

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF EAST KENTUCKY POWER	)	
COOPERATIVE, INC. FOR AN ORDER	)	CASE NO.
DECLARING THE GLASGOW LANDFILL GAS	)	2014-00292
TO ENERGY PROJECT TO BE AN ORDINARY	)	
EXTENSION OF EXISTING SYSTEMS IN THE	)	
USUAL COURSE OF BUSINESS AND A JOINT	)	
APPLICATION OF FARMERS RURAL	)	
ELECTRIC COOPERATIVE CORPORATION	)	
AND EAST KENTUCKY POWER	)	
COOPERATIVE, INC. FOR APPROVAL TO	)	
ENTER INTO A TEN YEAR PURCHASED	)	
POWER AGREEMENT AND APPROVAL OF A	)	
SPECIAL CONTRACT	)	

ORDER

On August 21, 2014, East Kentucky Power Cooperative, Inc. ("EKPC") filed an application requesting the Commission to issue an Order declaring the Glasgow Landfill Gas to Energy Project ("Glasgow LFGTE Project") to be an ordinary extension of existing systems in the usual course of business. As part of the same application, EKPC and Farmers Rural Electric Cooperative Corporation ("Farmers") (collectively "Joint Applicants"), request an Order approving a Capacity, Energy and Environmental Attribute Purchase, Sale and Interconnection Agreement dated August 13, 2014, the specified agreement being a special contract which relates to a landfill gas to energy project. Along with the application, Joint Applicants, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, filed a petition on August 21, 2014, seeking confidential

treatment for certain material in the filing. This Order addresses only the Joint Applicants' August 21, 2014 petition.

### DISCUSSION

The Commission is a public agency subject to Kentucky's Open Records Act, and all public records of the Commission "shall be open for inspection by any person, except as otherwise provided by KRS 61.870 to 61.884."<sup>1</sup> Therefore, "all material on file with the commission shall be available for examination by the public unless the material is confidential."<sup>2</sup> Any party requesting a grant of confidential treatment for material has the burden to prove that the material falls within the exclusions from disclosure enumerated in the Open Records Act.<sup>3</sup>

807 KAR 5:001, Section 13(2), sets forth the procedure for making a request for confidential treatment, and it requires Joint Applicants to establish "specific grounds pursuant to KRS 61.878, upon which the commission should classify the material as confidential."<sup>4</sup> It also requires Joint Applicants to state "the time period in which the material should be treated as confidential and the reasons for the time period."<sup>5</sup>

Joint Applicants seek confidential treatment for the approximate capital cost of EKPC's proposed LFGTE project; the initial rates and subsequent rate changes relating to the sale of capacity, energy, and environmental attributes; EKPC's cost comparisons

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<sup>1</sup> KRS 61.872(1).

<sup>2</sup> 807 KAR 5:001, Section 13(1). The material specifically identified in Joint Applicants' request is accorded confidential treatment pending action by the Commission or its executive director. 807 KAR 5:001, Section 13(4).

<sup>3</sup> 807 KAR 5:001, Section 13(2)(c).

<sup>4</sup> 807 KAR 5:001, Section 13(2)(a)(1).

<sup>5</sup> 807 KAR 5:001, Section 13(2)(a)(2).

with other EKPC LFGTE generation options; annual operation, maintenance and fuel costs; and the base price per mmBtu. Joint Applicants request confidential treatment for a period of ten years.

The Commission finds that on five prior occasions, the Commission has granted similar declarations, finding that relatively small-sized LFGTE projects are exempt from the requirements for the CPCN under KRS 278.020(1).<sup>6</sup> In each of those five prior Commission declarations, the approximate capital cost to construct the facility has been disclosed,<sup>7</sup> and we further find that capital costs are not generally recognized as confidential or proprietary when submitted in support of a request for a CPCN.<sup>8</sup>

In order to meet their burden of proof, Joint Applicants must show that the material in question is generally recognized as confidential or proprietary and that the information would permit an unfair commercial advantage to competitors if openly disclosed.<sup>9</sup> Joint Applicants do not demonstrate that the approximate capital costs are

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<sup>6</sup> Case No. 2007-00509, *Application of East Kentucky Power Cooperative, Inc. for an Order Declaring the Maysville-Mason County Landfill Gas to Energy Project to be an Ordinary Extension of Existing Systems in the Usual Course of Business* (Ky. PSC Mar. 26, 2008); Case No. 2006-00033, *Application of East Kentucky Power Cooperative, Inc., for an Order Declaring the Pendleton County Landfill Gas to Energy Project to be an Ordinary Extension of Existing Systems in the Usual Course of Business* (Ky. PSC Mar. 10, 2006); Case No. 2005-00164, *Application of East Kentucky Power Cooperative, Inc. for an Order Declaring the Hardin County Landfill Gas to Energy Project to be an Ordinary Extension of Existing Systems in the Usual Course of Business* (Ky. PSC July 8, 2005); Case No. 2002-00474, *Application of East Kentucky Power Cooperative, Inc. for an Order Declaring the Green Valley and Laurel Ridge Landfill Gas to Energy Projects to be Ordinary Extensions of Existing Systems in the Usual Course of Business* (Ky. PSC Mar. 3, 2003); and Case No. 2002-00352, *Application of East Kentucky Power Cooperative, Inc. for an Order Declaring Landfill Gas to Energy Projects to be Ordinary Extensions of Existing Systems in the Usual Course of Business* (Ky. PSC Dec. 18, 2002).

