

**Goss
Samford**

ATTORNEYS AT LAW | PLLC

David S. Samford
david@gosssamfordlaw.com
(859) 368-7740

July 2, 2018

Via Hand-Delivery

Ms. Gwen Pinson
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, KY 40602

Re: PSC Case No. 2018-00115

Dear Ms. Pinson:

On behalf of East Kentucky Power Cooperative, Inc. ("EKPC"), please find enclosed for filing in the record of the above-referenced case an original and eight (8) copies of EKPC's Response to Commission Staff's Supplemental Request for Information propounded June 25, 2018 and EKPC's Motion for Confidential Treatment. A copy of the confidential information is being tendered herewith under seal. Please return a file-stamped copy of this filing to my office.

Please do not hesitate to contact me if you have any questions or concerns.

Very truly yours,

David S. Samford

Enclosures

RECEIVED

JUL 02 2018

PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

JUL 02 2018

PUBLIC SERVICE
COMMISSION

In the Matter of:

APPLICATION OF EAST KENTUCKY POWER)	
COOPERATIVE, INC. FOR APPROVAL OF THE)	
AUTHORITY TO ISSUE UP TO \$300,000,000 OF)	CASE NO.
SECURED PRIVATE PLACEMENT DEBT AND/)	2018-00115
OR SECURED TAX EXEMPT BONDS AND FOR)	
THE USE OF INTEREST RATE MANAGEMENT)	
INSTRUMENTS)	

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 its response to Staff's Supplemental Request for Confidential Information tendered simultaneously herewith in the above-captioned proceeding, respectfully states as follows:

1. In Supplemental Request 10(b), Staff requests EKPC to provide an explanation and pricing grid to show the parameters for the interest rates on the private placement debt for various terms. Although treasury rates and credit spreads change daily, EKPC is including within its response indicative interest rates for both a 10-year term and 20-year term. These indicative rates are Confidential Information as the anticipated interest rates are an integral part of the requested approval for the issuance of the secured private placement. The open disclosure of this information would arm prospective lenders - with whom EKPC must still negotiate - with information that could allow such lenders an unfair commercial advantage over EKPC. By making available to the

public both the highly sensitive interest rates EKPC anticipates it can achieve through negotiation of its proposed private placement, EKPC faces substantial risk of higher interest rates and fees and other more restrictive and detrimental conditions, including higher rates to its Owner-Members, than would otherwise be the case if the information was not publicly disclosed.

2. The Confidential Information is retained by EKPC on a “need-to-know” basis and is not available from any commercial or other source. The Confidential Information is generally recognized as confidential and proprietary in the energy industry and in financial markets, and the public disclosure of the Confidential Information would potentially harm EKPC’s competitive position in the marketplace, to the detriment of EKPC, its Owner-Members, and the ultimate customers. In light of these facts, the Kentucky Open Records Act exempts the Confidential Information from disclosure. *See* KRS 61.878(1)(c)(1). Indeed, the Commission has previously afforded confidential treatment to the same type of information.¹

3. 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). The Confidential Information is critical to EKPC’s effective execution of business decisions and strategy. If disclosed, the Confidential Information would give potential lenders and other third parties insights into EKPC’s business operations and financial strategies that are

¹ *See In the Matter of the Application of East Kentucky Power Cooperative, Inc. for Approval of the Amendment and Extension or Refinancing of an Unsecured Revolving Credit Agreement in an Amount up to \$800,000,000 of Which up to \$100,000,000 may be in the Form of an Unsecured Renewable Term Loan and \$200,000,000 of Which will be in the Form of a Future Increase Option*, Order, Case No. 2016-00116 (Ky. P.S.C. Apr. 12, 2016).

otherwise publicly unavailable. Accordingly, the Confidential Information satisfies both the statutory and common law standards for affording confidential treatment.

4. 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.

