

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 December 8, 2023, Kentucky Power Company (Kentucky Power) filed a motion pursuant to 807 KAR 5:001, Section 13, and KRS 61.878 requesting that the Commission grant confidential treatment for certain information contained in stenographic transcripts of testimony given during confidential sessions of the hearing in this matter on November 28, 2023, and November 30, 2023.

**Testimony Regarding the Response to Commission Staff's First Request for Information (Staff's First Request), Item 33, Attachment 1**

Kentucky Power requested confidential treatment for five years for information contained in stenographic transcripts of testimony of Brian K. West, Andrew R. Carlin, and Katharine I. Walsh regarding information contained in Attachment 1 to Kentucky Power's response to Staff's First Request, Item 33, (Attachment 1) pursuant to KRS 61.878(1)(a), KRS 61.878(1)(c)(1), KRS 61.878(1)(k), and 17 C.F.R. § 240.10b-5

given during confidential session of the hearing in this matter on November 28, 2023, and November 30, 2023.

The testimony regarding Attachment 1 includes non-public compensation information for Kentucky Power's executive officers and other employees. In support of its motion, Kentucky Power stated it is required to maintain the confidentiality of the executive officer information under SEC regulation, 17 C.F.R. § 240.10b-5, until the information is included in publicly filed documents.<sup>1</sup> According to the motion, review of this information on a confidential basis could subject the reviewer to confidentiality and insider information obligations and restrictions under SEC rules.<sup>2</sup> Kentucky Power argued that this information is highly sensitive, even internally within Kentucky Power, and is only available on a need-to-know basis.<sup>3</sup> As noted above, in an October 2, 2023 Order, the Commission granted confidential treatment for non-public executive officer compensation information until the information was publicly filed by the SEC.<sup>4</sup>

The Commission granted confidential treatment for non-executive officer employee compensation pursuant to KRS 61.878(1)(a) and (c).<sup>5</sup> Attachment 1 was discussed during confidential session, and to the extent that there may have been conversations concerning non-executive officer employee compensation, Kentucky Power requested confidential treatment for five years.<sup>6</sup> Kentucky Power argued that

---

<sup>1</sup> Kentucky Power's Motion for Confidential Treatment (Motion) (filed Dec. 8, 2023) at 2.

<sup>2</sup> Motion at 2, footnote 2.

<sup>3</sup> Motion at 3.

<sup>4</sup> Order (Ky. PSC Oct. 2, 2023) at 6, ordering paragraph 5,

<sup>5</sup> Order (Ky. PSC Oct. 2, 2023).

<sup>6</sup> Motion at 2-3.

public disclosure of this personal information is likely to result in increased costs and a loss of negotiating ability for Kentucky Power and increases the risk of a higher cost of service resulting from greater employee compensation demands and higher costs to recruit and retain skilled employees and managers.<sup>7</sup> After five years the labor market will have changed sufficiently and there will no longer be any competitive advantage to gain from the information.

Having considered the motion and the material at issue, the Commission finds that the testimony regarding information contained in Attachment 1 is generally recognized as confidential or proprietary to the extent discussed below. The disclosure of executive salary information as it relates to SEC filings is generally considered confidential until public disclosure is made by the company, and as such; confidential treatment is granted pursuant to KRS 61.878(1)(k) until the public filing is made with the SEC. To the extent the non-executive salaries listed in Attachment 1 were discussed, the information meets the criteria for confidential treatment and should be exempted from public disclosure for five years pursuant to 807 KAR 5:001, Section 13, KRS 61.878(1)(a), and KRS 61.878(1)(c)(1) consistent with prior cases involving salary and compensation information.<sup>8</sup>

---

<sup>7</sup> Motion at 3.

<sup>8</sup> See Case No. 2017-00179, *Electronic Application of Kentucky Power Company for (1) A General Adjustment of Its Rates for Electric Service; (2) An Order Approving Its 2017 Environmental Compliance Plan; (3) An Order Approving Its Tariffs and Riders; (4) An Order Approving Accounting Practices to Establish Regulatory Assets and Liabilities; and (5) An Order Granting All Other Required Approvals and Relief* (Ky. PSC Aug. 23, 2017), Order at 2-3 and 6-7.

## **Testimony Regarding the Response to All-Source Request for Proposals**

Kentucky Power sought confidential treatment indefinitely for stenographic transcripts of testimony of Alex E. Vaughan regarding high-level details of the responses to Kentucky Power's All-Source Request for Proposals (RFP) on November 30, 2023, pursuant to KRS 61.878(1)(c)(1).

In support of its motion, Kentucky Power argued that the high-level details of the responses to the All-Source RFP are highly confidential and public disclosure of their existence or non-existence would cause competitive injury to Kentucky Power.<sup>9</sup> The information discussed concerned responses to an All-Source RFP for generation resources, which were provided to the Kentucky Power on a confidential basis by the respondents. According to the motion, the information discussed also provided insight into the manner by which Kentucky Power evaluates bids in response to the RFP.<sup>10</sup> Kentucky Power argued that failure to maintain this information as confidential may have a chilling effect on the willingness of future bidders to submit responses to Kentucky Power RFPs.<sup>11</sup> In addition, if offers are less competitive than they otherwise would be, Kentucky Power and its customers may be harmed through higher costs than would otherwise be incurred.

