

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN ELECTRONIC EXAMINATION OF THE)	
APPLICATION OF THE FUEL ADJUSTMENT)	CASE NO.
CLAUSE OF EAST KENTUCKY POWER)	2021-00293
COOPERATIVE, INC. FROM NOVEMBER 1, 2020)	
THROUGH APRIL 30, 2021)	

ORDER

On September 1, 2021, East Kentucky Power Cooperative, Inc. (EKPC) filed a petition, pursuant to 807 KAR 5:001E, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for ten years for information provided by EKPC in response to Commission Staff's First Request for Information (Staff's First Request), Items 4 and 11.

The Commission is a public agency subject to Kentucky's Open Records Act, which requires that all public records "be open for inspection by any person, except as otherwise provided by KRS 61.870 to 61.884."¹ In support of its petition, EKPC argued for the application of KRS 61.878(1)(c)(1), which exempts from disclosure "[r]ecords confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records." Exceptions to the free and open examination of public records contained in KRS 61.878

¹ KRS 61.872(1).

should be strictly construed.² The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.³

EKPC's redacted response to Staff's First Request, Item 4 is a coal bid tabulation sheet. The response to Staff's First Request, Item 11, is EKPC's fuel procurement policy. EKPC argued that this information should be protected under KRS 61.878(1)(c)(1) because it includes business planning assumptions, procurement and hedging strategy, coal specifications received from third-party bidders, pricing data for coal bids received from third-party bidders, and recommendations from EKPC staff regarding the selection of vendors.

Having considered the petition and the material at issue, the Commission finds that EKPC's petition should be granted. Non-selected coal bids and EKPC's fuel procurement policy should remain confidential because fuel suppliers could use this information to manipulate bidding, and competitors in the energy market could use this information to unfairly compete with EKPC.⁴ Therefore, the designated material, if openly disclosed, would permit an unfair commercial advantage to EKPC's competitors, is generally recognized as confidential or proprietary, meets the criteria for confidential treatment, and should be exempted from public disclosure for ten years pursuant to 807 KAR 5:001E, Section 13, and KRS 61.878(1)(c)(1).

² See KRS 61.871.


³ 807 KAR 5:001, Section 13(2)(c).

⁴ See Case No. 2018-00019, *Electronic Examination of the Application of the Fuel Adjustment Clause of East Kentucky Power Cooperative, Inc. from May 1, 2017 Through October 31, 2017* (Ky. PSC May 29, 2018), Order at 2.

IT IS THEREFORE ORDERED that:

1. EKPC's petition for confidential treatment is granted.
2. The designated material 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.
3. Use of the designated material granted confidential treatment by this Order in any Commission proceeding shall comply with 807 KAR 5:001E, Section 13(9).
4. EKPC shall inform the Commission if the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment.
5. 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, EKPC 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.
6. The Commission shall not make the requested material 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.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ENTERED
APR 17 2023 rcs
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

*L. Allyson Honaker
Honaker Law Office, PLLC
1795 Alysheba Way
Suite 6202
Lexington, KENTUCKY 40509

*David S Samford
Goss Samford, PLLC
2365 Harrodsburg Road, Suite B325
Lexington, KENTUCKY 40504

*Isaac Scott
Pricing Manager
East Kentucky Power Cooperative, Inc.
P. O. Box 707
Winchester, KY 40392-0707

*Patrick Woods
East Kentucky Power Cooperative, Inc.
P. O. Box 707
Winchester, KY 40392-0707

*East Kentucky Power Cooperative, Inc.
4775 Lexington Road
P. O. Box 707
Winchester, KY 40392-0707

*East Kentucky Power Cooperative, Inc
East Kentucky Power Cooperative, Inc.
4775 Lexington Road
P. O. Box 707
Winchester, KY 40392-0707