

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

AN ELECTRONIC EXAMINATION OF THE)	
APPLICATION OF THE FUEL ADJUSTMENT)	
CLAUSE OF EAST KENTUCKY POWER)	CASE NO. 2023-00009
COOPERATIVE, INC. FROM NOVEMBER 1, 2020)	
THROUGH OCTOBER 31, 2022)	

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 certain documents filed in response to four requests for information in the above-captioned proceeding, respectfully states as follows:

1. The Commission issued its Second Information Request on October 5, 2023.
2. Request No. 5 from the October 5th request for information states as follows:
 5. Refer to Tucker Direct Testimony page 5, lines 21-23.
Provide the July 2023 report as referenced.
3. In its response to Request No.5, EKPC is providing a copy of its 2023 Integration Annual Report that is required to be filed annual pursuant to PSC Case No. 2012-00169. This was also filed confidentially with the Commission on July 31, 2023.
4. Request No. 25 from the October 5th request for information states as follows:
 25. In an Excel spreadsheet format with all formulas, columns, and rows unprotected and fully accessible, for the period under review and when the units are available to run.

- a. Provide the bid status (i.e. economic dispatch, must-run, etc.), by day, of EKPC's coal generating units into PJM's day ahead market. Explain the reason for each bid status.
- b. Provide the price per MWH, by day, of EKPC's generating units bid into PJM's day ahead market and the corresponding LMP indicating whether or not the unit cleared the market.
- c. In a separate spreadsheet Tab, provide a graphical representation of the information in part b. above.

5. In its response to Request No. 25, EKPC is providing an Excel spreadsheet containing information responsive to the request for information.

6. The information and documents tendered by EKPC in response to Request No. 5 is being tendered in redacted form in the public version of EKPC's filing and in an unredacted form filed under seal herewith. The Excel spreadsheet being provided by EKPC in response to Request No. 25 is not being filed in redacted form since EKPC is asking for confidential treatment for the entire document. Collectively, this information and these documents are hereinafter referred to as the "Confidential Information."

7. The Confidential Information contains information about EKPC's net savings from its integration into PJM and 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). This information is commercially sensitive and proprietary and could be used by competitors to their advantage in the PJM energy market. The Confidential Information also contains commercially sensitive information regarding EKPC's coal unit market status including the bid status of its coal generating units and price per MWH of EKPC's generating units bid into PJM's day ahead market.

8. The Confidential Information is retained by EKPC on a “need-to-know” basis and is not publicly available. If disclosed, 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.

9. 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. 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). 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. Indeed, the Commission has routinely recognized the confidential nature of the information included in the responses and has afforded confidential treatment to identical information in a prior proceeding.¹

10. 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 the same for the sole purpose of participating in this case.

11. 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 Nos. 5 and 25.

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 November 1, 2021 Through April 30, 2022*, Order, Case No. 2022-00264 (Ky. P.S.C., February 14, 2023); *In the Matter of: 2022 Integrated Resource Plan of East Kentucky Power Cooperative, Inc.*, Order, Case No. 2022-00098 (Ky. P.S.C., August 7, 2023).

12. 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 a period of ten years. This will assure that the Confidential Information – if disclosed after that time – will be less likely to include information that continues to be commercially sensitive so as to impair the interests of EKPC if publicly disclosed. However, EKPC reserves the right to seek an extension of the grant of confidential treatment if it is necessary to do so at that time.

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 a period of ten years from the date of entry of such an Order.

This 20th day of October, 2023.

Respectfully submitted,




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CERTIFICATE OF SERVICE

This is to certify that the electronic filing was transmitted to the Commission on October 20, 2023 and that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding. Pursuant to the Commission's July 22, 2021 Order in Case No. 2020-00085 no paper copies of this filing will be made.



Counsel for East Kentucky Power Cooperative, Inc.