

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

THE APPLICATION OF EAST KENTUCKY POWER)
COOPERATIVE, INC. FOR APPROVAL OF THE)
ACQUISITION OF EXISTING COMBUSTION TURBINE)
FACILITIES FROM BLUEGRASS GENERATION) Case No. 2015- 00267
COMPANY, LLC AT THE BLUEGRASS GENERATING)
STATION IN LAGRANGE, OLDHAM COUNTY, KENTUCKY)
AND FOR APPROVAL OF THE ASSUMPTION OF CERTAIN)
EVIDENCES OF INDEBTEDNESS)

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 certain portions of EKPC’s Application and related exhibits and direct testimony filed 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 (“CPCN”) for the acquisition and operation of the existing simple cycle combustion turbine facilities in LaGrange, Oldham County, Kentucky (“Bluegrass Station”), from Bluegrass Generation Company, LLC (“Bluegrass”), and for approval to assume certain evidences of indebtedness related to such acquisition.

2. Information which is proprietary, confidential, sensitive, commercially valuable and descriptive of critical energy infrastructure and cyber security strategies is set forth throughout the Application, exhibits and direct testimony. In particularly, EKPC seeks Confidential

Treatment for the following information which is, hereinafter, identified as the “Confidential Information”:

a. The purchase price of the transaction, which is set forth in the Application (pp. 13, 22), the Asset Purchase Agreement (p. 15, Exhibit D1) (Exhibit 3), the direct testimony of Don Mosier (p. 7) (Exhibit 4), the direct testimony of David Crews (pp. 13, 15, 22) (Exhibit 5), the ACES’ Valuation Report (p. 3) (Exhibit DC-1), the direct testimony of Mike McNalley (p. 5) (Exhibit 10) and the direct testimony of James Read (p. 16) (Exhibit 8);¹

b. The calculated cost of the acquired capacity on a \$/kW basis, which is set forth in the Application (pp. 12, 23), the direct testimony of Don Mosier (pp. 7, 11), the direct testimony of David Crews (p. 22), the direct testimony of Mike McNalley (p. 11) and the direct testimony of James Read (p. 16);

c. The estimated cost of the levelized operating margin for Bluegrass Station, which appears in the Application (p. 12), the direct testimony of David Crews (p. 22) and the direct testimony of Ralph Luciani (p. 9) (Exhibit 9);

d. The estimated “break-even” capacity price, which is set forth in the Application (p. 16), the direct testimony of Mike McNalley (p. 11) and the direct testimony of Don Mosier (p. 8);

e. The estimated net benefit of the unexpired portion of the Unit 3 Tolling Agreement, which is identified in the Application (p. 18), the direct testimony of David Crews (p. 20) and the direct testimony of Ralph Luciani (p. 9);

¹ Bluegrass Generation Company, LLC has specifically requested that the purchase price be kept confidential. *See* Email from M. Strength to D. Crews (July 22, 2015). A copy of the email is attached hereto as Exhibit 1.

f. Information describing certain of the unsuccessful bidders' proposals received by EKPC in the course of the 2014 RFP Refresh, which is contained in The Brattle Group's Screening Analysis (pp. 4-5) (Exhibit JR-2);

g. A detailed description of the economic data, forecasts, models and conclusions of Navigant Consulting, Inc., which is set forth in the Application (pp. 9, 12), the direct testimony of David Crews (p. 20), the direct testimony of Ralph Luciani (p. 10) and throughout the entirety of the Navigant Report (Exhibit RL-2);

h. The conclusion of the Net Present Value (NPV) analysis conducted by The Brattle Group ("Brattle"), which appears in the Application (p. 8), the direct testimony of James Read (p. 16) and the Brattle Group's Screening Analysis (p. 6) (Exhibit JR-2);

i. The data, forecasts, assumptions, analysis and conclusion of the Valuation Report prepared by ACES, which appears in the Application (p. 8) the direct testimony of David Crews (p. 19) and the ACES' Valuation Report (pp. 3-9, 11-12);

j. The conclusion of EKPC's internal economic analysis of the acquisition, which appears in the Application (p. 9) and the direct testimony of David Crews (p. 21);

k. The heat rate for the Bluegrass Station Units, which appears in the Application (p. 11), the direct testimony of David Crews (p. 14) and direct testimony of James Read (p. 16);

l. The forecasted annual operations and maintenance expense associated with operating the Bluegrass Station, which is set forth in the Application (p. 22) and direct testimony of Mike McNalley (p. 10);

m. The anticipated annual fuel expense for the Bluegrass Station, which is set forth in the Application (p. 22) and the direct testimony of Mike McNalley (p. 10).

