

Goss • Samford PLLC



Mark David Goss
mdgoss@gosssamfordlaw.com
(859) 368-7740

January 23, 2015

RECEIVED

JAN 23 2015

PUBLIC SERVICE
COMMISSION

VIA HAND DELIVERY

Mr. Jeff 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:

Please find enclosed for filing with the Commission in the above-referenced case: (1) an original and ten (10) copies of the Supplemental Response of East Kentucky Power Cooperative, Inc. ("EKPC"), to Commission Staff's First Request for Information (Request No. 20(c)) dated October 9, 2014; (2) an original and ten (10) copies of the Responses of EKPC to Commission Staff's Third Request for Information dated January 12, 2015; (3) an original and ten (10) copies of a Motion for Confidential Treatment; (4) a redacted original and ten (10) redacted copies of the Responses of EKPC to the Attorney General's Third Request for Information dated January 14, 2015; and (5) an un-redacted copy (with certain Confidential Information highlighted) of the Responses of EKPC to the Attorney General's Third Request for Information dated January 14, 2015, which is to be filed and kept under seal.

Please return file-stamped copies to me.

Very truly yours,

Mark David Goss

Enclosures

cc: Parties of Record

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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, THE)	CASE NO.
REMOVAL OF IMPOUNDED ASH FROM)	2014-00252
WILLIAM C. DALE STATION FOR TRANSPORT)	
TO J. K. SMITH, AND APPROVAL OF A)	
COMPLIANCE PLAN AMENDMENT FOR)	
ENVIRONMENTAL SURCHARGE RECOVERY)	

MOTION FOR CONFIDENTIAL TREATMENT

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 EKPC's response to the Third Request for Information propounded by the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention (the "Attorney General"), in the above-captioned proceeding, respectfully states as follows:

1. EKPC's Application requests that the Commission issue a Certificate of Public Convenience and Necessity for the construction of a coal ash landfill at EKPC's J. K. Smith Station to receive coal ash removed and transported from its William C. Dale Station ("Dale"), and for approval of an Environmental Compliance Plan amendment for purposes of recovering the costs of the Project through EKPC's Environmental Surcharge.

2. On January 14, 2015, the Attorney General propounded its Third Request for Information upon EKPC. Request 1 of the Attorney General's Third Request for Information inquires as to whether PJM Interconnection, LLC ("PJM"), will reimburse EKPC for the costs associated with maintaining Dale Units 3 and 4 in such a state of readiness that they are available for economic dispatch in PJM. The Attorney General specifically requests that EKPC include in its response both Operations and Maintenance ("O&M") costs and those costs associated with seeking and obtaining from the Kentucky Division of Air Quality a one-year extension of the deadline for compliance with the U.S. Environmental Protection Agency's Mercury and Air Toxics Standards rule.

3. Contemporaneous with the filing of this Motion, EKPC is tendering information responsive to the Attorney General's Request 1. As part of its response, EKPC is providing, *inter alia*, specific dispatch expense estimates (including those related to variable O&M expense and start-up/shut-down expense) associated with the operation of Dale Units 3 and 4. EKPC utilizes these dispatch expense estimates as an integral part of a larger analysis to ascertain appropriate pricing for the generating unit supply offers EKPC submits to PJM, as well as for various financial and general business purposes. Collectively, the dispatch expense estimates are referred to herein as the "Confidential Information."

4. The Confidential Information is highly sensitive, commercially valuable and strictly proprietary information that is retained by EKPC on a "need-to-know" basis. The Confidential Information was developed internally by EKPC personnel and is not on file with any public agency or available from any commercial or other source. If disclosed, the Confidential Information would afford EKPC's competitors a distinct and substantial commercial advantage by knowing EKPC's pricing allocations and operational assumptions, as

well as EKPC's internal strategies and business decisions. Thus, the public disclosure of the Confidential Information would potentially harm EKPC's competitive position both within PJM and in the broader energy marketplace, to the detriment of EKPC and its customers.

5. The Kentucky Open Records Act exempts from disclosure certain confidential and proprietary commercial information. *See* KRS 61.878(1)(c). To qualify for this exemption from public disclosure and, therefore, to maintain the confidentiality of the information, a party must establish that disclosure of the confidential and proprietary commercial information would permit an unfair advantage to competitors of that party. As set forth above, public disclosure of the Confidential Information would lead to such a result. Moreover, the Kentucky Supreme Court has found that "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 related to energy sales, it satisfies both the statutory and common law standards for affording confidential treatment.

