

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

2019 INTEGRATED RESOURCE PLAN OF EAST) CASE NO.
KENTUCKY POWER COOPERATIVE, INC.) 2019-00096

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 a portion of the Responses to Data Requests propounded by Commission Staff, dated February 24, 2020, the Attorney General (“AG”), dated February 21, 2020, and Nucor Steel Gallatin (“Nucor”), dated February 24, 2020, with regard to EKPC’s 2019 Integrated Resource Plan, respectfully states as follows:

1. EKPC is filing its Responses to Data Requests from the aforementioned parties contemporaneously herewith. The Responses include a considerable amount of information that is highly confidential, including:

- a. Charts showing the net annual costs and benefits of EKPC’s participation in PJM (Staff-DR-01-02, pp. 2-3) from June 1, 2013 through May 31, 2018. These historical records provide multiple data points from which competitors could derive information regarding EKPC’s financial performance in PJM, which would allow them to potentially manipulate offers, bids or other actions so as to gain an advantage vis-à-vis EKPC. Such unfair commercial advantages

would obviously tend to cause EKPC's overall cost to serve its Owner-Members to rise, to the ultimate detriment of their retail members. Such information is confidential under KRS 61.878(1)(c).

- b. Copyrighted county level forecasts prepared by IHS Global Insights, Inc. (Staff-DR-01-14a Spreadsheets). These spreadsheets are used to prepare the Company's load forecast and are subject to federal and international copyright protections. Because the subject data is useful in building EKPC's load forecast, it is deemed to be confidential and proprietary under KRS 61.878(1)(c).¹ Moreover, the fact that data is provided to EKPC by a third-party and is therefore subject to copyright protections affords an additional basis for granting confidential treatment under KRS 61.878(1)(k) and relevant Commission precedent.²
- c. Transmission purchasing strategy information (Staff-DR-01-21b). As the Commission is aware, EKPC must acquire certain transmission rights in order to operate its generation facilities fully and efficiently. This response includes

¹ See *In the Matter of the Electronic Application of Duke Energy Kentucky, Inc. for: 1) An Adjustment of the Electric Rates; 2) Approval of an Environmental Compliance Plan and Surcharge Mechanism; 3) Approval of New Tariffs; 4) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities and 5) All Other Required Approvals and Relief*, Order, Case No. 2017-00321 (Ky. P.S.C. May 3, 2018) (affording confidential treatment to inputs and outputs of an internal forecasting tool); *In the Matter of the Joint Application of Duke Energy Corporation, Cinergy Corp., Duke Energy Ohio, Inc. Duke Energy Kentucky, Inc. Diamond Acquisition Corporation, and Progress Energy, Inc. for Approval of the Indirect Transfer of Control of Duke Energy Kentucky, Inc.*, Rehearing Order, Case No. 2011-00124 (Ky. P.S.C. Dec. 5, 2011) (granting confidential protection to load forecast data); *In the Matter of the Application of Kentucky Utilities Company for Certificates of Public Convenience and Necessity and Approval of its 2011 Compliance Plan for Recovery by Environmental Surcharge*, Letter from Jeff Derouen, Case No. 2011-00161 (Ky. P.S.C. Aug. 31, 2011) (granting confidential treatment to modeling inputs).

² See *In the Matter of the Electronic Application of Duke Energy Kentucky, Inc. for: 1) An Adjustment of the Electric Rates; 2) Approval of an Environmental Compliance Plan and Surcharge Mechanism; 3) Approval of New Tariffs; 4) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities and 5) All Other Required Approvals and Relief*, Order, Case No. 2017-00321 (Ky. P.S.C. May 3, 2018); *In the Matter of the Application of Water Service Corporation of Kentucky for a General Adjustment in Existing Rates*, Order, Case No. 2015-00382 (Ky. P.S.C. Apr. 5, 2016).

information concerning EKPC's strategies for procuring such rights that, if disclosed, could severely limit EKPC's access to the market for transmission rights and could force EKPC into a situation where it must purchase firm point to point transmission service from only one entity at what would be an inflated price. Accordingly, the disclosure of this information would be extremely valuable to those who would seek to gain an unfair commercial advantage over EKPC. The information is protected under KRS 61.878(1)(c) and other precedent.³

