

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF EAST KENTUCKY POWER	)	
COOPERATIVE, INC. FOR AN ORDER	)	CASE NO.
DECLARING THE GLASGOW LANDFILL GAS	)	2014-00292
TO ENERGY PROJECT TO BE AN ORDINARY	)	
EXTENSION OF EXISTING SYSTEMS IN THE	)	
USUAL COURSE OF BUSINESS AND A JOINT	)	
APPLICATION OF FARMERS RURAL	)	
ELECTRIC COOPERATIVE CORPORATION	)	
AND EAST KENTUCKY POWER	)	
COOPERATIVE, INC. FOR APPROVAL TO	)	
ENTER INTO A TEN YEAR PURCHASED	)	
POWER AGREEMENT AND APPROVAL OF A	)	
SPECIAL CONTRACT	)	

ORDER

On August 21, 2014, East Kentucky Power Cooperative, Inc. ("EKPC") filed an application requesting the Commission to issue an Order declaring the Glasgow Landfill Gas to Energy Project ("Glasgow LFGTE Project") to be an ordinary extension of existing systems in the usual course of business. As part of the same application, EKPC and Farmers Rural Electric Cooperative Corporation ("Farmers") (collectively "Joint Applicants"), request an Order approving a Capacity, Energy and Environmental Attribute Purchase, Sale and Interconnection Agreement dated August 13, 2014, the specified agreement being a special contract which relates to a landfill gas to energy project. Joint Applicants, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, filed a petition on November 24, 2014, seeking confidential treatment for certain material in their Responses to Commission Staff's Second Request for Information

("Staff's Second Request"). This Order addresses only Joint Applicants' November 24, 2014 petition.

### DISCUSSION

The Commission is a public agency subject to Kentucky's Open Records Act, and all public records of the Commission "shall be open for inspection by any person, except as otherwise provided by KRS 61.870 to 61.884."<sup>1</sup> Therefore, "all material on file with the commission shall be available for examination by the public unless the material is confidential."<sup>2</sup> Any party requesting a grant of confidential treatment for material has the burden to prove that the material falls within the exclusions from disclosure enumerated in the Open Records Act.<sup>3</sup>

807 KAR 5:001, Section 13(2), sets forth the procedure for making a request for confidential treatment, and it requires Joint Applicants to establish "specific grounds pursuant to KRS 61.878, upon which the commission should classify the material as confidential."<sup>4</sup> It also requires Joint Applicants to state "the time period in which the material should be treated as confidential and the reasons for the time period."<sup>5</sup>

Joint Applicants seek confidential treatment for information concerning the cost of capacity, operation and maintenance expenses, depreciation expense, cost of energy, the renewable energy credit value and net book value of the asset; information

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

<sup>2</sup> 807 KAR 5:001, Section 13(1). The material specifically identified in Joint Applicants' request is accorded confidential treatment pending action by the Commission or its executive director. 807 KAR 5:001, Section 13(4).

<sup>3</sup> 807 KAR 5:001, Section 13(2)(c).

<sup>4</sup> 807 KAR 5:001, Section 13(2)(a)(1).

<sup>5</sup> 807 KAR 5:001, Section 13(2)(a)(2).

regarding Farmers' cost of energy and EKPC's cost to Members; information regarding the current demand charge for the Glasgow project and the savings per year the avoidance of this cost will generate for Farmers; and an electronic version of Exhibit 6 of the application, EKPC's cost comparisons with other EKPC LFGTE generation options. Joint Applicants request confidential treatment for a period of at least ten years.

The information supplied in response to Item 2.a. Staff's Second Request contains calculations concerning the operation and maintenance costs, the depreciation expense, and the net book value of the Glasgow facility. Further, the response contains the capacity charge and Farmers' cost of energy and the renewable energy credit associated with the Glasgow facility. In order to meet their burden of proof, Joint Applicants must show that the material in question is generally recognized as confidential or proprietary and that the information would permit an unfair commercial advantage to competitors if openly disclosed.<sup>6</sup> The Commission finds that the Joint Applicants do not demonstrate how the information would permit an unfair commercial advantage to competitors if openly disclosed.

The information supplied in response to Item 2.b. of Staff's Second Request includes a projection of Farmers' 2015 all-in cost per megawatt hour ("MWh") for power from the Glasgow LFGTE Project, and a 2015 projection of Farmers' cost per MWh for power from EKPC as projected in EKPC's 2013 Financial Forecast. The Commission finds that the Joint Applicants do not demonstrate how the information concerning Farmers' cost per MWh of power from the Glasgow LFGTE Project would permit an unfair commercial advantage to competitors if openly disclosed. The Commission does

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<sup>6</sup> KRS 61.878(1)(c)(1); 807 KAR 5:001, Section 13(2)(c).

find that EKPC's 2013 Financial Forecast, which contains its projected cost per MWh for power to be sold to Farmers and EKPC's other member cooperatives qualifies for confidential treatment.

The information supplied in response to Item 2.d. of Staff's Second Request contains the demand charge for the Glasgow project and the savings per year the avoidance of this cost will generate for Farmers. The Commission finds that the Joint Applicants do not demonstrate how the information would permit an unfair commercial advantage to competitors if openly disclosed.

In response to Item 2.e. of Staff's Second Request, Joint Applicants supply a compact disk ("CD") containing an electronic copy of Exhibit 6 of the application with the formulas intact and unprotected and all rows and columns accessible. Joint Applicants state that it is an electronic copy of a table depicting the generation costs of EKPC's existing generating facilities. The Commission finds that the information in Exhibit 6 concerning EKPC's annual projected Financial Forecast Cost To Members and EKPC's projected Financial Forecast Cost To Members 6-Year Average qualify for confidential treatment and the CD supplied in response to Staff's Second Request, Item 2.e., qualifies for confidential treatment.

IT IS THEREFORE ORDERED that:

1. Joint Applicants' Motion for Confidential Treatment is granted in part and denied in part as discussed in this Order.
2. Joint Applicants' request for confidential treatment for responses to Staff's Second Request, Items 2.a. and 2.d., is denied.

3. Joint Applicants' request for confidential treatment of that portion of the response to Staff's Second Request, Item 2.b., containing Farmers' 2015 all-in cost per MWh for power from the Glasgow LFGTE Project is denied. Joint Applicants' request for confidential treatment of that portion of the response to Staff's Second Request, Item 2.b., containing Farmers' 2015 projection of cost per MWh for power from EKPC as projected in EKPC's 2013 Financial Forecast is granted for a period of ten years.

4. Joint Applicants' request for confidential treatment for the CD filed in response to Staff Request, Item 2.e., is granted for a period of ten years.

5. Within seven days for the date of this Order, Joint Applicants shall file revised pages reflecting as unredacted the information that has been denied confidential treatment.

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

7. Joint Applicants shall inform the Commission if the materials in question become publicly available or no longer qualify for confidential treatment.

8. If a non-party to this proceeding requests to inspect materials granted confidential treatment by this Order and the period during which the materials granted confidential treatment has not run, the Joint Applicants 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 Joint Applicants are unable to make such demonstration, the requested material shall be made available for inspection. Otherwise the Commission shall deny the request for inspection.

9. The materials denied confidential treatment shall be withheld from public inspection for 20 days from the date of this Order to allow Joint Applicants to seek any remedy afforded by law.

10. The Commission shall not make material granted confidential treatment available for inspection 20 days following an Order finding that the material no longer qualifies for confidential treatment in order to allow Joint Applicants to seek a remedy afforded by law.

By the Commission

ENTERED  
MAR 30 2015  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
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Executive Director

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