

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC TARIFF FILING OF EAST)	
KENTUCKY POWER COOPERATIVE, INC. AND)	
ITS MEMBER DISTRIBUTION COOPERATIVES)	CASE NO.
FOR APPROVAL OF PROPOSED CHANGES TO)	2021-00198
THEIR QUALIFIED COGENERATION AND)	
SMALL POWER PRODUCTION FACILITIES)	
TARIFFS)	

ORDER

On September 23, 2021, 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 five years for information filed in its Responses to Commission Staff's Third Request for Information (Staff's Third Request), specifically, the forecasted fixed operation and maintenance expenses for EKPC's generation fleet for the next five years provided in response to Staff's Third Request, Item 2. The response is a table disclosing forecasted fixed operation and maintenance expenses for more than nine generation units (coal-fired, natural gas turbines, and landfill gas).

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 argued for the application of KRS 61.878(1)(c)(1), which exempts records that are "[g]enerally recognized as confidential or

¹ KRS 61.872(1).

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

In support of its motion, EKPC argued that forecasted operations and maintenance expenses constitute highly sensitive and proprietary information and their confidentiality is critical to its effective execution of business decisions and strategy. EKPC also argued that the forecasted information is not publicly available and, moreover, contains current estimates and not the final forecasted expenses that will be included in EKPC’s next Integrated Resource Plan filing.

Having considered the motion and the material at issue, the Commission finds that the table disclosing forecasted fixed operation and maintenance expenses includes information generally recognized as confidential or proprietary,⁴ and would permit an unfair commercial advantage to competitors if disclosed. Therefore, it 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)(c)(1).

IT IS THEREFORE ORDERED that:

1. EKPC’s September 23, 2021 motion for confidential treatment is granted.

² See KRS 61.871.

³ 807 KAR 5:001, Section 13(2)(c).

⁴ See 2018-00195, *In the Matter of: Duke Energy Kentucky, Inc.’s Integrated Resource* (Ky. PSC Sept. 3, 2019), Order at 1, 3.

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 five years or until further Order of this Commission.

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.

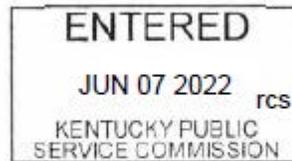
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