

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC TARIFF FILING OF BIG RIVERS)	
ELECTRIC CORPORATION AND KENERGY)	CASE NO.
CORP. TO REVISE THE LARGE INDUSTRIAL)	2023-00312
CUSTOMER STANDBY SERVICE TARIFF)	

ORDER

On December 4, 2023, Kimberly-Clark Corporation (Kimberly-Clark) filed three motions¹ containing identical requests for confidential treatment, however, the first two motions filed were unsigned.² The third motion identified as “Kimberly-Clark Corporation’s Corrected Motion for Confidential Treatment” was properly signed and filed pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for five years to certain documents and information contained with its responses to Big Rivers Electric Corporation (BREC) and Kenergy Corporation’s (Kenergy) First Request for Information. Kimberly-Clark specifically requested confidential treatment for portions of the testimony of Steven Cassady and Exhibits 1, 2, and 3 and portions of the Direct Testimony of Timothy Hondale and related Exhibit.

¹ Petition for Confidential Treatment (filed Dec. 4, 2023 at 6:01 PM).

² Petition for Confidential Treatment (filed Dec. 4, 2023 at 4:58 PM); Petition for Confidential Treatment (filed Dec. 4, 2023 at 5:17 PM).

LEGAL STANDARD

The Public Service Commission is a public agency subject to Kentucky Open Records Act,³ which requires that all public records “be open for inspection by any person, except as otherwise provided by KRS 61.870 to KRS 61.884.⁴ The exceptions to the free and open examination of public records should be strictly construed.⁵ The party requesting that the materials be granted confidential protection has the burden of establishing that one of the exemptions is applicable.⁶ KRS 61.878(1)(c)(1) exempts from public disclosure “[r]ecords confidentially disclosed to an agency or required by an agency to be disclosed to it, 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. KRS 61.878(1)(a) exempts from disclosure “[p]ublic 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, Kimberly-Clark argued portions of the direct testimony of Steven Cassady, including Exhibits 1, 2, and 3 should be afforded confidential treatment under KRS 61.878(1)(c)(1), as the testimony and exhibits contain operating costs of specific Kimberly-Clark facilities, including the Kimberly-Clark facility located in Owensboro, Kentucky, as well as information relating to Kimberly-Clark’s contractual

³ KRS 61.870 through 61.884.

⁴ KRS 61.872(1).

⁵ KRS 61.878.

⁶ 807 KAR 5:001, Section 13(2)(c).

commitments subject to non-disclosure agreements.⁷ Further, Kimberly-Clark argued the prices the company charges for its products are directly impacted by Kimberly-Clark's operating costs including the total price paid for electricity and electric services at specific facilities and should be afforded confidential treatment.⁸

Additionally, Kimberly-Clark argued disclosure of portions of the direct testimony of Timothy Hondale regarding the amount to maintain the Cogen (self-generation) unit and the associated exhibit related to outages of the self-generation turbine at Kimberly-Clark's Owensboro facility should remain confidential under KRS 61.878(1)(c)(1).⁹ Kimberly-Clark argued the confidential information is proprietary, not publicly available, not disseminated within Kimberly-Clark except to employees and professionals with a legitimate business need to know the information and contains detailed information about Kimberly-Clark's cost structure, strategies, operations and assets.¹⁰ Additionally, Kimberly-Clark argued disclosure of the information would place Kimberly-Clark at a competitive disadvantage if obtained by competitors and the information could be used to manipulate negotiations with Kimberly-Clark leading to higher costs.¹¹

Having considered the motion and the material at issue, the Commission finds that Kimberly-Clark's motion should be granted. The Commission finds that the designated material contained in the redacted portions of the direct testimony of Steven Cassady and Exhibits 1, 2, and 3 should be granted confidential treatment pursuant to

⁷ Petition for Confidential Treatment.

⁸ Petition for Confidential Treatment.

⁹ Petition for Confidential Treatment.

¹⁰ Petition for Confidential Treatment.

¹¹ Petition for Confidential Treatment.

KRS 61.878(1)(c)(1) and KRS 61.878(1)(a). Although the Commission is not bound to non-disclosure agreements, the Commission finds that disclosure of information related to the operational cost structure, internal investments, and business strategies would result in an unfair commercial advantage to competitors of Kimberly-Clark. Further, the Commission also has previously held that “large industrial customers on BREC’s system have a right to privacy concerning their power usage and projected needs.”¹²

The Commission finds that portions of the Direct Testimony of Timothy Hondale regarding the amount to maintain the Cogen unit and exhibit related to outages of the self-generation turbine should be granted confidential treatment pursuant to KRS 61.878(1)(c)(1). Although the Commission is not bound by non-disclosure agreements, the Commission finds the disclosure of business operations and strategies would place Kimberly-Clark at a competitive disadvantage and could be used by competitors leading to higher costs. The Commission has found that disclosing “annual operating costs would result in competitive injury.”¹³

IT IS THEREFORE ORDERED that:

1. Kimberly-Clark’s December 4, 2023 motion for confidential treatment is granted for portions of the Direct Testimony of Steven Cassady and Exhibits 1, 2, and 3.
2. Kimberly-Clark’s December 4, 2023 motion for confidential treatment is granted for portions of the Direct Testimony of Timothy Hondale and the associated exhibit.

¹² Case No. 2021-00289, *Electronic Tariff Filing of Big Rivers Electric Corporation and Kenergy Corp. to Implement a New Standby Service Tariff* (Ky. PSC Mar. 3, 2022), Order at 5.

¹³ Case No. 2015-00213, *Application of Owen Electric Cooperative, Inc. for a Certificate of Public Convenience & Necessity for the Construction of a Two Megawatt Distributed Generation Facility in Owen County, Kentucky* (Ky. PSC Apr. 17, 2019), Order at 1.

3. The designated material granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for five years or until further order of this Commission.

4. 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).

5. If the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment, Kimberly-Clark shall inform the Commission and file with the Commission an unredacted copy of the designated material.

6. 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, Kimberly-Clark 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 Kimberly-Clark is unable to make such demonstration, the requested material shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

7. 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 Kimberly-Clark to seek a remedy afforded by law.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ENTERED
APR 30 2024
rcs
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