

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 EAST KENTUCKY POWER)	2022-00037
COOPERATIVE, INC. FROM MAY 1, 2021)	
THROUGH OCTOBER 31, 2021)	

ORDER

This matter arises on two petitions for confidential treatment filed by East Kentucky Power Cooperative, Inc. (EKPC). On April 15, 2022, EKPC filed a petition, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1), requesting that the Commission grant confidential treatment for ten years for documents and redactions from documents it filed in response to Commission Staff's First Requests for Information (Staff's First Request), Items 4, 5, 11, and 21(b). On May 18, 2022, EKPC filed a petition, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1), requesting that the Commission grant confidential treatment for ten years for redactions from documents it filed in response to Commission Staff's Second Requests for Information (Staff's Second Request), Item 3(a). Both petitions are before the Commission for a decision.

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."¹ KRS 61.878(1)(c)(1) exempts from disclosure "[r]ecords confidentially disclosed to an agency or required by an agency to be

¹ KRS 61.872(1).

disclosed to it, generally recognized as confidential or proprietary, which if openly 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 KRS 61.878 should be strictly construed.² The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.³

April 15, 2022 Petition

EKPC’s responses to Staff’s First Request, Items 4, 5, 11, and 21(b), included information related to coal solicitation, including coal bid information and fuel procurement policies. EKPC argued that this information describes the business planning assumptions and procurement strategies of EKPC with regard to fuel as well as the information received and generated by EKPC in the course of conducting written and oral solicitations for fuel and would give potential vendors and competitors a tremendous competitive advantage in the course of ongoing and future negotiations to procure fuel if disclosed.

Having considered the petition and the material at issue, the Commission finds that EKPC’s April 15, 2022 petition for confidential treatment should be granted. Disclosure of coal solicitation information and policies could affect future bidding, allowing competitors and suppliers to gain an unfair advantage by having access to EKPC’s solicitation strategies and bids. This type of information was previously held confidential

² See KRS 61.871.

³ 807 KAR 5:001, Section 13(2)(c).

by the Commission.⁴ The Commission finds that the designated materials are records that meet the criteria for confidential treatment and are exempted from public disclosure for ten years pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13.

May 18, 2022 Petition

EKPC's responses to Staff's Second Request, Item 3(a) also included redacted documents containing information related to coal solicitation and bid information, namely bid tabulation sheets and bid rankings.

Having considered the petition and the material at issue, the Commission finds that EKPC's May 18, 2022 petition for confidential treatment should be granted. This information also constitutes coal solicitation information that would disadvantage EKPC in relation to its competitors. The Commission finds that the designated materials are records that meet the criteria for confidential treatment and are exempted from public disclosure for ten years pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13.

IT IS THEREFORE ORDERED that:

1. EKPC's April 15, 2022 and May 18, 2022 petitions for confidential treatment are 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 ten 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 Case No. 2018-00019, *Electronic Examination of the Application of the Fuel Adjustment Clause of East Kentucky Power Cooperative, Inc. from May 1, 2017 Through October 31, 2017* (Ky. PSC May 29, 2018), Order at 2.

4. EKPC shall inform the Commission if the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment.

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, EKPC 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 EKPC 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 EKPC to seek a remedy afforded by law.

PUBLIC SERVICE COMMISSION


Chairman

Vice Chairman


Commissioner



ATTEST:


Executive Director

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