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**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

JAN 07 2011

**PUBLIC SERVICE
COMMISSION**

IN THE MATTER OF:

**THE APPLICATION OF EAST KENTUCKY POWER)
COOPERATIVE, INC. FOR AN ORDER APPROVING)
THE ESTABLISHMENT OF A REGULATORY ASSET)
FOR THE AMOUNT EXPENDED ON ITS SMITH 1)
GENERATING UNIT)**

**CASE NO.
2010-00449**

**PETITION FOR CONFIDENTIAL
TREATMENT OF INFORMATION**

Comes now the petitioner, East Kentucky Power Cooperative, Inc. (“EKPC”) and, as grounds for this Petition for Confidential Treatment of Information (the “Petition”), states as follows:

1. This Petition is filed in conjunction with the filing of EKPC’s responses to the Commission Staff’s Initial Data Request in this case, dated December 22, 2010, and relates to confidential information contained in the responses to Requests 2c, 3b and 6 that is entitled to protection pursuant to 807 KAR 5:001 Section 7, KRS §61.878(1)(c)1, §61.878(1)(c)2c and §61.878(1)(j).

2. The information designated as confidential in the response to Request 2c includes correspondence, e-mails and other communication between EKPC and its external auditor, Deloitte & Touche LLP (“Deloitte”). It also includes communication between EKPC, Deloitte and EKPC’s legal counsel, Frost Brown Todd. Cumulatively, this communication provides history and context to the accounting treatment for Smith 1 developed as a direct result of sensitive and even privileged discussions between EKPC and its external accountants and attorneys. All such communication should be afforded

confidential treatment by the Commission pursuant to KRS 61.878(1)(j) because it contains preliminary recommendations, and preliminary memoranda in which opinions are expressed or policies formulated or recommended. In addition, those communications between EKPC and its legal counsel, Frost Brown Todd, are subject to attorney-client privilege. EKPC does not object to waiving such privilege for purposes of responding to this Data Request, however, EKPC believes that the Commission should afford confidential treatment to such communications.¹ As such, this information is confidential and not subject to public disclosure pursuant to KRS §61.878(1)(j). Moreover, pursuant to CR 26.02(3) of the Kentucky Rules of Civil Procedure, protection is to be afforded by a court or administrative agency against “disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation” or matter at issue. This rule provides an independent basis for the Commission to afford confidential treatment to this information.

3. The information designated as confidential in the responses to Requests 3b and 6 includes estimates of various vendor contract unwinding costs. The contracts subject to these unwinding costs are those contracts which EKPC entered into for the provision of supplies, equipment, parts, labor for assembly and construction, and other goods and services related to the design, construction and operation of EKPC’s Smith 1 Circulating Fluidized Bed Coal Unit (“Smith 1”). Now that EKPC has provided notice of its relinquishment of the Certificate of Public Convenience and Necessity for Smith 1, these contracts must be cancelled. Such cancellation will require EKPC and its vendors to negotiate the terms of the unwinding of these contracts which could result in the

¹ Even though it is waiving the privilege in this case and under these unique circumstances, EKPC reserves the right to assert the privilege in subsequent situations in this and future cases.

payment of unwinding costs by either party. The exact amounts required to unwind these contracts are not known at this time, and, indeed, they are subject to discussion and negotiation between the parties. The disclosure of the details of this information at this time would provide an unfair commercial advantage in favor of these vendor-competitors of EKPC and could adversely affect the strategies and bargaining positions available to EKPC in arriving at final costs to unwind these contracts. Specific disclosure of this information could result in less favorable outcomes in these negotiations, which could potentially increase EKPC's overall costs. . As such this information is confidential and not subject to public disclosure pursuant to KRS §61.878(1)(c)1.

4. The subject information is also entitled to protection pursuant to KRS §61.878(1)(c)2c, as records generally recognized as confidential or proprietary which are confidentially disclosed to an agency in conjunction with the regulation of a commercial enterprise.

5. Along with this Petition, EKPC has enclosed one copy of the subject responses to Requests 2c, 3b and 6, with the confidential information identified by highlighting or other designation, and 10 copies of the same responses, with the confidential information redacted. The identified confidential information is not known outside of EKPC and is distributed within EKPC only to persons with a need to use it for business purposes. It is entitled to confidential treatment pursuant to 807 KAR 5:001 Section 7, the various sections of KRS 61.878 delineated above and the Kentucky Rules of Civil Procedure.

WHEREFORE, EKPC respectfully requests the Public Service Commission to grant confidential treatment to the identified information and deny public disclosure of said information.

This 7th day of January, 2011.

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that an original and 10 copies of the foregoing Petition for Confidential Treatment of Information in the above-styled case were hand-delivered to the Office of Jeffrey Derouen, Executive Director of the Kentucky Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601, and transmitted by First Class United States mail to Hon. Dennis Howard, II and Hon. Larry Cook, Office of the Kentucky Attorney General, P. O. Box 2000, Frankfort, Kentucky 40602-2000 ; and to Hon. Mike Kurtz, Counsel for Gallatin Steel Co., Boehm, Kurtz & Lowry, 36 East Seventh Street, Suite 150, Cincinnati, Ohio 45202 on January 7, 2011.



Counsel for East Kentucky Power Cooperative, Inc.