- d. Proprietary data gathered as part of the appliance satisfaction survey, including the variables used to populate the survey data (Staff-DR-01-23 Attachments). Again, this data is used as part of EKPC's proprietary processes and includes commercially sensitive data used as variables to populate the survey in questions. It is therefore deemed to be confidential and proprietary under KRS 61.878(1)(c).⁴
- e. Projected capital costs in \$/kW and dollars for various resources and power purchase agreements (Staff-DR-01-50, p. 1). Given that EKPC may one day be entering the market to either construct or lease new capacity or enter into power purchases agreements, the public availability of this information would give an

³ See *In the Matter of the Filing of Agreement for the Purchase and Sale of Firm Capacity and Energy Between Big Rivers Electric Corporation and the Kentucky Municipal Energy Agency*, Order, Case No. 2016-00306 (Ky. P.S.C. Jan. 2, 2019) (granting confidential treatment to information pertaining to the purchase and sale of firm capacity and energy); *In the Matter of the Electronic Application of Duke Energy Kentucky, Inc. for: 1) An Adjustment of the Electric Rates; 2) Approval of an Environmental Compliance Plan and Surcharge Mechanism; 3) Approval of New Tariffs; 4) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities and 5) All Other Required Approvals and Relief*, Order, Case No. 2017-00321 (Ky. P.S.C. May 3, 2018) (granting confidential protection to the costs of short-term capacity sales and purchases).

⁴ See Order, Case No. 2017-00321 (Ky. P.S.C. May 3, 2018) (affording confidential treatment to inputs and outputs of an internal forecasting tool); Letter from Jeff Derouen, Case No. 2011-00161 (Ky. P.S.C. Aug. 31, 2011) (granting confidential treatment to modeling inputs).

advantage to potential bidders and suppliers of the generation assets or power purchase agreements in question. Again, this type of information has consistently been regarded as confidential by the Commission under KRS 61.878(1)(c).⁵

- f. Copyrighted population forecasts from IHS Global Insights, Inc. regarding county specific population data (AG-DR-01-13, p. 2). This data is also used to prepare the Company's load forecast and is additionally subject to federal and international copyright protections. Because the subject data is useful in building EKPC's load forecast, it is deemed to be confidential and proprietary under KRS 61.878(1)(c).⁶ Moreover, the fact that data is provided to EKPC by a third-party and is therefore subject to copyright protections affords an additional basis for granting confidential treatment under KRS 61.878(1)(k) and relevant Commission precedent.⁷
- g. An assessment of EKPC's generating facilities under Critical Infrastructure Protection Standards promulgated by the North American Electric Reliability Corporation ("NERC") (AG-DR-01-17, p. 1). It is well-established that

⁵ See Order, Case No. 2016-00306 (Ky. P.S.C. Jan. 2, 2019); Order, Case No. 2017-00321 (Ky. P.S.C. May 3, 2018).

⁶ See Order, Case No. 2017-00321 (Ky. P.S.C. May 3, 2018) (affording confidential treatment to inputs and outputs of an internal forecasting tool); Rehearing Order, Case No. 2011-00124 (Ky. P.S.C. Dec. 5, 2011) (granting confidential protection to load forecast data); Letter from Jeff Derouen, Case No. 2011-00161 (Ky. P.S.C. Aug. 31, 2011) (granting confidential treatment to modeling inputs).

⁷ See Order, Case No. 2017-00321 (Ky. P.S.C. May 3, 2018); Order, Case No. 2015-00382 (Ky. P.S.C. Apr. 5, 2016).

information regarding critical energy infrastructure is protected from public disclosure under Kentucky law in KRS 61.878(1)(m).⁸

- h. Dispatch costs and levelized cost of energy data for each of EKPC's generation facilities (AG-DR-01-21, pp. 1-2). Such information would give competitors in the PJM market an unfair commercial advantage with regard to understanding the "stack" of EKPC's dispatchable resources and the strategy by which EKPC interacts with the wholesale market. The Commission has recognized that this sort of information is confidential and shielded from public review under KRS 61.878(1)(c)(1) for nearly a decade at least.⁹
- i. Forecasted and actual capacity and demand reduction resources sold into the PJM market, including pricing and anticipated revenues (Nucor-DR-01-04, p. 1). This data is also highly propriety as it impacts the ability of EKPC to interact with the wholesale market and, if publicly disclosed, could give competitors an unfair commercial advantage. Moreover, the Commission has consistently recognized that such information is protected as confidential under KRS 61.878(1)(c).¹⁰

⁸ *In the Matter of the Application of East Kentucky Power Cooperative, Inc. for a Certificate of Public Convenience and Necessity for the Construction of Backup Fuel Facilities at its Bluegrass Generating Station*, Order, Case No. 2018-00292 (Ky. P.S.C. Feb. 1, 2019).

