

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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| ELECTRONIC APPLICATION OF TAYLOR |) | |
| COUNTY RURAL ELECTRIC COOPERATIVE |) | CASE NO. |
| CORPORATION FOR A GENERAL |) | 2023-00147 |
| ADJUSTMENT OF RATES |) | |

ORDER

On July 19, 2023, Taylor County Rural Electric Cooperative Corporation (Taylor RECC) filed three motions,¹ pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential protection for ten years for several of its responses, including information regarding bids, salaries, and a Key Ratio Trend Analysis (KRTA), to Staff’s Second Request and Attorney General’s First Request.

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.”² Exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.³ The

¹ On July 19, 2023, Taylor RECC filed three motions for confidential treatment. One motion addressed confidential treatment for material provided in response to Commission Staff’s Second Request for Information (Staff’s Second Request) and the Attorney General’s First Request for Information (Attorney General’s First Request). This motion was filed twice, each time for responses to each party. The third motion was an amended motion that included a request for confidential treatment for additional items provided in response to the Attorney General’s First Request. For ease of understanding, the Order will address the items as listed in the amended motion.

² KRS 61.872(1).

³ See KRS 61.871.

party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.⁴ KRS 61.878(1)(a) exempts “[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.”⁵ 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.”⁶ KRS 61.878(1)(k) exempts from public disclosure “[a]ll public records or information the disclosure of which is prohibited by federal law or regulation.”⁷

RESPONSE TO STAFF’S SECOND REQUEST, ITEM 1C

In response to Staff’s Second Request, Item 1c, Taylor RECC provided bids received from third-party contractors for right-of-way management. Taylor RECC claimed it participated in a competitive marketplace in terms of obtaining the service of right-of-way contractors. Taylor RECC argued that this information should be granted confidential treatment because the companies responding engaged in a competitive bidding process and, if disclosed, would permit an unfair commercial advantage to its competitors.

Having considered the motion and the material at issue, the Commission finds that Taylor RECC’s response to Staff’s Second Request, Item 1c, should be granted in part

⁴ 807 KAR 5:001, Section 13(2)(c).

⁵ KRS 61.878(1)(a).

⁶ KRS 61.878(1)(c)(1).

⁷ KRS 61.878(1)(k).

and denied in part. The Commission finds that the bids not selected by Taylor RECC are records that meet the criteria for confidential treatment and should be exempted from public disclosure pursuant to KRS 61.878, KRS 61.878(1)(c)(1), and 807 KAR 5:001, Section 13.

The Commission further finds that the request for confidential treatment should be denied for the bids selected by Taylor RECC contained in Taylor RECC's response to Staff's Second Request, Item 1c. The Commission has previously held that winning bids are not entitled to confidential protection."⁸ Therefore, the winning bids provided in response to Staff's Second Request, Item 1c, do not meet the criteria for confidential treatment and should not be exempted from public disclosure pursuant to KRS 61.878 (1)(c)(1) and 807 KAR 5:001, Section 13.

RESPONSE TO ATTORNEY GENERAL'S FIRST REQUEST, ITEM 3

In response to Attorney General's First Request, Item 3, Taylor RECC provided salary information for employees. Taylor RECC argued that this information should be granted confidential protection pursuant to KRS 61.878(1)(a) because disclosure of the information would be an unwarranted invasion of personal privacy.

Having considered the motion and the material at issue, the Commission finds that Taylor RECC's response to Attorney General's First Request, Item 3, should not be given confidential treatment. The spreadsheet provided does not contain any personal identifying information as required by 61.878(1)(a). Additionally, the spreadsheet contains some executive salaries, which are generally not granted confidential treatment

⁸ See Case No. 2022-00341, *Electronic Application of Delta Nat. Gas Co., Inc. for Its Pipe Replacement Filing* (Ky. PSC Feb. 17, 2023), Order at 1.

by the Commission.⁹ Therefore, the salary information provided in response to Attorney General's First Request, Item 3, does not meet the criteria for confidential treatment and should not be exempted from public disclosure pursuant to KRS 61.878(1)(a) and 807 KAR 5:001, Section 13.

