

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF EAST KENTUCKY POWER	)	
COOPERATIVE, INC. FOR A CERTIFICATE OF	)	
PUBLIC CONVENIENCE AND NECESSITY FOR	)	CASE NO.
THE CONSTRUCTION OF BACKUP FUEL	)	2018-00292
FACILITIES AT ITS BLUEGRASS GENERATING	)	
STATION	)	

ORDER

On June 3, 2021, East Kentucky Power Cooperative, Inc. (EKPC) filed a request, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for an indefinite period for as-built drawings for the construction of its Bluegrass Generating Station in Oldham County, Kentucky, provided in response to the Commission’s February 28, 2019 Order.

In support of its motion, EKPC argued that these documents are exempt from public disclosure under KRS 61.878(1)(c)(1) and KRS 61.878(1)(m). Under KRS 61.878(1)(c)(1), an exemption is provided for “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.” KRS 61.878(1)(m) exempts public disclosure of “[p]ublic records the disclosure of which would have a reasonable likelihood of threatening the public safety by exposing a vulnerability in preventing, protecting

against, mitigating, or responding to a terrorist act . . .”<sup>1</sup> The exemption is limited to certain types of records, including:

Infrastructure records that expose a vulnerability referred to in this subparagraph through the disclosure of the location, configuration, or security of critical systems, including public utility critical systems. These critical systems shall include but not be limited to information technology, communication, electrical, fire suppression, ventilation, water, wastewater, sewage, and gas systems.<sup>2</sup>

A terrorist act is defined as including a criminal act intended to “[d]isrupt a system” identified in the above.<sup>3</sup>

Having considered the motion and the material at issue, the Commission finds that under the plain language of KRS 61.878(1)(m), power generation facilities constitute public utility critical systems, which if compromised, would disrupt electrical service. As-built drawings, if disclosed, could expose vulnerabilities in these systems.<sup>4</sup> This information therefore meets the criteria for confidential treatment and is exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(m).

IT IS THEREFORE ORDERED that:

1. EKPC’s motion for confidential treatment is granted.
2. The designated material granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for an indefinite period or until further order of this Commission.

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<sup>1</sup> KRS 61.878(1)(m)(1).

<sup>2</sup> KRS 61.878(1)(m)(1)(f).

<sup>3</sup> KRS 61.878(1)(m)(2)(b).

<sup>4</sup> See Case No. 2014-00258, *Application of Kentucky-American Water Company for a Certificate of Convenience and Necessity Authorizing the Construction of Richmond Road Station Filter Building Improvements* (Ky. PSC Mar. 4, 2019), Order.

3. Use of the designated material granted confidential treatment by this Order in any Commission proceeding shall comply with 807 KAR 5:001, Section 13(9).

4. EKPC shall inform the Commission if the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment.

5. If a nonparty to this proceeding requests to inspect the material granted confidential treatment by this Order and the period during which the material has been granted confidential treatment has not expired, EKPC shall have 30 days from receipt of written notice of the request to demonstrate that the material still falls within the exclusions from disclosure requirements established in KRS 61.878. If EKPC is unable to make such demonstration, the requested material shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

6. The Commission shall not make the requested material available for inspection for 30 days from the date of service of an Order finding that the material no longer qualifies for confidential treatment in order to allow EKPC to seek a remedy afforded by law.

By the Commission

ENTERED  
FEB 03 2022 rCS  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
Executive Director

Case No. 2018-00292

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