

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE ELECTRONIC APPLICATION OF)	
EAST KENTUCKY POWER COOPERATIVE,)	
INC. FOR 1) CERTIFICATES OF PUBLIC)	CASE NO.
CONVENIENCE AND NECESSITY TO)	2024-00370
CONSTRUCT GENERATION RESOURCES;)	
2) A SITE COMPATIBILITY CERTIFICATE)	
RELATING TO THE SAME; 3) APPROVAL)	
OF DEMAND SIDE MANAGEMENT TARRIFS;)	
AND 4) 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 information filed in response to Appalachian Citizens Law Center, Kentuckians for the Commonwealth, Kentucky Solar Energy Society, and the Mountain Association’s (collectively “Joint Intervenors”) First Request for Information (“Joint Intervenor’s First Request”).

1. On November 20, 2024, EKPC filed an application for a Certificate of Public Convenience and Necessity (“CPCN”) to construct new generation resources, a Site Compatibility Certificate for one of the projects, approval of demand side management (“DSM”) tariffs, and

other general relief.¹ On December 20, 2024, Joint Intervenor's First Request with issued. However, the Commission did not grant intervention until January 6, 2025, and therefore EKPC did not tendered its responses pursuant to the December 5, 2024 Order procedural dates.

2. In response to the Joint Intervenor's First Request, EKPC is providing numerous documents and attachments that it believes should be granted confidential treatment. These include:

- The attachment provided in response to Joint Intervenor's First Request, Item 3(a);
- The Excel document provided in response to Joint Intervenor's First Request, Item 4(c), Item 4(e), Item 4(f), Item 4(h), and Item 4(k);
- The response to Joint Intervenor's First Request, Item 13(a);
- The attachment provided in response to Joint Intervenor's First Request, Item 19;
- The table provided in response to Joint Intervenor's First Request, Item 32(a);
- The Excel document provided in response to Joint Intervenor's First Request, Item 39(a)-(c);
- The response to Joint Intervenor's First Request, Item 44(a)-(b); and
- The response to Joint Intervenor's First Request, Item 45(a)-(b).

These items are referred to herein collectively as the "Confidential Information" for which protection is sought under 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*

¹ The Application was deemed completed and accepted for filing on November 25, 2024.

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. In response to Joint Intervenor's First Request, Item 3(a), EKPC provided an attachment that contains economic information for the Cooper Station that EKPC first provided in Case No. 2022-00098, *Electronic 2022 Integrated Resource Plan of East Kentucky Power Cooperative, Inc.* EKPC is providing the same document in its entirety for which the Commission previously granted confidential treatment.² The same reasoning applies in this filing, if EKPC is required to disclose its coal unit capacity, availability, heat rate, outages, expenses, and fuel costs it could allow market competitors to unfairly compete against EKPC by using cost figures to determine EKPC's pricing and this information should be granted confidential treatment pursuant to KRS 61.878(1)(c)(1).

5. In response to Joint Intervenor's First Request, Item 4(c), Item 4(e), Item 4(f), Item 4(h), and Item 4(k), EKPC provided an Excel attachment that contains projected fuel costs, heat rate, generation, capacity factor, and energy revenue in dollars for the Cooper generating units from 2025-2039. EKPC is requesting confidential treatment for this information pursuant to KRS 61.878(1)(c)(1) because public disclosure of this information would create an unfair commercial

² Case No. 2022-00098, *Electronic 2022 Integrated Resource Plan of East Kentucky Power Cooperative, Inc.*, August 7, 2023 Order at 12 (Ky. PSC August 7, 2023).

advantage to competitors because the projected costs, capacity factors, and revenue of EKPC's generation would be disclosed.

