

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC INVESTIGATION INTO THE)	
MANAGEMENT AND OPERATION OF GRAYSON)	CASE NO.
RURAL ELECTRIC COOPERATIVE)	2019-00101
CORPORATION)	

ORDER

This matter comes before the Commission on two motions for confidential treatment filed by Grayson Rural Electric Cooperative Corporation (Grayson RECC). On February 11, 2020, Grayson RECC filed a petition, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for an indefinite period for its responses to Commission Staff's First Request for Information (Staff's First Request), Items 8, 9, 18, 27, 28, 38, 95, 100, 102, 105, and 107.

On October 20, 2020, Grayson RECC filed a petition, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for an indefinite period for portions of its Audit Action Plan, Exhibits A and C.

Additionally, some responses referred to documents that were either not filed or not labeled as responsive to a particular data request. This order will also address these responses.

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.”¹ Exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.² The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.³

In support of its motions, Grayson RECC argued for the application of three exceptions to disclosure. 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.” KRS 61.878(1)(c)(1) provides an exception to the requirement for public disclosure for records that are “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.” Under KRS 61.878(1)(m), the Open Records Act exempts “[p]ublic records the disclosure of which would have a reasonable likelihood of threatening the public safety by exposing a vulnerability in preventing, protecting against, mitigating, or responding to a terrorist act . . .”⁴ The exemption is limited to certain types of records, including:

Infrastructure records that expose a vulnerability referred to in this subparagraph through the disclosure of the location, configuration, or security of critical systems, including public utility critical systems. These critical systems shall include but not be limited to information technology, communication, electrical, fire suppression, ventilation, water, wastewater, sewage, and gas systems.⁵

¹ KRS 61.872(1).

² See KRS 61.871.

³ 807 KAR 5:001, Section 13(2)(c).

⁴ KRS 61.878(1)(m)(1).

⁵ KRS 61.878(1)(m)(1)(f).

A terrorist act is defined as including a criminal act intended to “[d]isrupt a system” identified in the above.⁶

FEBRUARY 11, 2020 MOTION

Grayson RECC’s response to Staff’s First Request, Item 8, includes customer names redacted from meeting minutes and a check register. Grayson RECC’s response to Staff’s First Request, Item 38, included amounts owed to capital estates and customer names. Grayson RECC argued that personal identifying information of a utility’s consumers is and has been generally regarded as confidential.

Grayson RECC’s response to Staff’s First Request, Item 9, consists of training and seminar completion information including redacted addresses and social security numbers of directors. Grayson RECC’s response to Staff’s First Request, Item 28, included safety investigation information with redacted employee names, dates of birth, and driver’s license numbers. Grayson RECC argued that this type of personal information has typically been considered confidential in nature due to concerns of identity theft.

Grayson RECC’s responses to Staff’s First Request, Items 18, 27, 100, and 102 consist of executive and non-executive salary information, worker’s compensation data, and disability contribution rates. Grayson RECC argued that disclosure of employee pay information with names attached could lead to dissention within the employee base and is not typically disclosed for public viewing.

Grayson RECC’s response to Staff’s First Request, Item 95, included administrative guidelines governing the day-to-day internal operations. Grayson RECC’s

⁶ KRS 61.878(1)(m)(2)(b).

response to Staff's First Request, Item 107, includes redacted personal phone numbers of persons listed in its emergency response plan. Grayson RECC argued that this information is proprietary in nature and the disclosure creates the risk that this information could be used by terrorists or by individuals who intend disruption to Grayson or the greater electric grid.

Grayson RECC's response to Staff's First Request, Item 105 consists of a third-party publication on consolidations, mergers and shared management services.

Having considered the motion and material at issue, the Commission finds that Grayson RECC's February 11, 2020 motion for confidential treatment should be granted in part and denied in part. The designated material provided in response to Staff's First Request, Item 8 and 38, should be granted confidential treatment indefinitely pursuant to KRS 61.878(1)(a) because it identifies customers by name along with private account information.⁷

Non-executive compensation information provided in response to Staff's First Request, Items 18, 27,⁸ 100, and 102, should be granted confidential treatment under KRS 61.878(1)(a) as well. The information includes employee names. Individual employee compensation information has generally been protected as disclosure would constitute an invasion of personal privacy.⁹

⁷ See Case No. 2020-00174, *Electronic Application of Kentucky Power Company For (1) A General Adjustment of Its Rates for Electric Service; (2) Approval of Tariffs and Riders; (3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; (4) Approval of a Certificate of Public Convenience and Necessity; and (5) All Other Required Approvals and Relief* (Ky. PSC Oct. 27, 2020), Order at 3.