n. The identity of certain intellectual property to be acquired as part of the transaction which, if publicly disclosed, would provide the public with information regarding the Bluegrass Station's cyber infrastructure and cyber-security apparatus, which is set forth in Schedule 4.10(a)-(b) of the Asset Purchase Agreement;

o. A description of certain transmission assets and facilities that are impacted by the acquisition, which are identified or described in the Application (pp. 14-15) and the direct testimony of Darrin Adams (pp. 4-5, 8-12); and

p. Maps and specifications of the Bluegrass Station and regional electric power grid, which are set forth in the Disclosure Statement of the Asset Purchase Agreement, Exhibit DC-2 and Exhibit DA-1.²

3. The Confidential Information relates to: (a) the purchase price for the acquisition; (b) proprietary and sensitive economic data including: (i) market and pricing forecasts; (ii) economic modeling assumptions, methods and calculations; and (iii) the terms, conditions and pricing for various bids received in the course of the 2014 RFP Refresh; (c) estimates of annual operating, maintenance and fuel expenses; (d) intellectual property describing the cyber infrastructure and cyber-security apparatus of the Bluegrass Station; and (e) critical energy infrastructure information pertaining to the physical facilities for generating and transmitting electricity in the region. The Kentucky Open Records Act exempts the Confidential Information from disclosure. *See* KRS 61.878(1)(c)(1), (m)(1).

4. KRS 61.878(1)(c)(1) protects "records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which

² For the convenience of the Commission and any intervenors, EKPC has attempted to identify all of the pages in the July 24, 2015 filing which include Confidential Information. In the event that Confidential Information, denoted as such in the filing, is on a different page from that set forth herein, EKPC also requests confidential treatment for said information.

if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.” 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). All of the Confidential Information is critical to EKPC’s effective execution of business decisions and strategy. If disclosed, the Confidential Information would give EKPC’s competitors insights into EKPC’s business operations and strategies that are otherwise publicly unavailable. Accordingly, the Confidential Information satisfies both the statutory and common law standards for affording confidential treatment.

5. Likewise, KRS 61.878(1)(m)(1) additionally 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 portion of the Confidential Information which contains cyber infrastructure, cyber-security and critical energy infrastructure 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. Disclosure of the Confidential Information could result in the disruption of innumerable other infrastructure systems which relate to, or rely upon, the safe and reliable provision of electricity. Moreover, disclosure of the Confidential Information could have a reasonable likelihood of threatening the public safety. Maintaining the confidentiality of all the Confidential Information relating to cyber infrastructure, cyber-security and energy infrastructure is necessary to protect the interests of EKPC, its Owner-Members and end-use Members, and the region at large.

6. The Confidential Information is proprietary information that is retained by EKPC on a “need-to-know” basis and that is not publicly available. The Confidential Information is distributed within EKPC only to those employees who must have access for business reasons, and is generally recognized as confidential and proprietary in the energy industry.

7. 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 sole purpose of participating in this case. However, EKPC reserves the right to object to providing said information to any intervenor if said provision could result in liability to EKPC under any Confidentiality Agreement or Non-Disclosure Agreement associated with the 2014 RFP Refresh.

8. In accordance with the provisions of 807 KAR 5:001, Section 13(2), EKPC is filing one (1) copy of the unredacted Application and unredacted pages of the various exhibits and direct testimony containing Confidential Information separately under seal with the Confidential Information highlighted. Ten redacted copies of the Application, exhibits and direct testimony have also been tendered to the Commission.

9. In accordance with the provisions of 807 KAR 5:001, Section 13(2), EKPC respectfully requests that the Confidential Information be withheld from public disclosure for ten (10) years.

10. If, and to the extent, the Confidential Information becomes publicly available or otherwise no longer warrants confidential treatment., EKPC will notify the Commission and have its confidential status removed, pursuant to 807 KAR 5:001 Section 13(10).

WHEREFORE, on the basis of the foregoing, EKPC respectfully requests that the Commission classify and protect as confidential the specific Confidential Information described herein for a period of ten (10) years.

This 24th day of July, 2015.

Respectfully submitted,



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David Samford

From: David Crews <David.Crews@ekpc.coop>
Sent: Wednesday, July 22, 2015 9:55 AM
To: David Samford; Julie Tucker; Patrick Woods
Subject: FW: Bluegrass

Request from LS Power to keep the price confidential.

From: Mark Strength [mailto:MStrength@LSPower.com]
Sent: Wednesday, July 22, 2015 9:53 AM
To: David Crews
Cc: John King
Subject: Bluegrass

David, as discussed, we consider the price in the Asset Purchase Agreement between BLUEGRASS GENERATION COMPANY, L.L.C. and EAST KENTUCKY POWER COOPERATIVE, INC to be sensitive/confidential market information. As such, we request that you keep the price confidential in any upcoming filings and/or announcements. Please let me know if you have any questions. Thanks, Mark

