

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC INVESTIGATION OF THE)	CASE NO.
SERVICE, RATES AND FACILITIES OF)	2021-00370
KENTUCKY POWER COMPANY)	

ORDER

On December 14, 2021, Kentucky Power Company (Kentucky Power) filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c) and (k), requesting confidential treatment for portions of the Sellers Disclosure Letter filed in response to Kentucky Power's response to Commission Staff's Post-Hearing Request for Information (Staff's Post-Hearing Request), Item 1, which are described in specific detail below. The Sellers Disclosure Letter is part of a Stock Purchase Agreement between Kentucky Power; American Electric Power (AEP), Kentucky Power's parent entity; and Liberty Utilities Co. On January 4, 2022, Kentucky Power requested confidential treatment for the same material, which was filed in Case No. 2021-00481.¹ On March 11, 2022, the Commission granted in part and denied in part the January 4, 2022 motion for confidential treatment filed in Case No. 2021-00481.²

¹ Case No. 2021-00481, *Electronic Joint Application of American Electric Power Company, Inc., Kentucky Power Company and Liberty Utilities Co. for Approval of the Transfer of Ownership and Control of Kentucky Power Company* (filed Jan. 4, 2022), Motion for Confidential Treatment.

² Case No. 2021-00481, Mar. 11, 2022 Order.

LEGAL STANDARD

The Commission is a public agency subject to Kentucky Open Records Act, KRS 61.870 through KRS 61.884. KRS 61.872(1) requires that all public records be open for inspection by any person, except as otherwise provided by KRS 61.870 to KRS 61.884. KRS 61.878 requires that the exceptions to the free and open examination of public records are strictly construed. Commission regulation 807 KAR 5:001, Section 13(2)(c) provides that the party requesting that the materials be granted confidential protection has the burden of establishing that one of the exemptions is applicable.

KRS 61.878(1)(c)(1) provides an exception to the requirement for public disclosure of records that are generally recognized as confidential and proprietary, and, if openly disclosed, would permit an unfair commercial advantage to competitors of the entity that disclosed the records. KRS 61.878(1)(k) provides an exception to the requirement for public disclosure of records for which public disclosure is prohibited by federal law or regulation, or state law. KRS 61.878(1)(l) provides an exception for tax information.

KENTUCKY POWER'S MOTION

Kentucky Power requested confidential protection for multiple sections of the Seller's Disclosure Letter provided in its response to Staff's Post-Hearing Request, Item 1. Section 2.4(b) contain information regarding the Big Sandy Firm Transportation Service Agreement between Kentucky Power and Columbia Gas Transmission, LLC, references to Master Lease agreements, and tower lease agreements. Kentucky Power argued that this information should receive confidential protection because it would provide an unfair commercial advantage because other corporations could use the information to undermine Kentucky Power's contract negotiations. Kentucky Power requested confidential treatment until the end of September 2022 for the Big Sandy Firm

Transportation Service Agreement, and confidential treatment for five years for the lease documents.

Kentucky Power requested confidential treatment for portions of Section 2.7(c) of the Seller's Disclosure Letter. This section contains the dollar book value of coal lands owned by Indian Michigan Power and Kentucky Power. Kentucky Power argued that, if this information were made public, then it would place Kentucky Power at a commercial disadvantage if the property was placed for sale. Others could use the information to tailor offers lower than what they would normally if the book value was known. Kentucky Power requested the information be kept confidential until January 2026.

Kentucky Power requested confidential protection for portions of Section 2.8(a) of the Seller's Disclosure Letter. This section contains information about a solar project development, a piece of real property that is for sale, and the sale of a non-AEP subsidiary. Kentucky Power requested the information regarding the solar project and the real property be held confidential for five years, and the information about the sale of a non-AEP subsidiary to be held confidential for one year. Kentucky Power argued that, if this information is disclosed, then it will create an unfair advantage because others will be able to use the information to get more favorable pricing harming Kentucky Power.

Kentucky Power requested confidential protection for all of Section 2.8(b) of the Seller's Disclosure Letter. This section contains information related to a contract issue with one of Kentucky Power's suppliers. Kentucky Power argued that, if this information was disclosed publicly, then it could cause all of Kentucky Power's suppliers to price their resources differently causing Kentucky Power to pay more. This would create an unfair

commercial advantage to the company's doing business with Kentucky Power. Kentucky Power requested this information be kept confidential indefinitely.

