

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF EAST)	
KENTUCKY POWER COOPERATIVE, INC. FOR)	
1) A CERTIFICATE OF PUBLIC CONVENIENCE)	CASE NO.
AND NECESSITY TO CONSTRUCT A NEW)	2024-00310
GENERATION RESOURCE; 2) A SITE)	
COMPATIBILITY CERTIFICATE; AND 3) OTHER)	
GENERAL RELIEF)	

ORDER

On September 20, 2024, November 12, 2024, and December 16, 2024, East Kentucky Power Cooperative, Inc. (EKPC) filed motions, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for an indefinite period, except for its December 16, 2024 motion, which it requested confidential treatment for ten years or upon execution of the contract for several items more fully discussed below.

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 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

¹ KRS 61.872(1).

² See KRS 61.871.

that one of the exceptions is applicable.³ KRS 61.878(1)(a) provides an exception that “[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.” KRS 61.878(1)(c)(1) provides an exception to the requirement for public disclosure of records that are “generally recognized as confidential and proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.

DISCUSSIONS AND FINDINGS

EKPC’s September 20, 2024 Motion

EKPC requested the Direct Testimony of Julia Tucker, Attachment JJT-2, which included historical demand for a specific industrial customer be afforded confidential treatment pursuant to KRS 61.878(1)(a) and KRS 61.878(1)(c)(1).⁴ EKPC argued that that disclosure of this information would permit an unfair commercial advantage to third parties or present an unnecessary and unreasonable infringement upon EKPC’s legitimate privacy concerns.⁵ EKPC further argued that the demand of the customer is personal and if disclosed, would be an invasion of privacy.⁶

EKPC additionally asked that the Direct Testimony of Brad Young, Attachment BY-1 Section 7 and Appendix R to the Project Scoping Report be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1) and (1)(a).⁷ This information was in regard to

³ 807 KAR 5:001, Section 13(2)(c).

⁴ EKPC’s Motion for Confidential Treatment (filed Sept. 20, 2024) (Sept. 20, 2024 Motion) at 2.

⁵ EKPC’s Sept. 20, 2024 Motion at 1-2.

⁶ EKPC’s Sept. 20, 2024 Motion at 2.

⁷ EKPC’s Sept. 20, 2024 Motion at 2.

capital cost estimates.⁸ EKPC argued that, if these cost estimates were disclosed, it could place EKPC at a competitive disadvantage, because other parties would know what EKPC is prepared to pay for the materials to construct the new generation resource, and raise prices, which would result in EKPC having to pay a higher cost for the products.⁹ EKPC argued that this result would cause harm to EKPC and its members.¹⁰

Having considered the motion and the material at issue, the Commission finds that the Direct Testimony of Julia Tucker, Attachment JJT-2; and the Direct Testimony of Brad Young, Attachment BY-1 Section 7 and Appendix R to the Project Scoping Report are generally recognized as confidential or proprietary.

Disclosure of Julia Tucker's Direct Testimony, Attachment JJT-2, would result in commercial harm to EKPC and would be an invasion of the customer's privacy. The Commission has previously found that information revealing customer demand should be granted confidential treatment.¹¹ 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) and KRS 61.878 (1)(a).

Disclosure of the Direct Testimony of Brad Young, Attachment BY-1 Section 7 and Appendix R to the Project Scoping Report, would provide a competitive disadvantage for EKPC by allowing vendors the knowledge of what EKPC estimates certain material and

⁸ EKPC's Sept. 20, 2024 Motion at 2.

⁹ EKPC's Sept. 20, 2024 Motion at 2.

¹⁰ EKPC's Sept. 20, 2024 Motion at 2.

¹¹ Case No. 2016-00335, *An Examination by the Public Service Commission of the Environmental Surcharge Mechanism of East Kentucky Power Cooperative, Inc. For the Six-Month Billing Period during June 30, 2016, and the Pass Through Mechanism for Its Sixteen Member Cooperatives* (Ky. PSC Feb. 20, 2017), Order.

equipment costs at, disadvantaging EKPC in negotiations related to the construction of the project. The Commission has previously held that projected capital costs should be confidential.¹² 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 November 12, 2024 Motion

In support of its motion, EKPC asked that highlighted portions of the attachments to EKPC's response to Commission Staff's First Request for Information (Staff's First Request), Item 1(a) be held confidential under KRS 61.878(1)(c)(1).¹³ The first attachment was EKPC's Load Forecast for 2025-2039 with an analysis done by S&P Global about Kentucky Markets. The next attachment were PowerPoints for member companies with an economic forecast from S&P Global Markets. EKPC argued that disclosure of this confidential information would permit an unfair commercial advantage to third parties or present an unnecessary and unreasonable infringement on EKPC's privacy concerns.¹⁴ EKPC is requesting confidential treatment for this information because this information contains the assumptions used to create EKPC's models.¹⁵ EKPC argued that if this information is disclosed competitors would have an unfair commercial advantage because they would gain the ability to duplicate EKPC's models.¹⁶

¹² Case No. 2021-000310, *Electronic 2023 Integrated Resource Plan of Big Rivers Electric Corp.*, (Ky. PSC May 9, 2024), Order.

