

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 Commission Staff’s Second Request for Information (“Staff’s Second Request”) and 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 16, 2025 Commission Staff issued its Second Request and on January 17, 2025 Joint Intervenors' Second Request was issued.

2. In response to Staff's Second Request Item 22, EKPC is providing confidential information that was previously filed and granted confidential treatment in EKPC's 2022 IRP filing, Case No. 2022-00098.

3. In response to the Joint Intervenors' Second Request, EKPC is providing numerous documents and attachments that it believes should be granted confidential treatment. These include:

- The attachment to Joint Intervenors' Second Request, Item 8(a) and 8(c);
- The attachment to Joint Intervenors' Second Request, Item 10(a);
- The attachment to Joint Intervenors' Second Request, Item 11;
- The response to Joint Intervenors' Second Request, Item 19(a);
- The six attachments provided in a zip file in response to Joint Intervenors' Second Request, Items 23 and 24;
- The Excel documents provided in response to Joint Intervenors' Second Request, Item 33(a)-(c);
- The two attachments provided in response to Joint Intervenors' Second Request, Item 34;
- The attachment provided in response to Joint Intervenors' Second Request, Item 47(c); and,

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

- The table provided in the response to Joint Intervenors’ Second Request, Item 56(a) and the Excel spreadsheet attachment provided in response to Joint Intervenors’ Second Request Item 56(c).

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.

4. 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.

5. In response to Staff’s Second Request, Item 22, EKPC is providing the confidential version of its 2022 IRP. This information was granted confidential protection by the Commission in Case No. 2022-00098 by Order dated August 7, 2023.²

6. In response to Joint Intervenors’ Second Request, Item 8(a) and 8(c), EKPC provided information regarding its long-range financial forecast. This information is highly

² *In the Matter of: Electronic 2022 Integrated Resource Plan of East Kentucky Power Cooperative, Inc.*, Case No. 2022-00098. Order. (Ky. P.S.C. Aug. 19, 2022).

sensitive and confidential information that contains forecasted financial information for EKPC. If this information is made publicly available it could cause potential harm to EKPC, its owner-members and ultimately the owner-members' end-use members. This information should be granted confidential treatment pursuant to KRS 61.878(1)(c)(1).

7. In response to Joint Intervenors' Second Request, Item 10(a), EKPC is providing an email correspondence pertaining to the requested information. EKPC has redacted the email addresses to the parties involved in the communication as well as the pricing information for the items discussed. The email addresses are personal information and are confidential and should be afforded confidential treatment pursuant to KRS 61.878(1)(a). The pricing information should also be afforded confidential treatment due to the competitive harm it could cause to both EKPC and the counter-party to the email correspondence pursuant to KRS 61.878(1)(c)(1).

8. In response to Joint Intervenors' Second Request, Item 11, EKPC provided an attachment that contains a table with pricing information from third-party vendors. This information was gathered for informational purposes and was evaluated by EKPC but not pursued for any current projects. This information is sensitive, pricing information for third-party vendor that if publicly disclosed could cause competitive harm to the third-party vendors that provided the information to EKPC. This information should be granted confidential treatment pursuant to KRS 61.878(1)(c)(1).

9. In response to Joint Intervenors' Second Request, Item 19(a), EKPC provided information regarding wholesale pricing. If EKPC is required to disclose its wholesale pricing information 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).

10. In response to Joint Intervenors' Second Request, Items 23 and 24, EKPC provided zip files containing the 2024 Economic Forecast. This is confidential and proprietary information of IHS Global and S&P Global. This is not information that is publicly available and is only available through a paid subscription. If this information is disclosed, it would disclose proprietary information of a third party and cause competitive harm to third-parties that are not parties to this proceeding. This information should be granted confidential treatment pursuant to KRS 61.878(1)(c)1.

11. In the response to Joint Intervenors' Second Request, Item 33(a), Item 33(b) and Item 33(c) required EKPC to provide Variable Operating and Maintenance ("VOM") costs. EKPC is requesting confidential treatment of this information pursuant to KRS 61.878(1)(c)1. The pricing information is highly sensitive and confidential information that could cause competitive harm to EKPC if it were to be disclosed. It is forecasted, forward-looking information that is not publicly available. This information should be granted confidential treatment pursuant to KRS 61.878(1)(c)1.