6. In the response to Joint Intervenor's First Request, Item 13(a) required EKPC to list additional renewable energy projects EKPC will be pursuing based on investment tax credits and New Era funding. EKPC is requesting confidential treatment of this information pursuant to KRS 61.878(1)(c)(1). The projects are still in development and have not been publicly announced. EKPC is still in the process of issuing requests for proposals ("RFP") for the contracts that will be needed to construct the projects. If these projects are disclosed bidders in the RFP process could use this information to raise prices to the detriment of EKPC and its member owners.

7. In the response to the Joint Intervenor's First Request, Item 19, EKPC provided its Strategic Plan. EKPC is requesting confidential treatment of this response pursuant to KRS 61.878(1)(c)(1) because this information could allow competitors a commercial advantage because they will understand the inner workings of EKPC and can use that information to their benefit and the harm of EKPC and its members.

8. In response to Joint Intervenor's First Request, Item 32(a), EKPC provided the annual forecasted change in the wholesale power costs. EKPC is requesting confidential treatment of this information pursuant to KRS 61.878(1)(c)(1). This information if disclosed would create an unfair commercial advantage for competitors. Others would know EKPC's projected wholesale rates and could use that information to the detriment of EKPC.

9. In response to the Joint Intervenor's First Request, Item 39(a)-(c), EKPC is providing an Excel document that calculates the non-fuel O&M savings, reduction of variable operating costs of burning a 50% natural gas blend, and reduction of maintenance cost of burning of a 50% natural gas blend. EKPC believes this information should be granted confidential

treatment pursuant to KRS 61.878(1)(c)(1). If this information is disclosed competitors would know the advantages EKPC believes will be achieved from the co-firing projects and could use this information to their advantage.

10. The response to Joint Intervenor's First Request, Item 44(a)-(b), contains estimated capital costs of the gas lateral and infrastructure investments and an analysis of how these estimated capital costs factor into the Thermal Unit Net Cost Benefit values for the Spurlock co-fire. EKPC is requesting confidential treatment for these responses pursuant to KRS 61.878(1)(c)(1) because if these estimated capital costs are disclosed suppliers of labor and material for the projects would know what EKPC's expected costs for the project are and could raise prices, harming EKPC and ultimately the members. Additionally, EKPC is not the owner of the gas lateral pipeline and cannot disclose the cost estimates of a third-party.

11. The response to Joint Intervenor's First Request, Item 45(a)-(b), contains estimated capital costs of the gas lateral and infrastructure investments and an analysis of how these estimated capital costs factor into the Thermal Unit Net Cost Benefit values for the Cooper co-fire. EKPC is requesting confidential treatment for these responses pursuant to KRS 61.878(1)(c)(1) because if these estimated capital costs are disclosed suppliers of labor and material for the projects would know what EKPC's expected costs for the project are and could raise prices, harming EKPC and ultimately the members. Additionally, EKPC is not the owner of the gas lateral pipeline and cannot disclose the cost estimates of a third-party.

12. The Confidential Information consists of sensitive and proprietary information that is retained by EKPC on a "need-to-know" basis. The Confidential Information is distributed within EKPC only to those employees who must have access for business reasons and is generally recognized as confidential and proprietary in the energy industry.

13. 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.

14. 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 Excel files being provided in response to Joint Intervenor's First Request, Item 4(c), Item 4(e), Item 4(f), Item 4(h), Item 4(k), and Item 39(a)-(c). The Excel files are not being highlighted because confidential treatment is being sought for the entirety of the files. EKPC is filing an unredacted and highlighted version of the response to Joint Intervenor's First Request, Item 13(a) and Item 32(a). EKPC is filing an unredacted version of the responses to Joint Intervenor's First Request, Item 44 and Item 45. EKPC is not filing a highlighted version of the Response to Joint Intervenor's First Request, Item 44 and Item 45 because confidential treatment is being requested for the entirety of the responses. EKPC is noting in the public version of the filing all of the confidential responses.

15. 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.

16. 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 an indefinite period.

This 10th day of January 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that the foregoing electronic filing was transmitted to the Commission on January 10, 2025, 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.