

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC 2022 INTEGRATED RESOURCE	)	CASE NO.
PLANNING REPORT OF KENTUCKY POWER	)	2023-00092
COMPANY	)	

ORDER

On March 20, 2023, Kentucky Power Company (Kentucky Power) filed a motion, pursuant to 807 KAR 5:001E, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for an indefinite period for certain information contained in the Integrated Resource Planning (IRP) Report.

LEGAL STANDARD

The Commission is a public agency subject to the Kentucky Open Records Act,<sup>1</sup> which requires that all public records “be open for inspection by any person, except as otherwise provided by KRS 61.870 to KRS 61.884.”<sup>2</sup> The exceptions to the free and open examination of public records should be strictly construed.<sup>3</sup> The party requesting that the materials be granted confidential protection has the burden of establishing that one of the exemptions is applicable.<sup>4</sup> KRS 61.878(1)(c)(1) provides an exception to the requirement for public disclosure of records that are “generally recognized as confidential and

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<sup>1</sup> KRS 61.870 through 61.884.

<sup>2</sup> KRS 61.872(1).

<sup>3</sup> KRS 61.878.

<sup>4</sup> 807 KAR 5:001E, Section 13(2)(c).

proprietary, which 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 exemption to the requirement for public disclosure of records “which is prohibited by federal law or regulation or state law.”<sup>5</sup> KRS 61.878(1)(m) provides exemptions from disclosure for information that would threaten public safety by exposing critical infrastructure.<sup>6</sup>

### KENTUCKY POWER’S ARGUMENT

Kentucky Power requested confidential treatment for portions of Exhibits F, G, and I to Kentucky Power’s IRP filing.

Kentucky Power stated that, pages 1054-1058, 1086-1092, 1125-1154, and 1156-1178 of Exhibit I in the IRP Report contain forecasted customer-specific usage information and the historical usage data for the commercial and industrial customers. The documents also contain forecasted usage data from certain wholesale customers. Kentucky Power argued the documents should be granted confidential protection because public disclosure of customer-specific historical and forecasted usage data could create a competitive disadvantage because the potential for public disclosure of sensitive business information, such as operational costs, could result in potential commercial and industrial customers deciding against locating in Kentucky Power’s service territory. Kentucky Power requested confidential protection for an indefinite period for the historical and forecasted usage data for the commercial and industrial customers. Kentucky Power requested confidential treatment for the forecasted usage data for the wholesale

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<sup>5</sup> KRS 61.878(1)(k).

<sup>6</sup> KRS 61.878(1)(m)(1).

customers until the next IRP is filed. Under the current filing schedule, Kentucky Power will file its next IRP in December 2025.

Kentucky Power requested confidential treatment for Exhibits G-2, G-3, G-4, G-5, G-7, and G-8 of the IRP Report. Kentucky Power stated that Exhibits G-2, G-3, and G-4 contain forecasted operating information related to Kentucky Power's generating units. Kentucky Power stated Exhibits G-5, G-7, and G-8 contain projected average fuel costs, projected non-fuel generation operating and maintenance expenses, and projected variable production costs through 2037. Kentucky Power argued the information contained in these exhibits should be granted confidential protection pursuant to KRS 61.878(1)(c)(1) because public disclosure of the information could damage Kentucky Power's position in current and future competitive marketplaces. Kentucky Power argued that if the information was disclosed other companies could create bidding strategies that adversely impact Kentucky Power. Kentucky Power argued this information has been granted confidential protection in the past by the Commission.<sup>7</sup> Kentucky Power requested confidential protection until its next IRP is filed.

Kentucky Power requested confidential treatment for Exhibit F, pages 306 and 307. The designated material consists of maps that the Federal Energy Regulation Commission (FERC) considers Critical Energy/Electric Infrastructure Information (CEII) and should be exempt from disclosure pursuant to 18 C.F.R. §388.112 and KRS 61.878(1)(k), which excludes from open records laws documents that, under federal law, are prohibited from public disclosure. Kentucky Power also argued these maps

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<sup>7</sup> Case No. 2019-00443, *Electronic 2019 Integrated Resource Planning Report of Kentucky Power Company* (Ky. PSC Mar. 3, 2020).

should be exempt from disclosure pursuant to KRS 61.878(1)(m)(1)(f) because the maps contain information that could threaten public safety if disclosed. Kentucky Power requested confidential treatment for the life of the identified facilities in the IRP.