5. In accordance with the provisions of 807 KAR 5:001, Section 13(2), EKPC is filing, in a separate sealed envelope marked confidential, one (1) copy of Response 10(b) with the Confidential Information highlighted. Redacted copies of Supplemental Response 10(b) are attached to EKPC's Supplemental Responses tendered simultaneously herewith.

6. 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 three (3) years.

7. 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 2nd day of July, 2018.

Respectfully submitted,

Handwritten signature of David S. Samford in blue ink, written over a horizontal line. The signature is cursive and includes the name "David S. Samford" followed by "(by Kay Honaker)" in parentheses.

David S. Samford

L. Allyson Honaker

GOSS SAMFORD, PLLC

2365 Harrodsburg Road, Suite B-325

Lexington, KY 40504

(859) 368-7740

david@gosssamfordlaw.com

allyson@gosssamfordlaw.com

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 APPROVAL OF THE)
AUTHORITY TO ISSUE UP TO \$300,000,000 OF)
SECURED PRIVATE PLACEMENT DEBT AND/)
OR SECURED TAX EXEMPT BONDS AND FOR)
THE USE OF INTEREST RATE MANAGEMENT)
INSTRUMENTS)**

**CASE NO.
2018-00115**

**RESPONSES TO COMMISSION STAFF'S SUPPLEMENTAL REQUEST FOR
INFORMATION TO EAST KENTUCKY POWER COOPERATIVE, INC.**

DATED JUNE 25, 2018

EAST KENTUCKY POWER COOPERATIVE, INC.

PSC CASE NO. 2018-00115

RESPONSE TO INFORMATION REQUEST

STAFF'S SUPPLEMENTAL REQUEST FOR INFORMATION DATED 06/25/18

REQUEST 1

RESPONSIBLE PARTY: Tom Stachnik

Request 1. Refer to East Kentucky's responses to the Request for Information attached as an Appendix to the Commission's May 24, 2018 Order ("Staff's First Request"), Item 9 in which East Kentucky states that "no specific tax-exempt issuance is currently planned."

Request 1(a). Explain why East Kentucky is currently requesting approval for such a tax-exempt issuance if no specific tax-exempt issuance is currently planned.

Response 1(a). EKPC requested authority to borrow in the tax-exempt market and to use interest rate management tools because these options provide the flexibility to take advantage of market opportunities when and if they occur. The approval process for a financing application is sufficiently long that it is impossible to anticipate what opportunities may be available once approval is granted, and likewise difficult or impossible to "lock in" specific transaction details prior to seeking approval. However given the changes in market conditions and interest rates since this application was filed, EKPC does not anticipate using either in the proposed transaction and

now withdraws both requests. The only adverse impact of this decision is the loss of some flexibility.

Request 1(b). Describe and explain the anticipated timetable if East Kentucky determines that it should move forward with a specific tax-exempt issuance from the time it decides to move forward through the issuance of the tax-exempt bonds. Provide the same information with respect to the private placement debt.

Response 1(b). As stated in EKPC's response to Request 1(a), EKPC will not pursue tax-exempt financing at this time. For a private placement debt issuance, after PSC approval, EKPC could launch and price a transaction within 3-4 weeks. This would set the interest rate and obligate the investors. EKPC would likely choose to delay the actual draw of the funds for 3 months. A typical timetable would follow the estimated schedule below.

Week 1: Due diligence, preparation of marketing materials, drafting agreements

Week 2: Finalization of documentation

Week 3: Launch deal and solicit bids

Week 4: Price deal (locking interest) based on investor bids

90 days after pricing: close on financing and receive funds

Actual timing will be adjusted to avoid holiday and other periods where market activity is limited.

Request 1(c). State whether and, if so, explain in specific terms why East Kentucky contends it would be impossible, impractical, or detrimental to East Kentucky's position for East Kentucky to wait until it plans to move forward with a specific tax-exempt issuance to seek approval from the Commission.

Response 1(c). Please refer to EKPC's response to Request 1(a) and 1(b).

