

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE ELECTRONIC APPLICATION OF EAST)	
KENTUCKY POWER COOPERATIVE, INC.)	
FOR A GENERAL ADJUSTMENT OF RATES)	Case No. 2021-00103
APPROVAL OF DEPRECIATION STUDY)	
AMORTIZATION OF CERTAIN REGULATORY)	
ASSETS AND OTHER GENERAL RELIEF)	

EAST KENTUCKY POWER COOPERATIVE, INC.’S
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 information filed in its Responses to: (1) Commission Staff’s Supplemental Request for Information (“Staff-DR2”); (2) the Joint Requests for Information from the Attorney General (“AG”) and Nucor Steel Gallatin (“Nucor”) (AG/Nucor-DR1”); (3) Nucor’s First Data Request (“Nucor-DR1”); and (4) AppHarvest Morehead Farm, LLC’s (“AppHarvest”) First Request for Information (“AHMF-DR1”) (collectively, the “May 2021 Requests”) in the above-captioned proceeding, respectfully states as follows:

1. EKPC’s Application in the above-styled proceeding was deemed filed on April 6, 2021.
2. Commission Staff issued Staff-DR2 on May 12, 2021. The AG, Nucor and AppHarvest all tendered their respective requests on May 14, 2021. EKPC is tendering a small

mountain of paper in response to the various May 2021 Requests. A portion of this material includes information that is confidential and proprietary in nature and confidential treatment is necessary to assure that EKPC's trade secrets, customer information, financial projections, Board Policies, planning assumptions, formulas, investments in intellectual property and other information remain confidential. In particular, EKPC seeks confidential treatment for documents and information provides in response to: Staff-DR2-31(b); Staff-DR2-42(a); AG/Nucor-DR1-7; AG/Nucor-DR1-16; AG/Nucor-DR1-36(b); AG/Nucor-DR1-39b; AG/Nucor-DR1-72(c); Nucor-DR1-1; Nucor-DR1-7(c); Nucor-DR1-10; and AHMF-DR1-1(e)(1). Collectively this information and these documents are hereinafter referred to as the "Confidential Information."

3. Staff-DR2-31(b) states as follows:

Refer to the Macke Testimony, Exhibit RJM-3. ... b. Provide Exhibit RJM-3 net of riders with the percent increases to the proposed rates in Excel spreadsheet format with all formulas, columns, and rows unprotected and fully accessible.

4. In response, EKPC is providing a spreadsheet that includes revenue calculations by rate class, summaries of charges, detailed information on billing units and other detailed rate information that is both historic and projected. This information is so detailed that it concerns individual commercial and retail customers of EKPC's Owner-Member Cooperative's ("owner-members"), which gives tremendous insight into their load characteristics and power purchases. This information would be very valuable for other jurisdictions that might seek to entice them to leave Kentucky and create a resulting loss of jobs and investment. Moreover, it is well-understood that individual customers have a reasonable expectation of privacy with regard to their unique transactions with a regulated utility.¹ Also, the spreadsheets contain formulas and other trade

¹ See 807 KAR 5:001, Section 4(10); *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*

secret information that is closely held by EKPC and is not otherwise publicly available. The disclosure of this information would harm EKPC and its owner-members by causing the loss of valuable data, planning assumptions and analysis that was expensive to develop.

5. Staff-DR2-42(a) states as follows:

Refer to EKPC's response to Staff's First Request, Item 24, Excel spreadsheet entitled "PSC DR1 Response 24.xlsx."

a. Provide a summary of the expected Executive Officers Salaries and Other Compensation for the calendar year ended December 31, 2021, in the format provided in the table to this response.

6. In response, EKPC is providing a spreadsheet detailing projected executive compensation for 2021. Because this information concerns a period outside of the test period, its relevance for ratemaking purposes is significantly diminished.² Moreover, having just completed an executive search process to fill the position of Chief Financial Officer ("CFO") following the retirement of its former CFO, it is apparent that the market for senior executive leadership is very competitive and any information regarding executive compensation can give competitors a significant advantage. While EKPC reports this information on its Form 990 on an annual basis, that disclosure is retrospective and not prospective. Accordingly, EKPC seeks confidential treatment for this information until such time as it publishes its 2021 Form 990, which is expected to occur in May 2022. Commission precedent establishes that not all executive compensation is

5) *All Other Required Approvals and Relief*, Order, Case No. 2017-00321 (Ky. P.S.C. May 3, 2018); *In the Matter of the Proposed Revision of Rules Regarding the Provision of Wholesale Water Service by the City of Versailles to Northeast Woodford Water District*, Order, Case No. 2011-00419 (Ky. P.S.C. Mar. 14, 2012) (commercial account information).

² See *Cape Pub'ns, Inc. v. Univ. of Louisville Found., Inc.*, 260 S.W.3d 818, 822 (Ky. 2008) (compensation information is private in nature); *Zink v. Department of Workers' Claims, Labor Cabinet*, 902 S.W.2d 825, 828 (Ky. Ct. App. 1994) ("information such as . . . wage rate . . . [is] generally accepted by society as [a] detail in which an individual has at least some expectation of privacy."); see also KRS 68.878(1)(a).

subject to public disclosure,³ and the prospective compensation information at issue herein would fall within that category of protected information.

