

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE ELECTRONIC APPLICATION OF)	
EAST KENTUCKY POWER COOPERATIVE,)	
INC. FOR 1) A CERTIFICATE OF PUBLIC)	CASE NO.
CONVENIENCE AND NECESSITY TO)	2024- 00310
CONSTRUCT A NEW GENERATION)	
RESOURCE; 2) A SITE COMPATIBILITY)	
CERTIFICATE; AND 3) OTHER GENERAL RELIEF)	

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 Commission Staff’s Third Request for Information (“Staff’s Third Request”), Joint Intervenors’ Second Supplemental Request for Information (“Joint Intervenors’ Supplemental Request”), and the Sierra Club’s Third Request for Information (“Sierra Club’s Third Request”) and respectfully states as follows:

1. On September 20, 2024, EKPC filed an application for a Certificate of Public Convenience and Necessity (“CPCN”) to construct a new generation resource and for a Site Compatibility Certificate for the project. The Commission amended the Procedural Schedule allowing for additional requests for information that were filed on February 6, 2025.
2. Contemporaneously with this Motion, EKPC is providing its responses to the requests for information. Contained in those responses are various documents and attachments

that EKPC believes should be granted confidential treatment. EKPC is requesting confidential treatment of the following: The

- The response to Staff’s Third Request, Item 7: details regarding negotiations for property to be purchased for the Liberty Rice facility;
- The attachment provided in response to Staff’s Third Request, Item 11: a third-party study related to the project;
- The attachments provided in response to Joint Intervenors’ Supplemental Request, Items 19b and 19c: contains three documents that provide the capacity sales, off-system sales, and heat rates;
- The attachments provided in response to Joint Intervenors’ Supplemental Request, Item 21e: contracts between EKPC and a third-party;
- The attachments provided in response to Joint Intervenor’s Supplemental Request, Item 33 contains various responses to Request for Proposal (“RFP”) EKPC issued for the Liberty RICE project; and,
- The attachments provided in response to Sierra Club’s Third Request, Items 15a and 15b contains responses and other information to a RFP issued by EKPC .

The attachments and the information in the responses are referred to herein collectively as the “Confidential Information” for which protection is sought pursuant to KRS 61.878(1)(a) and KRS 61.878(1)(c)(1). Disclosure of the Confidential Information would permit an unfair commercial advantage to third parties or present an unnecessary and unreasonable infringement upon EKPC’s legitimate privacy concerns.

3. 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). As stated above, the public disclosure of the Confidential Information would potentially harm EKPC's competitive position in the marketplace which would be to the detriment of EKPC. Additionally, the Confidential Information is publicly unavailable, and its confidentiality is critical to EKPC's effective execution of business decisions and strategy. For these reasons, the Confidential Information satisfies both the statutory and common law standards for affording confidential treatment.

4. The Confidential Information in the Response to Staff's Third Request, Item 7 contains details of EKPC's negotiations with landowners regarding the prices for property. EKPC is requesting confidential treatment of this response pursuant to KRS 61.878(1)(a) and KRS 61.878(1)(c)(1). EKPC is requesting the information regarding the contracts and the map be granted confidential protection pursuant to KRS 61.878(1)(c)(1) because the contracts have not been executed at this point. If EKPC is forced to disclose this information before the contracts are executed, it will face a commercial disadvantage because others will know the negotiated prices. Additionally, EKPC believes the names of the property owners should be granted confidential treatment pursuant to KRS 61.878(1)(a) because if disclosed it would be an unwarranted invasion of these individuals' personal privacy.

5. The attachment provided in response to Staff's Third Request, Item 11 contains a third-party study related to the construction of the Liberty RICE facility. EKPC is requesting confidential treatment of this study pursuant to KRS 61.878(1)(c)(1) because it is confidential and proprietary to the third-party that created the study. Additionally, the study is not final and if disclosed at this point it could cause EKPC to face a commercial disadvantage.

6. The attachments provided in response to Joint Intervenors' Supplemental Request, Items 19b and 19c is three documents that provide the capacity sales, off-system sales, and heat rates. EKPC believes this information should be granted confidential treatment pursuant to KRS 61.878(1)(c)(1) because if this information regarding energy sales and heat rates were disclosed EKPC's competitors could gain a commercial advantage.

7. The attachments provided in response to Joint Intervenors' Supplemental Request, Item 21e contains two contracts regarding the RICE engines for the project. These are initial contracts and have not been finalized. EKPC is requesting confidential treatment of this information pursuant to KRS 61.878(1)(c)(1) because if these initial contracts are disclosed EKPC would face a commercial disadvantage. In addition, each of these contracts have information redacted in the copy filed under seal. The information is proprietary, trade secret, confidential information of the counter party to the agreement. According to the confidentiality agreement between EKPC and the counterparties, EKPC cannot share this information without the counterparties' permission. EKPC was not granted permission to disclose the information that is redacted in the confidential version.

8. The attachments provided in response to Joint Intervenor's Supplemental Request, Item 33 contains responses to the RFP EKPC issued for the Liberty RICE project. EKPC is requesting confidential treatment of these attachments pursuant to KRS 61.878(1)(c)(1) because the contracts for this project have not been finalized. If the responses to the RFP were disclosed and EKPC then had to rebid the project, it would face a commercial disadvantage because the companies bidding would know what the previous bids were. Please not, the version of these documents that are being filed under seal contain additional redactions. These redactions related

to other projects for which EKPC requested bids. The redacted information is in no way responsive to the request and is not being disclosed to any party.

9. The attachments provided in response to Sierra Club's Third Request, Items 15a and 15b contains responses and other information to a RFP issued by EKPC for the RICE engines. EKPC is requesting confidential treatment of these attachments pursuant to KRS 61.878(1)(c)(1) because as stated in the request regarding Joint Intervenor's Supplemental Request, Item 21e, the contracts have not been finalized and if this information is disclosed it could cause a competitive disadvantage to EKPC if it ultimately must request new bids.

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 same for the sole purpose of participating in this case. EKPC reserves the right to object to providing the Confidential Information to any intervenor if said provision could result in liability to EKPC under any Confidentiality Agreement or Non-Disclosure Agreement.

11. In accordance with the provisions of 807 KAR 5:001, Section 13(2), EKPC is filing separately under seal one (1) unredacted copy of the Confidential Information. None of the documents contain highlights because EKPC is requesting confidential treatment for the entirety of all of the documents. In the public record, EKPC is noting the filing of the confidential information.

12. In accordance with the provisions of 807 KAR 5:001, Section 13(2), EKPC respectfully requests that the Confidential Information be withheld from public disclosure for an indefinite period.

13. If, and to the extent, the Confidential Information becomes publicly available or otherwise no longer warrants confidential treatment, EKPC will notify the Commission and have its confidential status 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 Confidential Information described herein for ten (10) years or until the contracts are fully executed.

This 20th day of February 2025.

Respectfully submitted,

Heather S. Temple

L. Allyson Honaker
Heather S. Temple
Meredith Cave
HONAKER LAW OFFICE, PLLC
1795 Alysheba Way, Suite 1203
Lexington, KY 40509
(859) 368-8803
allyson@hloky.com
heather@hloky.com
meredith@hloky.com

Counsel for East Kentucky Power Cooperative, Inc.

CERTIFICATE OF SERVICE

This is to certify that the foregoing electronic filing was transmitted to the Commission on February 20, 2024, and that there are no parties that the Commission has excused from participation by electronic means in this proceeding. Pursuant to prior Commission Orders, no paper copies of this filing will be made.

Heather S. Temple

Counsel for East Kentucky Power Cooperative, Inc.