Having considered the motion and the material at issue, the Commission finds that the discussion regarding the All-Source RFP is generally recognized as confidential or proprietary. At the time, Kentucky Power had not selected a winning bid nor finished

---

<sup>9</sup> Motion at 3.

<sup>10</sup> Motion at 4.

<sup>11</sup> Motion at 4.

evaluating the applicants. As such, disclosure of the information would disadvantage Kentucky Power in future RFPs as well as allow applicants to possibly manipulate the process should no vendor be selected and therefore meets the criteria for confidential treatment and should be 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. Kentucky Power's December 8, 2023 motion for confidential treatment is granted.

2. The testimony contained in stenographic transcripts of Brian K. West, Andrew R. Carlin, and Katharine I. Walsh given on November 28, 2023 regarding executive officer salary information contained in Attachment 1 to Kentucky Power's response to Staff's First Request, Item 33, 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.

3. The testimony contained in stenographic transcripts of Brian K. West, Andrew R. Carlin, and Katharine I. Walsh given on November 28, 2023, and November 30, 2023, regarding the remainder of the employee salaries contained in Attachment 1 to Kentucky Power's response to Staff's First Request, Item 33, 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.

4. The testimony contained in stenographic transcripts of Alex E. Vaughan regarding high-level detail of the responses to Kentucky Power's All-Source Request for Proposals, 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.

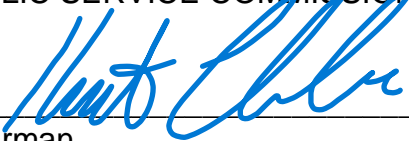
5. Use of the designated material granted confidential treatment by this Order in any Commission proceeding shall comply with 807 KAR 5:001, Section 13(9).

6. If the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment, Kentucky Power shall inform the Commission and file with the Commission an unredacted copy of the designated material.


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 in order to allow Kentucky Power to seek a remedy afforded by law.

PUBLIC SERVICE COMMISSION

  
\_\_\_\_\_  
Chairman

  
\_\_\_\_\_  
Vice Chairman

  
\_\_\_\_\_  
Commissioner

ENTERED  
JUN 04 2024  
rCS  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
\_\_\_\_\_  
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

\*Hector Garcia Santana  
American Electric Power Service Corporation  
1 Riverside Plaza, 29th Floor  
Post Office Box 16631  
Columbus, OHIO 43216

\*Kenneth J Gish, Jr.  
Stites & Harbison  
250 West Main Street, Suite 2300  
Lexington, KENTUCKY 40507

\*Ashley Wilmes  
Kentucky Resources Council, Inc.  
Post Office Box 1070  
Frankfort, KENTUCKY 40602

\*Hema Lochan  
Earthjustice  
48 Wall Street, 15th Floor  
New York, NEW YORK 10005

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

\*Byron Gary  
Kentucky Resources Council, Inc.  
Post Office Box 1070  
Frankfort, KENTUCKY 40602

\*Joseph Fichera  
Senior Managing Director & CEO  
Saber Partners, LLC  
260 Madison Avenue 8th Floor  
New York, NEW YORK 10016

\*Honorable Kimberly S McCann  
Attorney at Law  
VanAntwerp Attorneys, LLP  
1544 Winchester Avenue, 5th Floor  
P. O. Box 1111  
Ashland, KENTUCKY 41105-1111

\*Carrie H Grundmann  
Spilman Thomas & Battle, PLLC  
110 Oakwood Drive, Suite 500  
Winston-Salem, NORTH CAROLINA 27103

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

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

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

\*John Horne  
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

\*Cassandra McCrae  
Earthjustice  
1617 JFK Boulevard, Suite 1675  
Philadelphia, PENNSYLVANIA 19103

\*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

\*Thomas J FitzGerald  
Counsel & Director  
Kentucky Resources Council, Inc.  
Post Office Box 1070  
Frankfort, KENTUCKY 40602

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

\*Megan W Mullins  
Spilman Thomas & Battle, PLLC  
300 Kanawha Blvd, East  
Charleston, WEST VIRGINIA 25301



\*Steven W Lee  
Spilman Thomas & Battle, PLLC  
1100 Brent Creek Blvd., Suite 101  
Mechanicsburg, PENNSYLVANIA 17050

\*Thomas Cmar  
Earthjustice  
6608 Wooster Pike  
Cincinnati, OHIO 45227

\*Tanner Wolfram  
American Electric Power Service Corporation  
1 Riverside Plaza, 29th Floor  
Post Office Box 16631  
Columbus, OHIO 43216

\*W. Mitchell Hall, Jr.  
VanAntwerp Attorneys, LLP  
1544 Winchester Avenue, 5th Floor  
P. O. Box 1111  
Ashland, KENTUCKY 41105-1111