

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

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| AN EXAMINATION OF THE APPLICATION |) | |
| OF THE FUEL ADJUSTMENT CLAUSE OF |) | |
| EAST KENTUCKY POWER COOPERATIVE, |) | CASE NO. 2022-00037 |
| INC. FROM MAY 1, 2021 THROUGH |) | |
| OCTOBER 31, 2021 |) | |

RESPONSE TO COMMISSION’S JUNE 8, 2023 ORDER

Comes now East Kentucky Power Cooperative, Inc. (“EKPC”), by and through counsel, pursuant to the June 8, 2023 Order (“June 8th Order”) of the Kentucky Public Service Commission (“Commission”), and for its response to the request of Foresight Coal Sales (“Foresight”) to inspect fuel bid sheets that were granted confidential treatment by the Commission in this proceeding respectfully states as follows:

EKPC filed its fuel bid sheets in response to a request for information issued by the Commission in this proceeding. The fuel bid sheets were submitted along with a motion seeking confidential treatment of the fuel bid sheets. This motion was granted by the Commission. EKPC opposes the request of Foresight for the Commission to produce the aforementioned fuel bid sheets.

These fuel bid sheets contain highly sensitive and proprietary information, which if disclosed to Foresight, would give Foresight an unfair commercial advantage over any other company that may submit a bid to EKPC for fuel. As stated in EKPC’s Motion for Confidential Treatment in this proceeding, the fuel bid sheets are retained by EKPC on a “need-to-know” basis

and are not publicly available. If disclosed, the Confidential Information would give potential vendors and competitors a tremendous competitive advantage in the course of ongoing and future negotiations to procure fuel. These market advantages would likely translate into higher costs for EKPC and, by extension, detrimentally higher rates for EKPC's Members. Thus, disclosure of the fuel bid sheets would be highly prejudicial to EKPC, EKPC's owner-members and those owner-members' End-Use Retail Members.

In addition, the Kentucky Open Records Act exempts the Confidential Information from public disclosure. *See* KRS 61.878(1)(c). As set forth above, disclosure of the Confidential Information would permit an unfair advantage to third parties (including Foresight). 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). In addition, The Confidential Information is commercially sensitive and proprietary and constitutes a "trade secret" under KRS 365.880(4). 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.

WHEREFORE, on the basis of the foregoing, EKPC respectfully opposes the request of Foresight for the Commission to produce EKPC's fuel bid sheets.

This 15th day of June 2023.

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that the foregoing electronic filing was transmitted to the Commission on June 15, 2023 and 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.