

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF KENTUCKY)	
POWER COMPANY FOR APPROVAL OF A)	CASE NO.
CONTRACT FOR ELECTRIC SERVICE WITH MC)	2019-00124
MINING, LLC)	

ORDER

This matter arises from motions requesting confidential treatment, pursuant to KRS 61.878 and 807 KAR 5:021, Sections 13 and 14, filed by Kentucky Power Company (Kentucky Power) on May 1, 2019, and June 28, 2019.

In its May 1, 2019 motion, Kentucky Power requests confidential treatment for certain information contained in the contract (Special Contract) between Kentucky Power and MC Mining, LLC (MC Mining). Kentucky Power states that the information it is requesting to be held confidential is the per-kilowatt-hour (kWh) discount rate and the Monthly Economic Development Credit as set forth in Article V of Addendum 2 to the Special Contract. Kentucky Power notes that the per-kWh rate is used in calculating the Monthly Economic Development Credit that Kentucky Power will provide to MC Mining under the agreement and the limit or cap on the amount of any month's Monthly Economic Development Credit to be provided under the agreement. Kentucky Power states that this information is the product of lengthy negotiations between MC Mining and Kentucky Power and reflects compromise between the parties. Kentucky Power points out that the credit information reflects its consideration of the load of MC Mining's new mine and the importance of the new mine to Kentucky Power's economic development efforts, including

the investment to be made by MC Mining and the resulting retained jobs and created jobs in its service territory.

Kentucky Power contends that the subject information should be treated as confidential pursuant to KRS 61.878(1)(c)(1) because public disclosure of this information will hamper Kentucky Power's future negotiations with other coal mining companies looking to establish or expand their operations in Kentucky Power's service territory. Kentucky Power anticipates that the credit information, if disclosed, would be the starting point for such negotiations and that the prospective customers would seek the same or lower rate. Kentucky Power argues that existing customers could use the credit information to seek similar or lower rate treatment. Accordingly, Kentucky Power contends that the disclosure of the credit information would jeopardize its ability to negotiate future economic development opportunities.

Kentucky Power cites to prior instances in which the Commission has recognized unfair commercial injury as a basis to grant confidential treatment of terms of special contracts.¹ Kentucky Power cites to Case No. 2013-00148,² in which the Commission granted the request for confidential treatment of contract terms that Atmos Energy Corporation argued "could be used to negotiate favorable terms for [competitors of Atmos and competitors of the counterparties] as well as develop marketing strategies harmful to [Atmos] or those specific customers" if publicly disclosed.³ Kentucky Power also cites to

¹ Motion at 7.

² Case No. 2013-00148, *Application of Atmos Energy Corporation for an Adjustment of Rates and Tariff Modifications* (Ky. PSC Nov. 25, 2013).

³ Motion at 8.

Case No. 2014-00328,⁴ involving Valley Gas, Inc. (Valley Gas), and Case No. 2013-00174,⁵ involving East Kentucky Power Cooperative, Inc. (EKPC), in which the Commission granted confidential treatment of special contract rate information that, if disclosed to the public, would have prevented other customers of these two utilities from gaining an unfair commercial advantage in negotiations with Valley Gas and EKPC.⁶ Finally, Kentucky Power cites to Case No. 2018-00164,⁷ in which the Commission granted confidential treatment to the financial terms, including the rates, of a gas supply agreement concluding that the public disclosure of the contract terms could result in “unfair commercial advantage” to the utilities’ competitors.⁸

Kentucky requests that this information be kept confidential for the term of the Special Contract, which is approximately 14 years from its effective date or through May 31, 2033.

In its June 28, 2019 motion, Kentucky Power requests confidential treatment for certain portions of its responses to Commission Staff’s First Request for Information (Staff’s Initial Request), Items 3(b) and 3(c), and for the attachment to the response to Staff’s Initial Request, Item 4. Kentucky Power states that the information contained in

⁴ Case No. 2014-00368, *Valley Gas, Inc. Request for Approval of a Special Contract With Mago Construction Company and a Deviation From the Gas Cost Adjustment Clause* (Ky. PSC Oct. 28, 2014).

⁵ Case No. 2013-00174, *Application of East Kentucky Power Cooperative, Inc. for Approval of Special Contract Between EKPC, Owen Electric Cooperative, and Gallatin Steel Company* (Ky. PSC April 8, 2014).

