

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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AUG 28 2015

PUBLIC SERVICE
COMMISSION

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 responses to requests for information propounded 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. On August 17, 2015, the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention (the "AG"), propounded his first request for information upon EKPC in this matter. On August 18, 2015, Commission Staff and Kentucky

Utilities Company/Louisville Gas and Electric Company ("KU/LG&E"), respectively, propounded requests for information upon EKPC in this matter. Pursuant to the procedural schedule prescribed by the Commission's Order entered July 31, 2015, EKPC's responses to these requests for information must be filed by August 28, 2015.

3. Certain of EKPC's responses contain information which is proprietary, confidential, sensitive, commercially valuable and/or descriptive of critical energy infrastructure. Pursuant to applicable law, EKPC seeks confidential treatment for this information (hereinafter, the "Confidential Information"), which is more particularly described as follows:

a. The estimated "break-even" capacity price for the Bluegrass Station Units and supporting calculations, which are provided as part of EKPC's response to Item 13 of Commission Staff's first request for information;¹

b. The facility inspection and test reports with respect to Bluegrass Station Units 1, 2, and 3, respectively (the "Inspection Reports"), copies of which are provided as part of EKPC's response to Items 14(a) and 14(c)(6) of Commission Staff's first request for information;

c. The 2014 and 2015 studies conducted by Bentek concerning the availability and affordability of natural gas at the Bluegrass Station, copies of which are provided as part of EKPC's response to Item 30(a) of Commission Staff's first request for information;

d. The assumptions, calculations and conclusions of the internal economic analysis performed by EKPC related to the proposed transaction, which are provided as part of EKPC's response to Item 32(a) of Commission Staff's first request for information;

¹ This item of Confidential Information, as well as the items described in subparagraphs (d.), (e.), (g.), (h.), (i.), (j.), (k.), (l.), (m.), and (n.), repeat or directly relate to information for which EKPC seeks confidential treatment in its Motion for Confidential Treatment filed in conjunction with its Application in this matter, the same having been filed on July 24, 2015.

e. The detailed assumptions and calculations utilized by ACES/EKPC to evaluate the natural gas supply costs and strategies associated with the Bluegrass Station, which are provided as part of EKPC's response to Items 34(d) and 37 of Commission Staff's first request for information;

f. The Environmental Site Assessment Report concerning the Bluegrass Station prepared for EKPC by Linebach Funkhouser, Inc. (the "ESA Report"), a copy of which is provided as part of EKPC's response to Item 41 of Commission Staff's first request for information;

g. The System Impact Study Reports and the Facilities Study Report (collectively, the "Transmission Reports") performed in response to EKPC's request to designate the Bluegrass Station Units as Network Resources for EKPC load connected to the KU/LG&E transmission system, copies of which are provided as part of EKPC's response to Item 42 of Commission Staff's first request for information;

h. The aerial photograph of the Bluegrass Station site that is contained on page 27 of the report provided by CE Power in conjunction with the testing it performed on the generator step-up and auxiliary transformers at the Bluegrass Station, a copy of which is provided as part of EKPC's response to Item 44 of Commission Staff's first request for information;

i. The descriptions of the transmission constraint and system upgrades to be performed relevant to the Bluegrass Station, as well as the explanation and copy of the operating guideline applicable to the Bluegrass Station (collectively, the "Transmission Constraint Materials"), which are provided as part of EKPC's response to Items 49(a), 49(b), and 49(c) of Commission Staff's first request for information;

j. The workpapers and analyses developed by James Read and The Brattle Group in conjunction with their net present value evaluation of the various proposals submitted in response to the RFP Refresh (as that term is defined in Mr. Read's testimony) (together with the identities of bidders described in subparagraph (n.) below, the "RFP Materials"), which are provided as part of EKPC's response to Item 52(a) of Commission Staff's first request for information;

k. The PJM capacity price projections provided by Ralph Luciani/Navigant Consulting, Inc., which are provided as part of EKPC's response to Items 54(d)(1) and 55(a) of Commission Staff's first request for information;

l. The supporting calculations for the estimations of Ralph Luciani/Navigant Consulting, Inc., related to the Bluegrass Station's real levelized operating margins, which are provided as part of EKPC's response to Item 55(b) of Commission Staff's first request for information;

m. The identities of specific transmission facilities that will need to be constructed or upgraded by either EKPC or KU/LG&E should the proposed transaction close (collectively, the "Transmission Upgrade Materials," and together with the Transmission Reports, Transmission Constraint Materials, and aerial photograph of the Bluegrass Station site, the "Transmission Infrastructure Materials"), which are provided as part of EKPC's response to Item 63 of Commission Staff's first request for information; and

n. The identities of entities that responded to EKPC's 2012 RFP and RFP Refresh (as those terms are defined in Mr. Read's testimony), which are provided as part of EKPC's response to Items 16, 16(a), and 17 of the AG's first request for information.²

