

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF MEADE)	
COUNTY RURAL ELECTRIC COOPERATIVE)	CASE NO.
CORPORATION FOR AN ADJUSTMENT OF)	2020-00131
RATES)	

ORDER

On July 21, 2020, Meade County Rural Electric Cooperative Corporation (Meade RECC) filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential protection for ten years to information filed in response to Commission Staff’s First Request for Information (Staff’s First Request), Items 4, 8, and 25; and Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention’s (Attorney General) First Request for Information (Attorney General’s First Request) Items 3 and 18.

In support of its motion, Meade RECC argued that the designated material in this rate case is exempt from public disclosure under KRS 61.878(1)(c)(1) which exempts “[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 openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records” and KRS 61.878(1)(a) which exempts “[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.”

In response to Staff's First Request, Item 8, Meade RECC provided a copy of a Key Ratio Trend Analysis (KRTA) compiled by third party Cooperative Financial Corporation (CFC) comprised of comprehensive details of internal Meade RECC business figures for a five-year period across 145 different factors, including revenue, expenses, growth data, pricing, and other data compared with proprietary national and regional data collected by CFC for use in this type of report. Meade RECC argued that this report should stay confidential in its entirety under copyright law and that CFC specifically included language in the report stating that the information was considered by CFC to be proprietary, confidential, and protected by copyright law. Meade RECC argued that disclosure could result in being accused of violating CFC's copyright and losing access to this information in the future due to the potential chilling effect on CFC's willingness to share such information.

In response to Staff's First Request, Item 4, Meade RECC provided a copy of a wage and salary report prepared by third party Intandem, LLC (Intandem). Meade RECC argued that this report should be exempt from public disclosure in its entirety for similar reasons as the KRTA. Intandem also used regional and national proprietary data collected by Intandem for use in this type of report and might be reluctant to work with Meade RECC in the future if it fails to protect Intandem's work product. The report also contains individual non-executive salary information, including some employee names, as well as information that could be used to identify other individuals' salary information. Meade RECC argued that its non-executive employees have a privacy interest in their compensation information that is protected under KRS 61.878(1)(a).

In response to Staff's First Request, Item 25, Meade RECC provided a copy of a list of non-executives' pay rates, which did not include individual employee titles or names, just numbers. Meade RECC stated that this information is clearly private and commercially valuable.

Meade RECC also sought confidential treatment under KRS 61.878(1)(a) for documents provided in response to Attorney General's First Request Items 3 and 18. These documents consist of salary increases and annual bonus payments to employees. Meade RECC argued that these employees have a privacy interest in their compensation information. However, Meade RECC did not request confidential treatment for executive officers' compensation data.

Having considered the motion and the material at issue, the Commission finds that Meade RECC's motion for confidential treatment is granted in part and denied in part. The KRTA and salary report are both proprietary and intended by the preparers to remain confidential. Public disclosure could jeopardize Meade RECC's ability to obtain this type of information in the future and might represent a copyright law violation. Release of the wage and salary report would also be detrimental to Meade RECC's future compensation negotiations with employees. The Commission has previously granted confidential treatment to KRTA's and other reports generated by third parties pursuant to KRS 61.878(1)(c)(1).¹ The non-executive employee compensation information is exempt from public disclosure under KRS 61.878(1)(a) because non-executive employees have

¹ Case No. 2021-00358, *Electronic Application of Jackson Purchase Energy Corporation for a General Adjustment of Rates and Other General Relief* (Ky. PSC Dec. 9, 2021), Order at 2, granting confidential treatment to a KRTA and *citing* Case No. 2018-00358, *Electronic Application of Kentucky American Water Company for an Adjustment of Rates* (Ky. PSC Mar. 14, 2019), Order at 2.

an expectation of privacy in this information.² Therefore the documents that Meade RECC sought confidential treatment for, provided in response to Staff's First Request, Items 4 and 8; and Attorney General's First Request Items 3 and 18 (excluding executive officer salary data), meet the criteria for confidential treatment and is exempted from public disclosure for ten years pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(a) and (1)(c)(1).

The Commission further finds that the request for confidential treatment should be denied for the list of pay rates provided in response to Staff's First Request, Item 25. This information is not personal in nature under KRS 61.878(1)(a) because it does not include employee names, titles, or any other information that would allow identification of individual compensation data. The Commission has previously denied confidential treatment to non-individualized employee compensation data,³ which is included in the ratemaking calculation. Therefore, this information does not meet the criteria for confidential treatment and is not exempted from public disclosure pursuant to KRS 61.878(1)(a) and 807 KAR 5:001, Section 13.

IT IS THEREFORE ORDERED that:

1. Meade RECC's motion for confidential treatment for the designated material is granted in part and denied in part.

² See Case No. 2020-00160, *Electronic Application of Water Service Corporation of Kentucky for a General Adjustment in Existing Rates* (Ky. PSC Dec. 22, 2020), Order at 2; Case No. 2017-00321, *Electronic Application of Duke Energy Kentucky, Inc. For: 1) An Adjustment of the Electric Rates; 2) Approval of an Environmental Compliance Plan and Surcharge Mechanism; 3) Approval of New Tariffs; 4) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities and 5) All Other Required Approvals and Relief* (Ky. PSC May 3, 2018), Order at 4–6.

³ Case No. 2020-00290, *Electronic Application of Bluegrass Water Utility Operating Company, LLC for an Adjustment of Rates and Approval of Construction* (Ky. PSC Dec. 27, 2021), Order at 6.

2. Meade RECC's motion for confidential treatment for documents provided in response to Staff's First Request, Items 4 and 8; and Attorney General's First Request Items 3 and 18 (excluding executive officer salary data) is granted.

3. Meade RECC's motion for confidential treatment for the document provided in response to Staff's First Request, Item 25 is denied.

4. 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.

5. 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).

6. Meade RECC shall inform the Commission if the designated material granted confidential treatment becomes publicly available or no longer qualifies for confidential treatment.

7. 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, Meade RECC 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 Meade RECC is unable to make such demonstration, the requested material shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

8. The Commission shall not make the requested material for which confidential treatment was granted 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 Meade RECC to seek a remedy afforded by law.

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 Meade RECC 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 should be granted confidential treatment.

11. Within 30 days of the date of service of this Order, Meade RECC 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 Meade RECC'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 Meade RECC to seek a remedy afforded by law.

By the Commission

ENTERED
JAN 25 2022 rCS
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


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Case No. 2020-00131

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