

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF CUMBERLAND VALLEY	)	
ELECTRIC, INC. FOR COMMISSION APPROVAL	)	
FOR A CERTIFICATE OF PUBLIC CONVENIENCE	)	CASE NO.
AND NECESSITY TO INSTALL AN ADVANCED	)	2018-00056
METERING INFRASTRUCTURE (AMI) SYSTEM	)	
PURSUANT TO KRS 807 KAR 5:001 AND KRS 278.020	)	

ORDER

This matter arises on Cumberland Valley Electric, Inc.'s ("Cumberland Valley") requests for confidential treatment of the cost for the advanced metering infrastructure ("AMI") system that Cumberland Valley proposes to install for a period of ten years. On March 8, 2018, the Commission entered an order denying Cumberland Valley's request for confidential treatment for the total cost and for individual component pricing for the AMI system. On March 22, 2018, Cumberland Valley filed a revised motion for confidential treatment ("Revised Motion") requesting that the same information be treated confidentially. Cumberland Valley filed a second revised motion for confidential treatment ("Second Revised Motion") on April 2, 2018, modifying the request to allow public disclosure of the total cost of the AMI system, while requesting confidential treatment for the individual component pricing.

In making its Second Revised Motion, Cumberland Valley submitted into the public record a redacted version of its Master Services and Purchases Agreement with the vendor for its AMI system (the "Agreement"), which contains the information for which it is seeking confidential treatment. The Master Services and Purchases Agreement

identifies the component prices for Cumberland Valley's proposed AMI system, including the component prices for related services, by listing the unit price for each component of the contract, such as the unit price for each advanced meter, the number of units for each component included in the contract, and the total cost for each component. The agreement divides the components into six categories —Endpoint Devices, Network Infrastructure Equipment & Tools, Spare Inventory of Network Infrastructure Equipment & Tools, Professional Services, PROD Environment, and TEST Environment— and provides the total cost of each category as well as the total contract cost. Cumberland Valley redacted the unit price for each component of the contract, the number of units for each component included in the contract, the total cost for each component, and the total cost for each category; but did not redact the total contract price.

In its Second Revised Motion, Cumberland Valley requested only that the Commission treat the redacted portions of the Agreement in a confidential manner. Cumberland Valley states that designated information involves competitively bid products and services that could be bid again in the future, and therefore, the information could be used by competitors to the detriment of Cumberland Valley. Cumberland Valley asserts the individual component pricing terms are subject to a confidentiality agreement between Cumberland Valley and its AMI system vendor and attached a letter from its AMI system vendor to the March 22, 2018 motion to support that assertion. Cumberland Valley argues that the individual component pricing information is confidential and proprietary and that public disclosure of the designated material would permit an unfair commercial advantage.

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> 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> In determining whether materials should be exempt from disclosure, the Commission must balance the harm from disclosure with “the effect of protecting a given document from scrutiny by the public and potential intervenors.”<sup>4</sup> “[C]apital costs and O&M costs are not generally recognized as confidential or proprietary when submitted in support of a request for a CPCN.”<sup>5</sup>

Here, as noted in the Commission’s March 8, 2018 Order, Cumberland Valley is seeking a CPCN for the implementation of an AMI system in this matter. The Commission has generally held that ratepayers have a right know the cost of assets that a public utility proposes to purchase and the evidence on which the Commission will rely in reaching a decision regarding whether the utility can incur such cost.<sup>6</sup> Moreover, Cumberland Valley

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

<sup>2</sup> See KRS § 61.871.

<sup>3</sup> 807 KAR 5:001, Section 13 (2)(c).

<sup>4</sup> *Southern United Medigroup, Inc. v. Hughes*, 952 S.W.2d 195, 199 (Ky. 1997), *abrogated on other grounds by Hoskins v. Maricle*, 150 S.W.3d 1 (Ky. 2004).

<sup>5</sup> Case No. 2014-00166, *2014 Integrated Resource Plan of Big Rivers Electric Corporation* (Ky. PSC Aug. 26, 2014) at 11; see also Case No. 2014-00292, *Application of East Kentucky Power Cooperative, Inc. for an Order Declaring the Glasgow Landfill Gas to Energy Project to be an Ordinary Extension of Existing Systems in the Usual Course of Business and a Joint Application of Farmers Rural Electric Cooperative Corporation and East Kentucky Power Cooperative, Inc. for Approval to Enter into a Ten Year Purchased Power Agreement and Approval of a Special Contract* (Ky. PSC Mar. 30, 2015) at 2 (“[C]apital costs are not generally recognized as confidential or proprietary when submitted in support of a request for a CPCN.”).

is a utility that provides retail electric service within an exclusive certified territory such that it has no real direct competitors. However, having further considered the record Cumberland Valley's revised motions, the Commission does find that the specific cost information may be used to the financial detriment of Cumberland Valley and its ratepayers by allowing potential future vendors to bid just under the cost of its current vendor, which, in turn, would place Cumberland Valley at a competitive disadvantage. Importantly, no party has requested intervention in this matter and no public comments have been received such it does not currently appear to be a matter of great public concern. Thus, in balancing the interests involved, the Commission finds that Cumberland Valley established that the redacted material meets the criteria for confidential treatment.

IT IS THEREFORE ORDERED that:

1. Cumberland Valley's Revised Motion for confidential treatment filed on March 22, 2018, is denied.
2. Cumberland Valley's Second Revised Motion for confidential treatment of the component pricing filed on April 2, 2018, is granted.
3. Within seven days of the date of the entry of this Order, Cumberland Valley shall file a revised version of the materials at issue, reflecting as redacted only the specific component pricing information and as unredacted the total cost of the proposed project and Exhibit 6 to the Application.
4. The materials for which confidential treatment was sought in the Second Revised Motion shall not be made available to the public for a period of ten years from the date of this order, unless and until the Commission orders otherwise.

5. Use of the materials for which confidential treatment was granted in any Commission proceeding shall be in compliance with 807 KAR 5:001, Section 13(9).

6. Cumberland Valley shall inform the Commission if the materials for which confidential treatment was granted become publicly available or no longer qualify for confidential treatment.

7. If a non-party to this proceeding requests to inspect materials granted confidential treatment by this Order and the period during which the materials have been granted confidential treatment has not run, Cumberland Valley shall have 20 days from receipt of written notice of the request to demonstrate that the materials still fall within the exclusions from disclosure requirements established in KRS 61.878. If Cumberland Valley is unable to make such demonstration, the requested materials shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

8. Nothing in this Order shall be construed as preventing the Commission from revisiting the confidential treatment of the material at issue herein.

By the Commission

ENTERED  
MAY 09 2018  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
Executive Director

Case No. 2018-00056

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