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**COMMONWEALTH OF KENTUCKY**

**BEFORE THE PUBLIC SERVICE COMMISSION**

**IN THE MATTER OF:**

<b>AN APPLICATION OF EAST KENTUCKY</b>	)	
<b>POWER COOPERATIVE, INC. FOR A</b>	)	
<b>CERTIFICATE OF PUBLIC CONVENIENCE</b>	)	
<b>AND NECESSITY FOR ALTERATION OF</b>	)	<b>PSC CASE NO. 2013-00259</b>
<b>CERTAIN EQUIPMENT AT THE COOPER</b>	)	
<b>STATION AND APPROVAL OF A COMPLIANCE</b>	)	
<b>PLAN AMENDMENT FOR ENVIRONMENTAL</b>	)	
<b>SURCHARGE COST RECOVERY</b>	)	

**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 portions of two exhibits attached to EKPC's Application in the above-captioned proceeding, respectfully states as follows:

1. The Application requests the Commission to issue a Certificate of Public Convenience and Necessity ("CPCN"), pursuant to KRS 278.020(1), for an environmental compliance project that involves re-routing the existing duct work for EKPC's Cooper Station Unit #1 ("Cooper #1") such that its emissions are able to flow to the Cooper Station Unit #2 Air Quality Control System ("Cooper #2 AQCS") (the "Project"). For a capital investment of approximately \$15 million, EKPC will be able to retain 116 MW of existing capacity, thereby reducing its need to procure new capacity from other sources. The Application also requests that

the Commission authorize EKPC to amend its Environmental Compliance Plan, pursuant to KRS 278.183, so that EKPC may recover the costs associated with the Project through its existing environmental surcharge mechanism.

2. The Project is the result of a Request for Proposals (“RFP”) that was issued on June 8, 2012 and publicized in industry trade publications. The RFP was facilitated by The Brattle Group (“Brattle”), who served as the Independent Procurement Manager (“IPM”) and provided expertise in evaluating the proposals received. After performing an initial evaluation of the bids received in the RFP, Brattle and EKPC’s evaluation team concluded that the Project clearly provided the most reasonable, least-cost option. The Brattle Group summarized its recommendation in a lengthy letter to EKPC’s evaluation team on January 28, 2013. That letter was endorsed by EKPC’s Senior Vice President for Power Supply, who provided further justification for the Project, in a separate letter to EKPC’s President and Chief Executive Officer on January 28, 2013. These letters are attached to the Application as Exhibit 1. In addition, the EKPC Board’s February 12, 2013 Resolution includes instructions to management as to how to pursue filling the additional anticipated capacity need. The Resolution is attached to the Application as Exhibit 2.

3. Exhibit 1 and Exhibit 2 both contain information that describes the business planning assumptions and strategy of EKPC and other information that is commercially sensitive and proprietary, as well as detailed information regarding specific bids that were received by EKPC in the course of the RFP. More specifically, the Exhibits include:

- a. The source and nature of several of the market assumptions used by the Brattle Group to evaluate bids received in the course of the RFP;
- b. EKPC’s strategy for fulfilling the balance of capacity sought in the RFP;

- c. EKPC's strategy for financing capacity projects;
- d. The names of potential partners to satisfy the balance of EKPC's anticipated future capacity need;
- c. Detailed descriptions of the projects included on the RFP "short list";
- f. The Brattle Group's analysis of various projects on the short list;
- g. A summary of the status of negotiations to fulfill the balance of the anticipated future capacity need; and
- h. The EKPC Board's direction to management with regard to said negotiations.

4. The above-described information (the "Confidential Information") that is included in the two Exhibits to the Application is proprietary and commercially sensitive information that is retained by EKPC on a "need-to-know" basis and that is not publicly available. If disclosed, the Confidential Information would give potential business partners a tremendous advantage in the course of ongoing negotiations to fulfill the balance of the anticipated future capacity need. Disclosure would also give participants in the broader energy market a material advantage in relations with EKPC as a result of knowing the business strategies being implemented by EKPC and the market assumptions made by EKPC or the Brattle Group. These market advantages would likely translate into higher costs for EKPC and, by extension, detrimentally higher rates for EKPC's Members.

5. The Kentucky Open Records Act exempts the Confidential Information from public disclosure. *See* KRS 61.878(1)(c). As set forth above, disclosure of the Confidential Information would permit an unfair advantage to third parties. Moreover, the Kentucky Supreme Court has stated, "information concerning the inner workings of a corporation is 'generally

accepted as confidential or proprietary.” *Hoy v. Kentucky Industrial Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995). Because the Confidential Information is critical to EKPC’s effective execution of business decisions and strategy, it satisfies both the statutory and common law standards for affording confidential treatment.

6. EKPC does not object to limited disclosure of the Confidential Information described herein, pursuant to an acceptable confidentiality and nondisclosure agreement, to the Attorney General or any other intervenors with a legitimate interest in reviewing the same for the purpose of participating in this case.

7. In accordance with the provisions of 807 KAR 5:001, Section 13(2), EKPC is filing one copy of Exhibit 1 and Exhibit 2 (with the Confidential Information highlighted) separately under seal. Redacted copies of Exhibit 1 and Exhibit 2 are attached to the Application.

8. In accordance with the provisions of 807 KAR 5:001, Section 13(3), EKPC respectfully requests that the Confidential Information be withheld from public disclosure for a period of ten years. This will assure that the Confidential Information – if disclosed after that time – will no longer be commercially sensitive so as to likely impair the interests of EKPC if publicly disclosed.

Wherefore, on the basis of the foregoing, EKPC respectfully requests the Commission to enter an Order granting this Motion for confidential treatment and to so afford such protection from public disclosure to the unredacted copies of Exhibit 1 and Exhibit 2 of the Application, which are filed herewith under seal, for a period of ten years from the date of entry of such an Order.

This 21<sup>st</sup> day of August 2013.

Respectfully submitted,

A handwritten signature in black ink that reads "Mark David Goss". The signature is written in a cursive style and is positioned above a horizontal line.

Mark David Goss

David S. Samford

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