

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF EAST)	
KENTUCKY POWER COOPERATIVE, INC. FOR)	
APPROVAL TO AMEND ITS ENVIRONMENTAL)	
COMPLIANCE PLAN AND RECOVER COSTS)	CASE NO.
PURSUANT TO ITS ENVIRONMENTAL)	2024-00109
SURCHARGE, AND FOR THE ISSUANCE OF A)	
CERTIFICATE OF PUBLIC CONVENIENCE AND)	
NECESSITY AND OTHER GENERAL RELIEF)	

ORDER

On July 16, 2024, East Kentucky Power Cooperative, Inc. (EKPC) filed a motion,¹ pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for an indefinite period for information contained within its responses to the Commission Staff's First Request for Information (Staff's First Request), Item 9.²

LEGAL STANDARD

The Public Service Commission is a public agency subject to Kentucky Open Records Act, which requires that all public records "be open for inspection by any person, except as otherwise provided by KRS 61.870³ to KRS 61.884.⁴ The exceptions to the free and open examination of public records should be strictly construed. The party

¹ EKPC's Motion for Confidential Treatment (Motion) (filed July 16, 2024).

² EKPC's Response to Staff's First Request (filed July 16, 2024).

³ KRS 61.870.

⁴ KRS 61.884.

requesting that the materials be granted confidential protection has the burden of establishing that one of the exemptions is applicable. KRS 61.878(1)(c)(1) exempts from public 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.”⁵

DISCUSSION AND FINDINGS

EKPC sought confidential treatment for certain information, specifically related to requests for proposals (RFPs) regarding the beneficial use of gypsum from Spurlock Units 1 and 2.⁶ In support of its Motion, EKPC argued that the disclosure of these RFP responses, including the evaluation and rankings of proposals, would provide an unfair commercial advantage to competitors and undermine EKPC’s ability to negotiate favorable contract terms.⁷ EKPC noted that, as no contract has been executed, releasing this information at this stage could compromise the procurement process and harm its competitive position.⁸ Additionally, EKPC highlighted that this information is recognized as proprietary under KRS 61.878(1)(c)(1), which protects records that, if disclosed, would permit an unfair commercial advantage to competitors.⁹ EKPC further relied on established case law, including *Zink v. Department of Workers’ Claims, Labor Cabinet*,¹⁰

⁵ KRS 61.878(1)(c)(1).

⁶ Motion at paragraph 2.

⁷ Motion at paragraph 4.

⁸ Motion at paragraph 4.

⁹ Motion at paragraph 3.

¹⁰ *Zink v. Department of Workers’ Claims, Labor Cabinet*, 902 S.W.2d 825 (Ky. App. 1994).

which supports the nondisclosure of proprietary business information, and *Hoy v. Kentucky Industrial Revitalization Authority*,¹¹ which affirms that confidentiality is warranted where disclosure would harm competitive interests. EKPC committed to disclosing the winning bid and selection criteria once a contract is finalized, ensuring transparency at the appropriate stage.¹² Until that time, EKPC maintained that public interest and competitive fairness warrant the indefinite protection of the unselected bids and related proprietary information.

Having considered the Motion and the material at issue, the Commission finds that the designated material in EKPC's response to Staff's First Request, Item 9, which contains information related to RFPs regarding the beneficial use of gypsum from Spurlock Units 1 and 2, is generally recognized as confidential or proprietary which if openly disclosed would permit an unfair commercial advantage to EKPC's competitors; it therefore meets the criteria for confidential treatment and should be exempted from public disclosure pursuant to 807 KAR 5:001, Section 13,¹³ and KRS 61.878(1)(c)(1).

IT IS THEREFORE ORDERED that:

1. EKPC's July 16, 2024 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 an indefinite period or until further order of this Commission.

¹¹ *Hoy v. Kentucky Industrial Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995).

¹² Motion at paragraph 6.

¹³ 807 KAR 5:001, Section 13.

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. If the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment, EKPC shall inform the Commission and file with the Commission an unredacted copy of the designated material.

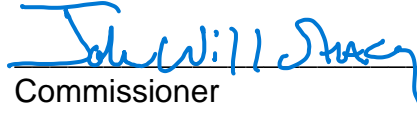
5. If a nonparty to this proceeding requests to inspect the material granted confidential treatment by this Order and the period during which the material has been granted confidential treatment has not expired, EKPC shall have 30 days from receipt of written notice of the request to demonstrate that 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



Commissioner

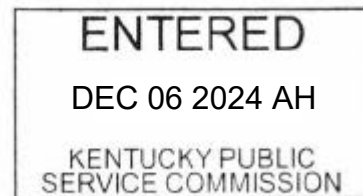


Commissioner

ATTEST:



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