

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF EAST)	
KENTUCKY POWER COOPERATIVE, INC. FOR)	
A (1) CERTIFICATE OF PUBLIC CONVENIENCE)	
AND NECESSITY FOR THE CONSTRUCTION OF)	CASE NO.
TRANSMISSION FACILITIES IN MADISON)	2022-00314
COUNTY, KENTUCKY; AND (2) DECLARATORY)	
ORDER CONFIRMING THAT A CERTIFICATE OF)	
PUBLIC CONVENIENCE AND NECESSITY IS)	
NOT REQUIRED FOR CERTAIN FACILITIES)	

ORDER

On November 22, 2022, East Kentucky Power Cooperative, Inc. (EKPC) filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1), requesting that the Commission grant confidential treatment for ten years for information provided in response to Commission Staff's First Request for Information (Staff's First Request), Items 4(b) and 4(c).¹

LEGAL STANDARD

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."² Exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.³ The

¹ EKPC's Response to Staff's First Request (filed Nov. 22, 2022) (Response to Staff's First Request), Items 4(b) and (c).

² KRS 61.872(1).

³ See KRS 61.871.

party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.⁴ KRS 61.878(1)(c)(1) provides an exception to the requirement for public disclosure for records that are “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.”

DISCUSSION AND FINDINGS

In support of its motion, EKPC argued that the cost estimates provided in response to Staff’s First Request, Item 4(b) and Item 4(c) are the kind of estimates that are generally considered confidential or proprietary and if disclosed would create an unfair advantage to competitors.⁵ EKPC asserted that if its planned projects are approved and it has to receive bids for the projects the disclosure of the designated material could allow potential bidders access to EKPC’s internal estimated costs of the planned project, harming EKPC’s ability to negotiate.

Having considered the motion and the material at issue, the Commission finds that EKPC’s motion should be granted. The designated materials in EKPC’s attachments to its response to Staff’s First Request, Item 4(b) and its response to Staff’s First Request, Item 4(c), which are estimates for planned projects, contain information that generally recognized as confidential or proprietary; and therefore meets the criteria for confidential treatment and is exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

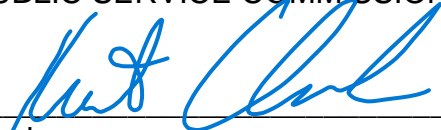
⁴ 807 KAR 5:001, Section 13(2)(c).

⁵ KRS 61.878(1)(c)(1).

IT IS THEREFORE ORDERED that:

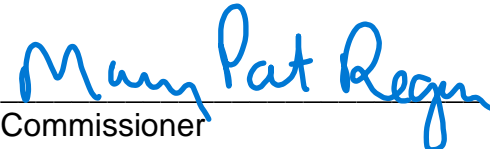
1. EKPC's motion for confidential treatment is granted.
2. The designated material granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for ten years or until further Order of this Commission.
3. Use of the designated material granted confidential treatment by this Order in any Commission proceeding shall comply with 807 KAR 5:001, 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

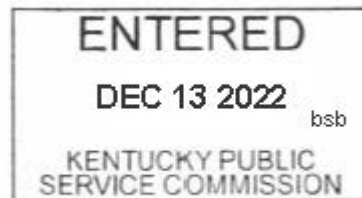


Chairman

Vice Chairman



Commissioner



ATTEST:



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