Request 1(d). State and explain whether East Kentucky's ability to obtain private placement financing or the terms under which it could obtain such financing would be affected if the Commission were to approve East Kentucky's request as to the private placement debt but were to deny the request with respect to any tax-exempt issuance at this time.

Response 1(d). Please refer to EKPC's response to Request 1(a). However, EKPC withdrawing its request to borrow in the tax-exempt market does not affect its ability to obtain private placement financing or the terms under which it could obtain such financing.

EAST KENTUCKY POWER COOPERATIVE, INC.

PSC CASE NO. 2018-00115

RESPONSE TO INFORMATION REQUEST

STAFF'S SUPPLEMENTAL REQUEST FOR INFORMATION DATED 06/25/18

REQUEST 2

RESPONSIBLE PARTY: Tom Stachnik

Request 2. Refer to the document from US Bank produced in response to Staff's First Request, Item 10, which refers to and indicates it forms part of the ISDA Master Agreement executed by the parties. Provide a copy of the ISDA Master Agreement referred to therein. If no ISDA Master Agreement has yet been executed or agreed to by the parties, provide a copy of a form ISDA Master Agreement as referred to therein.

Response 2. Please refer to EKPC's response to Request 1(a).

EAST KENTUCKY POWER COOPERATIVE, INC.

PSC CASE NO. 2018-00115

RESPONSE TO INFORMATION REQUEST

STAFF'S SUPPLEMENTAL REQUEST FOR INFORMATION DATED 06/25/18

REQUEST 3

RESPONSIBLE PARTY: Tom Stachnik

Request 3. Refer to East Kentucky's response to Staff's First Request, Item 10 in which East Kentucky stated it was seeking approval to manage interest rates, in part, by "[e]ntering into a forward-starting swap or treasury lock to lock the rate of an anticipated fixed-rate AUS advance or approved private placement transaction."

Request 3(a). State whether East Kentucky is seeking approval to enter into forward-starting swaps or locks for anticipated tax-exempt bonds.

Response 3(a). Please refer to EKPC's response to Request 1(a).

Request 3(b). Describe how East Kentucky would define "anticipated" as used therein for an RUS-advance or private placement transaction (or tax-exempt bonds, if applicable) in the event the Commission were to approve the use of such interest rate management tools for such "anticipated" transactions, and explain why East Kentucky's definition of an "anticipated"

transaction would be appropriate for determining when East Kentucky should be permitted to use those interest rate management tools for such transactions.

Response 3(b). Please refer to EKPC's response to Request 1(a).

Request 3(c). Describe what would occur in circumstances when the interest rate for a debt placement is lower at the time of closing than the rate locked in by a future-starting swap or lock; the interest rate for a debt placement is higher at the time of closing than the rate locked in by a future-starting swap or lock; and the future-starting swap or lock expires prior to the closing date for the debt.

Response 3(c). Please refer to EKPC's response to Request 1(a).

Request 3(d). State and explain whether East Kentucky's hedging position for a particular anticipated debt would end at the time any fixed interest rate debt is placed or whether East Kentucky would continue to hold the swaps or locks for the term of the debt.

Response 3(d). Please refer to EKPC's response to Request 1(a).

EAST KENTUCKY POWER COOPERATIVE, INC.

PSC CASE NO. 2018-00115

RESPONSE TO INFORMATION REQUEST

STAFF'S SUPPLEMENTAL REQUEST FOR INFORMATION DATED 06/25/18

REQUEST 4

RESPONSIBLE PARTY: Tom Stachnik

Request 4. Refer to the first paragraph of Exhibit 1 to East Kentucky's Application in which East Kentucky stated that it was seeking authority "to issue ... up to \$300,000,000 principal amount of secured private placement indebtedness or secured tax-exempt bonds" and that "[t]he proposed financing will be issued under an Indenture of Mortgage, Security Agreement and Financing Statement." Confirm that the "proposed financing" as used therein refers to both private placement indebtedness and the secured tax-exempt bonds for which approval is requested herein. If any portion of the private placement indebtedness or the secured tax-exempt bonds would not be issued under that agreement, identify and provide any other security agreement under which the financing will be issued.

