

# Goss ■ Samford PLLC



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October 8, 2014

**RECEIVED**

OCT 08 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 Application of East Kentucky Power Cooperative, Inc. for a Certificate of Public Convenience and Necessity for Construction of an Ash Landfill at J. K. Smith Station to Receive Impounded Ash from William C. Dale Station, and for Approval of a Compliance Plan Amendment for Environmental Surcharge Recovery  
PSC Case No. 2014-00252

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\1450 - Dale Ash Landfill  
CPCN\Correspondence\Ltr. to Jeff Derouen - 141008

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

IN THE MATTER OF:

OCT 08 2014

PUBLIC SERVICE  
COMMISSION

AN APPLICATION OF EAST KENTUCKY )  
POWER COOPERATIVE, INC. FOR A )  
CERTIFICATE OF PUBLIC CONVENIENCE )  
AND NECESSITY FOR CONSTRUCTION OF AN )  
ASH LANDFILL AT J. K. SMITH STATION TO )  
RECEIVE IMPOUNDED ASH FROM WILLIAM )  
C. DALE STATION, AND FOR APPROVAL OF A )  
COMPLIANCE PLAN AMENDMENT FOR )  
ENVIRONMENTAL SURCHARGE RECOVERY )

CASE NO.  
2014-00252

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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:

On October 3, 2014, 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 should be disclosed to the public on the basis that "there is nothing secret about the transmission of electricity." As with its similar untimely objection in Case No. 2014-00226,<sup>1</sup> Grayson's response is flawed, both procedurally and substantively.

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<sup>1</sup> See *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*, Response in Opposition to Motion for Confidential Treatment, Case No. 2014-00226 (filed Sept. 3, 2014).



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, also filed on October 3, 2014,<sup>2</sup> has not been granted and it is not a party. Accordingly, Grayson's response in opposition to the motion for confidential treatment is pre-mature and should be rejected.

Second, 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 again appears to be implicit in its response, then it is unlikely that Grayson would be willing to enter into such a confidentiality and nondisclosure agreement.

Third, Grayson could have requested the information from EKPC directly by virtue of its status as an Owner-Member of EKPC rather than resort to the needless and wasteful incursion of time and expense associated with seeking to intervene in this proceeding and preparing and filing the response. While Kentucky law does not guarantee that an owner of a corporation is entitled to all information within the possession of the corporation,<sup>3</sup> Grayson has not yet offered a single factual basis for why it needs access to the Confidential Information. EKPC has responded to

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<sup>2</sup> EKPC will file a separate response to the Motion for Leave to Intervene.

<sup>3</sup> In general, Kentucky law allows a shareholder in a corporation to request information from the corporation so long as it seeks the information for a proper corporate purpose. *See e.g.* 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.'").



many, many informal requests for records over the past two years and there is no indication in Grayson's response why it did not simply request the information informally. The obvious implication is that Grayson knew in advance that its purpose for making such a request would be inappropriate and inconsistent with Kentucky law.

Fourth, Grayson apparently fails to understand precisely what information EKPC is seeking to keep confidential. For instance, Grayson simplistically claims that "there is nothing secret about the transmission of electricity," as if to indicate that EKPC was seeking to keep confidential something which is plainly known to all. However, the Confidential Information which is the subject of EKPC's motion is not the fact that EKPC is transmitting electricity through facilities that must be relocated in the course of the underlying Project, but rather the nature and purpose of those facilities. This information is very valuable to understanding the flow of power in central Kentucky and to ascertaining the relative strengths and vulnerabilities of the electric grid in general. To those who would seek to disrupt the electric grid, such information is invaluable. Accordingly, such information is widely-known in the energy industry, except apparently to Grayson, as critical energy infrastructure information ("CEII").

Fifth, and unsurprisingly, Grayson's response is not accompanied by any authority or factual argument, nor does it even acknowledge the CEII nature and significance of the Confidential Information. In contrast to Grayson's motion, Kentucky law, Commission precedent, federal authorities and national headlines all demonstrate that confidential treatment should be afforded to the Confidential Information. For instance, as set forth in the motion for confidential treatment, the Kentucky Open Records Act plainly exempts from disclosure certain information relating to critical energy infrastructure. KRS 61.878(1)(m)(1) protects "[p]ublic records the disclosure of which would have a reasonable likelihood of threatening public safety



by exposing a vulnerability in preventing protecting against, mitigating, or responding to a terrorist act....,” and specifically exempts from public disclosure certain records pertaining to public utility critical systems. *See* KRS 61.878(1)(m)(1)(f). If disclosed, the Confidential Information could be utilized to commit or further a criminal or terrorist act, disrupt critical public utility systems, and/or intimidate or coerce the civilian population. Maintaining the confidentiality of the Confidential Information is necessary to protect the interests of EKPC, its Members (including Grayson), and the region at large.

