

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

ELECTRONIC EXAMINATION OF THE)	
APPLICATION OF THE FUEL ADJUSTMENT)	
CLAUSE OF EAST KENTUCKY POWER)	CASE NO. 2019-00003
COOPERATIVE, INC. FROM NOVEMBER 1, 2016)	
THROUGH OCTOBER 31, 2018)	

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 three requests for information in the above-captioned proceeding, respectfully states as follows:

1. The Commission issued its Order establishing this case on February 11, 2019 and included the initial set of requests for information to EKPC as an Appendix to that Order.
2. Request No. 4 from the February 11th 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. 5 from the February 11th request for information states as follows:

5. List each oral coal supply solicitation issued during the period under review.
 - a. For each solicitation, state why the solicitation was not written, the date(s) of the solicitation, 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, identify all vendors solicited and the vendor selected. Provide the tabulation sheet or other 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.

5. In its response to Request No. 5, EKPC is providing a copy of its bid tabulation sheets, which includes information that is responsive to the request for information.

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

11.
 - a. For the last six months of the period under review, state if there have been any changes to EKPC'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.
 - c. If no, provide the date EKPC'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.

7. In its response to Request No. 11, EKPC is providing a copy of its Fuel and Admissions Department Procurement Manual ("Procurement Manual"). The Procurement Manual was updated on October 18, 2018.

8. The information and documents tendered by EKPC in response to Request No. 4, Request No. 5 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."

9. The Confidential Information contains extensive information that describes the business planning assumptions and procurement strategy of EKPC with regard to fuel as well as the information received and generated by EKPC in the course of conducting written and oral solicitations for fuel. This information is commercially sensitive and proprietary. More specifically, the Confidential Information includes: procurement strategies; coal specifications received from third-party bidders; pricing data for coal bids received from third-party bidders; and recommendations from EKPC Staff regarding the selection of particular vendors to supply fuel to EKPC's generating fleet.

10. 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. 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 Owner-Member Cooperatives and those owner-embers' End-Use Retail Members.

11. 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

12. 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.

13. 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, Request No. 5 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.

14. 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 the Electronic Examination of the Application of the Fuel Adjustment Clause of East Kentucky Power Cooperative, Inc. from May 1, 2017 Through October 31, 2017*, Order, Case No. 2018-00019 (Ky. P.S.C., October 18, 2018). 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 25th day of February, 2019.

Respectfully submitted,

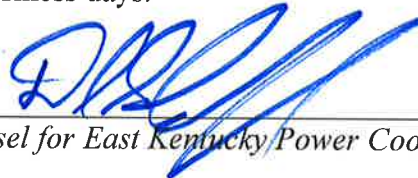


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CERTIFICATE OF SERVICE

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 February 25, 2019; 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 will be delivered to the Commission within two business days.



Counsel for East Kentucky Power Cooperative, Inc.

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

ORDER

On March 2, 2018, Eastern Kentucky Power Cooperative ("EKPC") filed a petition pursuant to KRS 61.878 and 807 KAR 5:001, Section 13(2), requesting that the Commission grant confidential protection to the identified portions of the Response to Request Number 4 and Response to Request Number 11 contained in the Appendix to the Commission's Order of February 16, 2018.

Specifically, EKPC seeks confidential treatment of its bid tabulation sheets from coal solicitations ("Response No. 4"). EKPC also seeks confidential treatment of its: 1) Fuel and Admissions Procurement Manual and Board Policy 404, Transaction Authority Limits for Energy and Energy Related Commodities and Transportation; 2) Board Policy 405, Hedging; and 3) Administrative Policy A031, Internal Delegation of Authority ("Response No. 11"). The confidential information includes: delegations of authority to bind EKPC with regard to various transactions; means and methods of transactional processes; procurement strategies; governance records and policies; coal specifications received from third party bidders; pricing data for coal bids received from third-party



bidders; and, recommendations from EKPC Staff regarding the selection of particular vendors to supply fuel to EKPC's generating fleet.

As the basis for its request, EKPC states that the confidential information is maintained by EKPC on a "need-to-know" basis and is not publicly available. EKPC states that public disclosure of the confidential information would give potential vendors and competitors a significant competitive advantage in the course of ongoing and future negotiations to procure fuel and fuel-related commodities. EKPC asserts that this advantage would lead to higher costs for EKPC and, thus, higher rates for EKPC's members. EKPC requests that this information remain confidential for ten years.

Having considered the petition and the material at issue, the Commission finds that the designated material contained in Response No. 4 and Response No. 11 is generally recognized as confidential or proprietary, and therefore meets the criteria for confidential treatment and is exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13.

IT IS THEREFORE ORDERED that:

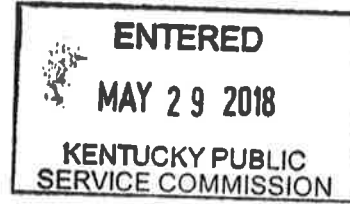
1. EKPC's petition for confidential protection for Response No. 4 and Response No. 11 is granted and the information shall not be placed in the public record or made available for public inspection for a period of ten years or until further Orders of this Commission.
2. Use of the material in question in any Commission proceeding shall be in compliance with 807 KAR 5:001, Section 13(9).
3. EKPC shall inform the Commission if the material in question becomes publicly available or no longer qualifies for confidential treatment.

4. If a non-party 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, then EKPC shall have 20 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.

5. The Commission shall not make the requested material available for inspection for 20 days following 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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By the Commission



ATTEST:


Executive Director

Case No. 2018-00019

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