

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 January 19, 2024, 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 attachments to Fleming-Mason Energy's response to Commission Staff's Fourth Request for Information (Staff's Fourth Request), Items 2 and 3; and an attachment to Fleming-Mason Energy's response to the Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention (Attorney General's), Third Request for Information (Attorney General's Third Request), Item 9.

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>1</sup> Exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.<sup>2</sup> The party requesting that materials be treated confidentially has the burden of establishing

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

<sup>2</sup> See KRS 61.871.

that one of the exceptions is applicable.<sup>3</sup> KRS 61.878(1)(a) provides an exception to the requirement for public disclosure of records that contain “information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.”<sup>4</sup> KRS 61.878(1)(c)(1) provides an exception to the requirement for public disclosure of records that are “generally recognized as confidential and proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.”<sup>5</sup>

In support of its motion, Fleming-Mason Energy argued that the contracts provided as an attachment in response to Staff’s Fourth Request, Item 2, and Attorney General’s Third Request, Item 9, were obtained by competitive bidding and contain individual bid items and itemized payments. Fleming-Mason Energy further argued that these contracts are proprietary and public disclosure of the information could present an unfair commercial advantage to future bidders pursuant to 61.878(1)(c).

Fleming-Mason Energy also provided an Excel spreadsheet of employee wages, including employee numbers, as an attachment in its response to Staff’s Fourth Request, Item 3. Fleming-Mason Energy argued that employees have a reasonable expectation of privacy to their salary and wage information and disclosure would put Fleming-Mason Energy at a disadvantage in the workforce marketplace.

Having considered the motion and the material at issue, the Commission finds that Fleming-Mason Energy’s motion should be granted in part and denied in part. The

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<sup>3</sup> 807 KAR 5:001, Section 13(2)(c).

<sup>4</sup> KRS 61.878(1)(a).

<sup>5</sup> KRS 61.878(1)(c)(1).

Commission finds that the line-item hourly wages of contractor employees contained in Fleming-Mason Energy's responses to Staff's Fourth Request, Item 2, Attachment; Fleming-Mason Energy's responses to the Attorney General's Third Request, Item 9, Attachment; and the employee numbers and non-executive compensation in Fleming-Mason Energy's response to Staff's Fourth Request, Item 3, Attachment are records that meet the criteria for confidential treatment and should be exempted from public disclosure pursuant to KRS 61.878(1)(c), KRS 61.878(1)(a), and 807 KAR 5:001. The Commission has previously found that employee salaries with job titles, non-executive information, and employee numbers should be afforded confidential treatment.<sup>6</sup>

The Commission further finds that the request for confidential treatment should be denied for any aggregate personnel spending figures and the rest of the information in the right-of-way contracts for the winning bids contained in Fleming-Mason Energy's response to Staff's Fourth Request, Item 2, and the Attorney General's Third Request, Item 9. The Commission has previously held that such information should not be afforded confidential treatment.<sup>7</sup> The Commission further finds that the request for confidential treatment should be denied for any executive compensation information provided in Fleming-Mason's response to Staff's Fourth Request, Item 3 attachment. The Commission has previously found that executive compensation information should not be

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<sup>6</sup> See Case No. 2021-00185, *Electronic Application of Delta Natural Gas Company, Inc. for an Adjustment of Its Rates & A Certificate of Public Convenience & Necessity*, (Ky PSC Jan. 21, 2022), Order; Case No. 2015-00418, *Application of Kentucky-American Water Company for an Adjustment of Rates*, (Ky. PSC Aug. 26, 2016), Order at 3.

<sup>7</sup> See Case No. 2021-00185, *Electronic Application of Delta Natural Gas Company, Inc. for an Adjustment of Its Rates & A Certificate of Public Convenience & Necessity*, (Ky PSC Jan. 21, 2022), Order; Case No. 2023-00147, *Electronic Application of Taylor County Rural Electric Cooperative Corporation for a General Adjustment of Rates* (Ky. PSC October 20, 2023), Order.

afford confidential treatment.<sup>8</sup> 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)(c) and KRS 61.878 (1)(a) and 807 KAR 5:001, Section 13.

IT IS THEREFORE ORDERED that:

1. Fleming-Mason Energy's January 19, 2024 motion for confidential treatment for attachments to Fleming-Mason Energy's response to Staff's Fourth Request, Items 2 and 3, and an attachment to Fleming-Mason Energy's response to the Attorney General's Third Request, Item 9, is granted in part and denied in part.

2. Fleming-Mason Energy's January 19, 2024 motion for confidential treatment for the line-item hourly wages of contractor employees contained in Fleming-

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<sup>8</sup> 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).

Mason Energy's responses to Staff's Fourth Request, Item 2, attachment and the Attorney General's Third Request, Item 9; and the employee numbers and non-executive compensation in Fleming-Mason Energy's response to Staff's Fourth Request, Item 3, attachment is granted.

3. Fleming-Mason Energy's January 19, 2024 motion for confidential treatment for any aggregate personnel spending figures and the rest of the information in the right-of-way contracts for the winning bids contained in Fleming-Mason Energy's response to Staff's Fourth Request, Item 2, and the Attorney General's Third Request, Item 9; and executive information contained in Fleming-Mason's response to Staff's Fourth Request, Item 3, attachment 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, 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  
FEB 26 2024 rcs  
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SERVICE COMMISSION

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