

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF EAST)	
KENTUCKY POWER COOPERATIVE, INC. FOR)	
A (1) CERTIFICATE OF PUBLIC CONVENIENCE)	
AND NECESSITY FOR THE CONSTRUCTION OF)	CASE NO.
TRANSMISSION FACILITIES IN MADISON)	2022-00314
COUNTY, KENTUCKY; AND (2) DECLARATORY)	
ORDER CONFIRMING THAT A CERTIFICATE OF)	
PUBLIC CONVENIENCE AND NECESSITY IS)	
NOT REQUIRED FOR CERTAIN FACILITIES)	

ORDER

On February 2, 2023, East Kentucky Power Cooperative (EKPC) filed a motion, pursuant to 807 KAR 5:001E, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for ten years for responses information provided in EKPC's response to Commission Staff's Post-Hearing Request for Information (Staff's Post-Hearing Request).

LEGAL STANDARD

The Commission is a public agency subject to Kentucky Open Records Act,¹ which requires that all public records "be open for inspection by any person, except as otherwise provided by KRS 61.870 to KRS 61.884."² The exceptions to the free and open examination of public records should be strictly construed.³ The party requesting that the

¹ KRS 61.870 through 61.884.

² KRS 61.872(1).

³ KRS 61.878.

materials be granted confidential protection has the burden of establishing that one of the exemptions is applicable.⁴ KRS 61.878(1)(c)(1) provides an exception to the requirement for public disclosure of records that are “generally recognized as confidential and proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.”

DISCUSSION AND FINDINGS

In support of its motion, EKPC argued that the attachment to EKPC’s response to Staff’s Post-Hearing Request, Item 1 is an Order entered by the city of Richmond’s Order authorizing an option to purchase contract for a mega site should receive confidential treatment because it is a contract involving parties not directly involved in the case. EKPC argued the financial information in the city of Richmond’s contract has not been publicly disclosed, and if released could harm the city of Richmond’s ability to negotiate contracts in the future.

Additionally, EKPC requested confidential treatment, pursuant to KRS 61.878(1)(c)(1), for several Exhibits to EKPC’s response to Commission Staff’s First Request for Information, Item 1 which contained power flow studies. EKPC argued this information should be considered confidential because, if disclosed, it would provide EKPC’s competitors with an unfair commercial advantage. EKPC further argued that the power flow studies were confidential energy/electric infrastructure information (CEII)

⁴ 807 KAR 5:001E, Section 13(2)(c).

which have traditionally been treated as confidential by Federal Energy Regulatory Commission (FERC).⁵

EKPC argued the FERC Form 715 provided in response to EKPC's response to Staff's Post-Hearing Request, Item 3 should be granted confidential protection because Form 715 contains CEII and FERC considers the document confidential. EKPC also argued that if the information was publicly released its competitors could use contents of Form 715 to harm EKPC's business interests.

Having considered the motion and the material at issue, the Commission finds that EKPC's motion should be granted. The financial information in the third-party contract is information that would harm Richmond's interests and ability to negotiate contracts if disclosed. The power flow studies provided as Exhibits to EKPC's response to Staff's Post-Hearing Request, Item 1 is information that if disclosed would harm EKPC's position. Additionally, FERC Form 715 provided in EKPC's response to Staff's Post-Hearing Request, Item 3 is considered confidential by FERC and contains information that if disclosed would harm EKPC's commercial interests. All the information meets the criteria for confidential treatment and should be exempted from public disclosure pursuant to 807 KAR 5:001E, Section 13, and KRS 61.878(1)(c)(1).

IT IS THEREFORE ORDERED that:

1. EKPC'S motion for confidential treatment is granted.

⁵ See e.g., Case No. 2013-00430, *Application of Kentucky Power Company for a Certificate of Public Convenience and Necessity Authorizing the Company to Convert Big Sandy Unit 1 to a Natural Gas-Fired Unit and for All Other Required Approvals and Relief* (Ky. PSC June 18, 2019), Order.

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.

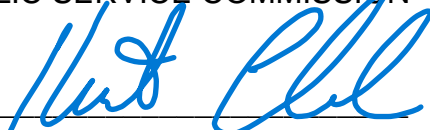
3. Use of the designated material granted confidential treatment by this Order in any Commission proceeding shall comply with 807 KAR 5:001E, Section 13(9).

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

ENTERED
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KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

*L. Allyson Honaker
Honaker Law Office, PLLC
1795 Alysheba Way
Suite 6202
Lexington, KENTUCKY 40509

*Brittany H. Koenig
Honaker Law Office, PLLC
1795 Alysheba Way
Suite 6202
Lexington, KENTUCKY 40509

*Chris Adams
East Kentucky Power Cooperative, Inc.
P. O. Box 707
Winchester, KY 40392-0707

*East Kentucky Power Cooperative, Inc.
4775 Lexington Road
P. O. Box 707
Winchester, KY 40392-0707