

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)	2024-00145
COOPERATIVE, INC. FROM MAY 1, 2023)	
THROUGH OCTOBER 31, 2023)	

ORDER

On August 26, 2024, East Kentucky Power Cooperative, Inc. (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 documents, in its entirety, filed in response to Commission Staff’s First Request for Information (Staff’s First Request), Items 4 and 11.

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 In support of its motion, EKPC argued for the application of KRS 61.878(1)(c)(1), which exempts from 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 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

¹ KRS 61.872(1).

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 motion, EKPC asserted that, in response to Staff's First Request, Item 4, EKPC provided bid tabulation sheets from the solicitations of coal during the time period at issues.⁴ Additionally, in response to Staff's First Request, Items 11a and 11b, EKPC provided the current Fuel and Emissions Department Procurement Manual and Policy No. 405. EKPC argued that these documents contain extensive information that describes the business planning assumptions and procurement strategies with regard to fuel and hedging, which if disclosed, would lead to a commercial advantage for its competitors.⁵ Furthermore, EKPC argued that the information is commercially sensitive, and as such, the Commission has previously granted confidential treatment.⁶

Having considered the motion and the material at issue, the Commission finds that the material should receive confidential treatment. Disclosure of coal solicitation information and policies could affect future bidding, allowing competitors to gain an unfair advantage by having access to EKPC's solicitation strategies and bids. This type of information was previously held confidential by the Commission.⁷ The Commission finds that the designed materials are records that meet the criteria for confidential treatment;

² See KRS 61.871.

³ 807 KAR 5:001, Section 12(2)(c).

⁴ EKPC's Motion for Confidential Treatment (Motion for Confidential Treatment) (filed Aug. 26, 2024), at 1–2.

⁵ Motion for Confidential Treatment at 1–2.

⁶ Motion for Confidential Treatment at 2.

⁷ See Case No. 2022-00264, *An Electronic Application 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.

however, in accordance with Commission precedent, will only be exempted from public disclosure for ten years pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13.

IT IS THEREFORE ORDERED that:

1. EKPC's August 26, 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 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. 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

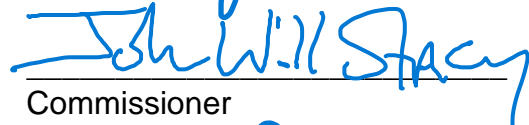
longer qualifies for confidential treatment in order to allow EKPC to seek a remedy afforded by law.

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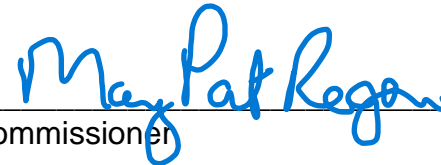
PUBLIC SERVICE COMMISSION



Chairman



Commissioner



Commissioner

ENTERED
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rcs
KENTUCKY PUBLIC
SERVICE COMMISSION

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