

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF EAST)	
KENTUCKY POWER COOPERATIVE, INC. FOR)	
APPROVAL TO AMEND ITS ENVIRONMENTAL)	
COMPLIANCE PLAN AND RECOVER COSTS)	CASE NO.
PURSUANT TO ITS ENVIRONMENTAL)	2024-00109
SURCHARGE, AND FOR THE ISSUANCE OF)	
A CERTIFICATE OF PUBLIC CONVENIENCE)	
AND NECESSITY AND OTHER RELIEF)	

MOTION FOR CONFIDENTIAL TREATMENT

Comes now East Kentucky Power Cooperative, Inc., (“EKPC” or the Company”) by and through the undersigned counsel, pursuant to KRS 278.020, 807 KAR 5:001, 807 KAR 5:120 and other applicable law and respectfully moves the Commission to afford confidential treatment to certain information filed by EKPC in response to the Commission Staff’s First Request for Information (“Staff’s First Request”) Item 9. In support of this request, EKPC states as follows:

1. On May 17, 2024, EKPC filed an application to amend its Environmental Compliance Plan (“Compliance Plan”), recover costs associated with the Compliance Plan, and a Certificate of Public Convenience and Necessity (“CPCN”) for the construction of facilities related to the Compliance Plan. On June 26, 2024, Staff’s First Request was issued. EKPC is filing responses to those requests for information contemporaneously herewith.

2. EKPC requests the Commission to grant confidential protection to certain information being filed by EKPC in response to Item 9. The response to Item 9 required EKPC to

provide the requests for proposal (“RFP”) for beneficial use of the Spurlock Unit 1 and Unit 2 gypsum. Additionally, the response to Item 9 required EKPC to provide the evaluation and rankings of the responses to the RFP. This information is collectively referred to as the “Confidential Information.”

3. KRS 61.878(1)(c)(1) permits confidential protection for records that are generally recognized as confidential or proprietary, and if disclosed would permit an unfair commercial advantage to competitors of the disclosing party. The Kentucky Open Records Act and applicable precedent exempts the Confidential Information from disclosure, including KRS 61.878(1)(a); KRS 61.878(1)(c)(1); *Zink v. Department of Workers Claims, Labor Cabinet*, 902 S.W.2d 825 (Ky. App. 1994); *Hoy v. Kentucky Industrial Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995). The Confidential Information meets both the statutory and common law standards for confidential protection.

4. The responses to the RFP are generally recognized as confidential and proprietary. EKPC operates in a competitive environment and the pricing of contracts would lead to an unfair commercial advantage to competitors if the bids are disclosed. Additionally, as of the date of this filing, no bid has been selected and no contract has been executed related to the gypsum. Permitting disclosure of the ranking of the proposals contained in the Response to Item 9 would undermine the negotiation process and put EKPC at a competitive disadvantage.

5. 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 that highlights the confidential material for the Response to Item 9. EKPC is not providing a redacted copy of the RFP responses, but only filing the documents under seal because EKPC is requesting confidential treatment for the entirety of the documents.

6. Also, in accordance with the provisions of 807 KAR 5:001 Section 13(2), EKPC respectfully requests indefinite confidential treatment for the unselected bids. At the time the contract is executed, EKPC does not object to disclosure of the winning bid and selection criteria.

7. If, and to the extent, the Confidential Information becomes publicly available or otherwise no longer warrants confidential treatment, EKPC will notify the Commission and seek to have confidential protection 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 specific Confidential Information described herein for an indefinite period.

This 16th day of July, 2024.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

This is to certify that the electronic filing was transmitted to the Commission on July 16, 2024, 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.