

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

AMENDED 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 amended motion requesting that the Kentucky Public Service Commission (“Commission”) afford confidential treatment to a portion of the Responses to Data Requests propounded by Commission Staff, dated June 28, 2022, the Attorney General (“AG”), dated June 29, 2022, the Sierra Club dated June 30, 2022 and the Joint Intervenors dated June 30, 2022, with regard to EKPC’s 2022 Integrated Resource Plan, respectfully states as follows:

1. EKPC filed its Responses to Data Requests to the aforementioned parties on July 29, 2022 along with a Motion for Confidential Treatment.
2. On August 18, 2022 EKPC discovered that it requested confidential treatment for two responses to the AG’s Data Requests that should not have been included in the Motion for Confidential Treatment. After drafting the Motion for Confidential Treatment, EKPC determined that its response to AG 1-15b and AG 1-31 did not require confidential treatment but did not delete those responses from the Motion. AG 1-31 referenced the IRP Section 8(3)(b)(12), which was filed confidentially along with a Motion for Confidential Treatment with the original IRP filing.

3. EKPC filed the responses to these two requests and did not file any confidential information pertaining to these two responses.

4. EKPC is filing this amended Motion for Confidential Treatment requesting confidential treatment for each of the items contained in the original July 29, 2022 Motion except for the response to AG 1-15b and response to AG 1-31.

5. EKPC's Responses included a considerable amount of information that is highly confidential. EKPC will provide a copy of the confidential information to each of the intervenors that have signed a confidentiality agreement,

6. Commission Staff's Request No. 37 states as follows:

Refer to the IRP, Technical Appendix Vol. I, Load Forecast pages 16, and 26-29. Provide a complete copy of the 2022 Residential end-use survey report.

7. In its response to Commission Staff's Request No. 37, EKPC is filing a complete copy of the 2022 Residential end-use survey report. This report contains highly sensitive information regarding the residential end-use members of EKPC's Owner-Members. This information is used for EKPC's load forecast. If this information is made publicly available, the end-use members may stop supplying the information to EKPC and its Owner-Members when requested. This information could give competitors a commercial advantage by giving them information regarding residential end-use members' usage information and equipment preferences. The information is gathered in a proprietary manner and is not made available to third parties. The information is also to be regarded as a "trade secret" under Kentucky law.

8. The AG's Request No. 7b states as follows:

Provide the net savings that EKPC realized from its PJM membership through May 31, 2021, and explain how the net savings was calculated.

9. In response to AG Request No. 7b EKPC is filing the net savings realized from its PJM membership through May 31, 2021. The information being filed also contains the calculation methodology is explained within the annual reports. Such detailed, highly sensitive economic data and corporate information is retained by EKPC on a “need-to-know” basis and is not available from any commercial or other source. The information is being filed contemporaneously to this filing as part of EKPC’s PJM Annual Report, along with its own request for confidential treatment. The information about EKPC’s net savings is generally recognized as confidential and proprietary in the energy industry and has specifically been granted confidential treatment by the Commission in the context of the PJM annual report filings. The public disclosure of the Confidential Information would potentially harm EKPC’s competitive position in the marketplace, to the detriment of EKPC and its customers. EKPC has consistently requested confidential protection for its actual and projected performance in PJM since Case No. 2012-00169. *See* KRS 61.878(1)(c)(1).

10. The Joint Intervenor’s Request No. 26c states as follows:

Please provide the data gathered for all customers participating in the load research and smart home pilot for the preceding 5 years.

11. In response to the Joint Intervenor’s Request No. 26c, EKPC is providing load research data. This data contains highly sensitive information regarding load information and consumption data for end-use members. This information contains information concerning customer load data and participation in a pilot program. If this sensitive customer information is provided to the public, EKPC may be unable to gather the necessary information from these customers in the future.

12. The Joint Intervenor’s Request No. 30 states as follows:

For each existing coal-fired unit, please provide the projected annual data by unit, or if EKPC does not maintain unit-level data, by the

economic analysis period in this filing (i.e., 2022-2036): a. Fixed O&M cost; b. Variable O&M cost; c. Fuel costs; d. Capital costs; e. Heat rate; f. Generation; g. Capacity rating; h. Capacity factor; i. Forced outage rate; j. Planned outage rate; k. Energy revenues; l. Capacity revenues; m. Ancillary services revenues.

13. In response to the Joint Intervenors' Request No. 30, EKPC is providing an Excel spreadsheet containing the requested information. This information is highly confidential information regarding projected costs, outages, revenues, generation and other sensitive information for EKPC's generating fleets. It includes detailed economic data and assumptions related to EKPC's generation fleet. If this information was publicly disclosed it could cause harm to EKPC by providing energy marketers with information regarding EKPC's generation position, plans and assumptions, which could be used to increase the accuracy of the marketers' forecasts for EKPC's future energy needs, which could very likely result in EKPC paying higher energy or capacity prices. This information reflects proprietary projections and modeling developed internally by EKPC that is not available from any commercial or other source, and the public disclosure of the Confidential Information would potentially harm EKPC's competitive position in the marketplace, to the detriment of EKPC and its customers. The Kentucky Open Records Act exempts the Confidential Information from disclosure. *See* KRS 61.878(1)(c)(1).

