

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC INVESTIGATION INTO THE)	
OPERATIONAL CAPACITY AND)	CASE NO.
INFRASTRUCTURE OF GRAYSON RURAL)	2020-00018
ELECTRIC COOPERATIVE CORPORATION)	

ORDER

On November 15, 2022, Grayson Rural Electric Cooperative Corporation (Grayson RECC) filed a motion, pursuant to 807 KAR 5:001E, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for an unspecified period for Exhibits C and G to a status update filed as ordered by the Commission.¹

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 In support of its motion, Grayson RECC argued the application of two provisions of KRS 61.870. 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 . . .”³ 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,

¹ Order (Ky. PSC Aug. 12, 2022) at 2.

² KRS 61.872(1).

³ KRS 61.878(1)(m)(1).

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.⁴

A terrorist act is defined as including a criminal act intended to “[d]isrupt a system” identified in the above.⁵

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.”

Exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.⁶ The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.⁷

Exhibit C to the status update consists of a proposal from a cybersecurity vendor that includes an overview of computer system vulnerabilities and recommendations for remedying these risks. Exhibit G is another report from the same vendor that includes details of Grayson RECC’s computer system, including usernames, operating systems and software used, and server patch statuses.

Grayson RECC argued that KRS 61.878(1)(m) is intended to protect this information, which specifically identifies components of its computer systems and notes

⁴ KRS 61.878(1)(m)(1)(f).

⁵ KRS 61.878(1)(m)(2)(b).

⁶ See KRS 61.871.

⁷ 807 KAR 5:001E, Section 13(2)(c).

areas of improvement of the security of those systems. Grayson RECC asserted that disclosure of that information could create or increase the risk of a terroristic cyber-attack by providing sensitive information. Grayson RECC also argued that KRS 61.878(1)(c)(1) exempts disclosure of this information because it is proprietary to Grayson RECC.

Having considered the motion and the material at issue, the Commission finds that Grayson RECC's motion should be granted. The material contained in Exhibits C and G contain ample information necessary to create an opportunity to disrupt public utility critical technology systems via cyber-attack that could negatively impact the electric grid. Therefore, this information meets the criteria for confidential treatment and is exempted from public disclosure indefinitely pursuant to KRS 61.878(1)(m) and 807 KAR 5:001E, Section 13.

IT IS THEREFORE ORDERED that:

1. Grayson RECC's motion for confidential treatment is granted.
2. The designated material 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.
3. Use of the designated material granted confidential treatment by this Order in any Commission proceeding shall comply with 807 KAR 5:001E, Section 13(9).
4. Grayson RECC shall inform the Commission if the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment.
5. 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.

6. The Commission shall not make the requested material 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.

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PUBLIC SERVICE COMMISSION

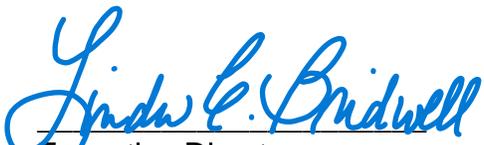

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