

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 the May 9, 2022 Commission Staff Request for Information Item 3a, in the above-captioned proceeding, respectfully states as follows:

1. The Commission issued its Order establishing this case on March 31, 2022.
2. Commission Staff issued Request for Information on May 9, 2022.
3. Request No. 3a from the May 9th request for information states as follows:

It is not clear as to whether all the bid sheets for the Cooper station have been provided. There is one bid sheet filed confidentially: 1st QTR 2021 Verbal. Provide the required sheets or point to which bid sheets are referenced on page 2 of 4 in the response.

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

5. The information and documents tendered by EKPC in response to Request No. 3a, is 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."

6. 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.

7. 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.

8. 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

9. 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.

10. 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 No. 3a.

11. 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.

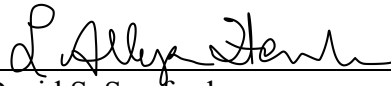
WHEREFORE, on the basis of the foregoing, EKPC respectfully requests the Commission to enter an Order granting this Motion for Confidential Treatment and to so afford such protection

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).

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 18th day of May, 2022.

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that the electronic filing was transmitted to the Commission on May 18, 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.