

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 UTILITIES COMPANY	)	2024-00146
FROM MAY 1, 2023 THROUGH OCTOBER 31,	)	
2023	)	

ORDER

On August 26, 2024, Kentucky Utilities Company (KU) filed a petition,<sup>1</sup> pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for five years for bid analysis information and the bid selection process, as it relates to its internal policies and procedures regarding coal procurement.

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.”<sup>2</sup> In support of its motion, EKPC 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 records.” Exceptions to the free and open examination of public records contained in

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<sup>1</sup> KU’s Petition for Confidential Treatment (Petition) (filed Aug. 26, 2024).

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

KRS 61.878 should be strictly construed.<sup>3</sup> The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.<sup>4</sup>

In support of its petition, KU argued that disclosure of the bid analysis and selection process would damage KU's competitive position.<sup>5</sup> Furthermore, disclosing the information to "potential bidders could manipulate the bid solicitation process to the detriment of KU and its ratepayers by tailoring bids to correspond and comport with KU's bidding criteria and process."<sup>6</sup> KU asserted that the information is not known outside of KU and is generally recognized as confidential and proprietary information within the energy industry.<sup>7</sup>

Having considered the petition and the material at issue, the Commission finds that disclosure of coal bid information and procurement material would disadvantage KU in future negotiations by allowing future bidders to manipulate the selection process. This information 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 previously treated such information as confidential for a period of five years.<sup>8</sup>

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<sup>3</sup> See KRS 61.871.

<sup>4</sup> 807 KAR 5:001, Section 12(2)(c).

<sup>5</sup> Petition at 1.

<sup>6</sup> Petition at 2.

<sup>7</sup> Petition at 2.

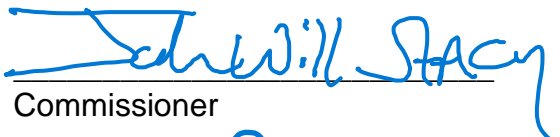
<sup>8</sup> See Case No. 2022-00265, *An Electronic Examination of the Application of the Fuel Adjustment Clause of Kentucky Utilities Company from November 1, 2021 through April 30, 2022* (Ky. PSC Feb, 2024), Order at 3, ordering paragraph 1.

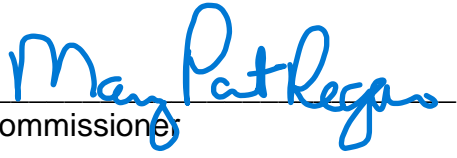
IT IS THEREFORE ORDERED that:

1. KU's August 26, 2024 petition for confidential treatment is granted.
2. The designated material 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.
3. 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).
4. If the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment, KU shall inform the Commission and file with the Commission an unredacted copy of the designated material.
5. 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, KU 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 KU is unable to make such demonstration, the requested material shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.
6. 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 KU to seek a remedy afforded by law.

PUBLIC SERVICE COMMISSION

  
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Chairman

  
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Commissioner

  
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Commissioner

ENTERED  
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KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
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