

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 POWER COMPANY)	2024-00136
FROM NOVEMBER 1, 2022 THROUGH APRIL 30,)	
2023)	

ORDER

On September 23, 2024, Kentucky Power Company (Kentucky Power) filed a motion,¹ pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for portions of Attachment 2 and Attachment 4 to its response to Commission Staff’s Second Request for Information (Staff’s Second Request), Item 2 for a period of five years and for portions of Attachment 1 provided as part of its response to Staff’s Second Request, Item 7, for a period of ten years.

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.”² In support of its motion, Kentucky Power argued for the application of KRS 61.878(1)(c)(1), which exempts from disclosure “[r]ecords confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if opening disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the

¹ Kentucky Power’s Motion for Confidential Treatment (Motion) (filed Sept. 23, 2024).

² KRS 61.872(1).

records.” Exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.³ The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.⁴

In support of its motion, Kentucky Power asserted that Attachments 2 and 4 provided in response to Staff’s Second Request, Item 2, contain certain unit specific information relating to the operation of Kentucky Power’s generating units, their costs, and the strategy for bidding the units into the PJM market.⁵ Kentucky Power argued that the sensitive data, if disclosed, would allow competitors to use the information to gain competitive advantage in daily participation in the PJM energy and ancillary service markets.⁶ Furthermore, Kentucky Power stated that the unit specific performance data is not generally known or readily ascertainable.⁷

Kentucky Power also requested that certain information in Attachment 1 to Staff’s Second Request, Item 7, receive confidential treatment for ten years.⁸ In support of its motion, Kentucky Power argued that disclosure of commercial and industrial customer names as well as customer account numbers could allow competitors to gain specific information regarding business operations and would lead to customers being less likely to locate in Kentucky Power’s service territory.⁹

³ See KRS 61.871.

⁴ 807 KAR 5:001, Section 12(2)(c).

⁵ Kentucky Power’s Motion at 2.

⁶ Kentucky Power’s Motion at 2.

⁷ Kentucky Power’s Motion at 2.

⁸ Kentucky Power’s Motion at 3.

⁹ Kentucky Power’s Motion at 3.

Having considered the motion and the material at issue, the Commission finds that the identified unit specific performance data and customer name and account numbers for customers curtailed during Winter Storm Elliott is generally recognized as confidential or proprietary; it 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). The Commission has previously afforded confidential treatment to similar information.¹⁰ Additionally, the Commission grants confidential treatment for Attachment 2 and Attachment 4 for the requested five-year period. Further, the Commission grants the identified information provided in response to Staff's Second Request, Item 7, Attachment 1, confidential treatment for a ten-year period.

IT IS THEREFORE ORDERED that:

1. Kentucky Power's September 23, 2024 motion for confidential treatment is granted.
2. Attachments 2 and 4 provided in response to Staff's Second Request, Item 2 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. Attachment 1 provided in response to Staff's Second Request, Item 7 shall not be placed in the public record or made available for public inspection for ten years or until further order of this Commission.

¹⁰ See Case No. 2020-00174, *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 Practices to Establish Regulatory Assets and Liabilities; (4) Approval of a Certificate of Public Convenience and Necessity; and (5) All Other Required Approvals and Relief* (Ky. PSC Oct. 27, 2020), Order at 3.

4. 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).

5. 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.

6. 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.

7. 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



Commissioner



Commissioner

ATTEST:



Executive Director

ENTERED
DEC 04 2024 AH
KENTUCKY PUBLIC
SERVICE COMMISSION

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