

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN EXAMINATION OF THE APPLICATION OF	)	
THE FUEL ADJUSTMENT CLAUSE OF EAST	)	CASE NO.
KENTUCKY POWER COOPERATIVE, INC. FROM	)	2024-00137
NOVEMBER 1, 2022 THROUGH APRIL 30, 2023	)	

ORDER

This matter arises on two motions for confidential treatment filed by East Kentucky Power Cooperative, Inc. (EKPC). On August 26, 2024, EKPC filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for an indefinite period for the Fuel and Emissions Department Procurement Manual and Policy No. 405, Hedging, which were filed in response to Commission Staff's First Request for Information (Staff's First Request), Item 11.

On September 23, 2024, EKPC filed a motion, pursuant to 807 KAR 5:001, Section 13 and KRS 61.878, requesting that the Commission grant confidential treatment for an indefinite period to documents filed in response to Commission Staff's Second Request, for Information (Staff's Second Request), Item 3.

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> In support of its motion, EKPC argued for the application of KRS 61.878(1)(c)(1), which exempts from disclosure "[r]ecords

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

confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if opening 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 should be strictly construed.<sup>2</sup> The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.<sup>3</sup>

August 26, 2024 Motion

EKPC’s response to Staff’s First Request, Item 11 included EKPC’s fuel procurement manual and Policy No. 405, filed confidentially in its entirety. The documents contain information that describe the business planning assumptions and procurement strategies of EKPC regarding fuel and hedging. EKPC argued that the information was commercially sensitive, not available to the public, and would lead to a commercial advantage for competitors.<sup>4</sup>

Having considered the motion and the material at issue, the Commission finds that EKPC’s procurement manual and Policy No. 405 are 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

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

<sup>3</sup> 807 KAR 5:001E, Section 12(2)(c).

<sup>4</sup> BREC’s Motion for Confidential Treatment (filed Aug. 26, 2024).

KRS 61.878(1)(c)(1). However, in accordance with Commission precedent, confidential treatment for the procurement manual and Policy No. 405 should be limited to ten years.<sup>5</sup>

September 23, 2024 Motion

EKPC's response to Staff's Second Request, Item 3 contains information pertaining to EKPC's hourly energy purchased, the day ahead/real time locational marginal price (LMP), the hourly bids for EKPC's generation units, the price PJM called for each unit, and the hourly generation fours for EKPC's generation units. EKPC argued that the material is commercially sensitive and proprietary and could be used by competitors to the advantage in the PJM energy market.<sup>6</sup> Furthermore, EKPC asserted that the disclosure could harm EKPC's competitive position in the marketplace to the detriment of EKPC.<sup>7</sup>

Having considered the motion and the material at issue, the Commission finds that the hourly energy purchased, the LMP price, hourly bids, and the price PJM calls for each unit are generally recognized as confidential or proprietary because disclosure could affect EKPC's ability to fairly negotiate in the future; 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). However, in accordance with Commission precedent, confidential treatment should be limited to five years, at which

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<sup>5</sup> See Case No. 2022-00264, *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 and Case No. 2021-00293, *An Electronic Examination of the Application of the Fuel Adjustment Clause of East Kentucky Power Cooperative, Inc. from November 1, 2020 through April 30, 2021*, (Ky. PSC April 17, 2023).

<sup>6</sup> BREC's Motion for Confidential Treatment (filed Sept. 23, 2024).

<sup>7</sup> BREC's Motion for Confidential Treatment (filed Sept. 23, 2024).

time this data will be obsolete because each demand and pricing will have changed sufficiently.<sup>8</sup>

IT IS THEREFORE ORDERED that:

1. EKPC's August 26, 2024 and September 23, 2024 motions for confidential treatment are granted.

2. The designated material in EKPC's August 26, 2024 motion 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. The designated material in EKPC's September 23, 2024 motion granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for five 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, EKPC shall have 30 days from receipt of written notice of the request to demonstrate that the material still falls within the exclusions

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<sup>8</sup> See Case No. 2016-00278, *Application of Big Rivers Electric Corporation for a Declaratory Order*, (Ky. PSC Jan. 9, 2017), Order.


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 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.

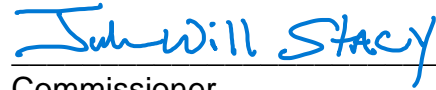
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PUBLIC SERVICE COMMISSION

Chairman



Commissioner



Commissioner



ENTERED

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KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:



Executive Director

Case No. 2024-00137

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