Kentucky Power requested confidential protection for Section 2.13(f) of the Seller's Disclosure Letter. The information contains employee benefits that would be triggered if Kentucky Power is sold. Kentucky Power argued that this information is generally considered as confidential and if disclosed could cause retention issues with other employees. Kentucky Power argued that if the designated material was disclosed, then it could create problems hiring other employees because they would request the same salary. Kentucky Power requested confidential protection for five years.

Kentucky Power request confidential protection for the entirety of Section 2.15 of the Seller's Disclosure Letter, which contains Kentucky Power's federal tax information. Kentucky Power argued this is exempt from disclosure pursuant to 26 U.S.C. § 6103(a)(2), and KRS 131.190. Kentucky Power requested indefinite confidential protection for this material.

Kentucky Power requested confidential protection for portions of Section 4.1(a) of the Seller's Disclosure Letter. This includes information about the solar development, the sale of real property, information about forecasted fuel costs and needs, and tax related information regarding Kentucky Power and Wheeling Power. The information related to the solar development and the sale of real property is the same information from Section 2.8(a) of the Seller's Disclosure Letter and Kentucky Power again requested confidential protection for 5 years. The tax information is the same tax information from Section 2.15 of the Seller's Disclosure Letter, and Kentucky Power again requested indefinite confidential protection for that material. Kentucky Power argued the information about

the forecasted fuel costs and needs is highly sensitive and if publicly disclosed competitors could use the information to gain a competitive advantage over Kentucky Power in the daily PJM energy markets. Kentucky Power requested that the information to be held confidential for five years.

Kentucky Power requested confidential protection of portions of Section 4.8(b) of the Seller's Disclosure Letter, which contains the capacity position of Kentucky Power in the Bridge Power Coordination Agreement between Liberty, Kentucky Power, and AEP. Kentucky Power argued that if this information is disclosed publicly, then it could place Kentucky Power at a competitive disadvantage if it needed to purchase third party power. This is because the third party could price capacity higher if the third party had access to Kentucky Power's capacity position or its need in PJM for certain years. Kentucky Power requested confidential protection of this information until May 2024, which is the end of the 2023/2024 PJM Capacity Period.

Kentucky Power requested confidential protection of portions of 4.20(a) of the Seller's Disclosure Letter. This is information related to a third party letter agreement which is an ongoing negotiation with the third party. Kentucky Power argued that if this information was disclosed, then it could negatively impact the negotiations with the third-party harming Kentucky Power. Kentucky Power requested that the information be held confidential for five years.

Kentucky Power requested confidential protection for the entirety of Section 4.20(e) of the Seller's Disclosure Letter, including the title of the section. Kentucky Power argued that this information relates to agreements made between Kentucky Power and AEP Generation Resources in the event that the Mitchell Plant is transferred to Wheeling

Power. Kentucky Power claimed public disclosure could lead entities that Kentucky Power had contracted with in the past to seek additional consideration for past agreements placing Kentucky Power at a disadvantage. Kentucky Power requested confidential protection until December 2028.

Kentucky Power requested confidential protection for the entirety of Section 9.2(a) of the Seller's Disclosure Letter, which provides information about potential legal claims against Kentucky Power. Kentucky Power argued that this information is generally considered confidential and contains information about legal positions. If it is disclosed, it could harm Kentucky Power's legal positions and be considered admissions. Kentucky Power requested confidential protection for five years for this material.

FINDINGS

Having considered the motion and the material at issue, the Commission finds that Kentucky Power's motion is granted in part and denied in part. The Commission finds that the designated material contained in Sections 2.4(b), 2.7(c), 2.8(a), 2.8(b), 2.15, 4.1(a), 4.8(b), the information in 4.20(e) but not the title, and 9.2(a) are records that 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.

The Commission finds that the designated material contained in Sections 2.15 and the portion of 4.1(a) that is related to tax information are records that meet the criteria for confidential treatment and are exempted from public disclosure pursuant to KRS 61.878(1)(k) and 807 KAR 5:001, Section 13.

