

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

ELECTRONIC INVESTIGATION OF THE)	
PROPOSED POLE ATTACHMENT TARIFFS OF)	CASE NO.
RURAL ELECTRIC COOPERATIVE)	2022-00106
CORPORATIONS)	

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 information provided in response to Commission Staff’s First Request for Information (“Staff’s First Request”), respectfully states as follows:

1. The Commission issued its Order establishing this case on March 30, 2022.
2. Commission Staff issued its Staff’s First Request April 22, 2022.
3. Request No. 11 from Staff’s First Request states as follows:

Describe in detail the current plan or policy regarding the inspection and replacement of aging or damaged poles in your system, and provide a copy of any such plan or policy that has been memorialized in writing.

4. In its response to Request No. 11, EKPC is providing a copy of its internal procedures for transmission infrastructure inspection practices.

5. The information and documents tendered by EKPC in response to Request No. 11 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.”

6. The Confidential Information contains extensive information that describes the internal policy and procedures of EKPC for its inspection and transmission maintenance practices. Public disclosure of this internal procedure would give third parties an advantage when bidding for some of these services and to also know the inner workings of EKPC’s maintenance and inspection procedures. Moreover, the information relates to the operation and maintenance of critical infrastructure necessary to operate EKPC’s bulk power grid and, if disclosed, would significantly aid malevolent third parties who might wish to sabotage, interfere with or impose mayhem on EKPC’s transmission system.

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 provide inspection and maintenance services. 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-embers’ End-Use Retail Members. Furthermore, the Company’s internal inspection procedures are considered proprietary and trade secret information as they contain sensitive business operations procedures, which if made available, would potentially harm EKPC and its Owner-Members. If released publicly, competitors would have insight into the internal operations of EKPC which they could then use and incorporate into their own inspection and business strategies, to the detriment of EKPC and its Owner-Members. More sinisterly, the information would enhance the likelihood that bad actors

could gain the requisite information to cause harm to EKPC's transmission system. EKPC's policies and procedures were developed over years of operation and implementation of best practices derived from decades of experience. Its internal processes, procedures, and policies should not be made public.

8. The Kentucky Open Records Act exempts the Confidential Information from public disclosure. *See* KRS 61.878(1)(c), (m). As set forth above, disclosure of the Confidential Information would permit an unfair advantage to third parties and elevate the likelihood of harm. 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). In addition to the express protections from disclosure afforded by KRS 61.878(1)(c) and (m), precedent also demonstrates that the Commission consistently and correctly recognizes that the public disclosure of internal corporate policies and procedures would violate the Open Records Act.¹ 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.

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

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. May 29, 2018) (governance and commodity procurement policies); *In the Matter of the Electronic Application of Duke Energy Kentucky, Inc. for: 1) An Adjustment of the Electric Rates; 2) Approval of an Environmental Compliance Plan and Surcharge Mechanism; 3) Approval of New Tariffs; 4) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities and 5) All Other Required Approvals and Relief*, Order, Case No. 2017-00321 (Ky. P.S.C. May 4, 2018) (accounting policies); *In the Matter of the Application of Nolin Rural Electric Cooperative Corporation for a General Rate Increase*, Order, Case No. 2016-00367 (Ky. P.S.C. Mar. 13, 2019); *In the Matter of the Electronic Application of Duke Energy Kentucky, Inc. for: 1) An Adjustment of the Electric Rates; 2) Approval of an Environmental Compliance Plan and Surcharge Mechanism; 3) Approval of New Tariffs; 4) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities and 5) All Other Required Approvals and Relief*, Order, Case No. 2017-00321 (Ky. P.S.C. May 4, 2018).

any other intervenors with a legitimate interest in reviewing the same for the sole purpose of participating in this case.

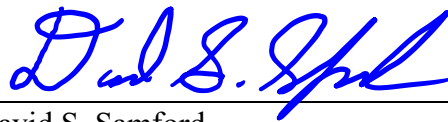
10. In accordance with the provisions of 807 KAR 5:001, Section 13(2), EKPC is filing one copy of the Confidential Information separately under seal. The filing of the Confidential Information is noted in the public version of EKPC's response to Request No. 11, which include redacted copies of such information.

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 indefinitely.

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 an indefinite period of time from the date of entry of such an Order.

This 5th day of May, 2022.

Respectfully submitted,

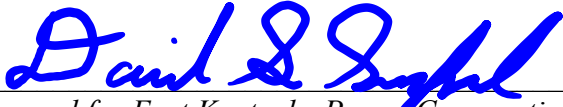


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CERTIFICATE OF SERVICE

This is to certify that the foregoing electronic filing is a true and accurate copy of the document being filed in paper medium; that the electronic filing was transmitted to the Commission on May 5, 2022; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that pursuant to the Commission's Order in Case No. 2020-00085 no paper copies of this filing shall be made.



Counsel for East Kentucky Power Cooperative, Inc.