

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 Commission Staff’s Post-Hearing Request for Information (“Post-Hearing 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. A hearing was held in this matter on August 3, 2021 and completed on August 4, 2021.
3. On August 5, 2021 Commission Staff issued its Post-Hearing Requests to EKPC.
4. EKPC is providing Excel spreadsheets in response to certain of those Post-Hearing Requests for which EKPC is seeking confidential treatment. Specifically, EKPC is requesting

confidential treatment for the Excel spreadsheets provided in response to Request Nos. 1, 9 and 10. These Excel spreadsheets that include the information is hereinafter referred to as the “Confidential Information.”

3. Request No. 1 of the Post-Hearing Requests states as follows:

Refer to EKPC’s Hearing Exhibit 1, the Stipulation and Settlement Agreement (Settlement Agreement), Exhibit C. Provide Settlement Agreement Exhibit C in an Excel version containing supporting calculations with all formulas, columns, and rows unprotected and accessible.

4. In its response to Request No. 1 EKPC is filing an excel spreadsheet containing sensitive information involving EKPC’s owner-members and the owner-members’ retail customers, including names, usage information and other sensitive personal details. The tabs containing this information cannot be separated from the spreadsheet therefore EKPC is seeking confidential treatment of the entire spreadsheet.

5. Request No. 9 of the Post-Hearing Requests states as follows:

Refer to Richard J. Macke’s Rebuttal Testimony, Exhibits RJM-4 and RJM-5.

- a. Provide Exhibit RJM-4 in a schedule containing supporting calculations in Excel spreadsheet format with all formulas, columns, and rows unprotected and fully accessible.
- b. Provide Exhibit RJM-5 in a schedule containing supporting calculations in Excel spreadsheet format with all formulas, columns, and rows unprotected and fully accessible.

6. In its response to Request No. 9 EKPC is providing two Excel spreadsheets containing sensitive information with specific personal information for some of EKPC’s owner-member’s retail customers, including customer names along with their usage and other personal details. The tabs containing this information cannot be separated from the rest of the spreadsheet so EKPC is requesting confidential treatment for the entire spreadsheet.

7. Request No. 10 of the Post-Hearing Requests states as follows:

Provide a billing analysis of the allocation of the proposed Stipulation and Settlement Agreement revenue increase, including the allocation of revenue to each rate class and to each of EKPC's Owner-Members, by rate component (i.e., kWh, customer, demand).

8. In its response to Request No. 10 EKPC is providing an Excel spreadsheet containing sensitive information involving personal information of EKPC's owner-members and their retail customers, including customer names, usage information and other personal details. The tabs containing this information cannot be separated from the spreadsheet therefore EKPC is seeking confidential treatment of the entire spreadsheet.

9. EKPC is unable to file a redacted version of the Excel spreadsheets into the public record and therefore is requesting confidential treatment for the each of the four spreadsheets in their entirety. 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 and the Confidential Information is so pervasive that confidential treatment should be afforded for the entire Excel file.

10. The Confidential Information is retained by EKPC on a "need-to-know" basis and is not publicly available. The Confidential Information is spreadsheets that contains customer specific billing information, which is self-evidently confidential. Indeed, the Commission's own privacy regulation – 807 KAR 5:001, Section 4(10), requires that such information be filed on a confidential basis. Moreover, the Confidential Information all arises from or relates to the proprietary cost of service study prepared at EKPC's sole cost and expense. Disclosure of the spreadsheets in question would allow third parties to reap a windfall in the development of their own cost of service studies and rate analysis. This information constitutes a trade secret under Kentucky law and should be further protected from disclosure on that basis.

11. 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.

12. EKPC does not object to limited disclosure of the Confidential Information, pursuant to an acceptable confidentiality and nondisclosure agreement. The Attorney General, Nucor and AppHarvest have all entered into Confidentiality Agreements.

13. 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 (10) years.

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 period set forth herein.

This 18th day of August 2021.

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that the foregoing electronic filing was transmitted to the Commission on August 18, 2021; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding. Pursuant to the Commission's July 22, 2021 Order in Case No. 2020-00085 no paper copies of this filing will be filed.



Counsel for East Kentucky Power Cooperative, Inc.