⁸ Grayson RECC's Response to Staff's First Request, Item 27, includes medical information, which is required to be redacted as individually identifiable health information under 807 KAR 5:001, Section 4(10)(a)(6) and 45 CFR 160.103.

⁹ 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.

Grayson RECC's response to Staff's First Request, Item 95, should be granted confidential treatment in part. The administrative guidelines included in the response contain a section on page 26 entitled "Access Keys" which contains sensitive security protocols regarding access to Grayson RECC's headquarters. This information could expose vulnerabilities to public utility critical systems, allowing shutdown of power and should be protected pursuant to KRS 61.878(1)(m).

Confidential treatment should be granted for Grayson RECC's response to Staff's First Request, Item 105 consisting of a document entitled "Consolidations, Mergers and Shared Management Services" published by Cooperative Finance Corporation (CFC) because although this document was previously publicly available online, it is now only available to CFC members.¹⁰ The Commission finds that such information is generally recognized as confidential and proprietary as the Commission has granted such requests in the past, that disclosure of such information could disadvantage Grayson RECC in obtaining such information in the future, and that the material may be protected by federal copyright law.¹¹ Therefore, the designated material described above meets the criteria for confidential treatment and should be exempted from public disclosure indefinitely pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(a) and (m).

The portions of Grayson RECC's responses to Staff's First Request, Item 9, 28, and 107 consisting of social security numbers, addresses, dates of birth, driver's license

¹⁰ <https://www.cooperative.com/news/Pages/Is-a-Merger-Right-for-Your-Cooperative.aspx> (Last accessed Sept. 28, 2023)

¹¹ Case No. 2018-00348, *Electronic 2018 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company* (Ky. PSC April 16, 2020) Order. See also Case No. 2018-00348, *Electronic 2018 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company* (Ky. PSC Nov. 16, 2018), Order.

numbers, phone numbers, and email addresses, are required to be redacted. Personal identifying information, including social security numbers, dates of birth, driver's license numbers, and phone numbers and email addresses of non-parties are required to be redacted by 807 KAR 5:001, Section 4(10)(a).

Confidential treatment is denied for the portion Grayson RECC's response to Staff's First Request, Item 9, consisting of director names associated with completed training. The names alone, without personal identifying information, which must be redacted under 807 KAR 5:001, Section 4(10)(a), are not exempt from disclosure under KRS 61.878.

Confidential treatment is also denied for the portion of Grayson RECC's responses to Staff's First Request, Item 18 and 102, consisting of executive officers' compensation information. Executive officers' privacy interest is outweighed by the public's interest in knowing executive compensation that is recovered in base rates. The Commission has previously held that executive salaries are not entitled to confidential protection because of the public interest in disclosure.¹²

¹² The Commission has a long precedent of not granting confidential treatment for executive compensation. See Case No. 2012-00221, *Application of Kentucky Utilities Company for an Adjustment of its Electric Rates* (Ky. PSC Sept. 11, 2013); Case No. 2014-00371, *Application of Kentucky Utilities Company for an Adjustment of its Electric Rates* (Ky PSC Jan 20, 2016); Case No. 2015-00418, *Application of Kentucky-American Water Company for an Adjustment of Rates* (Ky PSC Aug. 31, 2016); Case No. 2017-00321, *Electronic Application of Duke Energy Kentucky, Inc. For: 1) An Adjustment of the Electric Rates; 2) Approval of an Environment 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 June 12, 2018); Case No. 2018-00294, *Electronic Application of Kentucky Utilities Company for an Adjustment of its Electric Rates* (Ky. PSC Oct. 8, 2019); Case No. 2018-00295, *Electronic Application of Louisville Gas and Electric Company for an Adjustment of its Electric and Gas Rates* (Ky. PSC Oct. 8, 2019); Case No. 2019-00268, *Application of Knott County Water and Sewer District for an Alternative Rate Adjustment* (Ky. PSC Dec. 3, 2019); Case No. 2019-00271, *Electronic Application of Duke Energy Kentucky, Inc. for 1) An Adjustment of the Electric Rates; 2) Approval of New Tariffs; 3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; and 4) All other Required Approvals and Relief* (Ky. PSC May 4, 2020); 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); Case No. 2020-00349, *Electronic Application of Kentucky Utilities Company for an Adjustment of Electric Rates, a Certificate of Public Convenience and Necessity to Deploy Advanced*

Confidential treatment is also denied for the portion of Grayson RECC's response to Staff's First Request, Item 95 not consisting of the section on page 26 entitled "Access Keys." The remainder of the guidelines are human resources guidelines, customer specific provisions, and other information that does not meet the standard set forth in KRS 61.878(1)(m).

