

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF EAST	)	
KENTUCKY POWER COOPERATIVE, INC.	)	
FOR A GENERAL ADJUSTMENT OF RATES,	)	CASE NO.
APPROVAL OF DEPRECIATION STUDY,	)	2021-00103
AMORTIZATION OF CERTAIN REGULATORY	)	
ASSETS, AND OTHER GENERAL RELIEF	)	

ORDER

This matter arises upon requests for confidential treatment filed by East Kentucky Power Cooperative, Inc. (EKPC), pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, on May 28, 2021; June 16, 2021; June 28, 2021; and August 18, 2021. The designated materials are described below.

MOTIONS FOR CONFIDENTIAL TREATMENT

May 28, 2021 Motion for Confidential Treatment

In its May 28, 2021 motion, EKPC requested confidential treatment for the designated materials in EKPC's responses to Commission Staff's (Staff) and the parties' respective requests for information (Request).

- Staff's Second Request, Items 31(b) and 42(a). EKPC requested confidential treatment for an indefinite period for its response to Staff's Second Request, Item 31(b), which contains historical and projected revenue and billing information, including load forecasts for individual customers. As a basis for the request, EKPC asserted that public disclosure of individual customers' usage data would be an unwarranted invasion of the customers' privacy and could result in commercial harm to

EKPC if competitors used the information to attract the customers to relocate to another jurisdiction.

EKPC also requested confidential treatment until May 2022 for its response to Staff's Second Request, Item 42(a), which contains EKPC executive compensation. EKPC asserted that public disclosure of the information prior to the May 2022 date to publish its Form 990 could result in commercial harm to EKPC because the market for senior executive leadership is competitive.

- Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention and Nucor Steel Gallatin's (Attorney General/Nucor) First Request, Items 7, 16, 36(b), 39(b), 72(c). EKPC requested confidential treatment for an indefinite period for its responses, which consist of customer-specific usage, load, and revenue data. As a basis for the request, EKPC asserted that public disclosure of individual customers' usage data would be an unwarranted invasion of the customers' privacy.

- Nucor's First Request, Items 1, 7(c), and 10. EKPC requested confidential treatment for an indefinite period for its responses, which consist of customer-specific usage and load data. As a basis for the request, EKPC asserted that public disclosure of individual customers' usage data would be an unwarranted invasion of the customers' privacy.

- AppHarvest Morehead Farm, LLC's (AppHarvest) First Request, Item 1(e)(1). EKPC requested confidential treatment for an indefinite period for its responses, which consist of customer-specific usage and load data, which EKPC uses to develop load forecasts and growth rates. As a basis for the request, EKPC asserted that public

disclosure of the designated material could cause commercial harm to EKPC because third parties could use the information to discern business strategies that could disadvantage EKPC in the power market.

#### June 16, 2021 Motion for Confidential Treatment

- In its June 16, 2021 motion, EKPC requested confidential treatment for an indefinite period for its responses to Attorney General/Nucor's Second Request, Items 11 and 13, and to Nucor's Second Request, Items 3(a), 3(b), 4, 5, 7, and 10. The designated material includes customer-specific usage, load, and revenue information. As a basis for the request, EKPC asserted that public disclosure of individual customers' usage data would be an unwarranted invasion of the customers' privacy and could result in commercial harm to EKPC if competitors used the information to attract the customers to relocate to another jurisdiction.

#### June 28, 2021 Motion for Confidential Treatment

In its June 28, 2021 motion, EKPC requested confidential treatment for ten years for its response to AppHarvest's Second Request, item 2, which contains hourly load information. As a basis for the request, EKPC asserted that public disclosure of the designated material could cause commercial harm because market competitors could gain insight into EKPC's market strategies by predicting when EKPC is short or long on power, and thus disadvantage EKPC in the power market, which could raise costs to EKPC.

#### August 18, 2021 Motion for Confidential Treatment

In its August 18, 2021 motion, EKPC requested confidential treatment for ten years for its response to Staff's Post-Hearing Request for Information, Items 1, 9, and 10, which

contain spreadsheets with customer-specific account and usage information that cannot be redacted from the rest of the spreadsheet. Therefore, EKPC requests confidential treatment for the entirety of the spreadsheets. As a basis for the request, EKPC asserted that public disclosure of individual customers' usage data would be an unwarranted invasion of the customers' privacy.

