

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF ROWAN	)	CASE NO.
WATER, INC. FOR AN ALTERNATIVE RATE	)	2022-00252
ADJUSTMENT	)	

ORDER

On November 4, 2022, Rowan Water, Inc. (Rowan Water) filed a motion for confidential treatment, pursuant to 807 KAR 5:001E, Section 13, and KRS 61.878, requesting that the Commission grant confidential protection for ten years for documents supplied in response to Commission Staff's First Request for Information (Staff's First Request): Items 1d, 1e, 2, 7, 8, and 11c. Rowan Water subsequently filed to withdraw its confidential response to Item 8,<sup>1</sup> which makes that request moot.

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."<sup>2</sup> Exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.<sup>3</sup> The

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<sup>1</sup> Rowan Water's Motion to Withdraw Confidential Exhibit (Motion to Withdraw) (filed Dec. 19, 2022).

<sup>2</sup> KRS 61.872(1).

<sup>3</sup> KRS 61.871.

party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.<sup>4</sup>

KRS 61.878(1)(c)(1) exempts records that are “[g]enerally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.” KRS 61.878(1)(a) exempts records “containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy. . .”.

### DISCUSSION AND FINDINGS

In support of its motion, Rowan Water argued that the responses to Staff’s First Request, Item 1d, Item 1e and Item 2, included employee names, pay rate, responsibilities and identification which should be given confidential treatment in its entirety. Rowan Water stated that, because of its small workforce, the employees’ title and compensation should be given confidential treatment. Rowan Water asserts that the public disclosure of this information would also constitute an invasion of personal privacy and may unfairly harm Rowan Water’s competitive position in the marketplace.

In support of its motion, Rowan Water also argued that the responses to Staff’s First Request, Item 7, Item 8 and Item 11(c), contained customer specific account information including names and addresses should be given confidential treatment. Rowan Water subsequently filed a motion to withdraw the request for confidential treatment for Item 8.<sup>5</sup> According to the motion, the information provided in response to

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<sup>4</sup> 807 KAR 5:001, Section 13(2)(c).

<sup>5</sup> Rowan Water’s Motion to Withdraw.

Item 8 was unnecessary, and Rowan Water wished to withdraw the filing.<sup>6</sup> Rowan Water stated that public disclosure of customer specific information would result in an unwarranted invasion of the customers' personal privacy.

Having considered the motion to withdraw the confidential exhibit, Item 8, the Commission finds good cause to grants Rowan Water's request. The Commission will order the filing removed from the Commission record.

Having considered the motion for confidential treatment and the material at issue, the Commission finds that the motion should be granted in part and denied in part. The Commission finds that the designated material contained in Rowan Water's Response to Staff's First Request, Item 7 and Item 11(c), are records that meet the criteria for confidential treatment and are exempted from public disclosure pursuant to KRS 61.878(1)(a) and 807 KAR 5:001E, Section 13. Customer specific information, including names and addresses, should be given confidential treatment. Rowan Water's customers are not parties to this proceeding and they have a reasonable expectation that their names and addresses will not be publicly disclosed

The Commission further finds that Rowan Water's response to Staff's First Request, Item 1d and Item 2, should be granted confidential treatment in part and denied in part, subject to the discussion below. The Commission denies the request for confidential treatment for the vendor name highlighted in the submission as part of the response in Item 2. Rowan Water did not provide a basis for an exemption pursuant to KRS 61.878.

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<sup>6</sup> Rowan Water's Motion to Withdraw.

The Commission further finds that the request for confidential treatment is denied for Item 1d and Item 2, to the extent the information is related to the utility manager.<sup>7</sup> Compensation data is of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy under KRS 61.878(1)(a). The Commission has previously exempted this information from disclosure even when employee names are not included but job titles could allow identification of individual employees.<sup>8</sup> The Commission also held that compensation data, other than information regarding executive compensation, is protected from public disclosure by KRS 61.878(1)(c)(1) because competitors could use this information to compete for employees.<sup>9</sup> Therefore, the employment information related to the manager does not meet the criteria for confidential treatment and is not exempted from public disclosure pursuant to KRS 61.878(1)(a) or KRS 61.878(1)(c)(1) and 807 KAR 5:001E, Section 13. The Commission agrees that disclosure of the remaining information related to other employees would be an unwarranted disclosure of personal information and should be given confidential treatment pursuant to KRS 61.878(1)(a).

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<sup>7</sup> Case No. 2017-00321, *Electronic Application of Duke Energy Kentucky, Inc. For: 1) An Adjustment of the Electric Rates; 2) Approval of an Environmental 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 May 3, 2018), Order at 4-5; see also 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), Order. (The Commission has generally held that executive officer salary and compensation does not meet the criteria for confidential treatment); see also Case No. 2018-00294, *Electronic Application of Kentucky Utilities Company for an Adjustment of its Electric Rates* (Ky. PSC Oct. 8, 2019), Order (denying confidential treatment for officer compensation).

<sup>8</sup> Case No. 2021-00407, *Electronic Application of South Kentucky Rural Electric Cooperative Corporation for a General Adjustment of Rates, Approval of Depreciation Study, and Other General Relief* (Ky. PSC Mar. 28, 2022), Order at unnumbered 5-6.

<sup>9</sup> Case No. 2021-00407, Mar. 28, 2022 Order at unnumbered 3.

The Commission also finds that the request for confidential treatment is denied for Rowan Water's response to Staff's First Request, Item 1e. Rowan Water did not submit any redactions to the document. The burden is on the utility to demonstrate that the requested information meets an exemption set out in KRS 61.878 and Rowan Water failed to meet its burden.

IT IS THEREFORE ORDERED that:

1. Rowan Water's motion to withdraw the confidential exhibit, Item 8, is granted and the filing will be removed from the Commission record.

2. Rowan Water's motion for confidential treatment for response to Staff's First Request, Item 1d, Item 1e, Item 2, Item 7, and Item 11(c), is granted in part and denied in part.

3. Rowan Water's motion for confidential treatment for Item 7 and Item 11(c) is granted.

4. Rowan Water's motion for confidential treatment for Item 1e is denied.

5. Rowan Water's motion for confidential treatment for Item 1d is granted except for all information related to the utility manager.

6. Rowan Water's motion for confidential treatment for Item 2 is granted except for the information related to the vendor(s) and the utility manager.

7. 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.

8. 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).

9. Rowan Water shall inform the Commission if the designated material granted confidential treatment becomes publicly available or no longer qualifies for confidential treatment.

10. 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, Rowan Water 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 Rowan Water is unable to make such demonstration, the requested material shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

11. 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 Rowan Water to seek a remedy afforded by law.

12. 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.

13. If Rowan Water 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.

14. Within 30 days of the date of service of this Order, Rowan Water 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.

15. The designated material for which Rowan Water'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 Rowan Water to seek a remedy afforded by law.

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PUBLIC SERVICE COMMISSION

  
Chairman

Vice Chairman

  
Commissioner

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FEB 09 2023  
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KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
Executive Director

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

\*Rowan Water, Inc.  
1765 Christy Creek Road  
Morehead, KY 40351

\*Jerry Patrick  
Rowan Water, Inc.  
1765 Christy Creek Road  
Morehead, KY 40351