7. AG/Nucor-DR1-7 states as follows:

Provide the annual amounts of revenue recorded for each revenue category (electric base without fuel and without environmental, base fuel, base environmental, FAC, ES, etc., and steam), and account and subaccount, customer class, and each industrial customer (numbered to maintain confidentiality in the public response, but named in the confidential response) on a side-by-side basis for 2018, 2019, 2020, 2021 actual to date, and 2021 budget/forecast for remainder of calendar year.

8. In response, EKPC is providing an Excel spreadsheet that lists the information requested for each large commercial and industrial customer served by its owner-members. This information is customer specific and covers the period from January 1, 2018 through April 30, 2021. Information that is unique to a customer is generally regarded as confidential with customers enjoying a reasonable expectation of privacy with regard to their unique information. Moreover, this spreadsheet provides extraordinary insight into the operations of large commercial and industrial customers within the EKPC system.

9. AG/Nucor-DR1-16 states as follows:

Provide calculations of adjustments to annualize test year revenues for changes in customers and usage. Provide all supporting assumptions, data, and calculations, including electronic workpapers in live format with all formulas intact.

³ *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 4, 2018).

10. In response, EKPC is providing an Excel spreadsheet that again lists individual commercial and industrial customers of EKPC's owner-members and financial information by rate case that is outside the test year.

11. AG/Nucor-DR1-36(b) states as follows:

Refer to Exhibit ISS-2, which represents the test year-end balance sheet before and after the Company's proforma adjustments. The test year-end balance of "Investment in Assoc. Org. – Other General Fund" is depicted as \$9,370,967. ... b. Provide copies of any contracts, agreements, or policies in regards to each of the amounts included in this balance.

12. In response, EKPC is providing several documents that are responsive. However, two pages (14 of 66 and 16 of 66) include details or specific residential marketing loan program requests for loans for nine individual retail customers. EKPC seeks confidential treatment for the names of the retail customers as no public purpose will be served by disclosing the names of these individuals.⁴ Moreover, customers generally enjoy a reasonable expectation of privacy with regard to their unique transactions with a regulated utility.

13. AG/Nucor-DR1-39(b) states as follows:

Refer to Exhibit ISS-2, which represents the test year-end balance sheet before and after the Company's proforma adjustments. The test year-end balance of "Temporary Investments" is depicted as \$111,000,000. ... b. Provide copies of any contracts, agreements, or policies in regards to each of the amounts included in this balance.

14. In response, EKPC is providing a copy of Board Policy No. 205, which describes and sets forth its Investment Policy. This document clearly describes the internal governance and management delegations of one of EKPC's most important financial duties – managing its investments. Public disclosure of this Board Policy would give third parties a critical advantage

⁴ See 807 KAR 5:001, Section 4(10).

in terms of negotiating with EKPC on financial instruments in which EKPC might invest. They would also unfairly benefit from having knowledge as to what types of investments are deemed suitable for EKPC's purposes and the delegations of authority with regard to making investment decisions. Commission precedent demonstrates that the Commission has already recognized the confidential and proprietary nature of internal corporate policies such as this.⁵

15. AG/Nucor-DR1-72(c) state as follows:

Refer to the 2021 Budget for the Statement of Operations included as Exhibit AFB-2. ... c. Provide all workpapers used to determine the 2021 budgeted amounts for each of the revenue categories portrayed on Exhibit AFB-2. Provide in electronic format with all formulas intact.

16. In response, EKPC is providing four spreadsheets with all formulas intact. These spreadsheets include prospective revenue budgets for each of EKPC's rate classes and major special contracts. The spreadsheets also include customer-specific information concerning economic development rate credits, the formula for converting megawatt hours ("MHW") to million British Thermal Unit ("MMBTUs"), transmission revenues, incremental margins, outside sales, PJM auction revenues and budgets for a particular Landfill-Gas-to-Energy ("LFGTE") facility. This information includes numerous proprietary data inputs, assumptions, formulas and related financial information that is closely held by EKPC's management as it goes to the very core of EKPC's ability to budget and plan. This information, if publicly disclosed, would benefit

⁵ See, e.g., *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. May 29, 2018) (governance and commodity procurement policies); *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 4, 2018) (accounting policies); see also *Hoy v. Kentucky Industrial Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995).

numerous competitors, vendors and others with whom EKPC must do business. Again, Commission precedent supports affording confidential treatment to such information.⁶

17. Nucor-DR1-1 states as follows:

Please provide test year hourly loads for each EKPC rate class in the test year that is allocated fuel and purchased energy cost or is subject to the FAC.

