

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)	2023-00009
COOPERATIVE, INC. FROM NOVEMBER 1, 2020)	
THROUGH OCTOBER 31, 2022)	

ORDER

This matter arises from two motions for confidential treatment filed by East Kentucky Power Cooperative, Inc. (EKPC). On September 22, 2023, EKPC filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for ten years for its responses to Commission Staff's First Request for Information (Staff's First Request), Items 4, 11, 17, and 23.

On October 20, 2023, EKPC filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for ten years for its responses to Commission Staff's Second Request for Information (Staff's Second Request), Items 5 and 25.

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."¹ Exceptions to the free and open

¹ KRS 61.872(1).

examination of public records contained in KRS 61.878 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

In support of its motions, EKPC argued the application of KRS 61.878(1)(c), which 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.”

SEPTEMBER 22, 2023 MOTION

EKPC’s response to Staff’s First Request, Item 4, is a series of lists of non-selected coal bids and associated information such as quality and delivery costs. EKPC’s response to Staff’s First Request, Item 11, consists of EKPC’s fuel procurement policy. EKPC’s response to Staff’s First Request, Item 17, consists of EKPC’s generation unit availability for the fuel adjustment clause (FAC) review period. EKPC’s response to Staff’s First Request, Item 23, is a spreadsheet showing monthly resource mix percentages for the FAC review period.

EKPC argued that the above-referenced information consists of procurement strategies, coal pricing, generation availability, and forecasted fuel costs—all of which would give potential vendors and competitors a tremendous competitive advantage in the course of ongoing and future negotiations to procure fuel.

² See KRS 61.871.

³ 807 KAR 5:001, Section 13(2)(c).

Having considered the motion and the material at issue, the Commission finds that EKPC's September 22, 2023 motion for confidential treatment should be granted. Non-selected coal bid information and fuel procurement policies should remain confidential because of potential manipulation of future fuel bids based on this data.⁴ Generation unit availability information, even historical information, could be used by competitors to unfairly compete in energy markets by manipulating pricing to coincide with periods that EKPC has previously relied on more purchased power.⁵ The same rationale applies to monthly resource mix historical data.

Therefore, the designated material is generally recognized as confidential or proprietary, meets the criteria for confidential treatment and should be exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

OCTOBER 20, 2023 MOTION

EKPC's response to Staff's Second Request, Item 5, includes redactions from EKPC's 2023 Integration Annual Report. These redactions represent hedging strategies and costs and savings attributable to membership in the PJM Interconnection, LLC (PJM) regional transmission organization. EKPC's response to Staff's Second Request, Item 25, is a spreadsheet showing pricing and other information regarding energy bid by EKPC into PJM.

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.

⁵ See Case No. 2023-00264, *An Electronic Examination of the Application of the Fuel Adjustment Clause of East Kentucky Power Cooperative, Inc. from November 1, 2021 Through April 30, 2022* (Ky. PSC Feb. 14, 2023), Order at 2.

EKPC argued that this information pertains to EKPC's pricing, costs, and savings from its integration into PJM which has specifically been granted confidential treatment by the Commission in the context of the PJM annual report filings.

Having considered the motion and the material at issue, the Commission finds that EKPC's October 20, 2023 motion for confidential treatment should be granted. Competitors could use this information to their advantage in the PJM energy market by knowing EKPC's pricing model and factors affecting what EKPC is willing to pay for power. Competitors could also use EKPC's hedging strategies to manipulate bidding or pricing based on this information. All the information identified in this motion has previously been granted confidential treatment by the Commission.⁶

Therefore, the designated material is generally recognized as confidential or proprietary, meets the criteria for confidential treatment and should be exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

IT IS THEREFORE ORDERED that:

1. EKPC's September 22, 2023 and October 20, 2023 motions for confidential treatment are 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).

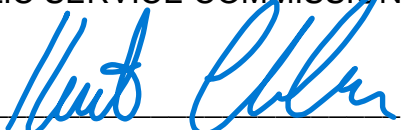
⁶ Case No. 2012-00169, *Application of East Kentucky Power Cooperative, Inc. to Transfer Functional Control of Certain Transmission Facilities to PJM Interconnection, LLC* (Ky. PSC Aug. 10, 2023), Order.

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 to allow EKPC to seek a remedy afforded by law.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ENTERED
DEC 08 2023
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KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


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