

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE 2015 INTEGRATED RESOURCE PLAN OF	)	CASE NO.
EAST KENTUCKY POWER COOPERATIVE, INC.	)	2015-00134

ORDER

On September 14, 2015, East Kentucky Power Cooperative, Inc. (“EKPC”), pursuant to KRS 61.878 and 807 KAR 5:001, Section 13, moved that certain materials contained in its responses to Commission Staff’s Supplemental Request for Information (“Staff’s Supplemental Request”), Item 6, be afforded confidential treatment for a period of ten years.

The information is more particularly described as designated portions of KEMA, Inc.’s Assessment of Evaluation, Measurement and Verification (“EM&V”) for DSM Programs (“EM&V Report”), which was filed as an attachment to EKPC’s response to Staff’s Supplemental Request, Item 6. The EM&V Report reviewed EKPC’s existing methodology for estimating the impact of its demand-side management (“DSM”) programs on system load forecast and power supply planning, for the purpose of formulating more rigorous evaluation protocols to better address current and anticipated future EM&V requirements. The designated materials contained in the EM&V Report for which confidential treatment is requested are: Table 1–3 on page 1–9 and Table 8–2 on page 8–9 of the EM&V Report, which contain current and projected DSM budgets; Section 3.2.3 on page 3–6 of the EM&V Report, which identifies by name a small number of EKPC employees engaged in EM&V data collection processes; Figure 8–1

on page 8–2 of the EM&V Report, which contains current staff allocation for DSM EM&V processes, listed by individual name, title, function, and annual number of hours spent on DSM EM&V processes; and Figure 8–2 on page 8–3 of the EM&V Report, which contains EKPC's organizational structure for DSM program management and evaluation staff, and depicts EKPC internal work flow and business processes.

In support of this motion, EKPC states that disclosure of the designated materials would give EKPC's competitors insights into business operations and strategies that are otherwise not publicly available. EKPC asserts that public disclosure of the designated materials would permit an unfair commercial advantage to EKPC's competitors, and thus is generally recognized as confidential and is exempt from public disclosure pursuant to KRS 61.878(1)(c)(1). EKPC further asserts that public disclosure of "information concerning the inner workings of a corporation is 'generally accepted as confidential or proprietary.'"<sup>1</sup> Lastly, EKPC contends that public disclosure of employee names and work assignments would present an unnecessary and unreasonable infringement upon EKPC's employees' privacy concerns.

Having carefully considered the petition and the materials at issue, the Commission finds that:

1. The materials pertaining to DSM budgets contained in Table 1–3 on page 1–9 and Table 8–2 on page 8–9 are not records that meet the criteria for confidential treatment under KRS 61.878(1)(c). KRS 61.878(1)(c)(1) applies to material generally recognized as confidential or proprietary, which would permit an unfair commercial advantage to competitors if openly disclosed. The Commission finds that EKPC has not

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<sup>1</sup> EKPC Motion for Confidential Treatment (filed Sept. 14, 2015), at 2 (citing *Hoy v. Kentucky Industrial Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995)).

established that disclosure of these materials would permit an unfair commercial advantage to third parties or that disclosure of said materials could result in competitive injury. This is especially so given the Commission's need to be able to fully and specifically address the cost impact in its final determination. Therefore, EKPC has failed to demonstrate that these materials meet the criteria for confidential treatment and are exempted from public disclosure pursuant to KRS 61.878(1)(c)(1). EKPC's request for confidential treatment should be denied for the designated material in Table 1-3 on page 1-9 and Table 8-2 on page 8-9.

2. The materials pertaining to the current staff allocation for DSM EM&V processes contained in Figure 8-1 on page 8-2, and the organizational structure contained in Figure 8-2 on page 8-3 of the EM&V Report attached to EKPC's response to Staff's Supplemental Request, Item 6, are not records that meet the criteria for confidential treatment under KRS 61.878(1)(c). KRS 61.878(1)(c)(1) applies to material generally recognized as confidential or proprietary, which would permit an unfair commercial advantage to competitors if openly disclosed. The Commission finds that EKPC has not established that disclosure of said materials would permit an unfair commercial advantage to third parties or that disclosure of said materials could result in competitive injury. Therefore, EKPC has failed to demonstrate that the materials meet the criteria for confidential treatment and are exempted from public disclosure pursuant to KRS 61.878(1)(c)(1). EKPC's request for confidential treatment should be denied for the designated material in in Figure 8-1 on page 8-2, and the organizational structure contained in Figure 8-2 on page 8-3 of the EM&V Report attached to EKPC's response to Staff's Supplemental Request, Item 6.

3. The employee names contained in Section 3.2.3 on page 3–6 of the EM&V Report attached to EKPC's response to Staff's Supplemental Request, Item 6, are not records that meet the criteria for confidential treatment under KRS 61.878(1)(c)(1) or KRS 61.878(1)(a).<sup>2</sup> KRS 61.878(1)(c)(1) applies to material generally recognized as confidential or proprietary which would permit an unfair commercial advantage to competitors if openly disclosed. KRS 61.878(1)(a) prohibits public disclosure of information of a personal nature where public disclosure would constitute an unwarranted invasion of personal privacy. The Commission finds that EKPC fails to state how the public disclosure of the names of a small number of employees, and only their names, would permit an unfair commercial advantage to EKPC's competitors. Further, public disclosure of the employees' names under these facts does not rise to the level of an unwarranted invasion of personal privacy. EKPC's request for confidential treatment should be denied for the designated material in Section 3.2.3 on page 3–6 of the EM&V Report.

IT IS THEREFORE ORDERED that:

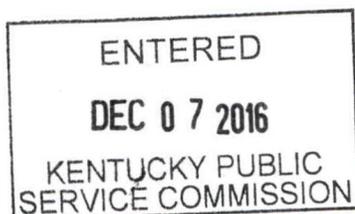
1. EKPC's motion for confidential protection is hereby denied.
2. Within seven days of the date of this Order, EKPC shall file a revised version of the materials on Table 1–3 on page 1–9, Table 8–2 on page 8–9, Section 3.2.3 on page 3–6, Figure 8–1 on page 8–2, Figure 8–2 on page 8–3 of the attachment to EKPC's response to Staff's Supplemental Request, Item 6, for which confidential protection was denied, reflecting as unredacted the information that has been denied confidential treatment.

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<sup>2</sup> EKPC requested confidential treatment pursuant to 61.878(1)(c)(1) only. However, EKPC's reference to granting confidential treatment to this information as an infringement upon its employees' privacy concerns implicates 61.878(1)(a).

3. The materials 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 33 days from the date of this Order in order to allow EKPC to seek a remedy afforded by law.

By the Commission



ATTEST:

  
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