

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF SHELBY)	
ENERGY COOPERATIVE, INC. FOR A GENERAL)	CASE NO.
ADJUSTMENT OF RATES PURSUANT TO)	2023-00213
STREAMLINED PROCEDURE PILOT PROGRAM)	
ESTABLISHED IN CASE NO. 2018-00407)	

ORDER

On September 12, 2023, Shelby Energy Cooperative, Inc. (Shelby Energy) 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 for certain responses to the first request for information from the Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention (Attorney General),¹ (Attorney General's First Request), specifically Items 19 and 24g.

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 party requesting that materials be treated confidentially has the burden of establishing

¹ Attorney General's First Request for Information (filed Aug. 29, 2023).

² KRS 61.872(1).

³ See KRS 61.871.

that one of the exceptions is applicable.⁴ KRS 61.878(1)(a) exempts from disclosure “[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

DISCUSSION

Response to Attorney General’s First Request, Item 19

In response to Attorney General’s First Request, Item 19, Shelby Energy provided redacted documents that contain both executive and non-executive employee information, with detailed information of employee compensation and benefits by position. While Shelby Energy’s response does not specifically designate executive verses non-executive employee information, Shelby Energy provided answers to the subsections of this question that pertained to executive positions and provided a redacted spreadsheet that disclosed figures relating to executive level positions only. Shelby Energy’s request for confidential treatment is for all remaining redacted employee information, which is the non-executive employee information requested. Shelby Energy argues that disclosure of proprietary information would violate the privacy rights of employees named and provide insight into salary determinations.

⁴ 807 KAR 5:001, Section 12(2)(c).

⁵ KRS 61.878(1)(a).

⁶ KRS 61.878(1)(c)(1).

Response to Attorney General's First Request, Item 24g

In response to Attorney General's First Request, Item 24g, Shelby Energy provided documents that contain right-of-way (ROW) clearing proposals for the last five years. Shelby Energy argued that this information should be granted confidential treatment pursuant to KRS 61.878(1)(c)(1) because public disclosure of the bids received from third-party contractors for ROW management would permit an unfair commercial advantage to competitors by allowing them access to Shelby Energy's competitive bidding process.

FINDINGS

Having considered the motion and the material at issue, the Commission finds that Shelby Energy's motion should be granted in part and denied in part. The Commission finds that the designated materials contained in Shelby Energy's Response to Attorney General's First Request, Item 19, should be granted confidential treatment as public disclosure of this information could result in the unwarranted invasion of personal privacy of employees. The Commission has previously found that such information should be afforded confidential treatment and disclosure would be a violation of employee's expectation of privacy.⁷ Therefore, the designated material meets the criteria for confidential treatment and should be exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, KRS 61.878(1)(c)(1), and KRS 61.878(1)(a).

The Commission generally treats itemized bids as confidential for a limited time to prevent future bidders from using the information to manipulate bidding in future

⁷ See Case No. 2020-00104, *Electronic Application of Clark Energy Cooperative, Inc. for a General Adjustment of Rates Pursuant to Streamlined Procedure Pilot Program Established in Case No. 2018-00407* (Ky. PSC Jan. 25, 2022), Order at 3.

contracts.⁸ Disclosure would also assist Shelby Energy's competitors in competing for obtaining future vegetation management contracts. Therefore, the Commission finds that confidential treatment for the information redacted from Shelby Energy's Response to Attorney General's First Request, Item 24g, pursuant to KRS 61.878 (1)(c)(1), KRS 61.878(1)(a), and 807 KAR 5:001, Section 13, with the exception of the total winning bid should be granted.

The Commission further finds that the request for confidential treatment for the information redacted from Shelby Energy's Response to Attorney General's First Request, Item 24g is denied for the total winning bid amount. This amount is included in base rate calculations and should be subject to public disclosure. This information does not meet the criteria for confidential treatment and is not exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13.⁹

IT IS THEREFORE ORDERED that:

1. Shelby Energy's motion for confidential treatment is granted in part and denied in part.
2. Shelby Energy's motion for confidential treatment for responses provided to Attorney General's First Request Item 19 containing non-executive employee information is granted.

⁸ See Case No. 2020-00004, *An Electronic Examination of the Application of the Fuel Adjustment Clause of Kentucky Power Company from May 1, 2019 Through October 31, 2019* (Ky. PSC Apr. 9, 2020), Order at 1–2.

⁹ See Case No. 2022-00341, *Electronic Application of Delta Natural Gas Company, Inc. for Its Pipe Replacement Filing* (Ky. PSC Feb. 17, 2023), Order at 1.

3. Shelby Energy's motion for confidential treatment for responses provided to Attorney General's First Request Item 24g containing ROW bids for the last five years that were not selected by Shelby Energy is granted.

4. Shelby Energy's motion for confidential treatment for responses provided to Attorney General's First Request Item 24g containing ROW bids for the last five years that were selected by the utility is denied.

5. 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.

6. 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).

7. Shelby Energy shall inform the Commission if the designated material granted confidential treatment becomes publicly available or no longer qualifies for confidential treatment.

8. 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 Shelby Energy is unable to make such demonstration, the requested material shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

9. 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 Shelby Energy to seek a remedy afforded by law.

10. 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.

11. If Shelby Energy 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.

12. Within 30 days of the date of service of this Order, Shelby Energy 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.

13. The designated material for which Shelby Energy'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 Shelby Energy to seek a remedy afforded by law.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ENTERED
NOV 20 2023 bsb
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

*L. Allyson Honaker
Honaker Law Office, PLLC
1795 Alysheba Way
Suite 6202
Lexington, KENTUCKY 40509

*Michael West
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Angela M Goad
Assistant Attorney General
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Michael Moriarty
Shelby Energy Cooperative, Inc.
620 Old Finchville Road
Shelbyville, KY 40065

*Brittany H. Koenig
Honaker Law Office, PLLC
1795 Alysheba Way
Suite 6202
Lexington, KENTUCKY 40509

*Shelby Energy Cooperative, Inc.
620 Old Finchville Road
Shelbyville, KY 40065

*Gregory B Ladd
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Jack Bragg, Jr.
Shelby Energy Cooperative, Inc.
620 Old Finchville Road
Shelbyville, KY 40065

*John Horne
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Larry Cook
Assistant Attorney General
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204