

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 AppHarvest Morehead Farm, LLC’s (“AppHarvest”) Supplemental Request for Information (“AHMF-DR2”) 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. AppHarvest tendered AHMF-DR2 on May 14, 2021. Although it is outside the test year, EKPC’s response includes consolidated system hourly load data for the months of January 2020 through May 2021. The Excel spreadsheet including this information is hereinafter referred to as the “Confidential Information.”

3. AHMF-DR2 states as follows: “Please provide an hourly load profile by month for each month during 2020-2021.” The request is for information that is irrelevant to the issued raised in the rate case as it is outside the test year. Nevertheless, EKPC is providing a response to AppHarvest’s request in the form of an Excel spreadsheet labeled *AppHarvest DR2 Response 12 Hourly Load Data CONFIDENTIAL.xlsx*. The information contained therein includes EKPC’s hourly load profile for each month of this seventeen-month period. Obviously, disclosure of EKPC’s detailed load information on an hourly basis is valuable commercial information as it informs other market participants as to the extent of EKPC’s load profile in a highly detailed manner. Such information can be combined with other information freely available to market participants to determine when EKPC’s system peaks occur and how its performance correlates to PJM’s energy and capacity markets, as well as the availability of EKPC’s own assets. EKPC is concerned that a market competitor could use this information to advantage itself in the energy market by accurately predicting when EKPC may be short or long on power and, thereby, gain insight into EKPC’s market strategies. This information is confidential, proprietary and related to EKPC’s effective execution of its business strategies. Such an information advantage would likely yield increased costs to EKPC to the detriment of its Owner-Members and their end-use retail members.

4. 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. The Confidential Information is so pervasive that confidential treatment should be afforded for the entire Excel file.

5. The Confidential Information is retained by EKPC on a “need-to-know” basis and is not publicly available. It also constitutes a trade secret under Kentucky law. *See* KRS 365.880(4). 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.

6. 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.

7. EKPC does not object to limited disclosure of the Confidential Information, pursuant to an acceptable confidentiality and nondisclosure agreement. The Attorney General and Nucor entered into Confidentiality Agreements early in this proceeding. 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.

8. 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 28th day of June 2021.

Respectfully submitted,



David S. Samford
L. Allyson Honaker
GOSS SAMFORD, PLLC
2365 Harrodsburg Road, Suite B325
Lexington, KY 40504
(859) 368-7740
david@gosssamfordlaw.com
allyson@gosssamfordlaw.com

Counsel for East Kentucky Power Cooperative, Inc.

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 June 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.