

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN ELECTRONIC APPLICATION OF EAST)
KENTUCKY POWER COOPERATIVE, INC.)
FOR APPROVAL OF THE AMENDMENT AND)
EXTENSION OR REFINANCING OF AN)
UNSECURED REVOLVING CREDIT)
AGREEMENT IN AN AMOUNT UP TO)
\$800,000,000 OF WHICH UP TO \$100,000,000)
MAY BE IN THE FORM OF AN UNSECURED)
RENEWABLE TERM LOAN AND UP TO)
\$400,000,000 OF WHICH WILL BE IN THE)
FORM OF A FUTURE INCREASE OPTION)

Case No. 2021-00473

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 portions of EKPC’s Application tendered simultaneously herewith in the above-captioned proceeding, respectfully states as follows:

1. In its Application, EKPC requests Commission approval for an amendment and extension or refinancing of the Unsecured Revolving Credit Agreement (“Credit Facility”) currently held by EKPC which was approved by the Commission in Case No. 2011-00204,¹ and amended and extended with approval by the Commission in Case No. 2013-00306 and Case No.

¹ *In the Matter of the Application of East Kentucky Power Cooperative, Inc. for Approval of an Unsecured Revolving Credit Agreement for a Term of Up To Five Years and in an Amount Up To \$500,000,000*, Order, Case No. 2011-00204 (Ky. P.S.C., Jul. 19, 2011).

2016-00116.² The proposed amended and extended or refinanced Credit Facility Agreement is in an amount up to \$800,000,000, of which \$100,000,000 may be in the form of an unsecured, renewable term loan, and \$200,000,000 of which will be in the form of a future increase option.

2. Attached as Exhibit 1 to EKPC's Application is a description of the proposed financing, as required under 807 KAR 5:001 Section 18(1)(c). Within Exhibit 1, EKPC provides: (i) the amount of the facility fee it currently pays under its existing Credit Facility; (ii) the rate of interest it pays on amounts drawn under its existing Credit Facility; and (iii) a description of the amendment fees and expenses it expects to pay in conjunction with the options and proposed amended and extended or refinanced Credit Facility (collectively, the "Confidential Information").

3. The Confidential Information includes existing interest rates and other proprietary loan terms and conditions which are an integral part of the requested approval for the proposed amended and extended or refinanced Credit Facility. The open disclosure of this material would arm prospective lenders - with whom EKPC must still negotiate - with information that could allow such lenders an unfair commercial advantage over EKPC. By making available to the public both the highly sensitive terms of EKPC's existing Credit Facility and the terms EKPC anticipates it can achieve through negotiation of its proposed amended and extended or refinanced Credit Facility, EKPC faces substantial risk of higher interest rates and fees and other more restrictive and detrimental conditions, including higher rates to its Owner-Members, than would otherwise be the case if the information was not publicly disclosed.

² *In the Matter of an Application of East Kentucky Power Cooperative, Inc. for Approval of the Issuance of Up To \$200,000,000 of Secured Private Placement Debt, for the Amendment and Extension of an Unsecured Revolving Credit Agreement in an Amount Up To \$500,000,000, and for the Use of Interest Rate Management Instruments*, Order, Case No. 2013-00306 (Ky. P.S.C., Sep. 27, 2013); *In the Matter of an Application of East Kentucky Power Cooperative, Inc. for Approval of the Amendment and Extension or Refinancing of an Unsecured Revolving Credit Agreement in an Amount up to \$800,000,000 of which up to \$100,000,000 may be in the Form of an Unsecured Renewable Term Loan and \$200,000,000 of which will be in the Form of a Future Increase Option*, Order, Case No. 2016-00116 (Ky. P.S.C., Apr. 11, 2016).

4. The Confidential Information is retained by EKPC on a “need-to-know” basis and is not available from any commercial or other source. The Confidential Information is generally recognized as confidential and proprietary in the energy industry and in financial markets, and the public disclosure of the Confidential Information would potentially harm EKPC’s competitive position in the marketplace, to the detriment of EKPC, its Owner-Members, and the ultimate customers. In light of these facts, the Kentucky Open Records Act exempts the Confidential Information from disclosure. *See* KRS 61.878(1)(c)(1).

5. 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.” 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). The Confidential Information is critical to EKPC’s effective execution of business decisions and strategy. If disclosed, the Confidential Information would give potential lenders and other third parties insights into EKPC’s business operations and financial strategies that are otherwise publicly unavailable. Accordingly, the Confidential Information satisfies both the statutory and common law standards for affording confidential treatment.

6. EKPC does not object to limited disclosure of the Confidential Information described herein, pursuant to an acceptable confidentiality and nondisclosure agreement, to intervenors with a legitimate interest in reviewing the same for the sole purpose of participating in this case.

7. In accordance with the provisions of 807 KAR 5:001, Section 13(2) and recent Commission Orders, EKPC has emailed a copy of the Application with the Confidential Information highlighted to the Commission at PSCED@ky.gov. A redacted copy of EKPC's Application is tendered simultaneously herewith.

8. 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.

9. 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 specific Confidential Information described herein for a period of ten (10) years.

This 20th day of December 2021

Respectfully submitted,



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