

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF EAST	)	
KENTUCKY POWER COOPERATIVE, INC. FOR A	)	
CERTIFICATES OF PUBLIC CONVENIENCE AND	)	
NECESSITY AND SITE COMPATIBILITY	)	
CERTIFICATES FOR THE CONSTRUCTION OF A	)	
96 MW (NOMINAL) SOLAR FACILITY IN MARION	)	CASE NO.
COUNTY, KENTUCKY AND A 40 MW (NOMINAL)	)	2024-00129
SOLAR FACILITY IN FAYETTE COUNTY,	)	
KENTUCKY AND APPROVAL OF CERTAIN	)	
ASSUMPTIONS OF EVIDENCES OF	)	
INDEBTEDNESS RELATED TO THE SOLAR	)	
FACILITIES AND OTHER RELIEF	)	

ORDER

This matter arises on two motions for confidential treatment filed by East Kentucky Power Cooperative, Inc. (EKPC) pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, seeking ten years confidential treatment for the information described herein.

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."<sup>1</sup> Exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.<sup>2</sup> The

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<sup>1</sup> KRS 61.872(1).

<sup>2</sup> See KRS 61.871.

party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.<sup>3</sup>

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

#### APRIL 26, 2024 MOTION

EKPC’s application included Exhibit 2, the Direct Testimony of Julia J. Tucker, Attachment JJT-1,<sup>4</sup> which consisted of a list of bids and a discussion of bid evaluation criteria and results. EKPC argued that public disclosure of bids could result in receiving fewer bids and ultimately having to pay a higher cost for products. EKPC’s application also included Exhibit 3, which is a copy of the real property lease for the Northern Bobwhite facility with compensation terms redacted. EKPC asserted that the lease financial terms are financially sensitive and were previously granted confidential treatment by the Kentucky State Board on Electric Generation and Transmission Siting (Siting Board).<sup>5</sup>

Having considered the motion and the material at issue, the Commission finds that EKPC’s April 26, 2024 motion for confidential treatment should be granted. Competitors

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<sup>3</sup> 807 KAR 5:001, Section 13(2)(c).

<sup>4</sup> EKPC’s motion incorrectly refers to the Attachment as JJT-3.

<sup>5</sup> See Case No. 2020-00208, *Electronic Application of Northern Bobwhite Solar LLC for a Certificate of Construction for an Approximately 96 Megawatt Merchant Solar Electric Generating Facility in Marion County, Kentucky Pursuant to KRS 278.700 and 807 KAR 5:110*, (Ky. Siting Board Sept. 27, 2021), Order at 2-3.

could use bid information to compete with EKPC for contractors' business or contractors could use the information to unfairly negotiate with EKPC, disadvantaging EKPC with competitors. The Commission has previously granted confidential treatment to estimates and bids due to the possibility of bid manipulation resulting from disclosure.<sup>6</sup> The redacted lease terms should also remain confidential; competitors could use this information to undercut EKPC lease offers or allow potential lessors to unfairly negotiate with EKPC. These terms were granted confidential treatment by the Siting Board, which protected material terms, including financial terms.<sup>7</sup> This information is generally recognized as confidential or proprietary; it therefore 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).

#### JUNE 12, 2024 MOTION

EKPC sought confidential treatment for responses to Lexington-Fayette Urban County Government's (LFUCG's) First Request for Information (LFUCG's First Request), Items 37(b), 43, and 46. EKPC's response to LFUCG's First Request, Item 37(b) included a spreadsheet with a breakdown of estimated labor costs for the Bluegrass Plains project installation. EKPC's response to LFUCG's First Request, Items 43 and 46 include the Bluegrass Plains real property purchase agreement and amended purchase option. EKPC argued that these documents include detailed cost estimates and information

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<sup>6</sup> Case No. 2020-00309, *Electronic Purchased Gas Adjustment Filing of Louisville Gas and Electric Company* (Ky. PSC Aug. 20, 2021), Order at 3.

