

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

2022 INTEGRATED RESOURCE PLAN OF EAST
KENTUCKY POWER COOPERATIVE, INC.

) CASE NO.
) 2022-00098

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 a portion of the 2019 Integrated Resource Plan, respectfully states as follows:

1. EKPC is filing its 2022 Integrated Resource Plan (“IRP”), pursuant to 807 KAR 5:058, contemporaneously herewith. The voluminous filing includes several passages which involve the discussion or identification that is proprietary, a trade secret and confidential. These items include:

- a) Actual and projected cost and operating information for the base year and the basis underlying such projections for a fifteen-year period for each of EKPC’s generation resources, as required by 807 KAR 5:058 Section 8.3(b)(12) (IRP, pp. 104-110);
- b) The projected capital cost for traditional resources as calculated by EKPC’s RTSim Resource Optimizer (IRP, p. 163);

- c) Future year revenue requirements and average system rates, including the inflation rate and discount rate assumptions used to calculate same (IRP, p. 217);
- d) Critical energy infrastructure information included in Section 11.0 of the IRP;
- e) A discussion of anticipated expansion of an interruptible load customer and said expansions impact upon the load forecast and demand response capacity (Tech. Appx. Vol 1, pp 2-3; Tech. Appx. Vol. 2, Exhibit DSM-9, p. 1 of 1); and,
- f) A publication titled “US Markets State Economies – Kentucky 2020” which is an economic outlook that was used as an input to EKPC’s load forecasting process and it is a copyrighted and proprietary document from IHS.

2. Collectively, the information described above is designated as the “Confidential Information” for which protection is sought under KRS 61.878. Disclosure of the Confidential Information would permit an unfair commercial advantage to third parties or present an unnecessary and unreasonable infringement upon EKPC’s legitimate privacy concerns.

3. The Kentucky Open Records Act, and specifically 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.” 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). If disclosed, the Confidential Information within the IRP and accompanying Technical Appendices would give market participants and competitors insights into the operating costs, resource investment calculations,

anticipated load growth and the impact to future year revenue requirements and system average costs of EKPC that are otherwise publicly unavailable. Accordingly, the Confidential Information satisfies both the statutory and common law standards for affording confidential treatment. Indeed, the Commission recently granted confidential treatment for similar information in EKPC 2019 IRP filing.¹

4. Furthermore, the Confidential Information contains copyrighted and proprietary information from a third-party. The IHS information is confidential in nature and subject to copyrights of someone other than EKPC. EKPC must make all reasonable efforts to protect the copyrights of these publications. Furthermore, this information is only available to paid subscribers and could be harmful to the provider if disclosed. Disclosure of this information could be a breach of EKPC's subscription as well as copyright infringement.

5. The Confidential Information consists of sensitive and proprietary information that is retained by EKPC on a "need-to-know" basis. The Confidential Information is distributed within EKPC only to those employees who must have access for business reasons and is generally recognized as confidential and proprietary in the energy industry.

6. EKPC does not object to limited disclosure of the Confidential Information, pursuant to an acceptable confidentiality and nondisclosure agreement, to intervenors with a legitimate interest in reviewing same for the sole purpose of participating in this case. EKPC reserves the right to object to providing the Confidential Information to any intervenor if said

¹ See *In the Matter of the 2019 Integrated Resource Plan of East Kentucky Power Cooperative, Inc.*, Order, Case No. 2019-00096 (Ky. P.S.C. Nov. 8, 2019); see also *In the Matter of the Joint Application of Duke Energy Corporation, Cinergy Corp., Duke Energy Ohio, Inc., Duke Energy Kentucky, Inc., Diamond Acquisition Corporation, and Progress Energy, Inc. for Approval of the Indirect Transfer of Control of Duke Energy Kentucky, Inc.*, Rehearing Order, Case No. 2011-00124 (Ky. P.S.C. Dec. 5, 2011).

provision could result in liability to EKPC under any Confidentiality Agreement or Non-Disclosure Agreement.

7. In accordance with the provisions of 807 KAR 5:001, Section 13(2), EKPC is filing separately under seal one (1) unredacted copy of the Confidential Information highlighted or otherwise appropriately denoted. EKPC is also filing the electronic public version of the IRP and Technical Appendices with the Confidential Information redacted or removed.

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, except that the Confidential Information filed as part of Section 11.0 of the IRP (which is critical energy infrastructure information) be withheld from public disclosure indefinitely.

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 Confidential Information described herein for a period of ten (10) years, except that the Confidential Information filed as part of Section 11.0 of the IRP (which is critical energy infrastructure information) be withheld from public disclosure indefinitely.

This 1st day of April 2022.

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that the foregoing electronic filing was transmitted to the Commission on April 1, 2022 and that there are no parties that the Commission has excused from participation by electronic means in this proceeding. Pursuant to prior Commission Orders, no paper copies of this filing will be made.



Counsel for East Kentucky Power Cooperative, Inc.