

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

<i>Electronic</i> APPLICATION OF EAST)	
KENTUCKY MIDSTREAM, LLC FOR)	Case No.
APPROVAL OF A PROPOSED TARIFF)	2023-00112
UNDER 807 KAR 5:026, SECTION 9)	

Motion for Confidential Treatment of Information

East Kentucky Midstream, LLC (“EKM”) respectfully submits this Motion pursuant to 807 KAR 5:001, § 13, for confidential treatment of certain information filed concurrently with its application for approval of a proposed farm tap tariff in this case. In support of this Motion, EKM states as follows:

1. On this date, EKM filed with the Commission its application for approval of proposed farm tap tariff, with accompanying exhibits.
2. EKM seeks confidential treatment for the material terms contained in the asset purchase agreements, one of which is dated January 2021 and the other is dated March 2021 (collectively “Agreements”) filed as Application Exhibit A. Material terms include information such as the purchase amounts and other dollar amounts – items that are not simply boilerplate and are uniquely essential to negotiation of each Agreement. The publicly-filed Agreements have been redacted; unredacted copies with material terms highlighted have been provided under seal.
3. The material terms of the Agreements should be kept confidential because these contain propriety information. EKM should not be forced to share this information publicly to its possible detriment. Public accessibility would cause EKM harm because disclosure would

give other potential purchasers and competitors a “leg-up” regarding the assets discussed in the Agreements. Such disclosure would also be costly in the future when attempts acquire similar assets are made and EKM’s ability to negotiate terms specific to a particular system and its circumstances has been compromised.

4. Under KRS 61.878(1)(c)(1), commercial information (such as that contained in the Agreements) generally recognized as confidential is protected if disclosure would cause competitive injury and permit competitors an unfair commercial advantage. Additionally, the information in the Agreements is not publicly disseminated and public disclosure of this information would harm EKM. The Agreements reveal commercially sensitive information regarding the internal ability and workings of EKM — in particular, how EKM evaluates certain systems and responds to various issues that arise in similar purchase agreements, including the negotiated prices and terms. The price terms negotiated, form provisions, and related acquisition strategy then demonstrate innovative and proprietary processes developed through experience and used by EKM to develop these systems and networks. EKM would suffer a business injury if forced to disclose the material terms in the Agreements. For example, if disclosed, the Agreements would give competitors sensitive information about, *e.g.*, (a) acquisition strategy and capability and (b) analysis of systems, their problems, and potential.

5. If the Commission’s tentative assessment is that any of the information identified herein is not exempt from disclosure as confidential commercial information, it must hold an evidentiary hearing to protect EKM’s due process rights and permit an opportunity to create a complete record enabling the Commission to decide this confidentiality request.

6. In compliance with 807 KAR 5:001 § 13(2)(a)(3), EKM is filing with the Commission one copy of the Agreements, entirely unredacted and with highlighting of the

material for which confidential treatment is sought. The unredacted copies are filed under seal pursuant to the instructions regarding confidential filings in the 3/24/20 Order issued in KY. PSC Case No. 2020-00085; redacted pages have been publicly filed with the electronic copy of EKM's Response.

7. Section 13(2)(a)(2) of 807 KAR 5:001 provides that a motion for confidential treatment shall state the time period in which the material should be treated as confidential and the reasons for this time period. EKM respectfully submits that five (5) years from the date of the filing of the Response is a reasonable period of time for the material in these documents to be treated as confidential in the light of competitive conditions in the natural gas industry.

WHEREFORE, EKM respectfully requests that the Commission grant confidential treatment of the information described herein, filed under seal and shown as redacted in the publicly-filed Application and attachments thereto.

Respectfully submitted,

/s/ Kathryn A. Eckert

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