<sup>7</sup> *Id.*

<sup>8</sup> Case No. 2014-00166, *2014 Integrated Resource Plan of Big Rivers Electric Corporation* (Ky. PSC Aug. 26, 2014) at 15 and 16.

<sup>9</sup> KRS 61.878(1)(c)(1); 807 KAR 5:001, Section 13(2)(c).

generally recognized as confidential or proprietary, and Joint Applicants do not demonstrate how the information would permit an unfair commercial advantage to competitors if disclosed. Joint Applicants have not met their burden to show that the capital costs qualify for confidential treatment; accordingly, we find the capital costs on page 5 of the Joint Application and page 2 of Exhibit 7, EKPC Capital Cost Breakdown, should be publicly available and deny this part of Joint Applicants' request.

The Commission finds that the Joint Applicants have failed to meet their burden to show that the information listed in Exhibit 1 of Schedule A, titled "Sale of Capacity, Energy and Environmental Attribute Rates," qualifies for confidential treatment. The information relates to the rates to be charged by EKPC to Farmers for the Glasgow LFGTE project. This is a unique project, and the Joint Applicants have presented no facts to support finding that the public disclosure of this information would result in any competitive injury to the parties or that other persons might derive economic value by a regulated utility's disclosure of costs for a unique power project. The rates to be charged to customers for recovery of the costs of new generating projects are typically disclosed in cases seeking approval of the new generation. Farmers has made a business decision to purchase the output of the Glasgow LFGTE project, and Farmers' customers have a right to know the financial consequences of that decision, since those customers will be required to pay for the costs of the project. For these reasons, the Commission finds that this information should be publicly available

The Commission finds that with respect to Exhibit 6, page 1, the first sentence, confidentiality should be denied for the historical costs of EKPC's existing LFGTE projects, since that information is already publically available in EKPC's monthly Fuel

Adjustment Clause filings. With respect to Exhibit 6, page 1, the second sentence, although the amounts listed are described as the generation costs of the Glasgow LFGTE project, the Commission finds that the amounts are actually EKPC's financial forecast of annual power costs to its members, and those amounts qualify for confidential treatment. Similarly, in Exhibit 6, pages 2-6, EKPC's financial forecast of annual power costs to its members, and its forecast six-year average cost qualify for confidential treatment.

All of the other amounts listed on Exhibit 6, pages 2-6; Exhibit 9, pages 1 and 2; Exhibit 10, pages 2-31; and Exhibit 13, page 6, relate to costs (and inputs for calculating the costs) of the Glasgow LFGTE project. As stated above, the costs to Farmers for this project will be recovered from its customers, and those customers have a right to know how the cost of the power being purchased by Farmers and billed to them is calculated. There has been no showing of either competitive injury from the public release of this information or that the information qualifies as exempt from disclosure as a trade secret.

IT IS THEREFORE ORDERED that:

1. Joint Applicants' Motion for Confidential Treatment is granted in part and denied in part as discussed in this Order.

2. Joint Applicants' request for confidential treatment for the Joint Application, page 5; Exhibit 1, schedule A; Exhibit 6, page 1, the first sentence; Exhibit 6, pages 2-6, all amounts except EKPC's annual projected Financial Forecast Cost To Members and EKPC's projected Financial Forecast Cost To Members 6-year Average;

Exhibit 7, page 2; Exhibit 9, pages 1 and 2; Exhibit 10, pages 2-31; and Exhibit 13, page 6, is denied.

3. Joint Applicants' request for confidential treatment for the amounts listed on Exhibit 6, page 1, the second sentence; and on Exhibit 6, pages 2-6, EKPC's annual projected Financial Forecast Cost To Members and EKPC's projected Financial Forecast Cost To Members 6-year Average, is granted for a period of ten years.

4. Within seven days for the date of this Order, Joint Applicants shall file revised pages reflecting as unredacted the information that has been denied confidential treatment.

5. Use of the materials in question in any Commission proceeding shall be in compliance with 807 KAR 5:001, Section 13(9).

6. Joint Applicants shall inform the Commission if the materials in question become publicly available or no longer qualify for confidential treatment.

7. If a non-party to this proceeding requests to inspect materials granted confidential treatment by this Order and the period during which the materials granted confidential treatment has not run, the Joint Applicants shall have 20 days from receipt of written notice of the request to demonstrate that the materials still fall within the exclusions from disclosure requirements established in KRS 61.878. If Joint Applicants are unable to make such demonstration, the requested material shall be made available for inspection. Otherwise the Commission shall deny the request for inspection.

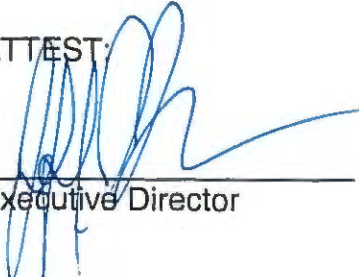
8. The materials denied confidential treatment shall be withheld from public inspection for 20 days from the date of this Order to allow Joint Applicants to seek any remedy afforded by law.

9. The Commission shall not make material granted confidential treatment available for inspection 20 days following an Order finding that the material no longer qualifies for confidential treatment in order to allow Joint Applicants to seek a remedy afforded by law.

By the Commission

ENTERED MAR 30 2015 KENTUCKY PUBLIC SERVICE COMMISSION
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ATTEST:



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Executive Director

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