6. EKPC does not object to limited disclosure of the Confidential Information described herein, pursuant to an acceptable confidentiality and nondisclosure agreement, to intervenors with a legitimate interest in reviewing the same for the purpose of participating in this case.

7. In accordance with the provisions of 807 KAR 5:001, Section 13(2), EKPC is filing one copy of the unredacted response to the Attorney General's Request 1 (with the Confidential Information highlighted) separately under seal. Redacted copies of EKPC's response to the Attorney General's Request 1 are filed contemporaneously herewith.

8. 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 five (5) 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 is filed herewith under seal, for a period of five (5) years from the date of entry of such an Order.

This 23rd day of January, 2015.

Respectfully submitted,



Mark David Goss
David S. Samford
M. Evan Buckley
GOSS SAMFORD, PLLC
2365 Harrodsburg Road, Suite B325
Lexington, KY 40504
(859) 368-7740
mdgoss@gosssamfordlaw.com
david@gosssamfordlaw.com
ebuckley@gosssamfordlaw.com


Counsel for East Kentucky Power Cooperative, Inc.

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 23rd day of January, 2015, addressed to the following:

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

W. Jeffrey Scott
P.O. Box 608
311 West Main Street
Grayson, KY 41143



Counsel for East Kentucky Power Cooperative, Inc.

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

In the Matter of:

**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, THE REMOVAL OF)
IMPOUNDED ASH FROM WILLIAM C. DALE STATION)
FOR TRANSPORT TO J. K. SMITH AND APPROVAL)
OF A COMPLIANCE PLAN AMENDMENT FOR)
ENVIRONMENTAL SURCHARGE RECOVERY)**

**CASE NO.
2014-00252**

**RESPONSES TO ATTORNEY GENERAL'S THIRD REQUEST FOR
INFORMATION TO EAST KENTUCKY POWER COOPERATIVE, INC.
DATED JANUARY 14, 2015**

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

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, THE REMOVAL OF IMPOUNDED ASH FROM WILLIAM C. DALE STATION FOR TRANSPORT TO J. K. SMITH AND APPROVAL OF A COMPLIANCE PLAN AMENDMENT FOR ENVIRONMENTAL SURCHARGE RECOVERY)))))))))))	CASE NO. 2014-00252
--	---	------------------------


CERTIFICATE

STATE OF KENTUCKY)
)
 COUNTY OF CLARK)

Don Mosier, being duly sworn, states that he has supervised the preparation of the responses of East Kentucky Power Cooperative, Inc. to the Attorney General's Third Request for Information in the above-referenced case dated January 14, 2015, and that the matters and things set forth therein are true and accurate to the best of his knowledge, information and belief, formed after reasonable inquiry.



Subscribed and sworn before me on this 21st day of January 2015.



 Notary Public # 502993
 My Com Exp: 1/27/18

REDACTED

AG Request 1

Page 1 of 2

EAST KENTUCKY POWER COOPERATIVE, INC.

PSC CASE NO. 2014-00252

RESPONSE TO INFORMATION REQUEST

ATTORNEY GENERAL'S THIRD REQUEST FOR INFORMATION DATED 12/14/15
REQUEST 1

RESPONSIBLE PARTY: Don Mosier

Request 1. In light of the fact that PJM has requested Dale units 3 and 4 to extend their operation beyond the previously-established date for their retirement, state whether PJM will be paying any and all costs associated with maintaining the plants in such a state of readiness that they are "available for economic dispatch in PJM," as Mr. Mosier states on p. 4 of his supplemental testimony. Include in your response both O & M, and any and all costs associated with seeking and obtaining the one-year extension from the Division of Air Quality.

Response 1. Please see EKPC's response to the Commission Staff's Third Request for Information dated January 12, 2015, Request 4. EKPC currently uses \$[REDACTED]/MWh for variable operations and maintenance expenses for Dale Units 3 and 4. This charge would cover up to \$[REDACTED] per unit per day to cover variable costs for operations. EKPC also estimates a charge of \$[REDACTED] each time one of these units is started, to cover the expenses of preparing the units to run and to shut back down. Concerning the costs associated with seeking and obtaining the one-year extension from the Division of Air Quality, EKPC believes the only costs were for legal consultation hours.