¹³ EKPC's Motion for Confidential Treatment (filed Nov. 12, 2024) (Nov. 12, 2024 Motion) at 1-2.

¹⁴ EKPC's Nov. 12, 2024 Motion at 2.

¹⁵ EKPC's Nov. 12, 2024 Motion at 2.

¹⁶ EKPC's Nov. 12, 2024 Motion at 2.

EKPC also asked for confidential treatment pursuant to KRS 61.878(1)(c)(1) for EKPC's response to Staff's First Request, Item 1(c), Attachment which is the Residential Statistically Adjusted End-Use (SAE) Spreadsheets – 2023 (Annual Energy Outlook) AEO Update. EKPC argued that this information is confidential and proprietary to Itron, a vendor used by EKPC, and EKPC cannot disclose this information.¹⁷ Additionally, if the modeling data was disclosed EKPC's competitors would have an unfair commercial advantage and know how EKPC prepares its load forecast.¹⁸

Having considered the motions and the material at issue, the Commission finds that the above-described material 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). Disclosure of EKPC's response to Staff's First Request, Item 1(a), Attachments could put EKPC at a commercial disadvantage and limit EKPC's ability to obtain information from S&P global in the future. For EKPC's Response to Staff's First Request, Item 1(c), Attachment, this information is propriety to Itron. Although non-disclosure agreements are not binding on the Commission, disclosure of this information would put EKPC at a commercial disadvantage when making contracts with third parties in the future.

EKPC's December 16, 2024 Motion

In support of its motion, EKPC argued that EKPC's response to Commission Staff's Second Request for Information (Staff's Second Request), Item 18 and the Attachment to Item 18, should be granted confidential treatment pursuant to KRS 61.878(1)(c)(1) and

¹⁷ EKPC's Nov. 12, 2024 Motion at 2-3.

¹⁸ EKPC's Nov. 12, 2024 Motion at 3.

(1)(a).¹⁹ EKPC argued that disclosure of this information would permit an unfair commercial advantage to third parties or present an unnecessary and unreasonable infringement upon EKPC's legitimate privacy concerns.²⁰ EKPC requested the information regarding the contracts and the map be held confidential, because the contracts have not been executed at this point.²¹ EKPC argued that if it is forced to disclose this information before the contracts are executed, it will face a commercial disadvantage because others will know the negotiated prices.²² Additionally, EKPC stated it believes the names of the property owners should be granted confidential treatment pursuant to KRS 61.878(1)(a), because if disclosed it would be an unwarranted invasion of these individuals' personal privacy.²³ EKPC asked that this information be granted confidential treatment for ten years or until the contracts are fully executed.²⁴

Having considered the motion and the material at issue, the Commission finds that EKPC's motion should be granted, in part, and denied, in part. The Commission finds that the designated material contained in EKPC's response to Staff's Second Request, Item 18 are records that meet the criteria for confidential treatment and should be exempted from public disclosure pursuant to KRS 61.878(1)(c)(1), (1)(a) and 807 KAR 5:001, Section 13. Disclosing owner names would infringe on privacy information of the individual owners of the properties and could put EKPC at a competitive disadvantage

¹⁹ EKPC's Motion for Confidential Treatment (filed Dec. 16, 2024) (Dec. 16, 2024 Motion) at 1-2.

²⁰ EKPC's Dec. 16, 2024 Motion at 2.

²¹ EKPC's Dec. 16, 2024 Motion at 2.

²² EKPC's Dec. 16, 2024 Motion at 3.

²³ EKPC's Dec. 16, 2024 Motion at 3.

²⁴ EKPC's Dec. 16, 2024 Motion at 3.

during contract negotiations. The Commission finds that this information be granted confidential treatment for ten years or until the contracts are fully executed.

The Commission further finds that the request for confidential treatment should be denied for EKPC's response to Staff's Second Request, Item 18, Attachment. This map does not contain any personally identifying information on its own and shows the property boundaries for the project. Therefore, this information does not meet the criteria for confidential treatment and should not be exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and (1)(a) and 807 KAR 5:001, Section 13.

IT IS THEREFORE ORDERED that:

1. EKPC's September 20, 2024 and November 12, 2024 motions for confidential treatment is granted.
2. EKPC's December 16, 2024 motion for confidential treatment is granted, in part, and denied, in part.
3. EKPC's December 16, 2024 motion for confidential treatment for EKPC's response to Commission Staff's Second Request, Item 18 is granted.
4. EKPC's December 16, 2024 motion for confidential treatment for EKPC's response to Commission Staff's Second Request, Item 18, Attachment is denied.
5. 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, until the relevant contracts are entered into for EKPC's Response to Commission Staff's Second Request for Information, Item 18, or until further order of this Commission.
6. 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).

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

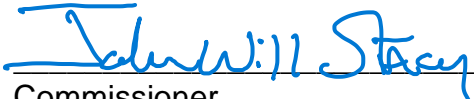
12. The designated material for which EKPC's request for confidential treatment has been denied shall neither be placed in the public record nor made available for inspection for 30 days from the date of service of this Order to allow EKPC to seek a remedy afforded by law.

13. 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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Commissioner


Commissioner

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