Response 4. Recognizing that EKPC is withdrawing its request to borrow in the tax-exempt market, any other secured indebtedness would be issued and secured by the existing Indenture.

EAST KENTUCKY POWER COOPERATIVE, INC.

PSC CASE NO. 2018-00115

RESPONSE TO INFORMATION REQUEST

STAFF'S SUPPLEMENTAL REQUEST FOR INFORMATION DATED 06/25/18

REQUEST 5

RESPONSIBLE PARTY: Tom Stachnik

Request 5. State what, if any, limits or parameters East Kentucky contends would be reasonable for the Commission to place on its issuance of private placement debt and explain the basis for East Kentucky's position.

Response 5. EKPC has stated limits in its initial request, namely a maximum spread of 3% over Treasury rates, a final maturity not to exceed 30 years, and an amount of \$300 million. While EKPC does not believe it is necessary to place a limit on the time period to execute these transactions due to the modest dollar limit relative to its asset base, it would not be unreasonable to have the approval expire at some fixed point in time, such as December 31, 2019.

EAST KENTUCKY POWER COOPERATIVE, INC.

PSC CASE NO. 2018-00115

RESPONSE TO INFORMATION REQUEST

STAFF'S SUPPLEMENTAL REQUEST FOR INFORMATION DATED 06/25/18

REQUEST 6

RESPONSIBLE PARTY: Tom Stachnik

Request 6. State what, if any, limits or parameters East Kentucky contends would be reasonable for the Commission to place on its issuance of tax-exempt bonds and explain the basis for East Kentucky's position.

Response 6. Please refer to EKPC's response to Request 1(a).

EAST KENTUCKY POWER COOPERATIVE, INC.

PSC CASE NO. 2018-00115

RESPONSE TO INFORMATION REQUEST

STAFF'S SUPPLEMENTAL REQUEST FOR INFORMATION DATED 06/25/18

REQUEST 7

RESPONSIBLE PARTY: Tom Stachnik

Request 7. Refer to Case No. 2013-00306 in which East Kentucky requested authority to enter into interest rate management agreements from the time of approval through December 31, 2014. State what time frame, if any, East Kentucky contends would be reasonable for the Commission to place on its use of interest rate management techniques for which approval is requested herein and explain the basis for East Kentucky's position.

Response 7. Please refer to EKPC's response to Request 1(a).

EAST KENTUCKY POWER COOPERATIVE, INC.

PSC CASE NO. 2018-00115

RESPONSE TO INFORMATION REQUEST

STAFF'S SUPPLEMENTAL REQUEST FOR INFORMATION DATED 06/25/18

REQUEST 8

RESPONSIBLE PARTY: Tom Stachnik

Request 8. State what, if any, limits or parameters East Kentucky contends would be reasonable for the Commission to place on fees and expenses connected to its use of interest rate management techniques and explain the basis for East Kentucky's position.

Response 8. Please refer to EKPC's response to Request 1(a).

EAST KENTUCKY POWER COOPERATIVE, INC.

PSC CASE NO. 2018-00115

RESPONSE TO INFORMATION REQUEST

STAFF'S SUPPLEMENTAL REQUEST FOR INFORMATION DATED 06/25/18

REQUEST 9

RESPONSIBLE PARTY: Tom Stachnik

Request 9. Refer to the Application in which East Kentucky states that it is seeking "an Order for authorization to issue up to \$300,000,000.00 of secured private placement debt, secured tax-exempt bonds, or some combination thereof."

Request 9(a). State and explain whether East Kentucky is seeking authorization to issue such debt and bonds on a revolving basis.

