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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

THE APPLICATION OF SOUTH KENTUCKY RURAL)
ELECTRIC COOPERATIVE CORPORATION FOR) Case No. 2018-00050
APPROVAL OF MASTER POWER PURCHASE AND)
SALE AGREEMENT AND TRANSACTIONS THEREUNDER)

SECOND MOTION FOR CONFIDENTIAL TREATMENT

Comes now South Kentucky Rural Electric Cooperative Corporation (“South Kentucky”), 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 Commission afford confidential treatment to certain data request responses which South Kentucky seeks to provide to Commission Staff’s Item No. 2(c) of the Commission Staff’s First Set of Data Requests; Distribution Cooperatives’ Item Nos. 3, 4, and 30; and East Kentucky Power Cooperative Items 26(b), 27 and 28(c), South Kentucky submits as follows:

1. South Kentucky’s Application requests that the Commission consider and approve, consistent with KRS 278.300, a long-term power purchase agreement and related energy and capacity transactions entered into on or about December 19, 2017, by and between the cooperative and Morgan Stanley Capital Group Inc. (“Morgan Stanley Capital Group”). South Kentucky’s proposal to diversify its power supply portfolio is the result of many months of discussions and analysis and is expected to yield significant wholesale power cost-savings for the benefit of South Kentucky’s approximately 50,000 members.

2. On February 26, 2018, the Commission Staff issued its First Request for Information to South Kentucky. First Information Requests from Distribution Cooperatives and East Kentucky followed on February 28, 2018.

3. In response to Commission Staff's, Distribution Cooperatives' and East Kentucky's First Requests for Information, South Kentucky is providing certain information for which it requests confidential treatment.

4. The information for South Kentucky seeks confidential treatment with respect to the Commission Staff, is contained in its Response to Commission Staff's First Request 2(c), which is referred to herein as the "Confidential Information" and, broadly speaking, includes operational assumptions.

5. Request No. 2(c) of Commission Staff's First Request for Information states as follows:

Refer to the Application, paragraph 12, which states that South Kentucky believes that the expected financial benefits from the proposed transaction outweigh the risks. Also refer to the Application, Exhibit 3, which states that South Kentucky's board of directions were "fully briefed" on the possible risks of the proposed transaction.

c. State with specificity the expected financial benefits of the proposed transaction that South Kentucky's Board of Directors evaluated.

6. In its response to Request No. 2(c), South Kentucky includes forecasted financial data involving net present value calculations of the proposed transaction. This information is the same information for which South Kentucky moved for confidentiality in connection with its application in this proceeding, for if disclosed, the data would provide South Kentucky's competitors with insight – not otherwise available to them – into its business operations and strategies. Consistent with its request for confidentiality accompanying the application, South

Kentucky is willing to provide limited disclosure of this information to those abiding by the terms and conditions of a non-disclosure agreement.

7. Request No. 3 of the Distribution Cooperatives' First Information Request states as follows:

Please provide a copy of each Document South Kentucky has provided to or received from the RUS, CFC or CoBank arising out of, related to or connected with South Kentucky seeking the approval or other consent of the RUS or any other creditor to South Kentucky entering into the PPA.

8. In its response to this Request No. 3, South Kentucky includes forecasted financial data involving net present value calculations of the proposed transaction (as it did for Commission Staff Item 2.c.) Thus, the same confidentiality concerns present here. The confidential information is located on p. 18 of 21 of DC Attachment 3.

9. Request No. 4 of the Distribution Cooperatives' First Information Request states as follows:

Please provide a copy of each Document South Kentucky has provided to or received from its board of directors, any secured creditor, any credit rating agency, EKPC, any EKPC member cooperative, PJM, Enervision, Inc., or Morgan Stanley Capital Group Inc. (or any of its subsidiaries or affiliates) that arises out of, is related to or is connected with any analysis by South Kentucky or any other person of the impact of the transaction represented by the PPA on South Kentucky, EKPC, any one or more EKPC member distribution cooperatives, or EKPC's wholesale rates for electric service to its member distribution cooperatives. With respect to the analysis in each such Document, please provide all assumptions, calculations, workpapers and supporting Documents used in that analysis, including but not limited to any Documents in electronic Excel spreadsheet format with all formulas intact and unprotected, and with all columns and rows accessible.

10. In its response to this Request No. 4, South Kentucky includes forecasted financial data involving net present value calculations of the proposed transaction (as it did for Commission Staff Item 2.c.), and Distribution Cooperatives' Item 3. Confidential information responsive to this request is located on DC Attachment 4 pp. 5-6, 17-24, 31-39, 59-80, and 111-115, also it includes certain proprietary analyses performed by South Kentucky's consultant EnerVision of

pricing details relating to both the proposed transaction in question, as well as proposals received by other third parties (which South Kentucky ultimately did not select). Thus, in addition to the same confidentiality concerns presented by Commission Staff Item 2.c and Distribution Cooperatives Item 3, this request calls for the production of information that could result in harm to South Kentucky, both from the disclosure of non-public financial and operational information that would give competitors insight into South Kentucky they otherwise are not privy to, as well as information regarding power market conditions that, again, is not available to them publicly and could be to the detriment of South Kentucky were it required to return to the market. Pursuant to 807 KAR 5:001, Section 13(2)(a)(3)(b), confidential treatment is sought for the entirety of DC Attachment 4 (Sheet 1); (Sheet 2); (Sheet 5); and (Sheet 6). South Kentucky is filing a CD containing the requested confidential Excel files for its response to Distribution Cooperative Item 4 and any other excel spreadsheets herein which confidential information pervades the document consistent with 807 KAR 5:001 §13(2)(a)(3)(b).

