

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF KENTUCKY)	
POWER COMPANY FOR (1) A GENERAL)	
ADJUSTMENT OF ITS RATES FOR ELECTRIC)	
SERVICE; (2) APPROVAL OF TARIFFS AND)	
RIDERS; (3) APPROVAL OF ACCOUNTING)	CASE NO.
PRACTICES TO ESTABLISH REGULATORY)	2023-00159
ASSETS AND LIABILITIES; (4) A)	
SECURITIZATION FINANCING ORDER; AND (5))	
ALL OTHER REQUIRED APPROVALS AND)	
RELIEF)	

ORDER

On July 13, 2023, Kentucky Power Company (Kentucky Power) filed a motion, pursuant to 807 KAR 5:001, Section 13, KRS 61.878, 26 U.S.C. § 6103(a)(2), KRS 131.190, and 17 C.F.R. § 240.10b-5 requesting that the Commission grant confidential protection for documents, including executive compensation information, tax returns, and salary and wage studies, submitted in Kentucky Power’s response to Commission Staff’s First Request for Information (Staff’s First Request).

Response to Staff’s First Request, Item 4, Attachment 1

Kentucky Power sought confidential treatment for 20 years for information concerning Kentucky Power’s internal accounting procedures pursuant to KRS 61.878(1)(c)(1).

In support of its motion, Kentucky Power argued that these procedures constitute proprietary and trade secret information, which, if made available to the public would

provide competitors with insight into Kentucky Power's internal operations and put it at a competitive disadvantage.

Having considered the motion and the material at issue, the Commission finds that the document containing information on Kentucky Power's internal accounting procedures is generally recognized as confidential or proprietary because if it is publicly disclosed it may provide competitors valuable insight into Kentucky Power's internal operations; it therefore meets the criteria for confidential treatment and should be exempted from public disclosure for 20 years, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

Response to Staff's First Request, Item 22, Attachment 1

Kentucky Power sought confidential treatment for reports summarizing analysis of the Company's executive compensation for five years pursuant to KRS 61.878(1)(c)(1).

In support of its motion, Kentucky Power argued that without confidential treatment, other businesses could obtain information that would provide an unfair advantage in recruiting and retaining executive employees.

Having considered the motion and the material at issue, the Commission finds that the document containing summaries of Kentucky Power's executive employee compensation is not generally recognized as confidential or proprietary; it therefore does not meet the criteria for confidential treatment and should not be exempted from public disclosure. The Commission has previously held that executive salaries are not entitled

to confidential protection because of the public interest in disclosure.¹ Therefore, the Commission further warns Kentucky Power that, as a result of the long-standing precedent denying confidential treatment to executive compensation, it will not look kindly on subsequent motions for confidential treatment of executive compensation.

Response to Staff's First Request, Item 22, Attachments 2 and 3

Kentucky Power sought confidential treatment for two benefits and compensation studies filed as Exhibit ARC-10 and ARC-11 in the Direct Testimony of Andrew Carlin with its application for an adjustment of rates for five years pursuant to KRS 61.878(1)(c)(1).

¹ The Commission has a long precedent of not granting confidential treatment for executive compensation. See Case No. 2012-00221, *Application of Kentucky Utilities Company for an Adjustment of its Electric Rates* (Ky. PSC Sept. 11, 2013); Case No. 2014-00371, *Application of Kentucky Utilities Company for an Adjustment of its Electric Rates* (Ky PSC Jan 20, 2016); Case No. 2015-00418, *Application of Kentucky-American Water Company for an Adjustment of Rates* (Ky PSC Aug. 31, 2016); Case No. 2017-00321, *Electronic Application of Duke Energy Kentucky, Inc. For: 1) An Adjustment of the Electric Rates; 2) Approval of an Environment Compliance Plan and Surcharge Mechanism; 3) Approval of New Tariffs; 4) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; and 5) All other Required Approvals and Relief* (Ky. PSC June 12, 2018); Case No. 2018-00294, *Electronic Application of Kentucky Utilities Company for an Adjustment of its Electric Rates* (Ky. PSC Oct. 8, 2019); Case No. 2018-00295, *Electronic Application of Louisville Gas and Electric Company for an Adjustment of its Electric and Gas Rates* (Ky. PSC Oct. 8, 2019); Case No. 2019-00268, *Application of Knott County Water and Sewer District for an Alternative Rate Adjustment* (Ky. PSC Dec. 3, 2019); Case No. 2019-00271, *Electronic Application of Duke Energy Kentucky, Inc. for 1) An Adjustment of the Electric Rates; 2) Approval of New Tariffs; 3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; and 4) All other Required Approvals and Relief* (Ky. PSC May 4, 2020); Case No. 2020-00290, *Electronic Application of Bluegrass Water Utility Operating Company, LLC for an Adjustment of Rates and Approval of Construction* (Ky. PSC Dec. 27, 2021); Case No. 2020-00349, *Electronic Application of Kentucky Utilities Company for an Adjustment of Electric Rates, a Certificate of Public Convenience and Necessity to Deploy Advanced Metering Infrastructure, Approval of Certain Regulatory and Accounting Treatments, and Establishment of a One-Year Subcredit* (Ky. PSC Dec. 7, 2021); Case No. 2020-00350, *Electronic Application of Louisville Gas and Electric Company for an Adjustment of its Electric and Gas Rates, a Certificate of Public Convenience and Necessity to Deploy Advanced Metering Infrastructure, Approval of Certain Regulatory and Accounting Treatments, and Establishment of One-Year Surcredit* (Ky. PSC Dec. 7, 2021); Case No. 2021-00183, *Electronic Application of Columbia Gas of Kentucky, Inc. for an Adjustment of Rates; Approval of Depreciation Study; Approval of Tariff Revision; Issuance of a Certificate of Public Convenience and Necessity; and Other Relief* (Ky. PSC Oct. 5, 2021); Case No. 2021-00185, *Electric Application of Delta Natural Gas Company, Inc. for an Adjustment of its Rates and a Certificate of Public Convenience and Necessity* (Ky. PSC Dec. 8, 2021).

