

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 Responses to Supplemental Data Requests propounded by the Attorney General (“AG”), dated August 30, 2022 and the Joint Intervenors dated August 30, 2022, with regard to EKPC’s 2022 Integrated Resource Plan, respectfully states as follows:

1. EKPC is filing its Responses to Supplemental Data Requests from the aforementioned parties contemporaneously herewith. The Responses include 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,

2. The AG’s Supplemental Request No. 13 states as follows:

Refer to the Company’s response to the Attorney General’s First Request, Item 7(a) and (b). Provide an unredacted copy of the referenced annual reports that provide the net savings realized as a PJM member for 2021 and 2022.

3. In response to AG Supplemental Request No. 13 EKPC is filing its Integration Annual Reports for 2021 and 2022. EKPC filed other Integration Annual Reports with responses to the AG’s First Request for Information Item 7, which is subject to a previously filed Motion for

Confidential Treatment. The information contains the calculation methodology 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 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 in Case No. 2012-00169, with the latest being granted confidential treatment on August 11, 2022.¹ 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).

4. The Joint Intervenor’s Request No. 1 states as follows:

Refer to Joint Intervenor Response 4b, please provide the most recent IHS updated outlook, released in July 2022.

5. In response to the Joint Intervenor’s Request No. 1, EKPC is providing a report from S&P Global *US Markets State Economies Kentucky Summer 2022*. This report contains information regarding the economy and other items in Kentucky. This 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 in order to continue to have access to this data source. 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.

¹ *In the Matter of the Application of East Kentucky Power Cooperative, Inc. to Transfer Functional Control of Certain Transmission Facilities to PJM Interconnection, LLC*, P.S.C. Case No. 2012-00169.

6. The Joint Intervenors' Supplemental Request No. 53 states as follows:

Please provide the most recent PJM capacity price forecast in EKPC's possession.

7. In response to the Joint Intervenors' Supplemental Request No. 53, EKPC is filing an Excel spreadsheet containing the requested information. This information is sensitive, proprietary information regarding forecasted capacity pricing. This information is highly confidential and is regularly regarded as confidential within the industry.

8. 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 forecasted pricing information.

9. 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 Supplemental Data Request Responses would give market participants and competitors insights into the inner-workings and decision-making strategies of EKPC. Accordingly, the Confidential Information satisfies both the statutory and common law standards for affording confidential treatment.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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 20th day of September 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 September 20, 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.