14. The Joint Intervenors' Request No. 32 states as follows:

Please provide the most recent condition assessment report of EKPC's thermal generating units.

15. In response to the Joint Intervenors' Request No. 32, EKPC is providing a zip file with multiple documents that are responsive to this request. This information is highly sensitive information relating to the boiler outage and inspections at EKPC's thermal generating units. This information is highly sensitive information and is especially useful to those who may wish to bid on any future work on the boilers. The information also concerns the material condition

of critical electric generating facilities and therefore qualifies as protected infrastructure information under Kentucky law. *See* KRS 61.878(1)(m).

16. The Joint Intervenor's Request No. 35 states as follows:

Please provide unredacted versions of the tables shown on pages 104-110, in native machine-readable format with formulae intact.

17. Unredacted copies of the information has been provided to each party that has signed a confidentiality agreement. EKPC requested confidential protection of this information in its Application filing and that Motion is still pending.

18. The Joint Intervenor's Request No. 40 states as follows:

Please provide, in spreadsheet format with all formulae intact, the RTSim input and output files used in the production of this IRP.

19. In response to the Joint Intervenor's Request No. 40, EKPC is providing zip files that contain the requested information. This data is proprietary and subject to copyright protections. If it were to be publicly disclosed, EKPC would be placed at a disadvantage in the market to other entities who could exploit the information for commercial gain by getting insights into EKPC's positions and strategies. It would also make it difficult for EKPC to be able to utilize other such proprietary modeling programs from third-parties who would fear that their intellectual property would be compromised.

20. The Joint Intervenor's Request No. 97 states as follows:

Please identify the month/year of EKPC's most recent coal supply contracts and summarize the responses received, including offered tonnage, delivered price per ton, and term.

21. In response to the Joint Intervenor's Request No. 97, EKPC is providing the requested information. This information is highly sensitive information that was obtained by EKPC in the course of conducting solicitations for coal supply. This information contains coal specifications and pricing data received from third-party bidders. If disclosed this information

would give potential vendors and competitors a tremendous competitive advantage in the course of ongoing negotiations to procure fuel. This market advantage could easily translate into higher costs for EKPC and its Owner-Members and their customers. This information is commercially sensitive and proprietary and is regularly viewed as confidential by the Commission in the context of fuel adjustment clause review cases.

22. The Sierra Club's Request No. 3 states as follows:

Please provide the supporting data and workpapers for all tables in EKPC's unredacted 2022 IRP in both Excel format with all formulas unlocked and intact and in non-redacted, native format (if not Excel) with all formulas unlocked and intact.

23. In response to the Sierra Club's Request No. 3, EKPC is providing the information requested. This information is highly sensitive and confidential information containing the information used to develop the tables provided by EKPC in the Application. These tables were included in a Motion for Confidential Treatment that was filed with the Application and is still pending. EKPC will provide the confidential information to intervenors who have signed a confidentiality agreement.

24. The Sierra Club's Request No. 13 states as follows:

For each of the Spurlock and Cooper coal-fired units, for each of the years 2022 through 2031, please identify the Company's most recent projection of: a. Installed Capacity; b. Unforced Capacity; c. Capacity factor; d. Availability; e. Heat rate; f. Forced or random outage rate; g. Effective forced outage rate (EFORd); h. Fixed O&M cost; i. Variabel O&M cost; j. Fuel Cost (by fuel type).

25. In response to the Sierra Club's Request No. 13, EKPC is filing an Excel spreadsheet containing the requested information. This information is sensitive, proprietary information regarding calculations and assumptions for EKPC's Spurlock and Cooper units. Public disclosure of this information would give information to vendors and competitors regarding EKPC's planned outages, capacity and cost information. This information is highly confidential

and is regularly seen as confidential in the industry. This information could give vendors, suppliers and competitors an unfair commercial advantage.

26. Collectively, the information described above is designated as the “Confidential Information” for which protection is sought under KRS 61.878 and other applicable law. Disclosure of the Confidential Information would permit an unfair commercial advantage to third parties to the detriment of EKPC, its Owner-Members and their end-use retail members. If disclosed, the Confidential Information would also give market participants and competitors insights into the anticipated operating costs, resource investment calculations, system outages, projected costs and revenues, present costs of fuel and sensitive customer information.

27. 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 Data Request Responses would give market participants and competitors insights into the inner-workings and decision-making strategies of EKPC. In addition, the information concerns critical electric generating infrastructure and is further protected from public disclosure under KRS 61.878(1)(m). Accordingly, the Confidential Information satisfies both the statutory and common law standards for affording confidential treatment.

28. The Confidential Information consists of 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.

29. 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 provision could result in potential liability or competitive harm to EKPC under any Confidentiality Agreement, Non-Disclosure Agreement or other obligation.

30. 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.

31. In accordance with the provisions of 807 KAR 5:001, Section 13(2), EKPC respectfully requests that the Confidential Information identified in this Motion be withheld from public disclosure for ten (10) years.

32. 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 and as set forth above.

This 19th day of August 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 August 19, 2022; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that pursuant to prior Commission Orders, no paper copies of this filing will be made.



Counsel for East Kentucky Power Cooperative, Inc.