4. The Confidential Information includes highly sensitive economic data that, if publicly disclosed, would permit an unfair commercial advantage to EKPC's competitors. Portions of the Confidential Information, such as those relating to the Bluegrass Units' estimated "break-even" capacity price, the Bluegrass Station's estimated real levelized operating margins, the availability and affordability of fuel for the Bluegrass Station, and EKPC's internal economic analysis, reflect strictly proprietary market and pricing forecasts and economic modeling assumptions, methods and calculations. The RFP Materials for which EKPC requests confidential treatment contain data, analyses, and bidder information, all of which is commercially valuable and should not be freely distributed to EKPC's competitors or the power market at large.³ The Inspection Reports and ESA Report include highly-detailed, proprietary information and analysis related to plant condition and operations, and the Transmission Infrastructure Materials include critical energy infrastructure information pertaining to the physical facilities for generating and transmitting electricity in the region. The Kentucky Open Records Act exempts the entirety of the Confidential Information from disclosure. *See* KRS 61.878(1)(c)(1), (m)(1).

5. 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,

² For the convenience of the Commission and any intervenors, EKPC has attempted to identify all of the responses to requests for information that include Confidential Information. In the event that information is denoted as confidential in a response but is not accurately described herein, EKPC also requests confidential treatment for that information.

³ The Confidential Information within the RFP Materials is also subject to confidentiality agreements executed by and between EKPC and the respective bidders. Of course, EKPC's public dissemination of information submitted confidentially by bidders would undermine the competitive process and harm EKPC's ability to successfully perform future RFPs.

which 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.

6. 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 Transmission 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 critical energy infrastructure information could have a reasonable likelihood of threatening the public safety. Maintaining the confidentiality of all the Confidential Information relating to energy infrastructure is necessary to protect the interests of EKPC, its Owner-Members and end-use Members, and the region at large.

7. 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.

8. 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. EKPC has entered into a confidentiality and nondisclosure agreement with the AG and Nucor Steel Gallatin, respectively, and all of the Confidential Information described herein has been or will be provided to those intervenors consistent with said agreements. EKPC continues to negotiate an acceptable confidentiality and nondisclosure agreement with KU/LG&E; upon the execution of such an agreement, KU/LG&E will be provided certain of the Confidential Information described herein.⁴ EKPC reserves the right to object to providing certain Confidential Information to any intervenor if said provision could result in liability to EKPC under any Confidentiality Agreement or Non-Disclosure Agreement.

9. In accordance with the provisions of 807 KAR 5:001, Section 13(2), EKPC is filing separately under seal one (1) copy of the responses to the requests for information propounded by Commission Staff, the AG, and KU/LGE, respectively, unredacted with the Confidential Information highlighted or otherwise denoted. EKPC is also filing ten (10) copies of the foregoing responses with the Confidential Information redacted or removed.

⁴ In light of the similar positions of EKPC and KU/LG&E as Kentucky generation and transmission utilities, certain Confidential Information contained in EKPC's responses is inappropriate for disclosure to KU/LG&E and will likely be excluded from the materials that are to be produced under the terms of the utilities' confidentiality and nondisclosure agreement.

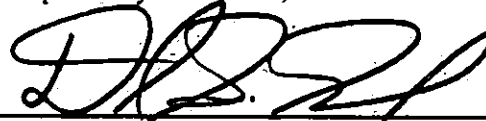
10. In accordance with the provisions of 807 KAR 5:001, Section 13(2), EKPC respectfully requests that the Confidential Information be withheld from public disclosure for ten (10) years.

11. 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 28th day of August, 2015.

Respectfully submitted,



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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 28th day of August, 2015, addressed to the following:

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