

September 15, 2017

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SEP 15 2017

PUBLIC SERVICE  
COMMISSION

*VIA HAND DELIVERED*

Mr. John Lyons, Acting Executive Director  
Kentucky Public Service Commission  
P.O. Box 615  
211 Sower Boulevard  
Frankfort, KY 40602

Re: PSC Case No. 2017-00283

Please find enclosed for filing with the Commission in the above-referenced case an original and eight redacted copies of the responses of East Kentucky Power Cooperative, Inc. ("EKPC"), to the information requests contained in the Appendix to the Commission's Order dated August 30, 2017.

Also enclosed are an original and eight copies of EKPC's Motion for Confidential Treatment of Information ("Motion"). One unredacted copy of the designated confidential portions of these responses, which are the subject of the Motion, is enclosed in a sealed envelope.

Please return a file stamped copy of these filings to my office.

Sincerely,



David S. Samford

Enclosures

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

**RECEIVED**

SEP 15 2017

PUBLIC SERVICE  
COMMISSION

**IN THE MATTER OF:**

**AN EXAMINATION OF THE APPLICATION )  
OF THE FUEL ADJUSTMENT CLAUSE OF )  
EAST KENTUCKY POWER COOPERATIVE, )  
INC. FROM NOVEMBER 1, 2016 THROUGH )  
APRIL 30, 2017 )**

**CASE NO. 2017-00283**

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**MOTION FOR CONFIDENTIAL TREATMENT**

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Comes now East Kentucky Power Cooperative, Inc. ("EKPC"), by and through counsel, pursuant to KRS 61.878, 807 KAR 5:001, Section 13 and other applicable law, and for its Motion requesting that the Kentucky Public Service Commission ("Commission") afford confidential treatment to certain documents filed in response to two requests for information in the above-captioned proceeding, respectfully states as follows:

1. The Commission issued its Order establishing this case on August 30, 2017 and included the initial set of requests for information to EKPC as an Appendix to that Order.
2. Request No. 15 from the August 30<sup>th</sup> request for information states as follows:
  15. a. During the period from November 1, 2016 to April 30, 2017, have there been any changes to East Kentucky's written policies and procedures regarding its fuel procurement?
  - b. If yes:
    - (1) Describe the changes;
    - (2) State the date(s) the changes were made;
    - (3) Explain why the changes were made; and
    - (4) Provide these written policies and procedures as changed.
  - c. If no, provide the date East Kentucky's current fuel procurement policies and procedures were last changed,

when they were last provided to the Commission, and identify the proceeding in which they were provided.

3. In its response to Request No. 15, EKPC is providing a copy of its Administrative Policy A031 (“Policy A031”). Policy A031 was revised on September 23, 2016, but was not provided to the Commission in the previous case. The policy was revised to correlate with the revisions made and approved to Policy No. 404 on July 12, 2016. Confidential treatment was granted for the previous version of this document as tendered in Case No. 2016-00231.

4. Request No. 19 from the August 30<sup>th</sup> request for information states as follows:

19. List each written coal supply solicitation issued during the period from November 1, 2016 through April 30, 2017.
  - a. For each solicitation, provide the date of the solicitation (contract or spot), the quantities solicited, a general description of the quality of coal solicited, the time period over which deliveries were requested, and the generating unit(s) for which the coal was intended.
  - b. For each solicitation, state the number of vendors to whom the solicitation was sent, the number of vendors who responded, and the selected vendor(s). Provide the bid tabulation sheet or corresponding document that ranks the proposals. (This document should identify all vendors who made offers.) State the reasons for each selection. For each lowest-cost bid not selected, explain why the bid was not selected.

5. In its response to Request No. 19, EKPC is providing a copy of its bid tabulation sheets, which includes information that is responsive to the request for information.

6. Request No. 20 from the August 30<sup>th</sup> request for information states as follows:

20. List each oral coal supply solicitation issued during the period from November 1, 2016 through April 30, 2017.
  - a. For each solicitation, state why the solicitation was not written, the date(s) of the solicitation, the quantities solicited, a general description of the quality of coal solicited, the time period over which deliveries were requested, and the generating unit(s) for which the coal was intended.
  - b. For each solicitation, identify all vendors solicited and the vendor selected. Provide the tabulation sheet or other document that ranks the proposals. (This document should identify all vendors who

made offers.) State the reasons for each selection. For each lowest-cost bid not selected, explain why the bid was not selected.

7. In its Response to Request No. 20, EKPC is providing its bid tabulation sheets, which includes information that is responsive to the request for information.

8. The information and documents tendered by EKPC in response to Request No. 15, Request No. 19 and Request No. 20 are being tendered in redacted form in the public version of EKPC's filing and in an unredacted form filed under seal herewith. Collectively, this information and these documents are hereinafter referred to as the "Confidential Information."