Moreover, the Commission has recognized the confidential nature of CEII on several occasions.<sup>4</sup> Kentucky law and Commission precedent are in accord with federal authorities restricting access to the Confidential Information. *See e.g.* 102 FERC ¶ 61, 190, Docket Nos. RM02-04-000, PL02-01-000, Order No. 630 (F.E.R.C., Feb. 21, 2003) (establishing CEII rule); Docket No. RM06-24-000, Order No. 683 (F.E.R.C., Sept. 21, 2006); 121 FERC ¶ 61, 107, Docket No. RM06-23-000, Order No. 702 (F.E.R.C., Oct. 30, 2007); 18 C.F.R. § 388.113(c) (defining CEII). Finally, as if it were necessary to further underscore the significant value of the Confidential Information to terrorists, criminals and vandals, recent national publications include

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<sup>4</sup> *See e.g. In the Matter of The 2014 Integrated Resource Plan of Big Rivers Electric Corporation*, Order, Case No. 2014-00166 (Ky. P.S.C., Aug. 26, 2014):

The Commission has reviewed the information and finds that the maps are infrastructure records that *disclose the location, configuration, or security of public utility critical systems*. The Commission finds that the disclosure of the records would have a reasonable likelihood of threatening the public safety by exposing a vulnerability in preventing, protecting against, mitigating, or responding to a terrorist act. *The Commission finds that the reasonable likelihood of the threat will continue as long as the transmission system remains in place*. The Commission concludes that Big Rivers has met its burden of proof that the items are excluded from disclosure under KRS 61.878. *The Commission concludes that the protection should extend indefinitely....* (Emphasis added).

*See also In the Matter of the Application of Nolin Rural Electric Cooperative Corporation for an Order Pursuant to KRS 278.300 and 807 KAR 5:001, Section 11 and Related Sections Authorizing the Cooperative to Obtain a Loan not to Exceed the Amount of \$64,000,000 From the National Rural Utilities Cooperative Finance Corporation*, Order, Case No. 2013-00119 (Ky. P.S.C., April 7, 2014); *In the Matter of Louisville Gas and Electric Company's Alleged Failure to Comply with KRS 278.495*, Order, Case No. 2012-00239 (Aug. 19, 2013).



these startling and sobering headlines, “Ex-Federal Official Raises Concerns Over Terror Attack on the Power Grid”<sup>5</sup> and “Assault on California Power Station Raises Alarm on Potential for Terrorism.”<sup>6</sup> Plainly, Grayson’s one and a half page response fails to demonstrate why confidential treatment should not be afforded to the Confidential Information. It does not even make a serious effort to do so.

The frivolous nature of Grayson’s response demonstrates that it continues to try and use any means available to gain leverage over EKPC in order to procure a favorable outcome in other, wholly unrelated disputes. Such tactics are anathema to the cooperative spirit and beneath the dignity of an organization with as proud a history and tradition as Grayson. EKPC remains committed to serving all of its Members, including Grayson, but Grayson’s continued resort to the formal processes of the Commission are a waste of valuable time, money and personnel for all involved.

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

This 8<sup>th</sup> day of October 2014.

Respectfully submitted,



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<sup>5</sup> *Ex-Federal Official Raises Concerns Over Terror Attack on the Power Grid*, Fox News, (Feb. 5, 2014) (<http://www.foxnews.com/us/2014/02/05/ex-federal-official-raises-concerns-over-terror-attack-on-power-grid>).

<sup>6</sup> *Assault on California Power Station Raises Alarm on Potential for Terrorism*, Wall Street Journal (Feb. 5, 2014) (<http://online.wsj.com/news/articles/SB10001424052702304851104579359141941621778>).

**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 8<sup>th</sup> day of October, 2014, addressed to the following:

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

Gregory T. Dutton  
Assistant Attorney General  
Office of the Attorney General Utility & Rate  
1024 Capital Center Drive, Suite 200  
Frankfort, KY 40601-8204



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*Counsel for East Kentucky Power Cooperative, Inc.*