

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

**In the Matter of:**

<b>THE ELECTRONIC APPLICATION OF EAST</b>	)	
<b>KENTUCKY POWER COOPERATIVE, INC.</b>	)	
<b>FOR A GENERAL ADJUSTMENT OF RATES,</b>	)	<b>CASE NO.</b>
<b>APPROVAL OF DEPRECIATION STUDY,</b>	)	<b>2025-00208</b>
<b>AMORTIZATION OF CERTAIN REGULATORY</b>	)	
<b>ASSETS AND OTHER GENERAL RELIEF</b>	)	

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**MOTION FOR CONFIDENTIAL TREATMENT**

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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 responses to Commission Staff’s First Request for Information (“Staff’s First Request”).

1. On July 1, 2025, EKPC filed its Notice of Intent to file an application for a general adjustment of rates, approval of depreciation study, amortization of certain regulatory assets, and other general relief in the above referenced matter. On July 11, 2025, Staff’s First Request was issued. EKPC is providing its responses to this request contemporaneously with this Motion.

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

- The attachment to Staff’s First Request, Item 1(b) – containing benefits of joining PJM Interconnection LLC (“PJM”);

- The attachments to Staff’s First Request Item 17 – containing wage and salary studies;
- The attachment to Staff’s First Request, Item 19 – containing general and merit wage increases;
- The attachment to Staff’s First Request, Item 20 – containing Board policies related to the authority of the Chief Executive Officer (“CEO”);
- The attachment to Staff’s First Request, Item 27(a) and Item 27(f) – containing EKPC’s compensation policy and merit increases;
- The response to Staff’s First Request, Item 35(a) – contains an engagement letter with a third-party that assisted on the rate case filings;
- The attachment to Staff’s First Request, Item 38 – containing the personal employment information of a certain employee;
- The attachment to Staff’s First Request, Item 43 – containing the personal information of Board members; and,
- The attachments to Staff’s First Request, Item 45 – containing the Board policies related to professional services, contracts; and, containing engagement letters for outside professional services.

The information herein is collectively referred to as the “Confidential Information” for which protection is sought under 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 and 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); and *Hoy v. Kentucky Industrial Revitalization Authority*, 907 S.W.2d 766 (Ky. 1995). As stated above, the public disclosure of the Confidential Information would 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 Staff's First Request, Item 1(b), EKPC is providing information related to the cost savings of joining PJM. EKPC is requesting confidential treatment for these reports in this proceeding based upon the Commission's prior rulings<sup>1</sup> that these reports are confidential pursuant to KRS 61.878(1)(c)(1).

5. In response to Staff's First Request, Item 17, EKPC is providing multiple compensation surveys performed by a third-party consulting firm. EKPC is requesting confidential treatment of this information because if this information is publicly available, it could cause potential harm to EKPC, its Owner-Members, and ultimately the Owner-Members' end-use members and create an unfair commercial advantage to competitors because EKPC must compete with other employers in the hiring and retention of employees and releasing the information to the public would unfairly harm EKPC's competitive position in the marketplace. Moreover, the surveys were created using a third-party to be used by EKPC exclusively and are confidential to the third-party. This information should be granted confidential treatment pursuant to KRS 61.878(1)(c)(1).

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<sup>1</sup> *Application of East Kentucky Power Cooperative, Inc. to Transfer Functional Control of Certain Transmission Facilities to PJM Interconnection LLC*, Case No. 2012-00169, December 21, 2012 Order (Ky. PSC December 21 2012) (EKPC is required to file the PJM Annual Report yearly in Case No. 2012-00169 and the Commission grants confidential treatment for these reports yearly.).

6. In the response to Staff's First Request, Item 19, EKPC is providing a document showing the general and merit compensation increases for certain employee groups. EKPC is requesting confidential treatment of this information pursuant to KRS 61.878(1)(c)(1) because, if this information is disclosed, it could cause competitive harm to EKPC. EKPC must compete for highly specialized employees and the disclosure of this information to the public would unfairly harm EKPC's competitive position in the marketplace.

7. In the response to Staff's First Request, Item 20, EKPC is providing EKPC Board Policy 103. This policy contains information related to the ways in which the Board delegates responsibility to the CEO. EKPC is requesting confidential treatment of this information because if the full authority of the CEO is disclosed it could cause harm to EKPC. Competitors would have an inside understanding of EKPC's business, organizational structure, and strategy that would create an unfair commercial advantage for competitors. In addition, this is a Board policy that is not publicly available.

8. In response to Staff's First Request, Item 27(a) and Item 27(d), EKPC is providing EKPC's written compensation policy and EKPC's Board minutes approving of compensation program revisions. EKPC is requesting confidential treatment of this information because this information relates directly to the retention of employees. If information related to the benefits provided by EKPC is disclosed, other utilities could use that information to craft benefit packages that would affect EKPC's ability to retain or recruit employees. The skill set required for EKPC's employees is specialized and highly sought after by other utilities and contractors. If EKPC were to lose employees to competitors, it would be costly to train additional employees and could leave EKPC without qualified personnel to provide safe and reliable electric service to its Owner-

Members. Therefore, this information should be granted confidential treatment pursuant to KRS 61.878(1)(c)(1).