⁹ *See In the Matter of an Investigation of Kentucky Utilities Company's and Louisville Gas & Electric Company's Respective Need for and Cost of Multiphase Landfills at the Trimble County and Ghent Generating Stations*, Order, Case No. 2015-00194 (Ky. P.S.C. Jan 27, 2016); *In the Matter of the Application of Kentucky Utilities Company for Certificates of Public Convenience and Necessity and Approval of its 2011 Compliance Plan for Recovery by Environmental Surcharge*, Letter from Jeff Derouen, Case No. 2011-00161 (Ky. P.S.C. Oct 7, 2011).

¹⁰ *See, e.g., In the Matter of the Application of East Kentucky Power Cooperative, Inc. for Approval of the Acquisition of Existing Combustion Turbine Facilities from Bluegrass Generating Company, LLC at the Bluegrass Generating Station in LaGrange, Oldham County, Kentucky and for Approval of the Assumption of Certain Evidences of Indebtedness*, Order, Case No. 2015-00267 (Ky. P.S.C. Jan. 12, 2016).

2. Collectively, the information described above is designated as the “Confidential Information” for which protection is sought under KRS 61.878 and other applicable law. Disclosure of the Confidential Information would permit an unfair commercial advantage to third parties or present an unnecessary and unreasonable infringement upon established copyright protections.

3. The Kentucky Open Records Act, and specifically 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.” 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). If disclosed, the Confidential Information within the Data Request Responses would give market participants and competitors insights into the anticipated load growth, operating costs, resource investment calculations and future year revenue requirements and system average costs of EKPC that are otherwise publicly unavailable. Accordingly, the Confidential Information satisfies both the statutory and common law standards for affording confidential treatment. Indeed, the Commission recently granted confidential treatment for similar information in EKPC’s 2015 IRP filing.¹¹

4. The Confidential Information consists of proprietary information that is retained by EKPC on a “need-to-know” basis. The Confidential Information is distributed within EKPC only to those employees who must have access for business reasons and is generally recognized as confidential and proprietary in the energy industry.

¹¹ See *In the Matter of the 2015 Integrated Resource Plan of East Kentucky Power Cooperative, Inc.*, Order, Case No. 2015-00134 (Ky. P.S.C. Dec. 7, 2018); see also Rehearing Order, Case No. 2011-00124 (Ky. P.S.C. Dec. 5, 2011).

5. EKPC does not object to limited disclosure of the Confidential Information, pursuant to an acceptable confidentiality and nondisclosure agreement, to intervenors with a legitimate interest in reviewing same for the sole purpose of participating in this case. EKPC reserves the right to object to providing the Confidential Information to any intervenor if said provision could result in liability or competitive harm to EKPC under any Confidentiality Agreement, Non-Disclosure Agreement or other obligation.

6. In accordance with the provisions of 807 KAR 5:001, Section 13(2), EKPC is filing separately under seal one (1) unredacted copy of the Confidential Information highlighted or otherwise appropriately denoted.

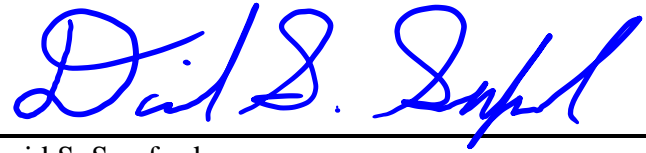
7. In accordance with the provisions of 807 KAR 5:001, Section 13(2), EKPC respectfully requests that the Confidential Information be withheld from public disclosure for ten (10) years, except that the Confidential Information filed as part of Response to AG-DR-01-17 (which is critical energy infrastructure information) be withheld from public disclosure indefinitely.

8. 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 Confidential Information described herein for a period of ten (10) years, except that the Confidential Information filed as part of Response to AG-DR-01-17 (which is critical energy infrastructure information) be withheld from public disclosure indefinitely.

This 16th day of March 2020.

Respectfully submitted,

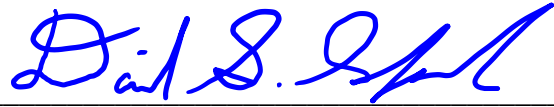


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CERTIFICATE OF SERVICE

This is to certify that the 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 16, 2020; 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 within two (2) business days.

A handwritten signature in blue ink, appearing to read "D. S. Spill", is written above a horizontal line.

Counsel for East Kentucky Power Cooperative, Inc.