

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)	CASE NO.
SECURED PRIVATE PLACEMENT DEBT)	2018-00115
AND/OR SECURED TAX EXEMPT BONDS AND)	
FOR THE USE OF INTEREST RATE)	
MANAGEMENT INSTRUMENTS)	

ORDER

On May 20, 2019, East Kentucky Power Cooperative, Inc. (EKPC) filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for ten years for redactions from a filing made on the same date pursuant to a Commission order dated August 6, 2018, reporting the terms of a loan closed on April 18, 2019.

The Commission is a public agency subject to Kentucky's Open Records Act, which requires that all public records “be open for inspection by any person, except as otherwise provided by KRS 61.870 to 61.884.”¹ EKPC sought application of KRS 61.878(1)(c)(1), which exempts records that are “[g]enerally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.” Exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.² The

¹ KRS 61.872(1).

² See KRS 61.871.

party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.³

The redacted information at issue involves the interest rates and fees applicable to a private placement loan sought by EKPC, which argued that these terms are negotiated with lenders and that EKPC would be harmed if lenders knew what terms EKPC were willing to accept.

Having considered the motion and the material at issue, the Commission finds that EKPC's motion should be denied. Although EKPC's rationale may have applied during the pendency of this case, over three years have passed, so the rate and fee information is now stale and would not harm EKPC if disclosed because lender and borrower positions will necessarily have changed. In addition, the Commission has previously found that once a loan closes, rates and fees actually paid should be made public because they impact revenue requirement and resulting rates, the calculation of which should be transparent.⁴ Therefore, the designated material does not meet the criteria for confidential treatment and is not exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13.

IT IS THEREFORE ORDERED that:

1. EKPC's motion for confidential treatment is denied.

³ 807 KAR 5:001, Section 13(2)(c).

⁴ See Case No. 2019-00109, *Electronic Application of Citipower, LLC for (1) An Adjustment of Rates Pursuant to 807 KAR 5:076; (2) Approval for a Certificate of Public Convenience and Necessity to Purchase Pipeline and Other Related Assets; and (3) Approval of Financing* (Ky. PSC Aug. 14, 2019), Order at 4.

2. The designated material denied confidential treatment by this Order is not exempt from public disclosure and shall be placed in the public record and made available for public inspection.

3. If EKPC objects to the Commission's determination that the requested material not be granted confidential treatment, it must seek either rehearing pursuant to KRS 278.400 or judicial review of this Order pursuant to KRS 278.410. Failure to exercise either of these statutory rights will be deemed as agreement with the Commission's determination of which materials should be granted confidential treatment.

4. Within 30 days of the date of service of this Order, EKPC shall file a revised version of the designated material for which confidential treatment was denied, reflecting as unredacted the information that has been denied confidential treatment.

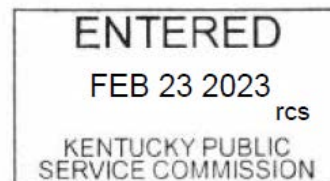
5. The designated material for which EKPC's request for confidential treatment has been denied shall neither be placed in the public record nor made available for inspection for 30 days from the date of service of this Order in order to allow EKPC to seek a remedy afforded by law.

PUBLIC SERVICE COMMISSION


Chairman

Vice Chairman


Commissioner



ATTEST:


Executive Director

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