Response 9 (a). EKPC is not seeking approval of any debt on a revolving basis.

Request 9(b). State the period during which East Kentucky requests that any authorization to issue debt and bonds sought herein remain valid if not used by East Kentucky, and explain why East Kentucky contends that period is appropriate.

Response 9 (b). Recognizing that EKPC is withdrawing its request to borrow in the tax-exempt market, EKPC does not believe it is necessary to place a limit on the time period to execute

these transactions due to the modest dollar limit relative to its asset base. It would not be unreasonable to have the approval expire at some fixed point in time, such as December 31, 2019. Strategically, a short period would result in EKPC either issuing the full amount immediately or returning to the Commission for subsequent approvals; a longer period would allow EKPC to choose an appropriate financing amount initially and then execute subsequent financings without the need for re-authorization. This flexibility is useful, for example, if financial markets were volatile, unsettled, or otherwise challenging during the initial offering, in which case EKPC likely would minimize that financing and execute a subsequent financing a few months later, after markets have calmed.

Request 9(c). If East Kentucky is requesting that any authorization remain valid indefinitely, state the minimum period that East Kentucky contends should reasonably be affixed to the authorization and explain the basis for East Kentucky's position.

Response 9 (c). While EKPC does not believe it is necessary to place a limit on the time period to execute these transactions due to the modest dollar limit relative to its asset base, it would not be unreasonable to have the approval expire at some fixed point in time, such as December 31, 2019. This will allow EKPC flexibility to issue when market conditions are favorable, possibly in several tranches, and in time to fund upcoming capital expenditures. See the response to 9(b).

Request 9(d). State and explain the period during which East Kentucky anticipates issuing the private placement debt or, if applicable, the tax-exempt bonds for which approval is requested herein.

Response 9 (d). Recognizing that EKPC is withdrawing its request to borrow in the tax-exempt market, EKPC is likely to do some portion of the private placement debt within the next 6 months, but would like the flexibility to issue in smaller amounts over a longer period of time for the reasons discussed in Response 9(b). While EKPC does not believe it is necessary to place a limit on the time period to execute these transactions due to the modest dollar limit relative to its asset base, it would not be unreasonable to have the approval expire at some fixed point in time, such as December 31, 2019.

EAST KENTUCKY POWER COOPERATIVE, INC.

PSC CASE NO. 2018-00115

RESPONSE TO INFORMATION REQUEST

STAFF'S SUPPLEMENTAL REQUEST FOR INFORMATION DATED 06/25/18

REQUEST 10

RESPONSIBLE PARTY: Tom Stachnik

Request 10(a). Provide East Kentucky's current credit rating with Fitch Ratings and Standard and Poors.

Response 10 (a). East Kentucky is currently rate "A-" by Fitch and "A" by Standard and Poor's.

Request 10(b). Based on East Kentucky's current credit rating by Fitch Ratings and Standard and Poors, provide an explanation and pricing grid to show the parameters for the interest rates on the private placement debt for 10-, 20-, and 30-year terms similar to the explanation and pricing grid provided by East Kentucky in Case No. 2013-00306 in response to Commission Staff's First Request for Information, Item 1 (e).

Response 10(b). Because EKPC issues amortizing debt, EKPC would not likely exceed a 20-year average life and 30-year maturity. Based on input from our potential placement agents, EKPC

anticipates indicative rates would be, based on June 25, 2018 treasury rates of 2.87% and 2.95% for 10 and 20 years respectively:

Indicative interest rate for 10 years: [REDACTED]

Indicative interest rate for 20 years: [REDACTED]

The treasury rates and credit spreads change daily, so precise figures cannot be known until a debt offering is priced immediately prior to issuance.

Request 10(c). Provide similar information for the tax-exempt bonds for which approval is requested herein at the time closing assuming that the time of closing is at or about the time of East Kentucky's response.

Response 10(c). Please refer to EKPC's response to Request 1(a).