

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN ELECTRONIC EXAMINATION OF THE)	
APPLICATION OF THE FUEL ADJUSTMENT)	CASE NO.
CLAUSE OF EAST KENTUCKY POWER)	2024-00145
COOPERATIVE, INC FROM MAY 1, 2023)	
THROUGH OCTOBER 31, 2023)	

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 requests 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 Order establishing this case on August 2, 2024, and included the initial set of requests for information to EKPC as an Appendix to that Order.
2. Commission Staff’s First Request for Information (Staff’s First Request), Item 4 required EKPC to provide bid tabulation sheets from the solicitations of coal during the time period at issue. Staff’s First Request, Item 11(a) and Item 11(b) requested any written policies or procedures related to fuel procurement.
3. Contemporaneously with this motion, EKPC is providing the bid tabulation sheets in response to Request No. 4 and the current Fuel and Emissions Department Procurement Manual (“Manual”) which was updated on November 30, 2022, and Policy No. 405, Hedging which was updated on March 13, 2023, in response to Request No. 11(a) and No. 11(b). The information and documents tendered by EKPC in these responses are being tendered only in unredacted form filed

under seal herewith since EKPC is requesting confidential protection of the entirety of the documents. This information is hereinafter referred to as the “Confidential Information.”

4. The Confidential Information is exempt from disclosure pursuant to KRS 61.878(1)(c). The documents contain extensive information that describes the business planning assumptions and procurement strategies of EKPC with regard to fuel and hedging. The Confidential Information contains commercially sensitive information regarding EKPC’s strategies for the procurement of fuel which would lead to a commercial advantage for competitors if disclosed. Additionally, the bid tabulation sheets, the Manuel, and Policy No. 405 have been granted confidential treatment by the Commission in the past.¹

5. 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 procure fuel. 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.

6. 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

¹ Case No. 2022-00264, *An Electronic Examination of the Application of the Fuel Adjustment Clause of East Kentucky Power Cooperative, Inc. from November 1, 2021 through April 30, 2022*, February 14, 2023 Order (Ky. PSC Feb. 14, 2023) and Case No. 2021-00293, *An Electronic Examination of the Application of the Fuel Adjustment Clause of East Kentucky Power Cooperative, Inc. from November 1, 2020 through April 30, 2021*, April 17, 2023 Order (Ky. PSC April 17, 2023).

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.

7. 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.

13. 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 documents being filed under seal are not highlighted because confidential treatment is being requested for the entirety of the documents. Since EKPC is requesting confidential protection for the entirety of the documents a redacted copy is not being provided in the public record; however, the filing of the Confidential Information is noted in the public version of EKPC’s response to Request No. 11.

14. 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 an indefinite period because the manual and policy are updated periodically and will remain commercially sensitive.

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 from the date of entry of such an Order.

This 26th day of August 2024.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that the electronic filing was transmitted to the Commission on August 26, 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.

Heather S. Temple

Counsel for East Kentucky Power Cooperative, Inc.