such information, and it was mistakenly designated for confidential treatment. Kentucky Power's request with respect to that information only is withdrawn.¹ It is common during the credit rating process for companies to provide rating agencies with nonpublic information, such as budgets and forecasts, financial statements, internal capital allocation schedules, contingent risks analyses, and information relating to new financings, acquisitions and dispositions.²

Such information is provided only to the credit rating agencies, and not shared broadly with the investment community as suggested by the Attorney General in its claim that the Company is attempting to withhold from its ratepayers information that it shares with "Wall Street."³ Further, the rating agencies have strict policies of keeping such

¹ Kentucky Power still maintains that the 2011 forecast information included on pages 62 and 67 of 79 of the Company's response to AG-51 should be afforded confidential treatment for the reasons set forth in Kentucky Power's motion and in this memorandum.

² Affidavit of Renee Hawkins ("Hawkins Affidavit"), ¶4. A copy of the Hawkins Affidavit is attached to this reply.

³ Hawkins Affidavit, ¶5.

information confidential.⁴ Credit rating agencies play a critical role in a Company's attempt to raise capital, with the Company's ability to issue debt dependent upon the investment grade ratings it obtains from the credit rating agencies.⁵

The ability to issue debt and attract investors to support the Company's ventures goes to the very core of its ability to succeed as a business. Indeed, Kentucky Power is competing with every other entity seeking investment for investor dollars and lower credit ratings typically lead to higher costs to the ratepayers.⁶ Should the Attorney General be successful in securing public disclosure of the confidential, nonpublic financial forecasts, such action would affect the Company's willingness to provide confidential information to the credit rating agencies to obtain credit ratings going forward.⁷ Without these credit ratings, the Company's ability to secure affordable debt to carry out its corporate functions, including the substantive operations of Kentucky Power, will be jeopardized.⁸ This puts the Company at a competitive disadvantage vis-à-vis other market participants who are able to furnish confidential information to credit rating agencies without having the information disclosed publicly.⁹

⁴ *Id.*

⁵ *Id.*

⁶ The Attorney General's argument at page 3 of his motion regarding Kentucky Power's certified territory thus seems to be premised upon his misunderstanding of the competitive marketplace at issue.

⁷ Hawkins Affidavit, ¶6.

⁸ *Id.*

⁹ *Id.*

2. The Confidential Information Is Exempt From The Federal Securities Law Disclosure Requirements.¹⁰

Due to the nature of the work performed by credit rating agencies, the federal regulations provide a specific exception from otherwise-applicable uniform disclosure requirements for information provided to these agencies. Kentucky Power asks that the Commission follow the federal practice of protecting this type of confidential information from public disclosure.

Title 17 § 243.100 of the Code of Federal Regulations provides the general rule regarding the disclosure of any nonpublic information pertaining to a corporation or its securities. It requires full public disclosure whenever otherwise-nonpublic information is disclosed to certain identified persons.¹¹ The information for which Kentucky Power is seeking confidential treatment falls within the scope of this general federal disclosure requirement and would be required to be disclosed simultaneously with its disclosure to credit rating agencies but for the exemption provided by 17 C.F.R. § 243.100(b)(2).

However, the regulations also recognize the need to provide confidential information to certain third parties without full public disclosure. Specifically, the regulation states the full public disclosure requirement does not apply:

(iii) To the following entities solely for the purpose of determining or monitoring a credit rating:

¹⁰ Although KRS 61.878(1)(k) may not be directly applicable to the exemption provided by 17 C.F.R. § 243.100(b)(2)(iii), the policies underlying both the Kentucky statute and the federal regulation are consistent.

¹¹ “Whenever an issuer, or any person acting on its behalf, discloses any material nonpublic information regarding that issuer or its securities to any person described in paragraph (b)(1) of this section, the issuer shall make public disclosure of that information ... (1) Simultaneously, in the case of an intentional disclosure.” 17 C.F.R. 243.100(a). These persons are identified in Section (b)(1)(i)-(iv) of the regulation, and include securities brokers and dealers, investment advisors, investment companies, and certain holders of the company’s securities. This disclosure requirement exists to address insider trading concerns and to ensure that certain market participants not gain an unfair competitive advantage through knowledge unavailable to other market participants.

(A) Any nationally recognized statistical rating organization, as that term is defined in Section 3(a)(62) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(62)), pursuant to §240.17g-5(a)(3) of this chapter; or

(B) Any credit rating agency, as that term is defined in Section 3(a)(61) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(61)), that makes its credit ratings publicly available;

Code of Federal Regulations, Title 17 § 243.100(b)(2). The regulation also includes exceptions from the public disclosure requirements for information provided to an attorney or accountant. The information for which confidential treatment is requested is protected from the public disclosure requirements of federal law by 17 C.F.R. § 243.100(b)(2)(iii).