OCTOBER 20, 2020 MOTION

Exhibit A to Grayson RECC's Audit Action Plan filed October 20, 2020, consists of a financial forecast supplied by CFC. Grayson RECC stated that the forecast is protected by KRS 61.878(1)(c)(1)—that it was prepared by CFC using its proprietary software and that CFC has specifically asked that Grayson RECC not disclose this document in a public manner. Grayson RECC also sought confidential treatment for redactions from Exhibit C to the Audit Action Plan, which consists of a summary of customer complaints. Grayson RECC sought confidential treatment for customer names.

Having considered the motion and material at issue, the Commission finds that Grayson RECC's October 20, 2020 motion for confidential treatment should be granted. Exhibit A may be subject to copyright protection and Grayson RECC might not be able to obtain such information in the future if it is required to publicly disclose.¹³

Metering Infrastructure, Approval of Certain Regulatory and Accounting Treatments, and Establishment of a One-Year Subcredit (Ky. PSC Dec. 7, 2021); Case No. 2020-00350, *Electronic Application of Louisville Gas and Electric Company for an Adjustment of its Electric and Gas Rates, a Certificate of Public Convenience and Necessity to Deploy Advanced Metering Infrastructure, Approval of Certain Regulatory and Accounting Treatments, and Establishment of One-Year Surcredit* (Ky. PSC Dec. 7, 2021); Case No. 2021-00183, *Electronic Application of Columbia Gas of Kentucky, Inc. for an Adjustment of Rates; Approval of Depreciation Study; Approval of Tariff Revision; Issuance of a Certificate of Public Convenience and Necessity; and Other Relief* (Ky. PSC Oct. 5, 2021); Case No. 2021-00185, *Electric 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).

¹³ Case No. 2018-00348, Nov. 16, 2018 Order.

Customer names associated with customer complaints should be granted confidential treatment under KRS 61.878(1)(a) as “[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.”¹⁴ Therefore, the designated material described above meets the criteria for confidential treatment and should be exempted from public disclosure indefinitely pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(a) and (c)(1).

INCOMPLETE FILINGS

Grayson RECC’s responses to Staff’s First Request, Items 10, 11, 22, 37, 39, and 61 refer to attached documents, but no documents labeled with these item numbers have been filed. Grayson RECC should file each of the intended documents into the record or indicate a previously filed responsive document for each of these requests.

IT IS THEREFORE ORDERED that:

1. Grayson RECC’s February 11, 2020 motion for confidential treatment is granted in part and denied in part.
2. Grayson RECC’s October 20, 2020 motion for confidential treatment is granted.
3. The designated portions of Grayson RECC’s responses to Staff’s First Request, Items 8, 9 (social security numbers and addresses, but not individuals’ names), 18 (except executive compensation), 27, 28, 38, 95 (“Access Keys” section only), 100,

¹⁴ See Case No. 2020-00174, *Electronic Application of Kentucky Power Company For (1) A General Adjustment of Its Rates for Electric Service; (2) Approval of Tariffs and Riders; (3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; (4) Approval of a Certificate of Public Convenience and Necessity; and (5) All Other Required Approvals and Relief* (Ky. PSC Oct. 27, 2020), Order at 3.

102 (except executive compensation), 105, and 107; and Grayson RECC's October 20, 2020 Audit Action Plan, Exhibits A and C, are granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for an indefinite period or until further order of this Commission.

4. The designated portions of Grayson RECC's responses to Staff's First Request, Items 18 (executive compensation data only), 95 (except for "Access Keys" section), and 102 (executive compensation data only) are denied confidential treatment.

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. Grayson 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, Grayson 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 Grayson 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 Grayson 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 Grayson 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, Grayson 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 Grayson 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 Grayson RECC to seek a remedy afforded by law.

13. Grayson RECC shall file into the record all documents referenced in its responses to Staff's First Request, Items 10, 11, 22, 37, 39, and 61, or if such documents have been filed into the record, file a response identifying the file name and date of filing of each referenced document.

PUBLIC SERVICE COMMISSION

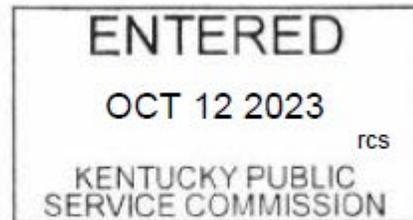
Chairman

Angie Hutton
Vice Chairman

*signed
w/ permission*

May Pat Regan
Commissioner

Chairman Kent A. Chandler did not participate in the deliberations or decision concerning this case.



ATTEST:

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