### DISCUSSION AND FINDINGS

Having considered the motion and the material at issue, the Commission finds that Kentucky Power's motion for confidential treatment should be granted for the following reasons. The documents contained in Exhibit I contain information that if publicly disclosed would harm Kentucky Power's ability to attract a new customer base. The information is generally considered confidential and proprietary, and it therefore meets the criteria for confidential treatment and should be exempted from public disclosure pursuant to 807 KAR 5:001E, Section 13, and KRS 61.878(1)(c)(1).

The designated material contained in Exhibits G-2, G-3, G-4, G-5, G-7, and G-8 could, if publicly disclosed, place Kentucky Power at a competitive disadvantage because its market position could be compromised by allowing competitors an opportunity to create a bidding strategy to undercut Kentucky Power's bids. The documents therefore meet the criteria for confidential treatment and should be exempted from public disclosure pursuant to 807 KAR 5:001E Section 13, and KRS 61.878(1)(c)(1).

The designated material contained in Exhibit F, pages 306 and 307, are maps of critical utility infrastructure that are exempt from public disclosure by federal law. Additionally, public disclosure of the designated material could have a reasonable likelihood of threatening public safety by exposing a vulnerability in preventing, protecting against, mitigating, or responding to a terrorist act. The documents therefore meet the

criteria for confidential protection and are exempted from public disclosure pursuant to KRS 61.878(1)(k) and KRS 61.878(1)(m)(1)(f).

IT IS THEREFORE ORDERED that:

1. Kentucky Power 's motion for confidential treatment is granted.
2. The designated material in Exhibit I of the IRP Report and Exhibits G-2, G-3, G-4, G-5, G-7, and G-8 of the IRP Report 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.
3. The designated material in Exhibit I of the IRP report that contains the forecasted usage data of wholesale customers shall not be placed in the public record or made available for public inspection until Kentucky Power's next IRP Report is filed, or until further Order of this Commission.
4. The maps contained in Exhibit F, pages 306 and 307, of the IRP Report shall not be placed in the public record or made available for public inspection for the life of the identified facilities, or until further Order of this Commission.
5. Use of the designated material granted confidential treatment by this Order in any Commission proceeding shall comply with 807 KAR 5:001E, Section 13(9).
6. Kentucky Power shall inform the Commission if the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment.
7. 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.

8. 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 to allow Kentucky Power to seek a remedy afforded by law.

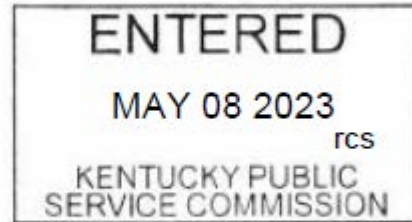
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PUBLIC SERVICE COMMISSION

  
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Chairman

  
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Vice Chairman

  
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Commissioner



ATTEST:

  
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Executive Director

\*Angela M Goad  
Assistant Attorney General  
Office of the Attorney General Office of Rate  
700 Capitol Avenue  
Suite 20  
Frankfort, KENTUCKY 40601-8204

\*Michael West  
Office of the Attorney General Office of Rate  
700 Capitol Avenue  
Suite 20  
Frankfort, KENTUCKY 40601-8204

\*Hector Garcia  
Kentucky Power Company  
1645 Winchester Avenue  
Ashland, KY 41101

\*Honorable Michael L Kurtz  
Attorney at Law  
Boehm, Kurtz & Lowry  
36 East Seventh Street  
Suite 1510  
Cincinnati, OHIO 45202

\*Jody Kyler Cohn  
Boehm, Kurtz & Lowry  
36 East Seventh Street  
Suite 1510  
Cincinnati, OHIO 45202

\*John Horne  
Office of the Attorney General Office of Rate  
700 Capitol Avenue  
Suite 20  
Frankfort, KENTUCKY 40601-8204

\*Kentucky Power Company  
1645 Winchester Avenue  
Ashland, KY 41101

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

\*Lawrence W Cook  
Assistant Attorney General  
Office of the Attorney General Office of Rate  
700 Capitol Avenue  
Suite 20  
Frankfort, KENTUCKY 40601-8204