

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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**PUBLIC SERVICE
COMMISSION**

In the Matter of:

THE APPLICATION OF EAST KENTUCKY POWER)
COOPERATIVE, INC. FOR DEVIATION FROM) Case No. 2015-00358
OBLIGATION RESULTING FROM CASE NO. 2012-00169)

**EAST KENTUCKY POWER COOPERATIVE, INC.'S
MOTION FOR CONFIDENTIAL TREATMENT**

Comes now East Kentucky Power Cooperative, Inc. ("EKPC"), by 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 the Amended Application and related supplemental direct testimony submitted contemporaneously herewith in the above-captioned proceeding, respectfully states as follows:

1. In its original Application filed October 30, 2015, EKPC requested permission to deviate from a directive contained in the Commission's final Order entered in Case No. 2012-00169 (the "PJM Integration Order").¹ Specifically, EKPC sought an eighteen (18) month extension of the deadline by which it must file a rate mechanism to share with customers certain capacity benefits earned through EKPC's participation in PJM Interconnection, LLC ("PJM").

2. During the weeks that followed the filing of EKPC's original Application, the Attorney General of the Commonwealth of Kentucky (the "AG") and Kentucky Industrial Utility Customers, Inc. ("KIUC"), each intervened in this matter and filed responses to EKPC's

¹ *In the Matter of the Application of East Kentucky Power Cooperative, Inc. to Transfer Functional Control of Certain Transmission Facilities to PJM Interconnection, LLC* (Ky. P.S.C., Dec. 20, 2012).

Application. Throughout the ensuing months, numerous informal conferences were held involving the parties and Commission Staff at which discussion focused on the development of a proposal defining the structure and implementation of the capacity benefits sharing mechanism (“CBS Mechanism”) required by the PJM Integration Order.

3. Contemporaneously with the filing of this Motion for Confidential Treatment, EKPC has moved the Commission for leave to amend its original Application in order to present its proposal for the CBS Mechanism. As an exhibit to its Motion for Leave to Amend, EKPC has attached an Amended Application that includes, *inter alia*, supplemental direct testimony from Mr. Michael McNalley, EKPC’s Executive Vice President and Chief Financial Officer.

4. The Amended Application and related supplemental direct testimony contain information which is proprietary, confidential, sensitive, and commercially valuable. Specifically, the Amended Application and supplemental direct testimony include the following items (hereinafter identified collectively as the “Confidential Information”):

- a. The estimated value of EKPC’s future mitigation and salvage efforts with respect to the J.K. Smith Power Station Unit 1 (“Smith 1”);
- b. The cost of and terms associated with certain penalty mitigation insurance purchased by EKPC for the 2016/17, 2017/18, and 2018/19 PJM Delivery Years; and
- c. The financial benefits EKPC projects it will realize from its participation in the PJM capacity market in the near term.²

² EKPC has consistently sought confidential treatment of information related to its projected performance in PJM. *See* EKPC’s Second Status Report and Motion for Confidential Treatment (filed herein on February 26, 2016); EKPC’s First Status Report and Motion for Confidential Treatment (filed herein on January 14, 2016); Letter from Mark David Goss to Jeff Derouen requesting confidential treatment for actual and projected PJM membership benefits and costs in EKPC’s first Annual Report on PJM Integration, Case No. 2012-00169, Post-Case Correspondence (filed June 2, 2014); Letter from Mark David Goss to Jeff Derouen requesting confidential treatment for actual and projected PJM

5. The Confidential Information includes proprietary, confidential calculations and projections which reflect EKPC's anticipated financial performance as a fully-integrated member of PJM during PJM Delivery Years 2016/17, 2017/18, and 2018/19. The Confidential Information also includes internally-derived estimations concerning the market value of EKPC's Smith 1 assets, as well as the private terms of insurance products purchased by EKPC as part of the effective execution of its business strategy. Such detailed, highly sensitive economic data and corporate 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 the public disclosure of the Confidential Information would potentially harm EKPC's competitive position in the marketplace, to the detriment of EKPC and its customers. In light of these facts, the Kentucky Open Records Act exempts the Confidential Information from disclosure. *See* KRS 61.878(1)(c)(1).

6. 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 EKPC's competitors insights into EKPC's business operations and strategies that are otherwise publicly unavailable.

membership benefits and costs in EKPC's second Annual Report on PJM Integration, Case No. 2012-00169, Post-Case Correspondence (filed July 31, 2015).

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

7. 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.³

8. 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 its Amended Application (including the related supplemental direct testimony) with the Confidential Information highlighted. EKPC is also filing a redacted original and ten (10) redacted copies of its Amended Application (including the related supplemental direct testimony).

9. 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 ten (10) years.

10. 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.

³ EKPC entered into a confidentiality agreement with Kentucky Industrial Utility Customers, Inc., on January 13, 2016, and with the Attorney General on January 14, 2016.

This 22nd day of June, 2016.

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing has been served, by delivering same to the custody and care of the U.S. Postal Service, postage pre-paid, this 22nd day of June, 2016, addressed to the following:

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