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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF SALT RIVER ELECTRIC)
COOPERATIVE CORPORATION FOR AN)
ORDER ISSUING A CERTIFICATE OF PUBLIC) CASE NO.
CONVENIENCE AND NECESSITY) 2019-00399
CONSTRUCT AN ADVANCED METERING)
INFRASTRUCTURE (AMI) SYSTEM PURSUANT)
TO 807 KAR 5:001 AND KRS 278.020)

**MOTION OF SALT RIVER ELECTRIC COOPERATIVE CORPORATION
TO RECONSIDER A PORTION OF THE COMMISSION'S
JANUARY 6, 2020 ORDER REGARDING CONFIDENTIALITY**

Comes now the Applicant, Salt River Electric Cooperative Corporation (SRECC), by counsel, and Moves the Commission to Reconsider a portion of its January 6, 2020 Order regarding confidential protection being granted to portions of its application, namely, to reconsider the Order's denial of SRECC's request to keep confidential the "individual component pricing" of its prevailing vendor, Aclara.

Background

The Commission's Order denied confidential treatment of Appendices A, C, D, and the portion of Appendix B specific to Aclara. Its basis for that ruling was 1) that the information contained in those Appendices "concern the costs of the proposed AMI system" and that "Salt River's owner-member customers have a right to know the evidence upon which the Commission relied in determining whether to approve" SRECC's application; 2) citation to publicly available materials as stated in Commission's Staff Opinion 2017-013, rendered 22 days prior to SRECC's Application; 3) that "Salt River has not shown that it has competitors"; and 4) that, pursuant to KRS

61.878(1)(c)(1), the Commission's legal interpretation that the phrase "entity that disclosed the records" refers to SRECC and not to Aclara. (See January 6 Order, pp.2-3)

Importantly, the Commission also noted that the information provided by other vendors in Appendix B was "generally recognized as confidential or proprietary and, therefore, meet the criteria for confidential treatment and are exempted from public disclosure." See January 6, Order, p. 3. This is the same information provided by Aclara, the only difference being that Aclara was the prevailing vendor of the bid.

ARGUMENT

1. **Confidentiality Agreement.** A Confidentiality Agreement was reached between SRECC and the Attorney General in this case and entered on December 5, 2019. We contend that the Agreement includes material that was discussed in the Order, but the Agreement was not referenced anywhere in the Commission's Order, and that the Order should be reconsidered accordingly.

2. **Aclara is Prejudiced.** When SRECC sought invitations to bid to potential vendors, it represented, in part based upon an agreement for confidentiality, to the proposed vendors that their bid information would not be publicly disclosed. The Commission's Order has the effect of causing SRECC to breach its representations in its invitation to bid. While for purposes of this filing SRECC can accept the denial of its request for confidentiality of the total costs contained in Appendices B and C, to publicly disclose the "individual component pricing" provided in Appendix A exposes the prevailing vendor, Aclara, to release of proprietary and private per unit pricing methods and abilities that will damage it as a vendor and provide commercial advantage to all of its other competitors in this area by competitors being able to view what Aclara can bid per unit. To the extent that the Commission believes that Aclara needs to assert this, SRECC attaches the statement

and request of Aclara to that affect (See attached Exhibit A). In addition, however, SRECC would also like the Commission to recognize the following in this regard:

A. SRECC's Owner-Members will be damaged in the deterioration of SRECC's relationships long-established with potential vendors and bidders if they are required to advise said vendors and bidders that they subject to public scrutiny their per-unit pricing and what they can pay for bids;

B. SRECC's Owner-Members will be damaged through the passage of costs resulting from the uniformity of per-unit cost pricing that will inevitably result from any vendor or bidder having its proprietary ability to bid publicly disclosed. Stated alternatively, if competitors know what Aclara can bid per-unit from public disclosure through this process, SRECC's independent bargaining ability is destroyed because Aclara can have no incentive to let the market dictate its per-unit pricing. This will ultimately lead to higher costs for SRECC's Owner-Members.

3. **The Order Regarding "Individual Component Pricing" Is Inconsistent with Prior Commission Rulings.** Specifically, we would direct the Commission to its ruling In Case No. 2018-00056, "Application of Cumberland Valley Electric, Inc., Etc." involving a case with facts analogous to the present case, in which the Commission stated the "individual component pricing" was exempt from public disclosure. See Order entered in Case No. 2018-00056 on May 9, 2018 ("the Commission does find that 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." SRECC was familiar with that ruling in advertising its bid as confidential to its vendors.

4. **Individual Component Pricing Is Unnecessary to the Public's Examination of Cost.** The Commission's Order fails to explain how the public disclosure of the proprietary "individual component pricing" relates in any way to the Commission's stated desire for the public

to know the “costs of the proposed AMI system.” The costs are amply reflected in the third column of Appendix A and Summary contained in Appendix B without the need for reference to the quantity or per unit cost contained in the first two columns of Appendix A. The third column breaks down in detail the total cost for each component, which is really all that is necessary for the public to examine the cost of the proposed AMI project. The first two columns reveal proprietary information, the damage from disclosure of which outweighs any superfluous benefit of a cost examination.

5. **Aclara is Treated Disparately.** The Commission already acknowledges that the information provided by competitor vendors in Appendix B is “proprietary and confidential,” and so, perforce, must also acknowledge that the same information provided by Aclara is proprietary and confidential. The only difference is that Aclara submitted the prevailing bid. We contend that it is inconsistent and inapposite for the winning bidder to be punished for its bid by having its proprietary information disclosed, when its competitors did not, and further argue that the cost-savings to the general public is also prejudiced by this inconsistency.

6. **Disagreement with Interpretation of KRS 61.878(1)(c)(1).** In its Order, the Commission states SRECC is the “entity” disclosing the records pursuant to KRS 61.878(1)(c)(1), and therefore that they are not harmed by the disclosure even if Aclara is. For purposes of that statute, had the legislature intended for “entity” to refer to SRECC, it would have utilized the term “agency” as it does twice more in that statute. “Entity” refers to persons/entities that are providing records to the “agency,” such as Aclara, and that the “agency” in this instance is SRECC, not the Commission. *See, e.g., Marina Mgmt. Svs. V. Cabinet for Tourism, Dept. of Parks*, 906 S.W.2d 318 (Ky., 1995). SRECC would normally NOT be considered a “public agency,” but in this instance become the “agency” by virtue of the mandate contained in 807 KAR 5:001 Section 13. “A rural electric

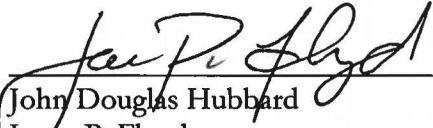
cooperative is not a “public agency” within the definition of the Open Meetings Law.” OAG 79-560.

CONCLUSION

For the foregoing reasons, SRECC asks this Court to Reconsider and Vacate its Order of January 6, 2020 as it pertains to the confidentiality and nondisclosure of the “individual component pricing” figures contained in the first two columns of Appendix A of its Application.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

A true and accurate copy of the foregoing has been served, via both e-filing and regular mail, this 24th day of January, 2019, upon all parties and counsel of record.