11. In this regard, as part of the RFP process, South Kentucky and the various bidders agreed that information supplied as part of the RFP process would be kept confidential. While the parties recognized that disclosure in connection with a proceeding such as this application could be required, the parties agreed that reasonable steps would be taken to protect the information against unnecessary publicity and, if required to be disclosed, attempt to afford the information comparable confidentiality protections.

12. In addition, upon information and belief, certain of the Distribution Cooperatives are participating in solicitations for which the data reflected in this item (and Distribution Cooperatives Item 30 and East Kentucky Items 26, 27 and 28) would provide pricing information (of both Morgan Stanley and of suppliers whose offers were not selected by South Kentucky),

given these entities access to competitive market intelligence that, absent this proceeding, would be otherwise unknowable to them or any other market participant, and which suppliers such as those affected here take steps to keep confidential.

13. Request No. 30 of the Distribution Cooperatives states as follows:

Please refer to the testimony of Mr. Carter Babbit (“Babbit”) in Exhibit 18. Please provide all workpapers used to develop Exhibits CB-4 through CB-10 (including the exhibits themselves and all of the supporting data sources and calculations) in electronic Excel spreadsheet format with all formulas intact and unprotected, and with all columns and rows accessible.

14. This information raises the same confidentiality concerns as the information discussed above within the scope of Distribution Cooperatives’ Request Item 4. Specifically, these proprietary analyses of EnerVision include detailed pricing data and associated value analyses relating to both the proposed transaction and proposals by other suppliers that South Kentucky did not select. Access and use of this information, without appropriate non-disclosure restrictions, would be harmful to South Kentucky and to the competitive power market, as it would afford individuals insight into the pricing decisions of suppliers they otherwise could not obtain (except perhaps through the performance of a solicitation, but in such case, the execution of binding non-disclosure agreements would be expected). Pursuant to 807 KAR 5:001, Section 13(2)(a)(3)(b), confidential treatment is sought for the entire documents produced in response to Distribution Cooperative Item 30 – DC Attachment 30 (CB 10); (CB 4); (CB5); and (CB8).

15. Request Items 26(b), 27 and 28(c) of East Kentucky provides as follows:

26. Please refer to Exhibit 18 of the Application, the Babbit Testimony, Exhibit CB-9.

(b) Please provide all spreadsheets, calculations, assumptions, and other documentation that support the information presented in graphic form on Exhibit CB-9. Please include spreadsheets in Excel format with all formulas intact and unprotected. The spreadsheets, calculations, assumptions, and other documentation are only requested for the EKPC base case and the Morgan Stanley proposal for the 58 MW.

27. In the Herrman Testimony, page 8, lines 13 through 16, Mrs. Herrman states that EnerVision calculated a projected 2020 contract year cost for power purchases made from both EKPC and Morgan Stanley. Please provide all spreadsheets, calculations, and assumptions utilized to determine the projected 2020 contract year cost.
28. Please provide the following costs associated with the proposed Morgan Stanley transaction and explain how these costs were incorporated into the net present value analysis of the proposal. If the cost was not included in the net present value analysis, please explain why it was not included.
 - c. The annual cost of transmission provided by EKPC.

16. These three request items call for a single set of workpapers developed by South Kentucky's consultant EnerVision. The information contained in these workpapers, which themselves are proprietary to EnerVision, raise the same confidentiality concerns as the materials referenced above as within the scope of the Distribution Cooperatives Items 4 and 30. Although the information called for by this item does not include the confidential information of third parties, it does include the Morgan Stanley pricing data (and by extension, the net present value data) for which South Kentucky has requested confidentiality. The entire spreadsheet provided in response to the East Kentucky Power Cooperative (Attachment 26) is confidential and should be treated as same pursuant to 807 KAR 5:001 §13(2)(a)(3)(b).

17. The Kentucky Open Records Act and applicable precedent exempts from disclosure information "generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records."¹ As described above, the responses for which South Kentucky seek confidential treatment contain information that is, or is based on or acquired from, proprietary information provided by

¹ See KRS 61.878(1)(c)(1); see also, e.g., Case No. 2016-00269, *In the Matter of: Application of East Kentucky Power Cooperative, Inc. for Issuance of a Certificate of Public Convenience and Necessity, Approval of Certain Assumption of Evidences of Indebtedness and Establishment of a Community Solar Tariff*, Order at pp. 2-3 (Ky. P.S.C. Nov. 30, 2016).