Disclosure of the confidential data at issue in the Attorney General's motion would make public financial data not intended for public dissemination – data that Kentucky Power provided confidentially to credit rating agencies pursuant to Section 243.100 of Title 17 of the Code of Federal Regulations. As stated in paragraph 6 of the affidavit of Renee Hawkins, submitted by Kentucky Power in support of its confidential treatment request, “[k]nowledge of this data could be used in the trading of the Company's publicly traded debt securities.”

Kentucky Power respectfully requests that the Commission recognize that the information at issue in the Attorney General's motion was disclosed to the credit rating agencies pursuant to a federal regulation that authorizes companies to make such disclosures without having to make full public disclosure of the information. Pursuant to this regulation, Kentucky Power shared the forecast information at issue with certain credit rating agencies with the expectation that it would remain confidential. For these

reasons, and for the reasons set forth in the Company's motion for confidential treatment and supporting affidavits, Kentucky Power asks that confidential treatment be afforded to the information at issue.

B. The Majority Of The Attorney General's Motion Addresses Information For Which The Company Is Not Seeking Confidential Treatment.

The other matter that must be addressed in this filing is the Attorney General's narrative on the 2008-2009 information provided to certain rating agencies concerning the amount of rate increase the Company projected it would seek in its 2010 rate case.¹² As a threshold matter it is unclear why such information is relevant to his motion. In his filing, the Attorney General acknowledges that Kentucky Power did not seek confidential treatment of these projected figures and expressly states that its motion does not apply to this information. More fundamentally, the Attorney General's argument is premised on a misunderstanding of the Company's filing.

The single number identified by the Attorney General in the regulatory planning document addresses only one projection of the Company's needs associated with traditional service rates. The projection did not include any consideration of the other factors ultimately included in the Company's filing. As pointed out in the application and the testimony in support filed by the Company, Kentucky Power proposes the adjustments in this case for a number of factors, including but not limited:

- (a) To compensate Kentucky Power's inadequate and unreasonable 2.90% return on equity for the test year ended September 30, 2009;
- (b) To reflect the increase in Kentucky Power's depreciation expense in light of the results of the Company's most recent depreciation study;

¹² Because of the passage of time that information is no longer confidential.

- (c) To reflect the costs of the proposed Renewable Energy Purchase Agreement;
- (d) To fund the Company's long term Reliability and Service Enhancement Plan;
- (e) To reflect the reduced "credit" to Kentucky Power's cost of service as a result of significantly reduced test year off-system sales;
- (f) To compensate the Company for the extensive capital investments in support of its business (the Company's net original cost of capital increased from \$907, 188,990 to \$1,058,299,844 from June 30, 2005 to September 30, 2006; and
- (g) To reflect the increase in the Company's operating expenses since the Company's general adjustment in rates.

(Kentucky Power's Application at 5).

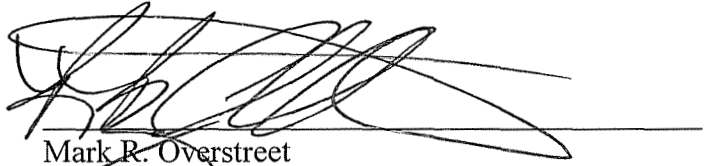
The Attorney General's characterization of the Company's filing as "telling Wall Street one thing, while asking the public, this Commission and the intervenors to believe it needed more than twice that amount in new revenues" fails to appreciate all of the different elements of the Company's filing. While it is the case that a portion of Kentucky Power's filing seeks to adjust the Company's rates to reflect increases in operating expenses since the last adjustment, the filing also includes items such as a reliability enhancement plan, depreciation expense adjustments, and the costs of a proposed renewable energy purchase agreement. These items were not included in the forecasted rate increase identified by the Attorney General. Simply stated, the Attorney

General is comparing apples to oranges in its filing in its effort to disparage the Company before the Commission.

Citations to individual numbers on a planning document can be easily misunderstood when viewed in a vacuum. The Company did not know the full extent of what it would include in its rate case filing until it did the extensive work to provide the Commission with all the information required for the filing of this case. The numbers and supporting documentation set forth in the application filed with the Commission speak for themselves and provide a full understanding of the elements of the Company's requested rate increase, an understanding that cannot be arrived at by looking at the single projected number upon which the Attorney General places such undue significance. The focus of this case is properly upon the application filed by the Company.