9. The Confidential Information contains extensive information that describes the internal delegation of authority, business planning assumptions and procurement strategy of EKPC with regard to fuel, limestone and other energy commodities as well as the information received by EKPC in the course of conducting written and verbal solicitations for fuel. This information is commercially sensitive and proprietary. More specifically, the Confidential Information includes:

- a. Delegations of authority to bind EKPC with regard to various transactions;
- b. The means and methods of transactional processes;
- c. Procurement strategies;
- d. Governance records and policies;
- e. Coal specifications received from third-party bidders;
- f. Pricing data for coal bids received from third-party bidders; and
- g. Recommendations from EKPC Staff regarding the selection of particular vendors to supply fuel to EKPC's generating fleet.

10. The Confidential Information is retained by EKPC on a "need-to-know" basis and is not publicly available. If disclosed, the Confidential Information would give potential vendors and competitors a tremendous competitive advantage in the course of ongoing and future

negotiations to procure fuel, limestone and other commodities. These market advantages would likely translate into higher costs for EKPC and, by extension, detrimentally higher rates for EKPC's Members. Thus, disclosure of the Confidential Information would be highly prejudicial to EKPC, EKPC's Members and those Members' members.

11. The Kentucky Open Records Act exempts the Confidential Information from public disclosure. *See* KRS 61.878(1)(c). As set forth above, disclosure of the Confidential Information would permit an unfair advantage to third parties. Moreover, the Kentucky Supreme Court has stated, "information concerning the inner workings of a corporation is 'generally accepted as confidential or proprietary.'" *Hoy v. Kentucky Industrial Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995). Because the Confidential Information is critical to EKPC's effective execution of business decisions and strategy, it satisfies both the statutory and common law standards for being afforded confidential treatment. Indeed, the Commission has already recognized the confidential nature of the information included in the responses and has afforded confidential treatment to identical information in a prior proceeding.<sup>1</sup>

12. EKPC does not object to limited disclosure of the Confidential Information, pursuant to an acceptable confidentiality and nondisclosure agreement, to the Attorney General or any other intervenors with a legitimate interest in reviewing the same for the sole purpose of participating in this case.

13. In accordance with the provisions of 807 KAR 5:001, Section 13(2), EKPC is filing one copy of the Confidential Information separately under seal. The filing of the Confidential Information is noted in the public version of EKPC's response to Request No. 15, Request No. 19

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<sup>1</sup> *See* Letter from Jeff Derouen to Mark David Goss, P.S.C. Case No. 2011-00246 (Sept. 28, 2011); *In the Matter of an Examination of the Application of the Fuel Adjustment Clause of East Kentucky Power Cooperative, Inc. from May 1, 2013 Through October 31, 2013*. Order, Case No. 2013-000445 (Ky. P.S.C., June 17, 2014). A copy of these documents are attached hereto as Exhibit 1.

and Request No. 20, which include redacted copies of such information. Due to the pervasive nature of the confidential and proprietary information included in Policy A031 and the bid tabulation sheets, confidential treatment is sought for the entirety of the Confidential Information.

14. In accordance with the provisions of 807 KAR 5:001, Section 13(3), EKPC respectfully requests that the Confidential Information be withheld from public disclosure for a period of ten years. This will assure that the Confidential Information – if disclosed after that time – will be less likely to include information that continues to be commercially sensitive so as to impair the interests of EKPC if publicly disclosed. However, EKPC reserves the right to seek an extension of the grant of confidential treatment if it is necessary to do so at that time.

WHEREFORE, on the basis of the foregoing, EKPC respectfully requests the Commission to enter an Order granting this Motion for Confidential Treatment and to so afford such protection from public disclosure to the unredacted copies of Confidential Information, which is filed herewith under seal, for a period of ten years from the date of entry of such an Order.

This 15<sup>th</sup> day of September, 2017.

Respectfully submitted,



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*Counsel for East Kentucky Power Cooperative, Inc.*



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Energy and Environment Cabinet

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David L. Armstrong  
Chairman

James W. Gardner  
Vice Chairman

Charles R. Borders  
Commissioner

September 28, 2011

Frost Brown Todd LLC  
Attention: Mark David Goss  
250 West Main Street, Suite 2800  
Lexington, Kentucky 40507-1749

Re: East Kentucky Power Cooperative, Inc.  
Petition for Confidential Protection received 9/13/11  
PSC Reference #: 2011-00246

Dear Mr. Goss:

The Public Service Commission has received the Petition for Confidential Protection you filed on September 13, 2011 on behalf of East Kentucky Power Cooperative, Inc. ("EKPC"), to protect certain information filed with the Commission as confidential pursuant to Section 7 of 807 KAR 5:001 and KRS 61.878. The information you seek to have treated as confidential is identified as being contained in EKPC's Responses to Data Request Nos. 15 and 19 per Commission Order dated August 23, 2011. The information is more particularly described as containing identification of coal vendors and ranking of proposals; tabulation sheets containing current coal pricing, volume of usage, proposal evaluation procedures and coal acquisition strategies.

Your justification for having the Commission handle this material as confidential is that the public disclosure of the information would compromise EKPC's competitive position in the industry, which would result in an unfair commercial advantage to its competitors.