In support of its motion, Kentucky Power argued that the public disclosure of the studies could place Kentucky Power at a competitive disadvantage to other employers seeking to attract and retain current and prospective Kentucky Power employees. In addition, Kentucky Power asserted that the subscription agreements with the two services prohibit Kentucky Power from copying, transferring, or disseminating any of the information contained in the service.

Having considered the motion and the material at issue, the Commission finds that the benefits and compensation studies are generally recognized as confidential or proprietary because if they were publicly disclosed they would give competitors an advantage when competing for employees; they therefore meet the criteria for confidential treatment and should be exempted from public disclosure for five years, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

Response to Staff's First Request, Items 24 and 33, Attachment 1

Kentucky Power sought confidential treatment for non-public compensation information for its executive officers until the information is filed with the Securities and Exchange Commission (SEC) pursuant to 17 C.F.R. § 240.10b-5.

In support of its motion, Kentucky Power argued that the information contains certain assumptions regarding forward-looking earnings-related information and stock-based information that it is required to maintain confidential under SEC regulation until publicly filed.

Having considered the motion and the material at issue, the Commission finds that the compensation information for Kentucky Power's executive officers is recognized as confidential, because the SEC requires the information remain confidential until publicly

filed; it therefore meets the criteria for confidential treatment and should be exempted from public disclosure until publicly filed with the SEC, pursuant to 17 C.F.R. § 240.10b-5.

Response to Staff's First Request, Item 44, Attachments 2 and 3

Kentucky Power sought indefinite confidential treatment for its 2021 federal and state tax returns pursuant to 26 U.S.C. § 6103(a)(2), KRS 131.190, KRS 61.878(k), and KRS 61.878(1)(l).

In support of its motion, Kentucky Power argued that tax return information is afforded broad confidential protections under both state and federal law.

Having considered the motion and the material at issue, the Commission finds that Kentucky Power's 2021 state and federal tax returns are generally granted confidential treatment, as tax returns are afforded broad confidential protection under both state and federal law; the information therefore meets the criteria for confidential treatment and should be exempted from public disclosure pursuant to 26 U.S.C. § 6103(a)(2), KRS 131.190, KRS 61.878(k), and KRS 61.878(1)(l).

IT IS THEREFORE ORDERED that:

1. Kentucky Power's motion for confidential treatment is granted in part and denied in part.
2. The information concerning Kentucky Power's internal accounting procedures in Kentucky Power's response to Staff's First Request, Item 4, Attachment 1, granted confidential treatment by this Order, shall not be placed in the public record or made available for public inspection for 20 years, or until further Order of this Commission.

3. Kentucky Power's reports summarizing analysis of the Company's executive compensation in Kentucky Power's response to Staff's First Request, Item 22, Attachment 1, denied confidential treatment by this Order, and shall be placed in the public record.

4. The two benefits and compensation studies filed as Exhibit ARC-10 and ARC-11 in the Direct Testimony of Andrew Carlin in Kentucky Power's response to Staff's First Request, Item 22, Attachments 2 and 3, 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.

5. The non-public compensation information for Kentucky Power's executive officers in Kentucky Power's response to Staff's First Request, Items 24 and 33, Attachment 1, granted confidential treatment by this Order, shall not be placed in the public record or made available for public inspection until the information is publicly filed with the SEC, or until further Order of this Commission.

6. Kentucky Power's 2021 federal and state tax returns in Kentucky Power's response to Staff's First Request, Item 44, Attachments 2 and 3, granted confidential treatment 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.

7. 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).

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

9. 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.

10. 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.

11. 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.

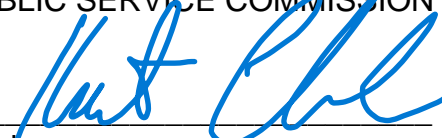
12. If Kentucky Power objects to the Commission's determination that the requested material not be granted confidential treatment, it must seek either rehearing pursuant to KRS 278.400 or judicial review of this Order pursuant to KRS 278.410. Failure to exercise either of these statutory rights will be deemed as agreement with the Commission's determination of which materials shall be granted confidential treatment.

13. 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.

14. 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.

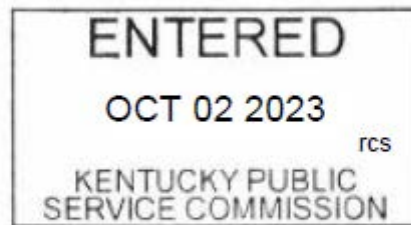
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