Kentucky Power Company respectfully requests that the Commission treat its nonpublic financial information protected by the Code of Federal Regulations from public disclosure as confidential in this case. This information has been provided to the Commission and certain of the intervenors pursuant to confidentiality agreements, and public disclosure will serve only to harm Kentucky Power and its ratepayers. In addition to harming Kentucky Power in this case, a precedent of disclosing this type of financial information could also harm other regulated entities in the future by providing market participants with information that could be used to the detriment of the regulated entities.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Mark R. Overstreet', written over a horizontal line.

Mark R. Overstreet

R. Benjamin Crittenden

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COUNSEL FOR:

KENTUCKY POWER COMPANY

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by first class mail, postage prepaid, and e-mail transmission upon the following parties, this 12th day of March, 2010.

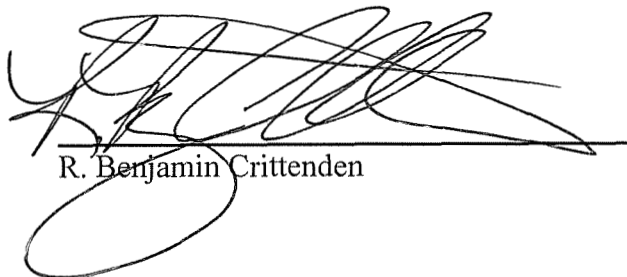
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R. Benjamin Crittenden

ATTACHMENT

AFFIDAVIT

Renee Hawkins, first being duly sworn, states:

(1) I am of the age of majority and competent to make this affidavit. I have personal knowledge of the matters set forth in this affidavit.

(2) I am Managing Director of Corporate Finance, Accounting and Strategic Planning of the American Electric Power Service Corporation ("AEPSC") and I am familiar with the content of the filings made by Kentucky Power Company ("Kentucky Power") in this case and the need to protect certain confidential and proprietary information filed with the Kentucky Public Service Commission ("Commission") in response to certain data requests issued by intervening parties in this proceeding. I am also familiar with the Attorney General's Motion to Disclose Alleged Confidential Information.

(3) I have specific personal knowledge of the confidential, proprietary, competitively-sensitive and trade secret nature of the information for which Kentucky Power has sought confidential treatment from the Commission. I have personal knowledge of the practice of Kentucky Power and other corporations to make limited disclosures of certain of the confidential information to credit rating agencies, and of the policies of these credit rating agencies to keep the information confidential. I have personal knowledge of the importance of credit rating agencies to Kentucky Power's ability to issue debt and attract investors, and of the effect the public disclosure of the confidential information would have on Kentucky Power's financing efforts. I gained this knowledge through direct contact with this information and through my work with other AEPSC and Kentucky Power employees who work directly with the confidential information and the credit rating agencies

(4) It is common during the credit rating process for companies, including Kentucky Power, to provide rating agencies with nonpublic information, such as budgets and forecasts, financial statements, internal capital allocation schedules, contingent risk analyses, and information relating to new financings, acquisitions and dispositions.

(5) This information is provided by companies, including Kentucky Power, only to credit rating agencies, who have strict policies of keeping such information confidential. These credit rating agencies play a critical role in a capital-raising efforts, with a company's ability to issue debt dependent upon the investment grade ratings it obtains from the credit rating agencies.

(6) If disclosure of otherwise-confidential information to credit rating agencies results in public disclosure of the information, such action will affect Kentucky Power's willingness to provide confidential information, including the forecast information at issue in the Attorney General's Motion to Disclose Alleged Confidential Information, to credit rating agencies going forward. This will result in limitations on Kentucky Power's ability to obtain credit ratings. Without these credit ratings, Kentucky Power's ability to secure affordable debt will be jeopardized. This result will leave Kentucky Power at a competitive disadvantage as compared to other market participants who are able to provide confidential information to credit rating agencies without having the information disclosed publicly.

(7) Further the Affiant sayeth naught.



Renee V. Hawkins
Assistant Treasurer and
Managing Director, Corporate Finance
American Electric Power Service Corporation

STATE OF OHIO)
) SS
COUNTY OF FRANKLIN)

Subscribed and sworn to before me, a Notary Public, in and for said County and State this
12th day of March 2010.



Catherine Hurston
Notary Public, State of Ohio
My Commission Expires 11-15-2014

Catherine Hurston
Notary Public

I am a resident of Franklin County, Ohio