Based on a review of the information and pursuant to KRS 61.878 and 807 KAR 5:001, Section 7, the Commission has determined that the information requested to be held confidential is of a proprietary nature, which if publicly disclosed would permit an unfair commercial advantage to EKPC's competitors. Therefore, the information requested to be treated as confidential meets the criteria for confidential protection and will be maintained as a nonpublic part of the Commission's file in this case. The procedure for usage of confidential materials during formal proceedings may be found at Section 7(8) of 807 KAR 5:001.

KentuckyUnbridledSpirit.com

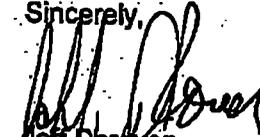


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Mr. Goss  
September 28, 2011  
Page 2

If the information becomes publicly available or no longer warrants confidential treatment, East Kentucky Power Cooperative, Inc. is required by Section 8(9)(a) of 807 KAR 5:001 to inform the Commission so that the information may be placed in the public record.

Sincerely,



Jeff Deroden  
Executive Director

kg/

cc: Parties of Record

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN EXAMINATION OF THE APPLICATION OF )  
THE FUEL ADJUSTMENT CLAUSE OF EAST )  
KENTUCKY POWER COOPERATIVE, INC. ) CASE NO. 2013-00445  
FROM MAY 1, 2013 THROUGH OCTOBER 31, )  
2013 )

ORDER REGARDING REQUEST FOR CONFIDENTIAL TREATMENT

On February 27, 2014, East Kentucky Power Cooperative, Inc., ("Movant") moved, pursuant to 807 KAR 5:001, Section 13, that certain materials filed with the Commission in response to requests for information contained in the Commission's February 7, 2014 Order be afforded confidential treatment and not be placed in the public record subject to public inspection.

In support of its motion, Movant states that the materials in question – coal bid analysis and tabulation sheets contained in response to Questions No. 19 and 20 of the requests for information, and a document describing Movant's fuel procurement policies and procedures filed in response to Question No. 15 – are records generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to its competitors and are exempted from public disclosure pursuant to KRS 61.878(1)(c)(1). Movant requests that information remain confidential for a period of ten years because the public disclosure of the information could impair its interests.

A hearing was held in this case on April 10, 2014. In response to a request made during that hearing, Movant filed on April 18, 2014, an updated response to

Question No. 15 contained in the Commission's February 7, 2014 Order, and requested that its updated response be afforded confidential treatment and not be placed in the public record subject to public inspection.

Having carefully considered the motion and the materials at issue, the Commission finds that:

1. The materials for which Movant seeks confidential treatment are records containing data which are generally recognized as confidential or proprietary, and which if openly disclosed would permit an unfair commercial advantage to its competitors and are exempted from public disclosure pursuant to KRS 61.878(1)(c)(1).

2. The information for which Movant seeks confidential treatment should not be placed in the public record or made available for public inspection from the date of this Order until February 27, 2024, at which time the materials will no longer qualify for the exemption pursuant to KRS 61.878(1)(c).

IT IS THEREFORE ORDERED that:

1. Movant's motion for confidential protection is granted.

2. The information for which Movant seeks confidential treatment shall not be placed in the public record or made available for public inspection from the date of this Order until February 28, 2024, at which time the materials will be placed in the public record. Movant may request that the materials continue to be treated as confidential, but must demonstrate that the materials still fall within the exclusions established in KRS 61.878.

3. If Movant objects to the time limits that the Commission has placed on the confidential treatment for the materials in question, it must seek either rehearing

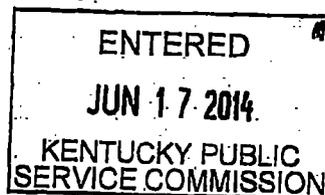
pursuant to KRS 278.400 or judicial review of this Order pursuant to KRS 278.410. Failure to exercise either of these statutory rights will be deemed as agreement with the Commission's determination of the period for which the materials are afforded confidential treatment and will require Movant to demonstrate a change in circumstances in any subsequent motion for continued confidential treatment of the materials in question after the end of the period set forth in ordering paragraph 2.

4. Use of the materials in question in any Commission proceeding shall be in compliance with 807 KAR 5:001, Section 13(9).

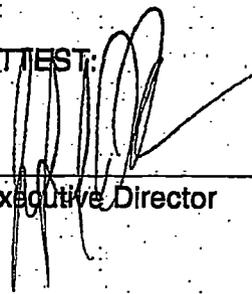
5. Movant shall inform the Commission if the materials in question become publicly available or no longer qualify for confidential treatment.

6. If a non-party to this proceeding requests to inspect materials granted confidential treatment by this Order and the period during which the materials have been granted confidential treatment has not run, the Movant shall have 20 days from receipt of written notice of the request to demonstrate that the materials still fall within the exclusions from disclosure requirements established in KRS 61.878. If Movant is unable to make such demonstration, the requested materials shall be made available for inspection.

By the Commission



ATTEST:

  
\_\_\_\_\_  
Executive Director

Case No. 2013-00445