12. In the response to Joint Intervenors' Second Request, Item 34 EKPC provided two attachments. One attachment contains information in the feasibility report pertaining to mechanic reference documents. The details contained in this document are confidential, proprietary information of the manufacturer of the components. If this information is made publicly available it would cause competitive harm to the manufacturer who is not a party to this proceeding. This information should be granted confidential treatment pursuant to KRS 61.878(1)(c)1. The second attachment provided in EKPC's response to Joint Intervenors' Second Request, Item 34 is EKPC's Solar Generation Program Proposal Response. This attachment contains sensitive, highly confidential, proprietary information of EKPC pertaining to potential solar projects that EKPC is

currently still evaluating and negotiating. If this information were to be made publicly available it could cause competitive harm to EKPC by revealing pricing and other sensitive information for possible Engineering Procurement and Construction (“EPC”) proposal. This could harm EKPC’s ability to negotiate future EPC contracts if this proposal is ultimately not accepted and EKPC needed to negotiate a different EPC contract. This could cause harm to EKPC, its owner-members and ultimately the owner-members’ end-use members. This attachment should be granted confidential treatment pursuant to KRS 61.878(1)(c)1.

13. In the response to Joint Intervenors’ Second Request, Item 47(c), EKPC provided confidential information pertaining to the fluid dynamics modeling results which is proprietary information to a third-party that is not a party to this proceeding. If this information were made publicly available it would cause competitive hard to a third-party that is not a party to this proceeding. This information should be granted confidential protection pursuant to 61.878(1)(c)1.

14. In the response to Joint Intervenors’ Second Request, Item 56(a) and 56(c), EKPC is providing a table that shows the forecasted, forward looking pricing information and an Excel spreadsheet that contains the forecasted, forward looking capacity monetary amounts. This information is sensitive, proprietary information that if publicly disclosed could cause competitive harm to EKPC, its owner-members and ultimately its owner-members’ end-use members. This information should be afforded confidential treatment pursuant to KRS 61.878(1)(c)1.

15. 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.

16. 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.

17. 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 Intervenors' Second Request, Item 8(c), Item 23, Item 24, Item 33(a), Item 33(b), Item 33(c) and Item 56(c). The Excel files for Item 8(c), Item 23, Item 24, Item 33(a), Item 33(b), Item 33(c) and Item 56(c) 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 Intervenors' Second Request, Item 19(a). EKPC is filing an unredacted version of the responses to Joint Intervenors' Second Request, Item 8(a), Item 10(a), Item 11, Item 19(a), Item 23, Item 24, Item 34 and Item 47(c). EKPC is not filing a highlighted version of one of the attachments for the Response to Joint Intervenors' Second Request, Item 34 because confidential treatment is being requested for the entirety of the attachment which is titled *Confidential-JI2.34-EKPC Solar Generation Program Proposal*. In addition, EKPC is not filing a highlighted version of the attachment for Response to Joint Intervenors' Second Request Item 47(c) because confidential treatment is being requested for the entirety of the attachment which is titled *Confidential-JI2.47c*. EKPC is noting in the public version of the filing all of the confidential responses. In addition, EKPC is filing an unredacted version of the 2022 IRP information in response to Commission Staff's Second Request Item 22 which contains highlights. EKPC is not providing a redacted

version of this information as noted in its response since that information is already publicly available in the case record for Case No. 2022-00098.

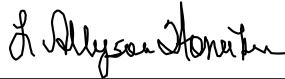
18. In accordance with the provisions of 807 KAR 5:001, Section 13(2), EKPC respectfully requests that the Confidential Information be withheld from public disclosure for an indefinite period.

19. 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 31st day of January 2025

Respectfully submitted,

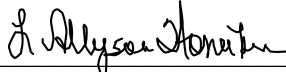


L. Allyson Honaker
Heather S. Temple
HONAKER LAW OFFICE, PLLC
1795 Alysheba Way, Suite 1203
Lexington, KY 40509
(859) 368-8803
allyson@hloky.com
heather@hloky.com

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 January 31, 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.