9. In response to Staff's First Request, Item 35(a), EKPC is providing various documents related to the filing of this Application. One of the documents contains the engagement letter with a third-party that provided support developing various schedules. EKPC is requesting confidential treatment of the fee schedule contained in the engagement letter pursuant to KRS 61.878(1)(c)(1) because if this fee schedule was disclosed EKPC could be faced with competitive harm because other companies would know the negotiated terms of the agreement. If EKPC needed to negotiate with another company they would be placed at a commercial disadvantage.

10. In response to Staff's First Request, Item 38, EKPC is providing the salary of an employee that is responsible for EKPC's lobbying activities. This information should be granted confidential treatment pursuant to KRS 61.878(1)(a) because this employee's salary is private and personal information for which disclosure would result in an undue invasion of personal privacy. Personal compensation information of non-executive employees is consistently granted confidential treatment by the Commission.

11. In response to Staff's First Request, Item 43, EKPC is providing the names and personal mailing addresses of each member of EKPC's Board of Directors. This information is confidential pursuant to 807 KAR 5:001 Section 4(10). It is personal identifying information that should be kept confidential. Additionally, this information should be granted confidential protection pursuant to KRS 61.878(1)(a) because revealing the Board Members personal addresses would be an unwarranted invasion of personal privacy and could be a cause for security concerns of the board members and their families.

12. In response to Staff's First Request, Item 45, EKPC is providing written policies on its compensation of its attorneys, auditors, and other professional service providers. EKPC is also providing various engagement letters with professional service providers. EKPC is requesting confidential treatment of this information because if this information is publicly available, it could cause potential harm to EKPC and create an unfair commercial advantage to competitors because EKPC must compete with other utilities for professional services. Disclosing this information could also harm EKPC's negotiations with future professional service providers who would know EKPC's policy on contracting and compensating for professional services. Allowing disclosure of this information would unfairly harm EKPC's competitive position in the marketplace. This information should be granted confidential treatment pursuant to KRS 61.878(1)(c)(1). Additionally, EKPC has redacted the scope of work portions and other privileged information from all engagement letters and this information is not being provided to the Commission or any other intervening parties. The scope of work is protected under the attorney client privilege doctrine, which has been codified as Kentucky Rules of Evidence ("KRE") 503 and attaches to a confidential communication made to facilitate the client's matter.<sup>2</sup> The rule explains, "[a] communication is 'confidential' if not intended to be disclosed to third persons other than those whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communications."<sup>3</sup> The privilege seeks to "facilitate the performance of effective legal services, and seeks to accomplish that objective by encouraging full disclosure of information by the client to the lawyer[.]"<sup>4</sup> The attorney client

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<sup>2</sup> *St. Luke Hospitals, Inc. v. Kopowski*, 160 S.W.3d 771, 777 (Ky. 2005).

<sup>3</sup> KRE 503(a)(5).

<sup>4</sup> Robert G. Lawson, *The Kentucky Evidence Law Handbook* § 5.05[1][a] (4th ed.2014).

privilege affords absolute protection, and the information is “not discoverable even when the information is essential to the underlying case and cannot be obtained from another source.”<sup>5</sup> Therefore this information is not even discoverable by the Commission and EKPC is not waiving privilege for this information. These portions of the engagement letters were created at the request of EKPC’s counsel in the furtherance of legal services and is not intended to be disclosed to any third parties and is therefore privileged and not discoverable. The scope of work for legal services related to items that are not a part of this proceeding and if released would cause harm to EKPC if third parties became aware of the reasons why EKPC may engage outside professionals.

13. EKPC believes all of the information provided in response to Staff’s First Request is information that is ultimately related to EKPC’s competitive cost structure. If any information regarding how responsibility is delegated, wages, benefits, consulting fees, or engagement letters is disclosed to the public, EKPC will face extreme harm in the marketplace. Each of these documents are ones that are recognized as confidential and proprietary. The electric utility field is small, especially within the Commonwealth. Allowing competitors any insight into these areas of EKPC’s business will give other utilities, utility contractors, and third-parties doing business with EKPC, an unfair commercial advantage and could result in EKPC’s highly skilled workforce being poached from competitors. The Commission should grant confidential treatment for all documents in this request pursuant to KRS 61.878(1)(c)(1).

14. 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.

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<sup>5</sup> *Kopowski*, 160 S.W.3d at 777.

15. 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.

16. 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 attachments provided in response to Items 1, 17, 19, 20, 27, 43, and 45. These attachments are not being highlighted because confidential treatment is being sought for the entirety of the documents. EKPC is providing a unredacted and highlighted responses to Item 38 because confidential protection is not requested for the entirety of the document. . EKPC is noting in the public version of the filing all of the confidential responses.

17. 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.


18. 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 the 22<sup>nd</sup> day of August 2025.



Respectfully submitted,



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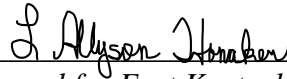
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**CERTIFICATE OF SERVICE**

This is to certify that the foregoing electronic filing was transmitted to the Commission on August 22, 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.



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*Counsel for East Kentucky Power Cooperative, Inc.*