

# Goss ■ Samford PLLC



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September 3, 2014

RECEIVED

SEP 03 2014

PUBLIC SERVICE  
COMMISSION

*Via Hand-Delivery*

Mr. Jeffrey Derouen  
Executive Director  
Kentucky Public Service Commission  
P.O. Box 615  
211 Sower Boulevard  
Frankfort, KY 40602

Re: In the Matter of: An Examination of the Application of the Fuel  
Adjustment Clause of East Kentucky Power Cooperative, Inc.  
from November 1, 2013 through April 30, 2014  
PSC Case No. 2014-00226

Dear Mr. Derouen:

Enclosed please find for filing with the Commission in the above-referenced case an original and ten (10) copies of East Kentucky Power Cooperative, Inc.'s Reply in Support of Motion for Confidential Treatment regarding the above-styled matter. Please return a file-stamped copy to me.

Do not hesitate to contact me if you have any questions.

Very truly yours,

David S. Samford

Enclosures

M:\Clients\4000 - East Kentucky Power\1700 - FAC Cases\  
Correspondence\Ltr. to Jeff Derouen - 140903

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

**RECEIVED**

SEP 03 2014

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, 2013 THROUGH )  
APRIL 30, 2014 )**

**CASE NO. 2014-00226**

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**REPLY IN SUPPORT OF MOTION  
FOR CONFIDENTIAL TREATMENT**

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Comes now East Kentucky Power Cooperative, Inc. (“EKPC”), by and through counsel, and hereby tenders its reply in support of its motion for confidential treatment in this matter, respectfully stating as follows:

Grayson Rural Electric Cooperative Corporation (“Grayson”) filed a response in objection to the motion for confidential treatment stating that the information EKPC is seeking to have treated as confidential is necessary to be disclosed to the public and to Grayson as well as the other distribution cooperatives who are Owner-Members of EKPC in order for them to ascertain information relative to the FAC mechanism. Grayson’s response is flawed, both procedurally and substantively.

First, Grayson’s response is not authorized to be filed by the Commission’s regulations. As stated in 807 KAR 5:001, Section 13(2)(d), “a party may file a response to the motion for confidential treatment.” Grayson’s motion for intervention has not been granted and it is not a party. Accordingly, Grayson’s response is pre-mature and should be rejected.

Second, Grayson's complaint that it was not served with a copy of the motion for confidential treatment demonstrates a lack of familiarity with the PSC's regulations and Order establishing this case. Grayson has not been granted leave to intervene and does not have a statutory right of intervention, thus it is not entitled to service of any documents filed by EKPC until its motion for intervention has been granted. According to 807 KAR 5:001, Section 4(11)(c), "...a party shall serve a person granted leave to intervene with all papers that the party submits in the case after the order granting intervention, but is not required to provide any papers submitted prior to the issuance of that order unless the commission otherwise orders." Likewise, the Commission's August 13, 2014 Order establishing this case states that responses to data requests shall be provided "...to all parties of record..."<sup>1</sup> Grayson has not been granted leave to intervene and the Commission has not entered an Order directing EKPC to include Grayson on the service list during the period the motion for intervention is pending. Accordingly, Grayson's objection is without merit on this point.

Third, if the Commission were to grant Grayson's motion for leave to intervene, the motion for confidential treatment plainly states that "EKPC does not object to limited disclosure of the Confidential Information, pursuant to an acceptable confidentiality and nondisclosure agreement, to...any other intervenors with a legitimate interest in reviewing the same for the sole purpose of participating in this case." Thus, if Grayson is granted leave to intervene, it will have the opportunity to review the Confidential Information in the context of its desire to participate in this case. If Grayson's intervention is for some other purpose, which is clearly implied in its response, then it is unlikely that Grayson would be willing to enter into such a confidentiality and nondisclosure agreement.

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<sup>1</sup> Order, p. 2.

Fourth, Grayson already has access to the information which it seeks by virtue of its status as an Owner-Member of EKPC and subject to EKPC's own Board Confidentiality Agreement signed by both Grayson's Chief Executive Officer and EKPC Director. Information regarding coal solicitations is provided to EKPC's directors and the Chief Executive Officers of its Members on a routine basis. Information regarding coal pile surveys is not typically something of interest to EKPC's Members, historically, but Grayson does not need to intervene in this proceeding in order to obtain such information. So long as it seeks the information for a proper corporate purpose, it can simply request the information. *See* KRS 271B.16-020; *Keeneland Association v. Pessin*, 484 S.W. 2d 849 (Ky. App. 1972) ("We do not believe that an intent to destroy a corporation, to bring vexatious suits, or to take unfair advantage for competition reasons could be included in the phrase 'proper corporate purpose.'").

Fifth, the substance of Grayson's response in opposition to the motion for confidential treatment is not supported by any authority or factual argument. Grayson simply claims that the coal solicitation information and coal pile survey cost data should be made available "for public view." This claim is squarely contradicted by the Commission's own precedent which recognizes that coal solicitation information is highly confidential, proprietary and subject to confidential treatment under both Kentucky statutory and common law.<sup>2</sup> Although it should not seem necessary to do so, EKPC reaffirms that if the bids received in a coal solicitation were

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<sup>2</sup> *See e.g. In the Matter of an Examination of the Application of the Fuel Adjustment Clause of East Kentucky Power Cooperative, Inc. From November 1, 2009 through April 30, 2010*, Letter from Staff, Case No. 2010-00265 (Nov. 16, 2010); *In the Matter of an Examination of the Application of the Fuel Adjustment Clause of East Kentucky Power Cooperative, Inc. From November 1, 2008 through October 31, 2010*, Letter from Staff, Case No. 2010-00491 (Feb. 23, 2011); *In the Matter of an Examination of the Application of the Fuel Adjustment Clause of East Kentucky Power Cooperative, Inc. From November 1, 2010 through April 30, 2011*, Order, Case No. 2011-00246 (Ky. P.S.C., Sept. 28, 2011); *In the Matter of an Examination of the Application of the Fuel Adjustment Clause of East Kentucky Power Cooperative, Inc. From November 1, 2010 through October 31, 2012*, Order, Case No. 2012-00551 (Ky. P.S.C., Aug. 20, 2013); *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, 2012*, Order, Case No. 2013-00445 (Ky. P.S.C., June 17, 2014).

publicly disclosed, it could have an adverse impact upon EKPC's ability to procure affordable fuel stocks in the future. If bidders are aware of what their competitors are offering for coal prices, then the incentive to provide the lowest possible bid is greatly diminished. If the incentive to offer the lowest possible bid for coal is diminished, the bids for coal prices are likely to rise. If bid prices rise, EKPC's fuel costs will rise. If EKPC's fuel costs increase, then EKPC's cost of service to its Members (including Grayson) will increase. Accordingly, not publicly disclosing bid information is an important safeguard for keeping EKPC's cost of service to its Members as low as possible.

For the foregoing reasons, EKPC's motion for confidential treatment should be granted and Grayson's response in opposition should be rejected.

This 3<sup>rd</sup> day of September 2014.

Respectfully submitted,



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*Counsel for East Kentucky Power Cooperative, Inc.*

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing was served by depositing same into the custody and care of the U.S. Postal Service, postage pre-paid, on this the 3<sup>rd</sup> day of September, 2014, addressed to the following:

W. Jeffrey Scott  
W. Jeffrey Scott, PSC  
P. O. Box 608  
Grayson, KY 41143

A handwritten signature in blue ink, appearing to be 'D. B. G.', is written above a horizontal line.

*Counsel for East Kentucky Power Cooperative, Inc.*