

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 TARIFFS;)	
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 as supplemental responses to Appalachian Citizens Law Center, Kentuckians for the Commonwealth, Kentucky Solar Energy Society, and the Mountain Association’s (collectively “Joint Intervenors”) Second Request for Information (“Joint Intervenors’ Second 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 January 17, 2025 Joint Intervenors’ Second Request was issued.

2. Pursuant to the Commission’s May 15, 2025 Order granting the Joint Intervenors’ motion to compel, EKPC is filing a copy of the Reaction Engineering International’s EKPC Spurlock 3 Co-Fire Project Final Report (“REI Report”) under seal. The REI Report contains information that should be granted confidential treatment. This document is referred to herein 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 and present an unnecessary and unreasonable infringement upon EKPC’s legitimate privacy concerns. It also reveals strategy information regarding EKPC’s plan to develop its Kentucky plan for compliance with the Green House Gas Rule (“GHG”). It is EKPC’s believe that this information is being sought by the Joint Intervenors as it affords them the means and opportunity to collaterally attack any air permitting work that EKPC may undertake in the future or that the Energy and Environment Cabinet may undertake in compliance with federal air regulations. Pursuant to the Reply in Support of this Motion as well as the Joint Intervenors Response to this Motion, EKPC is filing a redacted, confidential version of the REI Report so that confidential copies can be provided to the parties.

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 harm EKPC’s competitive position in

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

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 the supplemental response to Joint Intervenor's Second Request, Item 47(c), EKPC is providing the complete REI Report, with portions pertaining to strategy and would hinder EKPC's negotiations redacted. The REI Report contains the privileged and confidential conclusions of REI regarding the cofiring of Spurlock Station. Although EKPC is providing the document, EKPC is only waiving the attorney-client privilege that applies to this document for this proceeding, the information contained in the REI Report should be treated as highly confidential business information because it contains information that would provide a competitive advantage to third parties in the utility industry if released, pursuant to KRS 61.878(1)(c)(1). The REI Report was prepared at the direction of counsel to assist in developing EKPC's strategy for compliance with the GHG Rule and the state's compliance plan.

5. 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. The Confidential Information is not publicly available and was only provided to regulatory counsel by EKPC's environmental counsel after the Commission's May 15, 2025 Order. EKPC's compliance with the Commission's May 15, 2025 Order should not be viewed as EKPC's waiver of claiming attorney/client or work product privilege for documents in the future. EKPC is complying with the Commission's May 15, 2025 Order only to avoid delays in the processing of this proceeding.

6. Although EKPC is providing the redacted confidential version to the parties in this proceeding pursuant to a confidentiality agreement, EKPC views the REI Report as highly confidential information and is only providing a copy of the unredacted version to the Commission under seal. EKPC will continue to make a copy of the REI Report available for viewing for the intervenors in this proceeding. The REI Report can be viewed either at EKPC's headquarters in Winchester, Kentucky or at its counsel's office in Lexington, Kentucky. EKPC would not object to a party viewing the REI Report at the Commission's Office in Frankfort, Kentucky. During the viewing, no photocopies, screenshots, pictures or any other duplication of the REI Report will be permitted. No camera phones or other photographic devices will be allowed into the viewing room with the REI Report.

7. Releasing this information, even to the Joint Intervenors (let alone the public at large) creates a consequential risk that detrimental harm to EKPC and its Owner-Members will follow from giving Joint Intervenors insight into EKPC's strategies that are otherwise unavailable to them and that were prepared in anticipation of litigation under the direction of counsel. For avoidance of doubt, should the intervenors use the information being disclosed in this filing in any other matter or proceeding, which would violate the terms of the confidentiality agreement between them and EKPC, EKPC reserves the right to seek sanctions, injunctive relief and all other available remedies and causes of action from the Commission and all courts of competent jurisdiction. This highly confidential information reveals, in part, EKPC's strategy in upcoming negotiations regarding the GHG Rule and EKPC's compliance and state specific plan for compliance with same.

8. 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 information provided in its supplemental

response to Item 47(c). This document does not contain highlights since confidential treatment is being sought for the entirety of the document. EKPC is noting in the public version of the filing the confidential response.

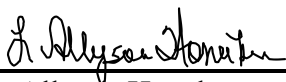
9. In accordance with the provisions of 807 KAR 5:001, Section 13(2), EKPC respectfully requests that the Confidential Information be withheld from public disclosure for an indefinite period.

10. 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 and the unredacted version of the REI Report that was filed on May 19, 2025 pursuant to a Motion for Confidential Treatment..

This 27th day of May 2025

Respectfully submitted,

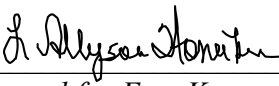


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CERTIFICATE OF SERVICE

This is to certify that the foregoing electronic filing was transmitted to the Commission on May 27, 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.



Counsel for East Kentucky Power Cooperative, Inc.