18. In response, EKPC is providing a spreadsheet that includes hourly loads for each EKPC rate class that is allocated fuel and purchased energy costs or that is otherwise subject to the Fuel Adjustment Clause (“FAC”) for each hour of the test year. This information provides a detailed accounting of EKPC’s total loads, load profile and peaks. This information would enable others in the energy market to accurately predict when EKPC may be short or long on power and, thereby, gain insight into EKPC’s market strategies. This information is therefore confidential, proprietary and related to EKPC’s effective execution of its business strategies.

19. Nucor-DR1-7(c) states as follows:

With regard to PSC DR1 Response 16 – App Exhibit 39 COSS and RD Confidential, please provide the following: ... c. The monthly CP demands for each rate class consistent with the 12 CP demands shown on Row 26 of TAB AED Alloc Factor.

20. In response, EKPC is providing the requested Excel spreadsheet. The formulas contained therein represent a significant investment by EKPC in the determination of allocation of costs, revenue calculations, billing units and other proprietary and confidential information. Allowing this spreadsheet to be publicly disclosed would allow third-parties to replicate EKPC’s analytical models and result in a significant loss of intellectual property. Moreover, as the

⁶ *In the Matter of the Application of Big Rivers Electric Corporation for Termination of Contracts and a Declaratory Order and for Authority to Establish a Regulatory Asset*, Order, Case No. 2018-00146 (Ky. P.S.C. Jan. 11, 2019) (affording confidential treatment to financial forecasts and models).

spreadsheet was prepared by Power Systems Engineering at EKPC's behest, public disclosure of the spreadsheet would have a significant chilling effect on the ability of EKPC to use and rely upon the expertise of consultants in the future. The excel spreadsheet is value work product with inherent value that belongs exclusively to EKPC alone and should not be publicly disclosed.

21. Nucor-DR1-10 states as follows: "Please provide a copy of EKPC 2019 COS and RD V5.xlsx, with formulas intact."

22. In response, EKPC is providing the same Excel spreadsheet referenced in response to Nucor-DR1-7(c). Accordingly, EKPC adopts and reiterates the reasons why the spreadsheet should be afforded confidential treatment.

23. AHMF-DR1-1(e)(1) states as follows:

Did the Company use and prepare a load forecast in conjunction with this Rate Case?

e. Has the Company completed the load forecast yet for the 2022 IRP?

1. If yes, please attach a copy.

24. In response, EKPC is producing a copy of its most recent load forecast. Two sections of the load forecast – Section 4.0 (Key Assumptions) and Section 6.0 (Results by Owner-Member) contain detailed information regarding the planning assumptions that go into developing the load forecast and detailed projections for growth rates – by customers and energy sales – for each of EKPC's owner-members. All of this information constitutes a trade secret and, if publicly disclosed, would reveal the proprietary assumptions used by EKPC to develop its load forecast and the relative growth prospects of each of its owner-members. This type of information would be valuable to third parties who may seek to leverage EKPC's load forecast to extrapolate market strategies to disadvantage EKPC in the power market. Moreover, the information reveals detailed information about each of EKPC's customers.

25. 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 responses, which include redacted copies of such information. For each of the spreadsheets, the Confidential Information is so pervasive that confidential treatment should be afforded for the entire file.

26. 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 competitors a tremendous advantage in each of the areas detailed above. These advantages would likely translate into higher costs for EKPC and, by extension, detrimentally higher rates for EKPC's Owner-Members. Thus, disclosure of the Confidential Information would be highly prejudicial to EKPC, EKPC's owner-member cooperatives and those owner-members' end-use retail members.

27. The Kentucky Open Records Act exempts the Confidential Information from public disclosure. *See* KRS 61.878(1). 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.

28. EKPC does not object to limited disclosure of the Confidential Information, pursuant to an acceptable confidentiality and nondisclosure agreement, to the Attorney General and Nucor who have a legitimate interest in reviewing the same for the sole purpose of participating in this case. Much of the Confidential Information may also be disclosed to AppHarvest as soon as it signs a confidentiality agreement that was tendered to it on May 26, 2021.

However, due to ongoing contractual negotiations with AppHarvest's affiliates, EKPC does not believe that it is appropriate to provide the spreadsheets provided in response to Staff-DR2-31(b), AG/Nucor-DR1-7, AG/Nucor-DR1-16, Nucor-DR1-1, Nucor-DR1-7(c), and Nucor-DR1-10 to AppHarvest notwithstanding any confidentiality agreement AppHarvest may be willing to enter into. These spreadsheets included detailed information about each of the other significant commercial and industrial loads served by EKPC and its owner-members, which would give AppHarvest a significant and unprecedented insight into the load profiles and characteristics of other similarly situated customers. Under the circumstances, such disclosures would be unfair to these retail commercial and industrial customers.

29. 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 an indefinite period of time. The exception to this is the information tendered in connection with Staff-DR2-42(a), for which EKPC only seeks confidential treatment until such time as the actual information is published as part of EKPC's 2021 Form 990 (in approximately 11 months).

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 the periods set forth herein.

This 28th day of May 2021.

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 May 28, 2021; 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 thirty (30) days of the conclusion of the present COVID-19 related state of emergency.



Counsel for East Kentucky Power Cooperative, Inc.