

November 18, 2014

Mr. Jeff Derouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, Kentucky 40602-0615

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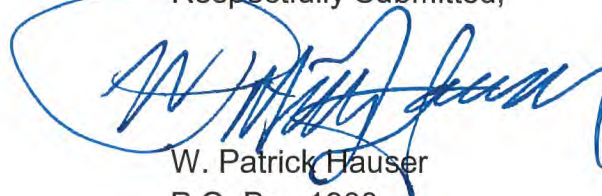
RE: Application of Cumberland Valley Electric Cooperative
Corporation for an Adjustment of Rates
Case No. 2014-00159

Dear Mr. Derouen:

Enclosed please find for the proper filing thereof an original and ten (10) copies of the Petition of Cumberland Valley Electric Inc For Confidential Treatment, an original and ten (10) copies of the KAEC Survey – Public, and one copy of the KAEC Survey – Confidential which has been placed in a separate sealed envelope marked as “Confidential”.

Should you have any questions or need further information, please let me know.

Respectfully Submitted,



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Attorney for
Cumberland Valley Electric, Inc.

Enclosures

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF CUMBERLAND VALLEY)
ELECTRIC, INC. FOR AN ADJUSTMENT OF RATES) CASE NO. 2014-00159
AND ALL CORRESPONDING MATERIALS)

PETITION OF CUMBERLAND VALLEY ELECTRIC INC.
FOR CONFIDENTIAL TREATMENT

Comes now Cumberland Valley Electric, Inc. (“Cumberland Valley”), by and through its counsel, and, pursuant to 807 KAR 5:001 Section 13 and KRS 61.878, hereby petitions the Public Service Commission for the Commonwealth of Kentucky (“Commission”) for an order granting confidential protection to certain information Cumberland Valley is providing in response to data requests issued by the Attorney General. The information Cumberland Valley seeks to protect as confidential is hereinafter referred to as the “Confidential Information.” As grounds for its motion, Cumberland Valley states as follows.

The Confidential Information includes portions of the salary survey requested by the Attorney General in Post-Hearing Data Request No. 1.

Certain information contained in the salary survey that is irrelevant to this proceeding has been withheld or fully redacted from both the public and confidential versions of the document pursuant to an agreement between Cumberland Valley's counsel and the Attorney General. Such information is not subject to this petition.

One (1) copy of the hardcopy pages containing Confidential Information, with the Confidential Information highlighted with transparent ink, printed on yellow paper, or otherwise marked “CONFIDENTIAL,” is being filed with this petition. A copy of those pages with the

Confidential Information redacted is being filed with the original and each of the ten (10) copies of the salary survey filed with this petition. 807 KAR 5:001 Section 13(2)(a)(3).

A copy of this petition with the Confidential Information redacted has been served on all parties to this proceeding pursuant to 807 KAR 5:001 Section 13(2)(b). A copy of the Confidential Information has been served on all parties that have signed a confidentiality agreement.

The Confidential Information is not publicly available, is not disseminated within Cumberland Valley except to those employees and professionals with a legitimate business need to know and act upon the information, and is not disseminated to others without a legitimate need to know and act upon the information. Furthermore, the Confidential Information is subject to confidentiality agreements between Cumberland Valley and third parties that provided the information. (*See* Section I, *infra*.)

If and to the extent the Confidential Information becomes generally available to the public, whether through filings required by other agencies or otherwise, Cumberland Valley will notify the Commission and have the information's confidential status removed pursuant to 807 KAR 5:001 Section 13(10)(b).

As discussed below, the Confidential Information is entitled to confidential protection pursuant to the Commission's standard practices regarding information protected by confidentiality agreements with third parties. The Confidential Information is also entitled to confidential protection pursuant to KRS 61.878(1)(a), which protects "records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." The Confidential Information is also entitled to confidential protection pursuant to KRS 61.878(1)(c)(1), which protects "records 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.” *See generally* 807 KAR 5:001 Section 13(2)(a)(1) (requiring specific grounds pursuant to KRS 61.878 for classification of material as confidential).

I. The Confidential Information Is Entitled to Confidential Treatment Because It Is Subject to Confidentiality Agreements with Third Parties.

The Confidential Information contained in the salary survey includes proprietary and confidential information provided to the Kentucky Association of Electric Cooperatives (“KAEC”) by its Kentucky electric distribution cooperative members. None of the Confidential Information was created or compiled by Cumberland Valley, and all of the third parties involved provided the KAEC (and, by extension, Cumberland Valley) with access to the Confidential Information pursuant to an understanding that the Confidential Information would remain confidential. Consequently, Cumberland Valley is not at liberty to publicly disclose the Confidential Information.

