

KENTUCKY MUNICIPAL ENERGY AGENCY
GUIDELINES AND PROCEDURES
RELATING TO CONFIDENTIAL INFORMATION

BACKGROUND

KyMEA. The Kentucky Municipal Energy Agency ("KyMEA"), is organized and existing under Section 65.210 to 65.300 of the Kentucky Revised Statutes ("KRS"), as amended, known as the "Interlocal Cooperation Act" (the "Act"), to act as a joint agency for the mutual advantage of its members (the "Members") who are municipal electric systems in the Commonwealth of Kentucky in the coordinated planning, permitting, acquisition, construction and operation of new and existing facilities, and from joint purchases, sales and exchanges of electric power and related sources.

In order to carry out its purpose and the directives of its Members, KyMEA may be required to enter into non-disclosure agreements or may receive information which KyMEA has been requested to keep confidential from the provider. In addition KyMEA may need to preserve the confidentiality of information or proposals when entering into competitive negotiation with one or more persons for services or goods.

KyMEA has established these Guidelines and Procedures (the "Protocol") to establish rules by which its Directors, its Members and the governing body, employees, officers and consultants of such Members and KyMEA's employees, officers and consultants will review and utilize any and all information, material or discussions which KyMEA has agreed, or is required, to keep confidential (the "Confidential Information").

PROTOCOL

Disclosure Agreements. When feasible, prior to receiving Confidential Information, KyMEA will enter into an agreement (each a "Disclosure Agreement") with the provider (the "Provider") of the Confidential Information which outlines the understanding of the Provider and KyMEA relating to:

- (i) the information, material or discussions which are to be considered as Confidential Information;
- (ii) the disposition, destruction or retention of such Confidential Information;
- (iii) the term of the agreement or period of confidentiality;
- (iv) any remedies of the parties for a breach of confidentiality; and
- (v) such other terms and provisions that may be applicable or desired by the Provider or KyMEA.

KyMEA Representatives. Confidential Information received by KyMEA may be disclosed to its directors, officers, employees, attorneys, consultants and financial advisors (collectively, "Representatives"), but only if such Representatives (i) need to know the Confidential Information and (ii) understand and agree to be bound by the terms of this Protocol and any Disclosure Agreement relating to the Confidential Information. Representatives shall not disclose the Confidential Information to any person other than as expressly permitted by this Protocol and any Disclosure Agreement relating to the Confidential Information, and the Representatives shall safeguard the Confidential Information from unauthorized disclosure. The KyMEA Board or, in its absence, the KyMEA Executive Committee, shall determine the Representatives who may or may not have access to the Confidential Information.

Conflicted Representative. Any Representative of KyMEA who has, or may have, a conflict of interest or who may achieve a competitive advantage over a Provider if Confidential Information is disclosed to such Representative shall be deemed a "Conflicted Representative" and shall be denied access or review of such Confidential Information. The KyMEA Board or, in its absence, the KyMEA Executive Committee, shall determine who is a Conflicted Representative. The KyMEA Board or the Executive Committee may seek and rely upon the advice of its legal counsel in determining whether or not a person is a Conflicted Representative.

Unauthorized Disclosure. Notwithstanding anything in this Protocol or any Disclosure Agreement to the contrary or to any remedy set forth in any Disclosure Agreement, any unauthorized disclosure of the Confidential Information by any Representative, who was aware or should have known that such disclosure was unauthorized, shall be considered a breach of such Representative's duties to KyMEA, and such Representative may be liable to KyMEA for any damages suffered by KyMEA as a result of such unauthorized disclosure.

Disclosure to KyMEA Members. It is understood that from time to time a KyMEA Director may need to consult with representatives of his or her respective KyMEA Member governing body, including but not limited to any board member, city council or commission members, officials, directors, officers, employees, attorneys, consultants and financial advisors of the KyMEA Member (the "Member Representatives"), which may require to the need to disclose Confidential Information to the Member Representatives. In order to preserve the confidentiality of the information to be disclosed and to protect KyMEA from a breach of its duties and representations under a Disclosure Agreement, Confidential Information may be disclosed to a Member Representative upon compliance with the following procedures:

- (i) a KyMEA Director shall provide a written statement to KyMEA stating that the KyMEA Member Representative has a need for access to the Confidential Information to fulfill the Member's role in providing direction to the KyMEA Director relating to the matter for which the Confidential Information pertains; and

- (ii) the Member Representative shall enter into a Disclosure Agreement with KyMEA, substantially in the form submitted to the Member Representative by KyMEA and which shall set forth the terms and provisions relating to the use and confidentiality of the Confidential Information.

Member Representatives shall not disclose the Confidential Information to any person other than as expressly permitted by this Protocol, the Disclosure Agreement entered into by and between the Provider and KyMEA and the Disclosure Agreement entered into by and between KyMEA and the Member Representative relating to the Confidential Information, and the Member Representative shall safeguard the Confidential Information from unauthorized disclosure. The KyMEA Board or, in its absence, the KyMEA Executive Committee, shall have sole discretion as to the disclosure, release or access to the Member Representative of the Confidential Information.

KyMEA shall have the sole determination as to the format in which the Confidential Information will be presented. Generally it shall be the policy of KyMEA and this Protocol that the Confidential Information will be disclosed in a presentation format in order to limit the distribution of written materials to the Member Representative to further aid KyMEA and the Member Representative in maintaining the confidentiality of the Confidential Information.

Any Member Representative who has, or may have, a conflict of interest or who may achieve a competitive advantage over a Provider if Confidential Information is disclosed to such Representative, as solely determined by the KyMEA Board or Executive Committee, shall be deemed a "Conflicted Representative" and shall be denied access or review of such Confidential Information.

Procurement Procedures. Having adopted the certain rules and procedures relating to the procurement of goods and services, when implementing this Protocol KyMEA shall consider its procurement rules and procedures particularly requirements relating to competitive negotiation provisions to maintain the confidentiality of any proposals submitted therefore to protect the interest of KyMEA in maintaining the strongest negotiation position.

Open Records. Notwithstanding any procedures herein to the contrary, KyMEA as a public agency, as are its Members, are subject to state law relating to open meetings and open records, and if KyMEA, and/or any Representative or Member Representative, receives an open records request or other demand for Confidential Information, then KyMEA or the Representative or Member Representative shall notify the Provider, as soon as possible, to allow the Provider the opportunity to protect any Confidential Information from disclosure.

= This Protocol is dated December 16, 2015, the date of its approval by the KyMEA Board.