

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

**RECEIVED**  
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PUBLIC SERVICE  
COMMISSION

**IN THE MATTER OF:**

**AN APPLICATION OF EAST KENTUCKY )  
POWER COOPERATIVE, INC. FOR A )  
CERTIFICATE OF PUBLIC CONVENIENCE )  
AND NECESSITY FOR ALTERATION OF )  
CERTAIN EQUIPMENT AT THE COOPER )  
STATION AND APPROVAL OF A COMPLIANCE )  
PLAN AMENDMENT FOR ENVIRONMENTAL )  
SURCHARGE COST RECOVERY )**

**PSC CASE NO. 2013-00259**

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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 a portion of a response to the Sierra Club's Supplemental Request for Information in the above-captioned proceeding, respectfully states as follows:

1. EKPC's Application requests the Commission to issue a Certificate of Public Convenience and Necessity ("CPCN"), pursuant to KRS 278.020(1), for an environmental compliance project that involves re-routing the existing duct work for EKPC's Cooper Station Unit #1 ("Cooper #1") such that its emissions are able to flow to the Cooper Station Unit #2 Air Quality Control System ("Cooper #2 AQCS") (the "Project"). For a capital investment of approximately \$15 million, EKPC will be able to retain 116 MW of existing capacity, thereby reducing its need to procure new capacity from other sources. The Application also requests that

the Commission authorize EKPC to amend its Environmental Compliance Plan, pursuant to KRS 278.183, so that EKPC may recover the costs associated with the Project through its existing environmental surcharge mechanism.

2. On November 4, 2013, Sierra Club issued its "Supplemental Requests for Information" containing 47 requests, most containing multiple sub-parts. The public version of the responses to the Supplemental Requests have been contemporaneously filed in redacted form in order to protect and preserve the information for which EKPC had previously requested Confidential Treatment by Motions dated October 18, 2013 (Commission Staff's Initial Request for Information), October 25, 2013 (Sierra Club's Initial Requests for Information), November 7, 2013 (EKPC's Supplemental Response to Sierra Club's Initial Requests for Information), and November 12, 2013 (Commission Staff's Second Request for Information).

3. In Supplemental Request 18b, Sierra Club referred to EKPC's response to Commission Staff's Initial Request for Information 7a and requested that EKPC confirm that a particular bidder's bid contained the highest Net Present Value ("NPV") in terms of dollars for MW-year for the analysis period presented in the response. Previously, EKPC asked that the response to Commission Staff 7a be afforded Confidential Treatment (October 18, 2013, Motion for Confidential Treatment). In response to Sierra Club 18b, EKPC merely confirms the identity of a bidder whose identity should be confidential since each bid received in the Request for Proposal along with other information concerning the bids is commercially sensitive and proprietary.

4. In Supplemental Request 18e, Sierra Club requested information pertaining to revisions to the numbers provided by bidders to the RFP which were used to update the analysis of those bids. EKPC's Response to Supplemental Request 18e states that these revisions were

provided in EKPC's response to Commission Staff's Second Requests for Information, Response 1b. And, in addition, EKPC is providing a workbook on a CD which more specifically details the revisions to the numbers used to update the analysis. Previously, EKPC asked that the response to Commission Staff's Second Request for Information 1b be afforded Confidential Treatment (November 12, 2013, Motion for Confidential Treatment). Confidential Treatment is sought for the entirety of the information on the CD.

5. In Supplemental Request 19b, Sierra Club referred to page 12 of Confidential Exhibit 1a to the Application, which refers to a block of intermittent non-dispatchable generation. Supplemental Request 19b questions why that block of generation is essentially unusable by EKPC. EKPC's Response to Supplemental Request 19b responds to Sierra Club's question but maintains confidentiality for the size of the block of generation consistent with EKPC's Motion for Confidential Treatment filed on August 21, 2013 and simultaneously with the filing of the Application.

6. The responses to the foregoing requests contain information that identifies a specific bidder submitting a bid received in the RFP along with other information concerning the bid that is commercially sensitive and proprietary. This information also includes the evaluative information relied upon by EKPC. This information is so pervasive on the CD, that it cannot be reasonably or easily isolated and redacted so as to create a "public" version of the responses. The responsive work papers used in the RFP's evaluation processes and the summaries of those processes are filled with confidential and proprietary information.

7. The above-described information (the "Confidential Information") that is included in EKPC's responses to the foregoing Supplemental Requests is proprietary and commercially sensitive information that is retained by EKPC on a "need-to-know" basis and that is not publicly



available. If disclosed, the Confidential Information would give bidders and potential business partners a tremendous advantage in the course of ongoing negotiations to fulfill the balance of the anticipated future capacity need. Disclosure would also give participants in the broader energy market a material advantage in relations with EKPC as a result of knowing the business strategies being implemented by EKPC and the market assumptions made by EKPC or The Brattle Group, EKPC's retained consultant for managing the RFP and assisting with the evaluation of the bids received. These market advantages would very likely translate into higher costs for EKPC and, by extension, detrimentally higher rates for EKPC's Members.

8. 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 affording confidential treatment.

9. EKPC does not object to limited disclosure of the Confidential Information described herein, pursuant to an acceptable confidentiality and nondisclosure agreement, to Gallatin Steel or the Sierra Club or any other intervenors with a legitimate interest in reviewing the same for the purpose of participating in this case.

10. In accordance with the provisions of 807 KAR 5:001, Section 13(2), EKPC is filing one copy of the unredacted response to the Supplemental Request (with the Confidential

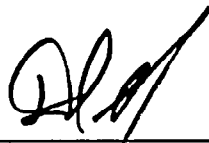
Information highlighted) separately under seal. Redacted copies of the responses to the Supplement Request are attached to EKPC's responses.

11. 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 no longer be commercially sensitive so as to likely impair the interests of EKPC if publicly disclosed.

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 Confidential Information, which are filed herewith under seal, for a period of ten (10) years from the date of entry of such an Order.

This 14<sup>th</sup> day of November 2013.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing was deposited in the custody and care of the U.S. Mail, postage prepaid, on this the 14<sup>th</sup> day of November 2013, addressed to the following:

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