⁶ Motion at 8–9.

⁷ Case No. 2018-00164, *The Filing of a Special Contract by Natural Energy Utility Corporation* (Ky. PSC June 8, 2018). Natural Energy Utility Corporation initially submitted the special contract and the accompanying confidentiality petition via the Commission’s Tariff Filing System and was assigned TFS2018-00207. A letter ruling granting the confidentiality request was issued as part of that tariff filing on June 8, 2018.

⁸ Motion at 9–10.

its responses to Items 3(b) and 3(c) are projected monthly energy usage, projected monthly demand, and projected monthly economic development credits for Excel Mine No. 5 for the billing periods August 2019 through January 2021. Kentucky Power also points out that the information contained in the attachment to its response to Item 4 consists of MC Mining's monthly bill amount, monthly metered and billed kilowatt hours of usage, monthly metered and billed demand, as well as the demand upon which MC Mining's CS-IRP credit is calculated, for the revenue months June 2018 through May 2019. The attachment also details the total calculated economic development credit for the same period using MC Mining's historical operational information.

Kentucky Power asserts that disclosure of the information contained in its responses to Staff's First Request, Items 3(b), 3(c), and 4, would impede its efforts to attract other coal mining companies. Kentucky Power notes that MC Mining operates in competitive markets both nationally and globally and releasing its customer-specific information would allow its competitors to gain specific information regarding an important component of the production costs of its coal. Kentucky Power contends that disclosure of this information would make MC Mining, and other commercial and industrial customers, less likely to locate in Kentucky Power's service territory. Kentucky Power also provides the same grounds for protection from public disclosure the economic development credit information as was provided in its May 1, 2019 petition.

Kentucky Power requests that the responses to Staff's First Request, Items 3(b), 3(c), and 4, be kept confidential for the term of the Special Contract, which is approximately 14 years from its effective date, through May 31, 2033.

Having carefully considered the motion and the materials at issue, the Commission finds that the designated materials in the confidentiality motion of Kentucky Power meet the criteria for confidential treatment and are exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13.

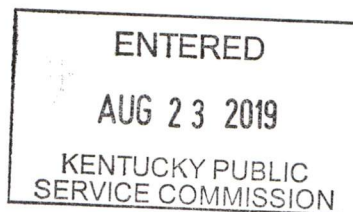
IT IS THEREFORE ORDERED that:

1. The motions for confidential treatment filed by Kentucky Power on May 1, 2019, and on June 28, 2019, are granted.
2. The designated materials for which Kentucky Power seeks confidential treatment in its motions shall not be placed in the public record or made available for public inspection until May 31, 2033, or until further Orders of this Commission.
3. Use of the materials in question in any Commission proceeding shall be in compliance with 807 KAR 5:001, Section 13(9).
4. Kentucky Power shall inform the Commission if the materials in question become publicly available or no longer qualify for confidential treatment.
5. If a non-party to this proceeding requests to inspect the materials granted confidential treatment by this Order and the period during which the materials have been granted confidential treatment has not run, then Kentucky Power shall have 30 days from receipt of written notice of the request to demonstrate that the materials still fall within the exclusions from disclosure requirements established in KRS 61.878. If Kentucky Power is unable to make such demonstration, the requested materials shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

6. The Commission shall not make the requested materials available for inspection for 30 days following an Order finding that the materials no longer qualify for confidential treatment in order to allow Kentucky Power to seek a remedy afforded by law.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

By the Commission



ATTEST:


Executive Director

*Christen M Blend
American Electric Power Service Corporation
1 Riverside Plaza, 29th Floor
Post Office Box 16631
Columbus, OHIO 43216

*John W. Pollom
Stites & Harbison
421 West Main Street
P. O. Box 634
Frankfort, KENTUCKY 40602-0634

*Kentucky Power Company
855 Central Avenue, Suite 200
Ashland, KY 41101

*Katie M Glass
Stites & Harbison
421 West Main Street
P. O. Box 634
Frankfort, KENTUCKY 40602-0634

*Honorable Mark R Overstreet
Attorney at Law
Stites & Harbison
421 West Main Street
P. O. Box 634
Frankfort, KENTUCKY 40602-0634