EnerVision, is not on file with publicly with any public agency, and is not publicly available from any commercial or other source. The aforementioned information is also distributed within South Kentucky only to those employees who must have access for business reasons, and is generally recognized as confidential and proprietary in the energy industry. The public disclosure of this information will create precisely the kind of competitive harm KRS 61.878(1)(c)(1) intends to prevent.

18. 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 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 South Kentucky’s effective execution of business decisions and strategy. If disclosed, the confidential information would give South Kentucky’s competitors insights into the cooperative’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.

19. As South Kentucky recognized in its initial motion for confidentiality, in the unlikely event the Commission determined to deny in whole or in part the Application, South Kentucky would face the prospect of revising the proposed transaction or returning to the market. If this were to occur and South Kentucky’s potential counterparties had access to essential commercial terms such as price, value, and the identities of their competitor-bidders responding to

the initial RFP, South Kentucky would be placed at a significant competitive disadvantage ultimately resulting in financial harm to the cooperative and its Owner-Members.

20. Finally, as noted above and in its original motion, South Kentucky does not necessarily object to limited disclosure of certain of the confidential information described herein (consistent with Commission regulations and its long-standing practice and procedures), 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.

21. In accordance with the provisions of 807 KAR 5:001, Section 13(2), South Kentucky is filing, separately and under seal, one (1) unredacted copy of the data request responses addressed herein with the confidential information highlighted. Also, confidential information pervades the entirety of some spreadsheets addressed above with written notification given pursuant to 807 KAR 5:001, Section 13(2)(a)(3)(b). A redacted original and ten (10) redacted copies have also been tendered to the Commission.

22. In accordance with the provisions of 807 KAR 5:001, Section 13(2), South Kentucky respectfully requests that the confidential information be withheld from public disclosure for a period of ten (10) years. The public disclosure of the confidential information prior to the expiration of this time period will result in a competitive disadvantage to South Kentucky and could be detrimental to future negotiations with vendors and competitors.

23. If, and to the extent, the Confidential Information becomes publicly available or otherwise no longer warrants confidential treatment., South Kentucky 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, South Kentucky respectfully requests that the Commission classify and protect as confidential the specific confidential information described herein for a period of ten (10) years.

Dated this 13th day of March, 2018.

Respectfully submitted,



Matthew R. Malone
William H. May, III.
Hurt, Deckard & May PLLC
127 West Main Street
Lexington, Kentucky 40507
(859) 254-0000 (office)
(859) 254-4763 (facsimile)
mmalone@hdmfirm.com
bmay@hdmfirm.com

Scott B. Grover (pro hac admission pending)
S. Michael Madison (pro hac admission pending)
Balch & Bingham, LLP
1710 Sixth Ave. North
Birmingham, Alabama 35203
(205) 251-8100
(205) 488-5660
sgrover@balch.com
mmadison@balch.com

Counsel for the Petitioner,

**SOUTH KENTUCKY RURAL ELECTRIC
COOPERATIVE CORPORATIO**

CERTIFICATE OF SERVICE

Pursuant to 807 KAR 5:001 Section 6, the undersigned certifies that consistent with 807 KAR 5:001 Section 4(8)(d)(3), a copy of this document has been electronically served upon the following:

Kent A. Chandler, Esq.
Rebecca W. Goodman, Esq.
ASSISTANT ATTORNEYS GENERAL
Kent.Chandler@ky.gov
Rebecca.Goodman@ky.gov

W. Patrick Hauser, Esq.
W. PATRIC HAUSER, PSC
phauser@barbourville.com

Michael L. Kurtz, Esq.
BOEHM, KURTZ & LOWRY
mkurtz@bkllawfirm.com

James M. Crawford, Esq.
Ruth H. Baxter, Esq.
Jake A. Thompson, Esq.
CRAWFORD & BAXTER, P.S.C.
Jcrawford@cbkylaw.com
Rbaxter@cbky.com
Jthompson@cbky.com

W. Jeffrey Scott, Esq.
Brandon M. Music, Esq.
W. JEFFREY SCOTT, P.S.C.
wjscott@windstream.net

Mark David Goss, Esq.
Goss Samford, PLLC
22365 Harrodsburg Road, Suite B325
Lexington, Kentucky 40504
mdgoss@gosssamfordlaw.com

James M. Miller, Esq.
R. Michael Sullivan, Esq.
SULLIVAN MOUNTJOY, PSC
jmiller@smlegal.com
msullivan@smlegal.com

John Doug Hubbard, Esq.
Jason P. Floyd, Esq.
FULTON, HUBBARD & HUBBARD, PLLC
jdh@bardstown.com
jpf@bardstown.com

Clayton O. Oswald, Esq.
TAYLOR, KELLER & OSWALD, PLLC
coswald@tkolegal.com

Robert Spragens, Jr., Esq.
SPRAGENS & HIDGON, P.S.C.
rspragens@spragenhigdonlaw.com

David T. Royse, Esq.
RANDSDELL ROACH & ROYSE PLLC
david@rrrfirm.com

David A. Smart, Esq.
Roger R. Cowden, Esq.
EKPC
David.smart@ekpc.coop
Roger.cowden@ekpc.coop

This 13th day of March, 2018.



ATTORNEY FOR SOUTH KENTUCKY