RESPONSE ATTORNEY GENERAL'S FIRST REQUEST, ITEM 27A

In response to Attorney General's First Request, Item 27a, Taylor RECC provided the Key Ratio Trend Analysis (KRTA) compiled by the Cooperative Financial Corporation (CFC). Taylor RECC argued that the KRTA is protected by copyright law, and CFC has the right to rely on its copyright to protect against the public disclosure of the information. Release of the KRTA could put Taylor County RECC in the position of being accused of violating CFC's copyright. Disclosure of this information could also hinder Taylor RECC being granted access to this information in the future.

Having considered the motion and the material at issue, the Commission finds that Taylor RECC's response to Attorney General's First Request, Item 27a, should be given confidential treatment. The Commission has previously held that the KRTA is generally recognized as confidential or proprietary.¹⁰ The Commission finds that KRTA meets the criteria for confidential treatment and should be exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13.

⁹ See Case No. 2021-00185, *Electronic Application of Delta Natural Gas Company, Inc for an Adjustment of Its Rates and a Certificate of Public Convenience and Necessity* (Ky. PSC Dec. 8, 2021), Order at 5.

¹⁰ See 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.

RESPONSE TO ATTORNEY GENERAL'S FIRST REQUEST, ITEM 102

In support of its motion, Taylor RECC requested confidential protection for its response to Attorney General's First Request, Item 102, which contained the aggregate salary percentage increase of all employees. Taylor RECC argued this should be granted confidential protection pursuant to KRS 61.878(1)(a) and KRS 61.878(1)(c)(1). Taylor RECC argued that disclosure of the information could allow competitors an advantage in the competitive market for employees. Taylor RECC also averred that the information is private in nature and release of it would be an invasion of personal privacy.

Having considered the motion and the material at issue, the Commission finds that the request for confidential treatment should be denied for the aggregate salary percentage increase of all employees provided in its response to Attorney General's First Request, Item 102. This information only shows the percentage increase of raises and does not provide a starting or resulting salary. This information is so limited that it is unlikely to create a competitive advantage to others. The Commission has not granted confidential treatment for similar information in the past.¹¹ Therefore, the aggregate salary percentage increase 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 807 KAR 5:001, Section 13.

¹¹ See Case No. 2020-00349, *Electronic Application of Kentucky Utilities Company for an Adjustment of Its Electric Rates, a Certificate of Public Convenience And Necessity To Deploy Advanced Metering Infrastructure, Approval of Certain Regulatory and Accounting Treatments, and Establishment of a One-Year Surcredit* (Ky. PSC Dec. 6, 2021), Order at 3.

IT IS THEREFORE ORDERED that:

1. Taylor RECC's motion for confidential treatment for its responses to Staff's Second Request, Item 1c, and Attorney General's First Request, Item 3, Item 27a, and Item 102, is granted in part and denied in part.

2. Taylor RECC's motion for confidential treatment for bids not selected by Taylor RECC from Taylor RECC's response to Staff's Second Request, Item 1c, and its response to Attorney General's First Request, Item 27a, is granted.

3. Taylor RECC's motion for confidential treatment for bids selected by Taylor RECC from Taylor RECC's response to Staff's Second Request Item 1c and its response to Attorney General's First Request, Item 3 and Item 102, 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. Taylor 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, 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 Taylor 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 Taylor 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 Taylor 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 shall be granted confidential treatment.

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

PUBLIC SERVICE COMMISSION

Hunt Clark
Chairman

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w/permission } Angie Hatten
Vice Chairman

Mary Pat Rogan
Commissioner

ENTERED
OCT 20 2023 bsb
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:

[Signature] For
Executive Director

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