#### DISCUSSION AND FINDINGS

Based upon a review of the motions and being otherwise sufficiently advised, the Commission finds that EKPC's May 28, 2021 motion, with the exception of the response to Staff's Second Request, Item 42(a); June 16, 2021 motion; June 28, 2021 motion; and August 18, 2021 motion meet the criteria and are exempt from public disclosure either as customer-specific information of a personal nature for which public disclosure would constitute a clearly unwarranted invasion of personal privacy, and thus is exempt under KRS 61.878(1)(a), or as commercial information that is generally recognized as confidential or proprietary, and thus exempt from public disclosure under KRS 61.878(1)(c)(1).

The Commission further finds that EKPC's May 28, 2021 request for confidential treatment for EKPC's response to Staff's Second Request, Item 42(a), does not meet the criteria, and thus is not exempt from public disclosure. It is well settled that, in the interest of transparency, confidential treatment is not granted for jurisdictional utilities' executive compensation amounts, with the exception of certain time-limited requests for compensation information that is subject to federal securities law in Securities and Exchange Commission filings. Confidential treatment of executive compensation will prevent the transparency necessary for EKPC, and its Owner-Members, ratepayers to

know what information the Commission relied upon in rendering its final determination in this rate adjustment case.

IT IS THEREFORE ORDERED that:

1. EKPC's May 28, 2021 motion for confidential treatment is granted in part and denied in part.

2. EKPC's May 28, 2021 request for confidential treatment for its responses to Staff's Second Request, Item 31 (b); Attorney General/Nucor's First Request, Items 7, 16, 36(b), 39(b), and 72(c); Nucor's First Request, Items 1, 7(c), and 10; and AppHarvest's First Request, Item 1(e)(1) is granted.

3. EKPC's May 28, 2021 request for confidential treatment for its response to Staff's Second Request, Item 42(a), is denied.

4. EKPC's June 16, 2021 motion for confidential treatment is granted.

5. EKPC's June 28, 2021 motion for confidential treatment is granted.

6. EKPC's August 18, 2021 motion for confidential treatment is granted.

7. The designated material in the May 28, 2021 and June 16, 2021 motions granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for an indefinite period or until further Order of this Commission.

8. The designated material in the June 28, 2021 and August 18, 2021 motions granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for ten years or until further Order of this Commission.

9. Use of the designated material granted confidential treatment by this Order in any Commission proceeding shall comply with 807 KAR 5:001, Section 13(9).

10. EKPC shall inform the Commission if the designated material granted confidential treatment becomes publicly available or no longer qualifies for confidential treatment.

11. If a nonparty to this proceeding requests to inspect the material granted confidential treatment by this Order and the period during which the material has been granted confidential treatment has not expired, shall have 30 days from receipt of written notice of the request to demonstrate that the material still falls within the exclusions from disclosure requirements established in KRS 61.878. If EKPC is unable to make such demonstration, the requested material shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

12. The Commission shall not make the requested material for which confidential treatment was granted available for inspection for 30 days from the date of service of an Order finding that the material no longer qualifies for confidential treatment in order to allow EKPC to seek a remedy afforded by law.

13. If EKPC objects to the Commission's determination that the requested material not be granted confidential treatment, it must seek either rehearing pursuant to KRS 278.400 or judicial review of this Order pursuant to KRS 278.410. Failure to exercise either of these statutory rights will be deemed as agreement with the Commission's determination of which materials should be granted confidential treatment.

14. Within 30 days of the date of service of this Order, EKPC shall file a revised version of the designated material for which confidential treatment was denied, reflecting as unredacted the information that has been denied confidential treatment.

15. The designated material for which EKPC's request for confidential treatment has been denied shall neither be placed in the public record nor made available for inspection for 30 days from the date of service of this Order to allow EKPC to seek a remedy afforded by law.

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By the Commission



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