

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF FLEMING-)	CASE NO.
MASON ENERGY COOPERATIVE, INC. FOR A)	2023-00223
GENERAL ADJUSTMENT OF RATES)	

ORDER

On November 20, 2023, Fleming-Mason Energy Cooperative, Inc. (Fleming-Mason Energy) filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential protection for ten years for an attachment to Fleming-Mason Energy's response to Commission Staff's Third Request for Information (Staff's Third Request), Item 6.

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 KRS 61.878(1)(a) provides an exception to the requirement for public disclosure of records that contain "information of a personal nature

¹ KRS 61.872(1).

² See KRS 61.871.

³ 807 KAR 5:001, Section 13(2)(c).

where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.”⁴

In support of its motion, Fleming-Mason Energy provided an attachment that included compensation information for executive and non-executive employees including employee numbers in response to Staff’s Third Request, Item 6. Fleming-Mason Energy argued that this information should be exempted under KRS 61.878(1)(a). Fleming-Mason Energy further argued that disclosure of this information would be an unwarranted invasion of privacy, and the information is of a sensitive and personal nature.

Having considered the motion and the material at issue, the Commission finds that the attachment to Fleming-Mason Energy’s response to Staff’s Third Request, Item 6 should be granted in part and denied in part. The Commission finds that both executive and non-executive employee identification numbers and non-executive compensation information are generally recognized as confidential or proprietary. The Commission has previously found that employee identification numbers, including those for executive employees, and non-executive employee compensation information should be confidential.⁵ Therefore, the designated material meets the criteria for confidential treatment and should be exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(a).

The Commission further finds that the request for confidential treatment should be denied for executive compensation information provided in the attachment to Fleming-Mason Energy’s response to Staff’s Third Request, Item 6. The Commission has

⁴ KRS 61.878(1)(a).

⁵ Case No. 2015-00418, *Application of Kentucky-American Water Company for an Adjustment of Rates* (Ky. PSC Aug. 26, 2016), Order at 3.

previously held that executive compensation information is not entitled to confidential protection.⁶ Therefore, the designated material does not meet the criteria for confidential treatment and should not be exempted from public disclosure pursuant to KRS 61.878(1)(a) and 807 KAR 5:001, Section 13.

IT IS THEREFORE ORDERED that:

1. Fleming-Mason Energy's November 20, 2023 motion for confidential treatment for is granted in part and denied in part.
2. Fleming-Mason Energy's motion for confidential treatment for both executive and non-executive employee numbers and for non-executive compensation

⁶ 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 Metering Infrastructure, Approval of Certain Regulatory and Accounting Treatments, and Establishment of a One-Year Surcredit* (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).

contained in the attachment to Fleming-Mason Energy's response to Staff's Third Request, Item 6 is granted.

3. Fleming-Mason Energy's motion for confidential treatment for executive compensation information contained in the attachment to Fleming-Mason Energy's response to Staff's Third Request, Item 6 is denied.

4. 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.

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. Fleming-Mason Energy 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, Fleming-Mason Energy 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 Fleming-Mason Energy 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 Fleming-Mason Energy 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 Fleming-Mason Energy 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, Fleming-Mason Energy 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 Fleming-Mason Energy'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 Fleming-Mason Energy to seek a remedy afforded by law.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ENTERED
JAN 04 2024 rcs
KENTUCKY PUBLIC
SERVICE COMMISSION

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