

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

AN EXAMINATION OF THE APPLICATION)
OF THE FUEL ADJUSTMENT CLAUSE OF)
EAST KENTUCKY POWER COOPERATIVE,) CASE NO. 2018-00019
INC. FROM MAY 1, 2017 THROUGH)
OCTOBER 31, 2017)

MOTION FOR CONFIDENTIAL TREATMENT

Comes now East Kentucky Power Cooperative, Inc. (“EKPC”), by and through 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 documents filed in response to two requests for information in the above-captioned proceeding, respectfully states as follows:

1. The Commission issued its Order establishing this case on February 16, 2018 and included the initial set of requests for information to EKPC as an Appendix to that Order.
2. Request No. 4 from the February 16th request for information states as follows:
 4. List each written coal supply solicitation issued during the period under review.
 - a. For each solicitation, provide the date of the solicitation, the type of solicitation (contract or spot), the quantities solicited, a general description of the quality of coal solicited, the time period over which deliveries were requested, and the generating unit(s) for which the coal was intended.
 - b. For each solicitation, state the number of vendors to whom the solicitation was sent, the number of vendors who responded, and the selected vendor. Provide the bid tabulation sheet or corresponding document that ranks the proposals. (This document should identify all vendors who made offers.) State the reasons

for each selection. For each lowest-cost bid not selected, explain why the bid was not selected.

3. In its response to Request No. 4, EKPC is providing a copy of its bid tabulation sheets, which includes information that is responsive to the request for information.

4. Request No. 11 from the February 16th request for information states as follows:

11. a. For the period under review have there been any changes to East Kentucky's written policies and procedures regarding its fuel procurement?
- b. If yes:
 - (1) Describe the changes;
 - (2) Provide the written policies and procedures as changed;
 - (3) State the date(s) the changes were made; and
 - (4) Explain why the changes were made; and
- c. If no, provide the date East Kentucky's current fuel procurement policies and procedures were last changed, when they were last provided to the Commission, and identify the proceeding in which they were provided.

5. In its response to Request No. 11, EKPC is providing a copy of its Fuel and Admissions Procurement Manual ("Procurement Manual") and Board Policy 404, Transaction Authority Limits for Energy and Energy Related Commodities and Transportation ("Policy 404") Board Policy 405, Hedging ("Policy 405") and Administrative Policy A031 – Internal Delegation of Authority ("Policy A031"). The Procurement Manual was revised on September 28, 2017 and Policy 404 was revised on June 5, 2017. Board Policy 405 was revised on July 11, 2017 and Policy A031 was revised on May 5, 2017 and July 5, 2017. Confidential treatment was granted for the previous versions of the Procurement Manual, Policy 404 and Policy 405 in Case No. 2017-00002.

6. The information and documents tendered by EKPC in response to Request No. 4 and Request No. 11 are being tendered in redacted form in the public version of EKPC's filing and in an unredacted form filed under seal herewith. Collectively, this information and these documents are hereinafter referred to as the "Confidential Information."

7. The Confidential Information contains extensive information that describes the internal delegation of authority, business planning assumptions and procurement strategy of EKPC with regard to fuel, limestone and other energy commodities as well as the information received by EKPC in the course of conducting written solicitations for fuel. This information is commercially sensitive and proprietary. More specifically, the Confidential Information includes:

- a. Delegations of authority to bind EKPC with regard to various transactions;
- b. The means and methods of transactional processes;
- c. Procurement strategies;
- d. Governance records and policies;
- e. Coal specifications received from third-party bidders;
- f. Pricing data for coal bids received from third-party bidders; and
- g. Recommendations from EKPC Staff regarding the selection of particular vendors to supply fuel to EKPC's generating fleet.

8. The Confidential Information is retained by EKPC on a "need-to-know" basis and is not publicly available. If disclosed, the Confidential Information would give potential vendors and competitors a tremendous competitive advantage in the course of ongoing and future negotiations to procure fuel, limestone and other commodities. These market advantages would likely translate into higher costs for EKPC and, by extension, detrimentally higher rates for EKPC's Members. Thus, disclosure of the Confidential Information would be highly prejudicial to EKPC, EKPC's Members and those Members' members.

9. The Kentucky Open Records Act exempts the Confidential Information from public disclosure. *See* KRS 61.878(1)(c). As set forth above, disclosure of the Confidential Information would permit an unfair advantage to third parties. Moreover, 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). Because the Confidential Information is critical to EKPC’s effective execution of business decisions and strategy, it satisfies both the statutory and common law standards for being afforded confidential treatment. Indeed, the Commission has already recognized the confidential nature of the information included in the responses and has afforded confidential treatment to identical information in a prior proceeding.¹

10. EKPC does not object to limited disclosure of the Confidential Information, pursuant to an acceptable confidentiality and nondisclosure agreement, to the Attorney General or any other intervenors with a legitimate interest in reviewing the same for the sole purpose of participating in this case.

11. In accordance with the provisions of 807 KAR 5:001, Section 13(2), EKPC is filing one copy of the Confidential Information separately under seal. The filing of the Confidential Information is noted in the public version of EKPC’s response to Request No. 4 and Request No. 11, which include redacted copies of such information. Due to the pervasive nature of the confidential and proprietary information included in the Confidential Information, confidential treatment is sought for the entirety of the Confidential Information.

12. In accordance with the provisions of 807 KAR 5:001, Section 13(3), EKPC respectfully requests that the Confidential Information be withheld from public disclosure for a period of ten years. This will assure that the Confidential Information – if disclosed after that time – will be less likely to include information that continues to be commercially sensitive so as to

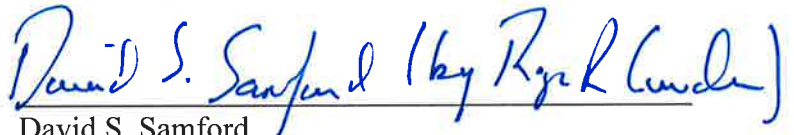
¹ See *In the Matter of an Examination of the Application of the Fuel Adjustment Clause of East Kentucky Power Cooperative, Inc. from August 8, 2017 Through October 31, 2016*, Order, Case No. 2017-00002 (Ky. P.S.C., August 18, 2017). A copy of this Order is attached hereto as Exhibit 1.

impair the interests of EKPC if publicly disclosed. However, EKPC reserves the right to seek an extension of the grant of confidential treatment if it is necessary to do so at that time.

WHEREFORE, on the basis of the foregoing, EKPC respectfully requests the Commission to enter an Order granting this Motion for Confidential Treatment and to so afford such protection from public disclosure to the unredacted copies of Confidential Information, which is filed herewith under seal, for a period of ten years from the date of entry of such an Order.

This 2nd day of March, 2018.

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that foregoing electronic filing is a true and accurate copy of the document being filed in paper medium; that the electronic filing was transmitted to the Commission on March 2, 2018; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that a copy of the filing in paper medium is being hand delivered to the Commission on this the 2nd day of March.



Counsel for East Kentucky Power Cooperative, Inc.