

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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AUG 28 2015

**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, 2014 THROUGH
APRIL 30, 2015**

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CASE NO. 2015-00233

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 two documents filed in response to certain requests for information in the above-captioned proceeding, respectfully states as follows:

1. The Commission issued its Order establishing this case on August 14, 2015, and included the initial set of requests for information to EKPC as an Appendix to that Order. Request No. 19 states as follows:

19. List each written coal supply solicitation issued during the period from November 1, 2014 through April 30, 2015.
 - a. For each solicitation, provide the date of the solicitation, the type of solicitation (contract or spot), the quantities solicited, a general description of the quality of coal solicited, the time period over which deliveries were requested, and the generating unit(s) for which the coal was intended.
 - b. For each solicitation, state the number of vendors to whom the solicitation was sent, the number of vendors who responded, and the selected vendor. Provide the bid tabulation sheet or corresponding document that ranked the proposals. (This document should identify all vendors who made offers.) State the reasons

for each selection. For each lowest-cost bid not selected, explain why the bid was not selected.

2. In its response to Request No. 19, EKPC is providing a copy of its bid tabulation sheets, which includes information that is responsive to the request for information.

3. Request No. 20 from the August 14 request for information states as follows:

20. List each oral coal supply solicitation issued during the period from November 1, 2014 through April 30, 2015.

- a. For each solicitation, state why the solicitation was not written, the date(s) of the solicitation, the quantities solicited, a general description of the quality of coal solicited, the time period over which deliveries were requested, and the generating unit(s) for which the coal was intended.
- b. For each solicitation, identify all vendors solicited and the vendor selected. Provide the tabulation sheet or other document that ranks the proposals. (This document should identify all vendors who made offers.) State the reasons for each selection. For each lowest-cost bid not selected, explain why the bid was not selected.

4. In its response to Request No. 20, EKPC is providing a copy of its bid tabulation sheets, which includes information that is responsive to the request for information.

5. The information and documents tendered by EKPC in response to Request No. 19 and Request No. 20 are being tendered in redacted form in the public version of EKPC's filing and in an unredacted form filed under seal herewith. Collectively, this information and these documents are hereinafter referred to as the "Confidential Information."

6. The Confidential Information contains extensive information that is received by EKPC in the course of conducting written and verbal solicitations for fuel. This information is commercially sensitive and proprietary. More specifically, the Confidential Information includes:

- a. Coal specifications received from third-party bidders;
- b. Pricing data for coal bids received from third-party bidders; and

- c. Recommendations from EKPC Staff regarding the selection of particular vendors to supply fuel to EKPC's generating fleet.

7. The Confidential Information is retained by EKPC on a "need-to-know" basis and is not publicly available. If disclosed, the Confidential Information would give potential vendors and competitors a tremendous competitive advantage in the course of ongoing and future negotiations. These market advantages would likely translate into higher costs for EKPC and, by extension, detrimentally higher rates for EKPC's Members. Thus, disclosure of the Confidential Information would be highly prejudicial to EKPC, EKPC's Members and those Members' retail customers.

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 being afforded confidential treatment. Indeed, the Commission has already recognized the confidential nature of the information included in the responses and has afforded confidential treatment to identical information in a prior proceeding.¹

9. EKPC does not object to limited disclosure of the Confidential Information, pursuant to an acceptable confidentiality and nondisclosure agreement, to the Attorney General or

¹ *See* Letter from Jeff Derouen to Mark David Goss, P.S.C. Case No. 2011-00246 (Sept. 28, 2011). A copy of this is attached hereto as Exhibit 1.

any other intervenors with a legitimate interest in reviewing the same for the sole purpose of participating in this case.

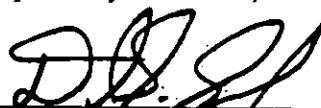
10. In accordance with the provisions of 807 KAR 5:001, Section 13(2), EKPC is filing one copy of the Confidential Information separately under seal. The filing of the Confidential Information is noted in the public version of EKPC's response to Request No. 19 and Request No. 20, which include redacted copies of such information. Due to the pervasive nature of the confidential and proprietary information included in the bid tabulation sheets, confidential treatment is sought for the entirety of the Confidential Information.

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 be less likely to include information that continues to be commercially sensitive so as to impair the interests of EKPC if publicly disclosed. However, EKPC reserves the right to seek an extension of the grant of confidential treatment if it is necessary to do so at that time.

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 unredacted copies of Confidential Information, which is filed herewith under seal, for a period of ten years from the date of entry of such an Order.

This 28th day of August 2015.

Respectfully submitted,



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David L. Armstrong
Chairman

James W. Gardner
Vice Chairman

Charles R. Borders
Commissioner

September 28, 2011

Frost Brown Todd LLC
Attention: Mark David Goss
250 West Main Street, Suite 2800
Lexington, Kentucky 40507-1749

Re: East Kentucky Power Cooperative, Inc.
Petition for Confidential Protection received 9/13/11
PSC Reference #: 2011-00246

Dear Mr. Goss:

The Public Service Commission has received the Petition for Confidential Protection you filed on September 13, 2011 on behalf of East Kentucky Power Cooperative, Inc. ("EKPC"), to protect certain information filed with the Commission as confidential pursuant to Section 7 of 807 KAR 5:001 and KRS 61.878. The information you seek to have treated as confidential is identified as being contained in EKPC's Responses to Data Request Nos. 15 and 19 per Commission Order dated August 23, 2011. The information is more particularly described as containing identification of coal vendors and ranking of proposals; tabulation sheets containing current coal pricing, volume of usage, proposal evaluation procedures and coal acquisition strategies.

Your justification for having the Commission handle this material as confidential is that the public disclosure of the information would compromise EKPC's competitive position in the industry, which would result in an unfair commercial advantage to its competitors.

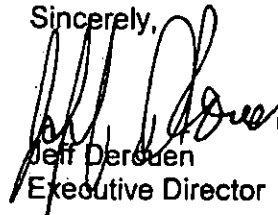
Based on a review of the information and pursuant to KRS 61.878 and 807 KAR 5:001, Section 7, the Commission has determined that the information requested to be held confidential is of a proprietary nature, which if publicly disclosed would permit an unfair commercial advantage to EKPC's competitors. Therefore, the information requested to be treated as confidential **meets the criteria for confidential protection** and will be maintained as a nonpublic part of the Commission's file in this case. The procedure for usage of confidential materials during formal proceedings may be found at Section 7(8) of 807 KAR 5:001.



Mr. Goss
September 28, 2011
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If the information becomes publicly available or no longer warrants confidential treatment, East Kentucky Power Cooperative, Inc. is required by Section 8(9)(a) of 807 KAR 5:001 to inform the Commission so that the information may be placed in the public record.

Sincerely,



Jeff Derouen
Executive Director

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cc: Parties of Record