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June 3, 2021

VIA U.S. MAIL

Ms. Linda Bridwell, P.E.
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, KY 40601

RE: *In the Matter of the Application of East Kentucky Power Cooperative, Inc. for a Certificate of Public Convenience and Necessity for the Construction of Backup Fuel Facilities at its Bluegrass Generating Station; Post-Case Correspondence and Request for Confidential Treatment – Case No. 2018-00292*

Dear Ms. Bridwell:

On August 24, 2018, East Kentucky Power Cooperative, Inc. (“EKPC”) filed an application for a certificate of public convenience and necessity (“CPCN”) to construct an on-site backup fuel supply project at its Bluegrass Generating Station in Oldham, Kentucky. In an Order entered on February 28, 2019, the Commission approved EKPC’s application and issued the CPCN. Ordering paragraph three of the Commission’s Order directed EKPC to file “as-built” drawings or plans of the facility within sixty (60) days of the project’s completion.

The Bluegrass Station’s backup fuel supply project was officially completed on April 30, 2021 and EKPC is now in possession of the final “as-built” plans. These plans were developed and prepared by EKPC’s engineering consultant, original equipment manufacturer, and construction contractors and contain detailed information regarding the infrastructure of the Bluegrass Station. Some of the information contained within these documents is regarded by the developers as trade secrets and subject to copyright protections. Due to the voluminous nature of same, EKPC is tendering the plans on the attached compact disk.

Pursuant to 807 KAR 5:001, Section 13(3) and KRS 61.878(1)(c) and (m), EKPC respectfully requests that the foregoing plans, drawings and specifications be kept and retained by the Commission on a confidential basis and not subject to public disclosure. Due to the

characteristics of the information, it is not possible to separate what is confidential from any incidental details which would not necessarily be confidential. Therefore, confidential protection is sought for the entirety of the records contained on the attached disk. This request is made in light of several applicable provisions of the Kentucky Open Records Act, common law and Commission precedent.

First, the documents being tendered herewith fall within three clear exemptions from public disclosure under the Kentucky Open Records Act:

records 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 record;¹

....

Infrastructure records that expose a vulnerability referred to in this subparagraph through the disclosure of the location, configuration, or security of critical systems, including public utility critical systems. These critical systems shall include but not be limited to information technology, communication, electrical, fire suppression, ventilation, water, wastewater, sewage, and gas systems;²

and

The following records when their disclosure will expose a vulnerability referred to in this subparagraph: detailed drawings, schematics, maps, or specifications of structural elements, floor plans, and operating, utility, or security systems of any building or facility owned, occupied, leased, or maintained by a public agency.³

Plainly, schematics and drawings of fuel storage facilities and the equipment and processes necessary to fuel the Bluegrass Station generators would be valuable information for any party bent on vandalism, disruption, terrorism or other mayhem. Also, to the extent that they involve proprietary technology and engineering expertise that is not freely available in the marketplace, the plans, drawings and specifications have intrinsic commercial value that would greatly benefit competitors if disclosed. It is therefore imperative, that this critical information concerning the configuration and design of the Bluegrass Station's fuel systems remain confidential.

¹ KRS 61.878(1)(c)1.

² KRS 61.878(1)(m)1.f.

³ KRS 61.878(1)(m)1.g.

Ms. Linda Bridwell, P.E.

May 28, 2021

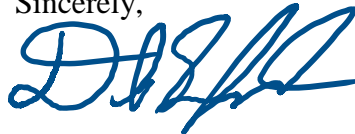
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Moreover, the Kentucky Supreme Court has stated, “information concerning the inner workings of a corporation is ‘generally accepted as confidential or proprietary.’” *Hoy v. Kentucky Industrial Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995). Because the plans and specifications are critical to the operation of EKPC’s Bluegrass Station, are kept on a need-to-know basis and are generally recognized as confidential in the industry, they satisfy both the statutory and common law standards for being afforded confidential treatment.

Finally, EKPC notes that the Commission has previously recognized that information concerning utility infrastructure is confidential in nature,⁴ as is information which is subject to copyright protections under federal and state law.⁵ For all of these reasons, EKPC respectfully requests that the attached compact disk be designated as confidential and not subject to public disclosure for an indefinite period of time.

Should you have any questions, please do not hesitate to contact either myself or Mr. Patrick Woods at EKPC. Thank you for your attention to this matter.

Sincerely,



David S. Samford

Enc.

⁴ See, e.g. *In the Matter of the Application of East Kentucky Power Cooperative, Inc. for Approval to Amend its Environmental Compliance Plan and Recover Costs Pursuant to its Environmental Surcharge, Settlement of Certain Asset Retirement Obligations and Issuance of a Certificate of Public Convenience and Necessity and Other Relief*, Order, Case No. 2017-00376 (Ky. P.S.C. May 21, 2018).

⁵ *In the Matter of the Application of Water Service Corporation of Kentucky for a General Adjustment in Existing Rates*, Order, Case No. 2015-00382 (Ky. P.S.C. Apr. 5, 2016).