

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

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

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 documents filed in response to four requests for information in the above-captioned proceeding, respectfully states as follows:

1. The Commission issued its Order establishing this case on March 31, 2022 and included the initial set of requests for information to EKPC as an Appendix to that Order.
2. Request No. 4 from the March 31st request for information states as follows:
 4. List each written coal supply solicitation issued during the period under review.
 - a. For each solicitation, provide the date of the solicitation, the type of solicitation (contract or spot), the quantities solicited, a general description of the quality of coal solicited, the period over which deliveries were requested, and the generating unit(s) for which the coal was intended.
 - b. For each solicitation, state the number of vendors to whom the solicitation was sent, the number of vendors who responded, and the selected vendor. Provide the bid tabulation sheet or corresponding document that ranked the proposals. (This document should identify all vendors who made offers.) State the reasons

for each selection. For each lowest-cost bid not selected, explain why the bid was not selected.

3. In its response to Request No. 4, EKPC is providing a copy of its bid tabulation sheets, which include information that is responsive to the request for information.

4. Request No. 5 from the March 31st request for information states as follows:

5. List each oral coal supply solicitation issued during the period under review.

- a. For each solicitation, state why the solicitation was not written, the date(s) of the solicitation, the quantities solicited, a general description of the quality of coal solicited, the period over which deliveries were requested, and the generating unit(s) from which the coal was intended.
- b. For each solicitation, identify all vendors solicited and the vendor selected. Provide the tabulation sheet or other document that ranks the proposals. (This document should identify all vendors who made offers.) State the reasons for each selection. For each lowest-cost bid not selected, explain why the bid was not selected.

5. In its response to Request No. 5, EKPC is providing a copy of its bid tabulation sheets, which include information that is responsive to the request for information.

6. Request No. 11 from the March 31st request for information states as follows:

11. a. For the period under review, state whether there have been any changes to EKPC's written policies and procedures regarding its fuel procurement. If yes:
 - (1) Describe the changes;
 - (2) Provide the written policies and procedures as changed;
 - (3) State the date(s) the changes were made; and
 - (4) Explain why the changes were made.
- b. If no, provide the date EKPC's current fuel procurement policies and procedures were last changed, when they were last provided to the Commission, and identify the proceeding in which they were provided.

7. In its response to Request No. 11, EKPC is providing a copy of its Board Policy 404, Transaction Authority Limits for Energy and Energy Related Commodities and

Transportation which was updated on July 13, 2021 and a copy of its Administrative Policy No. A031 which was amended to coincide with the changes made to Board Policy 404.

8. Request No. 21.b. from the March 31st request for information states as follows:

21. b. For each bid solicitation or potential spot purchase that resulted in a new purchase contract on or after July 1, 2021, provide the bid evaluation sheets that include:
 - (1) the coal severance tax rate being levied, if any;
 - (2) The coal severance tax rate per ton or MMBTU, as appropriate, being levied;
 - (3) The cost per ton or MMBTU, as appropriate, including any severance tax; and
 - (4) The cost per ton or MMBTU, as appropriate, excluding any severance tax.

9. In its response to Request No. 21.b., EKPC is providing a copy of its bid tabulation sheet, which includes information that is responsive to the request for information.

10. The information and documents tendered by EKPC in response to Requests Nos. 4, 5, 11 and 21b are being tendered in redacted form in the public version of EKPC's filing and in an unredacted form filed under seal herewith. Collectively, this information and these documents are hereinafter referred to as the "Confidential Information."

11. The Confidential Information contains extensive information that describes the business planning assumptions and procurement strategies of EKPC with regard to fuel as well as the information received and generated by EKPC in the course of conducting written and oral solicitations for fuel. This information is commercially sensitive and proprietary. More specifically, the Confidential Information includes: procurement strategies; coal specifications received from third-party bidders; pricing data for coal bids received from third-party bidders; and recommendations from EKPC Staff regarding the selection of particular vendors to supply fuel to EKPC's generating fleet.

12. 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 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 Confidential Information would be highly prejudicial to EKPC, EKPC’s Owner-Member Cooperatives and those owner-members’ End-Use Retail Members.

13. 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. 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. Indeed, the Commission has routinely recognized the confidential nature of the information included in the responses and has afforded confidential treatment to identical information in a prior proceeding.¹

14. EKPC does not object to limited disclosure of the Confidential Information, pursuant to an acceptable confidentiality and nondisclosure agreement, to the Attorney General or any other intervenors with a legitimate interest in reviewing the same for the sole purpose of participating in this case.

¹ *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., October 18, 2018).

15. 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 response to Request Nos. 4, 5, 11 and 21b.

16. 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 years. This will assure that the Confidential Information – if disclosed after that time – will be less likely to include information that continues to be commercially sensitive so as to impair the interests of EKPC if publicly disclosed. However, EKPC reserves the right to seek an extension of the grant of confidential treatment if it is necessary to do so at that time.

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 a period of ten years from the date of entry of such an Order.

This 15th day of April, 2022.

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that the electronic filing was transmitted to the Commission on April 15, 2022 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 made.



Counsel for East Kentucky Power Cooperative, Inc.