Request 1a. Will PJM treat the costs associated with the extended operations of Dale 3 and 4 under a reliability "must-run" type of mechanism?

Response 1a. No. Please see EKPC's response to the Commission Staff's Third Request for Information dated January 12, 2015, Request 2b.

**EAST KENTUCKY POWER COOPERATIVE, INC.
PSC CASE NO. 2014-00252
RESPONSE TO INFORMATION REQUEST**

**ATTORNEY GENERAL'S THIRD REQUEST FOR INFORMATION DATED 12/14/15
REQUEST 2**

RESPONSIBLE PARTY: Don Mosier

Request 2. If EKPC's members will be responsible for any portion of the costs associated with the PJM-requested extended operating period for the Dale units, please identify the specific costs, and all sums.

Response 2. As noted in EKPC's response to the Commission Staff's Third Request for Information, Request 7, the additional variable costs associated with running the Dale units will be included in EKPC's daily offer curve for each of the units. Consequently, EKPC's Members will not be responsible for those costs.

EAST KENTUCKY POWER COOPERATIVE, INC.
PSC CASE NO. 2014-00252
RESPONSE TO INFORMATION REQUEST

ATTORNEY GENERAL'S THIRD REQUEST FOR INFORMATION DATED 12/14/15
REQUEST 3

RESPONSIBLE PARTY: Don Mosier

Request 3. State whether PJM considers Dale units 3 and 4 to fall under PJM's recently-issued Capacity Performance Proposal, or whether the units would be designated as Base Capacity. If so does EKPC anticipate: (i) receiving performance payments, and if so, how much on a per MWh basis?; and (ii) does EKPC anticipate having to spend any additional sums to insure the operation of these units?; and

Response 3a. PJM's recently-issued Capacity Performance Proposal's earliest start time would be the 2016/2017 Delivery Year. Dale 3 and 4 will not be available to operate after April 16, 2016. Therefore, Dale 3 and 4 will not operate under the Capacity Performance criteria.

EAST KENTUCKY POWER COOPERATIVE, INC.
PSC CASE NO. 2014-00252
RESPONSE TO INFORMATION REQUEST

ATTORNEY GENERAL'S THIRD REQUEST FOR INFORMATION DATED 12/14/15
REQUEST 4

RESPONSIBLE PARTY: Don Mosier

Request 4. Were Dale Units 3 and 4 both fully operational during January, 2014? If not, why not?

Response 4. No. In the fall of 2013, the Dale Units were winterized because forward price curves indicated that Dale would not likely be dispatched during the winter of 2013/2014. The winterization was performed in the same manner it had been for the 2012/2013 winter. EKPC did not experience any equipment damage during the 2012/2013 winter. EKPC expected the balance of its fleet to dispatch during the 2013/2014 winter. As a result of the winterization, the Dale Units required a minimum of three days preparation work to bring the units on line. As cold weather approached in January of 2014, Spurlock, Cooper, Dale and Smith stations were all available for dispatch.

As the extreme cold weather of January 6, 2014 approached, PJM did not notify EKPC to prepare the Dale units for operations and bring it online. Neither EKPC, PJM nor other market participants anticipated the outages that would occur on January 6, 2014.

After the first extreme weather of January 6, 2014, inspections at the Dale Units plant uncovered frozen and burst pipes. On January 13, 2014, PJM granted a maintenance outage request to place Dale Station in a maintenance outage to repair the damaged equipment. Dale Station was not available for dispatch after the discovery of the frozen and burst pipes on January 13, 2014. After repairs, Dale Unit 3 was available for service on February 23, 2014 and Dale Unit 4 was available for service on March 1, 2014.

EAST KENTUCKY POWER COOPERATIVE, INC.
PSC CASE NO. 2014-00252
RESPONSE TO INFORMATION REQUEST

ATTORNEY GENERAL'S THIRD REQUEST FOR INFORMATION DATED 12/14/15
REQUEST 5

RESPONSIBLE PARTY: **Don Mosier**

Request 5. Reference Mosier supplemental testimony page 8, lines 16-19. What financial and logistical benefits could be realized by delaying the project for one year?

Response 5. There are no foreseeable financial or logistical benefits realized by delaying the project for one year.