The Commission has repeatedly granted confidential treatment to information in similar circumstances. *See, e.g., In the Matter of Big Rivers Elec. Corp. Filing of Wholesale Contracts Pursuant to KRS 278.100 and KAR 5:011 § 13*, Order, P.S.C. Case No. 2014-00134 (Oct. 9, 2014) (granting confidential treatment to a third party's strategic analysis); *In the Matter of Application of Big Rivers Elec. Corp. for a General Adjustment in Rates*, Order, P.S.C. Case No. 2012-00535 (April 25, 2013) (granting confidential treatment to models and industry data provided by third party consultants, as well as to details of sensitive commercial negotiations that were subject to a confidentiality agreement among the negotiating parties); *In the Matter of Big Rivers Elec. Corp. for Approval of Its 2012 Environmental Compliance Plan, for Approval of Its*

Amended Environmental Cost Recovery Surcharge Tariff, for Certificates of Public Convenience and Necessity, and for Authority to Establish a Regulatory Account, Petition of Big Rivers Elec. Corp. for Confidential Protection, P.S.C. Case No. 2012-00063 (May 30, 2012) (seeking confidential protection on grounds that information was provided by third party pursuant to confidentiality agreement); *id.*, Letter from Commission (Aug. 15, 2012) (granting petition for confidential protection); *In the Matter of Application of Kenergy Corp. for Certificate of Convenience and Necessity*, Petition of Kenergy Corp. for Confidential Treatment, P.S.C. Case No. 2011-00350 (Aug. 26, 2011) (proposed agreement between party and third party filed confidentially); *id.*, Letter from Commission (Sep. 7, 2011) (accepting confidential filing).

Accordingly, the Confidential Information should be afforded confidential treatment pursuant to the Commission's standard practices.

II. The Confidential Information Is Entitled to Confidential Treatment Pursuant to KRS 61.878(1)(a), Protecting Information of a Personal Nature.

KRS 61.878(1)(a) protects “records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.”

The Confidential Information contained in the salary survey identifies approximately 30 specific employee positions at multiple electric distribution cooperatives in Kentucky. It also provides detailed salary, hourly rate, holiday, sick leave, vacation, pension, health insurance, short-term disability insurance, and long-term disability insurance information related to each of those positions.

Information falls under the exemption set forth in KRS 61.878(1)(a) if it is of a “personal nature” and if the privacy interest in that personal information outweighs the public good in making the records publicly available. *See Kentucky Bd. of Examiners of Psychologists v.*

Courier-Journal, 826 S.W.2d 324, 327 (Ky. 1992). Here, the information contains extremely sensitive employment details that identify almost all compensation information associated with numerous specific employee positions at multiple companies. The sensitivity of the Confidential Information is especially high here because of the small community involved – the cooperatives are all situated in the same region of Kentucky. Even without specific company names listed, and even with employee positions listed by title instead of name, individuals knowledgeable about the electric industry in that region of Kentucky may find it easy to connect the compensation information to specific and identifiable employees. In short, the only way to adequately protect the privacy of these individuals is to protect the Confidential Information as confidential. This is especially true here, where the Attorney General has only sought access to the information in order to evaluate the compensation practices of Cumberland Valley, and not for the purpose of investigating or evaluating the third-party distribution cooperatives whose information is being provided pursuant to this Petition for Confidential Treatment.

The Confidential Information also implicates privacy concerns for the electric cooperatives and for KAEC themselves. If a knowledgeable individual can connect even one entry to a specific and identifiable employee, that individual can effectively gain access to the entire compensation structure of the cooperative for which that employee works. These cooperatives are not parties to this proceeding, they are not the subject of this proceeding, and their proprietary and confidential financial information should be protected. Finally, KAEC collected this sensitive information from its members and compiled it based on its members' expectations that the information would remain confidential. Separate from the privacy concerns of the individual employees and cooperatives, KAEC, which is also not a party to this proceeding, has a significant privacy interest in the continued confidential treatment of the

Confidential Information it has compiled for the benefit of its Kentucky electric cooperative members.

For these reasons, the information is of a highly personal nature, and because the details relate to private, not public, employees of cooperatives who are not the subject of this proceeding, there is little to no public interest in making these details publicly available. For these reasons, the public disclosure of this information would constitute an unwarranted invasion of personal privacy, and the Confidential Information should be afforded confidential treatment pursuant to KRS 61.878(1)(a).

III. The Confidential Information Is Entitled to Confidential Treatment Pursuant to KRS 61.878(1)(c)(1), Protecting Information of a Sensitive Commercial Nature.

A. Cumberland Valley Faces Actual Competition.

KRS 61.878(1)(c)(1) protects “records 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.”

As an electric distribution cooperative, Cumberland Valley competes with other businesses (including other electric cooperatives) for the best employees. Much of Cumberland Valley's workforce consists of talented individuals with a deep knowledge of the electric distribution industry; consequently, the retention of existing employees and the recruitment of qualified new employees is critically important to Cumberland Valley. Disclosure of the Confidential Information could impede Cumberland Valley's ability to effectively attract talented employees, either by creating false expectations and pricing signals in the marketplace or by revealing potential compensation strategies of Cumberland Valley. In either case, the

exposure of this information in the public realm could make it more difficult for Cumberland Valley to attract and retain the best possible employees.

