

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN ELECTRONIC EXAMINATION OF THE)	
APPLICATION OF THE FUEL ADJUSTMENT)	CASE NO.
CLAUSE OF KENTUCKY UTILITIES COMPANY)	2021-00055
FROM NOVEMBER 1, 2018 THROUGH)	
OCTOBER 31, 2020)	

ORDER

On March 22, 2021, Kentucky Utilities Company (KU) filed a petition, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for five years for documents provided in response to Commission Staff's First Request for Information (Staff's First Request), Items 4 and 32.

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."¹ KU 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

¹ KRS 61.872(1).

construed.² The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.³

KU sought confidential treatment for coal bid information redacted from a document provided in response to Staff's First Request, Item 4. KU argued that potential bidders could manipulate the bid solicitation process to the detriment of KU and its ratepayers by tailoring bids to correspond to and comport with KU's bidding criteria and process.

KU also sought confidential treatment for a schedule of scheduled plant outages provided in response to Staff's First Request, Item 32. KU argued that public disclosure of information regarding KU's plant maintenance schedules would reveal down time, an essential factor in determining KU's generating costs and need for power and energy during those periods and eroding KU's competitive position in the wholesale power market.

Having considered the petition and the material at issue, the Commission finds that KU's petition is granted. Public disclosure of coal bid information could result in bid manipulation. The Commission has previously granted confidential treatment to this type of information pursuant to KRS 61.878(1)(c)(1).⁴ KU is still subject to public filing requirements for coal contracts as required by 807 KAR 5:056, Section 2(1). Regarding scheduled outages, public disclosure of this schedule could give competitors insight into

² See KRS 61.871.

³ 807 KAR 5:001, Section 13(2)(c).

⁴ Case No. 2020-00005, *An Electronic Examination of The Application of the Fuel Adjustment Clause of East Kentucky Power Cooperative, Inc. from May 1, 2019 Through October 31, 2019* (Ky. PSC Apr. 9, 2020), Order at 1–2.

future down time energy purchases.⁵ The designated material therefore meets the criteria for confidential treatment and is exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

IT IS THEREFORE ORDERED that:

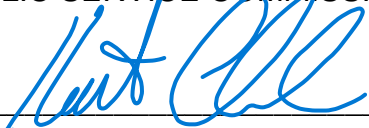
1. KU's petition for confidential treatment is granted.
2. The designated material granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for five years or until further Order of this Commission.
3. Use of the designated material granted confidential treatment by this Order in any Commission proceeding shall comply with 807 KAR 5:001, Section 13(9).
4. KU 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, KU 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 KU is unable to make such demonstration, the requested material shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

⁵ See Administrative Case No. 387, *Adequacy of Generation of Transmission* (Ky. PSC May 28, 2013), Order at 2.

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 KU to seek a remedy afforded by law.

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PUBLIC SERVICE COMMISSION



Chairman

Vice Chairman

Commissioner

ENTERED
JUN 03 2022 rcs
KENTUCKY PUBLIC
SERVICE COMMISSION

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