

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(1)(c)(1), 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 Second Request for Information (“Staff’s Second 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 Second Request May 19, 2022.
3. Request No. 5 from Staff’s Second Request states as follows:
Provide any current joint use agreements.
4. In its response to Request No. 5, EKPC is providing copies of its current joint use agreements.
5. The information and documents tendered by EKPC in response to Request No. 5 are only being filed under seal since EKPC is requesting confidential treatment for the entirety of the documents. Collectively, this information and these documents are hereinafter referred to as the “Confidential Information.”

6. The Confidential Information contains extensive information that describes the terms and conditions regarding the relocation of EKPC's transmission line for the Ford Glendale Battery Plant and relocating certain facilities on LG&E/KU owned structures. This agreement is the result of extensive negotiations with LG&E/KU and contains sensitive and proprietary terms and conditions that resulted from these extensive negotiations. Public disclosure of this information will give any future companies to which EKPC would need to negotiate collocation terms and conditions an unfair advantage in those negotiations. The Confidential Information also contains information regarding the terms and conditions regarding the collocating of fiber optic on EKPC facilities. Public disclosure of the terms and conditions of this agreement and its Amendment, would give third parties an advantage when negotiating for this same or similar services and could also affect any bids received for this same type of services and to also know the inner workings of EKPC's procedures for joint use agreement negotiations. Furthermore, the agreement has a confidentiality provision between the parties.

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 contractors, entities seeking collocation services and competitors a tremendous competitive advantage in the course of ongoing and future negotiations for joint use agreements. 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. If these agreements are released publicly, competitors would have insight into the negotiation process of EKPC which they could then use and incorporate into their own joint use agreement negotiations, to the detriment of EKPC and its Owner-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 to the detriment of EKPC, its Owner-Members and its Owner-Members' retail customers. 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), precedent also demonstrates that the Commission has correctly recognized that the public disclosure of joint use agreements and similar agreements, such as the ones EKPC is tendering 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 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(3), EKPC respectfully requests that the Confidential Information be withheld from public disclosure for the term of each agreement plus five years.

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: Electronic Application of Louisville Gas and Electric Company for an Adjustment of its Electric and Gas Rates and for Certificates of Public Convenience and Necessity*, Case No. 2016-00371, Order (Ky. PSC Dec. 10, 2018). (pole attachment agreements).

from public disclosure to the unredacted copies of Confidential Information, which is filed herewith under seal, for the term of each agreement plus five years.

This 2nd day of June, 2022.

Respectfully submitted,

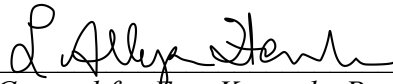


David S. Samford
L. Allyson Honaker
GOSS SAMFORD, PLLC
2365 Harrodsburg Road, Suite B325
Lexington, KY 40504
(859) 368-7740
david@gosssamfordlaw.com
allyson@gosssamfordlaw.com

Counsel for East Kentucky Power Cooperative, Inc.

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 June 2, 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.