Accordingly, Cumberland Valley competes in the marketplace of potential employees with other businesses (including electric cooperatives), and the Confidential Information should be protected to prevent unfair competitive advantage.

B. The Confidential Information is Generally Recognized as Confidential or Proprietary.

The Confidential Information for which Cumberland Valley seeks confidential treatment under KRS 61.878(1)(c)(1) is generally recognized as confidential or proprietary under Kentucky law.

The Confidential Information contained in the salary survey includes salary, hourly rate, holiday, sick leave, vacation, pension, health insurance, short-term disability insurance, and long-term disability insurance information related to numerous employee positions at multiple electric cooperatives. Cumberland Valley reviews information of this nature in evaluating its compensation structure, including wages, salaries, and potential raises paid to its employees.

Public disclosure of the Confidential Information would reveal details of Cumberland Valley's internal management strategies as it evaluates and plans its employee compensation structure. This type of information bears upon Cumberland Valley's inner workings, and it is generally recognized as confidential or proprietary. *See, e.g., Hoy v. Kentucky Indus. Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995) ("It does not take a degree in finance to recognize that such information concerning the inner workings of a corporation is 'generally recognized as confidential or proprietary'"); *Marina Management Servs. v. Cabinet for Tourism, Dep't of Parks*, 906 S.W.2d 318, 319 (Ky. 1995) (unfair commercial advantage arises simply from "the ability to ascertain the economic status of the entities without the hurdles systemically

associated with the acquisition of such information about privately owned organizations”). In addition, the Confidential Information is subject to confidentiality obligation with third parties, a circumstance in which the Commission has repeatedly granted confidential treatment. (*See* Section I, *supra.*)

Accordingly, the Confidential Information should be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1).

C. Disclosure of the Confidential Information Would Result in an Unfair Commercial Advantage to Cumberland Valley’s Competitors.

Disclosure of the Confidential Information would grant Cumberland Valley’s competitors in the workforce market an unfair commercial advantage. As discussed above in Section III.A, Cumberland Valley faces actual competition in the market for qualified employees. Cumberland Valley’s ability to compete in this market would be adversely affected if the Confidential Information were publicly disclosed, and Cumberland Valley seeks protection from such competitive injury.

Publication of the Confidential Information regarding employee compensation details used by Cumberland Valley to evaluate and plan its compensation structure could cause serious competitive repercussions, including the potential “poaching” of employees by other businesses (including other electric cooperatives) and Cumberland Valley’s competitors. These repercussions would result in an unfair commercial advantage for Cumberland Valley’s competitors because it would reduce Cumberland Valley’s ability to attract and retain its workforce and properly allocate its staff. Any departure of employees or suppression of Cumberland Valley's ability to attract and retain new talent could cause significant harm to its operational and administrative efforts.

Accordingly, the public disclosure of the Confidential Information would provide Cumberland Valley's competitors in the workforce marketplace with an unfair commercial advantage, and the Confidential Information should be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1).

IV. Time Period

Pursuant to 807 KAR 5:001 Section 13(2)(a)(2), Cumberland Valley requests that the Confidential Information be afforded confidential treatment in perpetuity. The information originated with third parties and reflects sensitive personal information of numerous third party individuals and companies. Unlike competitive concerns, these privacy concerns do not disappear with the passage of time. The personal information can only be adequately protected if the Confidential Information is protected in perpetuity.

V. Conclusion

Based on the foregoing, the Confidential Information is entitled to confidential treatment pursuant to 807 KAR 5:001 Section 13 and KRS 61.878. If the Commission disagrees that Cumberland Valley's Confidential Information is entitled to confidential treatment, due process requires the Commission to hold an evidentiary hearing. *Utility Regulatory Comm'n v. Kentucky Water Serv. Co., Inc.*, 642 S.W.2d 591 (Ky. App. 1982).

WHEREFORE, Cumberland Valley respectfully moves that the Commission classify and protect as confidential the Confidential Information.

Respectfully submitted,



W. PATRICK HAUSER

Attorney at Law

P.O. Box 1900

Barbourville, KY 40906

606-546-3811

ATTORNEY FOR CUMBERLAND VALLEY

CERTIFICATE OF SERVICE AND FILING

Counsel certified that an original and ten photocopies of the foregoing were served via Federal Express to Jeff Derouen, Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601; counsel further states that true and accurate copies of the foregoing were mailed via First Class U.S. Mail, postage pre-paid, to:

Hon. Angela M. Goad
Assistant Attorney General
1024 Capital Center Drive, Suite 200
Frankfort, KY 40601-8204

This 18th day of November, 2014.



W. PATRICK HAUSER