The Commission finds that the request for confidential treatment is denied for Section 2.13(f). The Commission has previously held that executive compensation is not

entitled to confidential protection. The designated material in Section 2.13(f) does not specify which employee's compensation agreements that confidential protection is sought for. Therefore, Section 2.13(f) of the Seller's Disclosure Letter does not meet the criteria for confidential treatment and is not exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13.

The Commission further finds that the request for confidential treatment is denied for the title of the Section 4.20(e) of the Seller's Disclosure Letter. The title of the section does not meet the criteria for confidential protection and not exempted from public disclosure pursuant to KRS 61.871(1)(c)(1) and 807 KAR 5:001, Section 13. Public disclosure of the title of the section does not place Kentucky Power at an unfair commercial disadvantage.

IT IS THEREFORE ORDERED that:

1. Kentucky Power's December 14, 2021 motion for confidential treatment for portions of the Seller's Disclosure Letter is granted in part and denied in part.
2. Kentucky Power's request for confidential treatment for Sections 2.4(b), 2.7(c), 2.8(a), 2.8(b), 2.15, 4.1(a), 4.8(b), the information in 4.20(e) but not the title, and 9.2(a) of the Seller's Disclosure Letter is granted.
3. Kentucky Power's request for confidential treatment for Section 2.13(f) and the title of 4.20(e) is denied.
4. The designated material granted confidential treatment in the portion of 2.8(a) regarding the sale of a subsidiary of the Seller's Disclosure Letter by this Order shall not be placed in the public record or made available for public inspection for one year or until further Order of this Commission.

5. The designated material granted confidential treatment in the portion of 2.4(b) regarding the Big Sandy Firm Transportation Agreement of the Seller's Disclosure Letter by this Order shall not be placed in the public record of made available for public inspection until September 2022 or until further Order of this Commission.

6. The designated material granted confidential treatment in Section 4.8(b) of the Seller's Disclosure Letter by this Order shall not be placed in the public record or made available for public inspection until May 2024 or until further Order of this Commission.

7. The designated material granted confidential treatment in Section 2.7(c) of the Seller's Disclosure Letter by this Order shall not be placed in the public record or made available for public inspection until January 2026 or until further Order of this Commission.

8. The designated material granted confidential treatment in Section 4.20(e) of the Seller's Disclosure Letter by this Order shall not be placed in the public record or made available for public inspection until December 2028 or until further Order of this Commission.

9. The designated material granted confidential treatment in portions of Section 2.4(b), portions of Section 2.8(a), portions of Section 4.1(a), Section 4.20(a), and Section 9.2(a) of the Seller's Disclosure Letter by this Order shall not be placed in the public record or made available for public inspection until five years or until further Orders of this Commission.

10. The designated material granted confidential treatment in Sections 2.8(b), 2.15, and the portion of 4.1(a) regarding tax information of the Seller's Disclosure Letter

by this Order shall not be placed in the public record or made available for public inspection for an indefinite period or until further Order of this Commission.

11. 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).

12. Kentucky Power shall inform the Commission if the designated material granted confidential treatment becomes publicly available or no longer qualifies for confidential treatment.

13. 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, Kentucky Power 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 Kentucky Power is unable to make such demonstration, the requested material shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

14. The Commission shall not make the requested material for which confidential treatment was granted 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 Kentucky Power to seek a remedy afforded by law.

15. The designated material denied confidential treatment by this Order is not exempt from public disclosure and shall be placed in the public record and made available for public inspection.

16. If Kentucky Power objects to the Commission's determination that the requested material not be granted confidential treatment, it must seek either rehearing pursuant to KRS 278.400 or judicial review of this Order pursuant to KRS 278.410.

17. Within 30 days of the date of service of this Order, Kentucky Power shall file a revised version of the designated material for which confidential treatment was denied, reflecting as unredacted the information that has been denied confidential treatment.

18. The designated material for which Kentucky Power's request for confidential treatment has been denied shall neither be placed in the public record nor made available for inspection for 30 days from the date of service of this Order to allow Kentucky Power to seek a remedy afforded by law.

PUBLIC SERVICE COMMISSION


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ATTEST:


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