<sup>7</sup> Case No. 2020-00208, Sept. 27, 2021 Order at 2–3.

regarding the asset purchase and options that are contingent upon approval of the CPCN application.<sup>8</sup>

Having considered the motion and the material at issue, the Commission finds that EKPC's June 12, 2024 motion for confidential treatment should be granted in part and denied in part. The Commission finds that the spreadsheet of estimated labor costs provided in response to LFUCG's First Request, Item 37(b) should be afforded confidential treatment in its entirety because contractors could use the information to unfairly negotiate with EKPC, disadvantaging EKPC with competitors.<sup>9</sup> The Commission also finds that confidential treatment should be granted for the financial terms in the documents provided in EKPC's response to LFUCG's First Request, Items 43 and 46, consistent with the decision in Case No. 2020-00208.<sup>10</sup> This information is generally recognized as confidential or proprietary; it therefore 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). EKPC's motion did not provide justification for providing confidential treatment for the entirety of these documents. Therefore, confidential treatment is denied for EKPC's response to LFUCG's First Request, Items 43 and 46, except for the financial terms, as discussed above. EKPC should file a public copy of same with financial terms redacted.

IT IS THEREFORE ORDERED that:

1. EKPC's April 26, 2024 motion for confidential treatment is granted.

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<sup>8</sup> Motion for Confidential Treatment (filed June 12, 2024) at 2.

<sup>9</sup> See Case No. 2020-00309, Aug. 20, 2021 Order at 3.

<sup>10</sup> Case No. 2020-00208, Sept. 27, 2021 Order at 2–3.

2. EKPC's June 12, 2024 motion for confidential treatment is granted in part and denied in part. Confidential treatment is granted for EKPC's response to LFUCG's First Request, Item 37(b) and financial terms found in the documents provided in response to LFUCG's First Request, Items 43 and 46. Confidential treatment is denied for the remainder of EKPC's response to LFUCG's First Request, Items 43 and 46.

3. 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.

4. 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).

5. 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.

6. 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.

7. 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.

8. The designated material denied confidential treatment by this Order is not exempt from public disclosure and shall be placed in the public record and made available for public inspection.

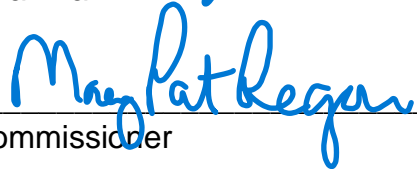
9. If EKPC objects to the Commission's determination that the requested material not be granted confidential treatment, it must seek either rehearing pursuant to KRS 278.400 or judicial review of this Order pursuant to KRS 278.410. Failure to exercise either of these statutory rights will be deemed as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


10. 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.

11. 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.

PUBLIC SERVICE COMMISSION

  
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Chairman

  
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Commissioner

  
\_\_\_\_\_  
Commissioner

ENTERED  
OCT 18 2024 AH  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
\_\_\_\_\_  
Executive Director

\*L. Allyson Honaker  
Honaker Law Office, PLLC  
1795 Alysheba Way  
Suite 1203  
Lexington, KENTUCKY 40509

\*Honorable Matthew R Malone  
Attorney at Law  
Hurt, Deckard & May  
The Equus Building  
127 West Main Street  
Lexington, KENTUCKY 40507

\*Aaron D Reedy  
Hurt, Deckard & May  
The Equus Building  
127 West Main Street  
Lexington, KENTUCKY 40507

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

\*Brittany H. Koenig  
Honaker Law Office, PLLC  
1795 Alysheba Way  
Suite 1203  
Lexington, KENTUCKY 40509

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

\*Honorable David J. Barberie  
Managing Attorney  
Lexington-Fayette Urban County Government  
Department Of Law  
200 East Main Street  
Lexington, KENTUCKY 40507

\*Dennis G Howard II  
Howard Law PLLC  
740 Emmett Creek Lane  
Lexington, KENTUCKY 40515

\*Heather Temple  
Honaker Law Office, PLLC  
1795 Alysheba Way  
Suite 1203  
Lexington, KENTUCKY 40509