

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF SOUTH)	
KENTUCKY RURAL ELECTRIC COOPERATIVE)	CASE NO.
CORPORATION FOR A GENERAL ADJUSTMENT)	2024-00402
OF RATES AND OTHER GENERAL RELIEF)	

ORDER

On April 11, 2025, South Kentucky Rural Electric Cooperative Corporation (South Kentucky RECC) filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential protection for responses to the Attorney General's Second Request for Information (Attorney General's Second Request), Items 6, 7, 23(d), and 53(k).

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."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 that "[p]ublic records containing information of a personal nature where the public disclosure

¹ KRS 61.872(1).

² See KRS 61.871.

³ 807 KAR 5:001, Section 13(2)(c).

thereof would constitute a clearly unwarranted invasion of personal privacy.” 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.

DISCUSSION AND FINDINGS

In support of its motion, South Kentucky RECC argued that its responses to the Attorney General’s Second Request, Items 6 and 7 should be afforded confidential treatment under KRS 61.878(1)(a). South Kentucky RECC’s responses Items 6 and 7 contained salary information for non-executive employees. South Kentucky RECC argued that the salary information for non-executive employees should be granted confidential treatment because it is personal to the employees and would be an unwarranted invasion of privacy if disclosed.⁴ Additionally, South Kentucky RECC argued that release of the information could competitively harm South Kentucky RECC because it must compete with other employers for the hiring and retention of employees and releasing the information would unfairly harm South Kentucky RECC.⁵

South Kentucky RECC further argued that Items 23(d) and 53(k) should be afforded confidential treatment under KRS 61.878(1)(c)(1). Item 23(d) contained right of way (ROW) bid proposals. Item 53(k) contained bids for circuit cutting. South Kentucky RECC argued that Items 23(d) and 53(k) should be granted confidential treatment because the information is generally recognized as confidential or proprietary and public

⁴ South Kentucky RECC’s Motion for Confidential Treatment (Motion for Confidential Treatment) (filed Apr. 11, 2025) at 2.

⁵ Motion for Confidential Treatment at 2.

disclosure would permit an unfair commercial advantage to South Kentucky RECC's competitors.⁶ Additionally, South Kentucky RECC argued that if the information was disclosed it would create an economic disadvantage for South Kentucky RECC.⁷

Having considered the motion and the material at issue, the Commission finds that South Kentucky RECC's motion should be granted, in part, and denied, in part. The Commission finds that the designated material contained in South Kentucky RECC's responses to the Attorney General's Second Request, Items 6 and 7 are records that meet the criteria for confidential treatment and should be exempted from public disclosure pursuant to KRS 61.878 (1)(a) and 807 KAR 5:001, Section 13.

The Commission further finds that South Kentucky RECC's responses to the Attorney General's Second Request, Items 23(d) and 53(k) should be granted, in part, and denied, in part. The Commission finds that the non-winning bids contained in Items 23(d) and 53(k) are records that meet the criteria for confidential treatment and should be exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13. However, the Commission finds that the winning bids contained in Items 23(d) and 53(k) should be denied. The Commission has previously held that bids that were not selected should be granted confidential treatment, but that winning bids should be denied confidential treatment based on the principles of transparency.⁸ Therefore, South Kentucky RECC's response to the Attorney General's Second Request, Items

⁶ Motion for Confidential Treatment at 3.

⁷ Motion for Confidential Treatment at 3.

⁸ See Case No. 2022- 00341, *Electronic Application of Delta Natural Gas Co., Inc. for Its Pipe Replacement Filing* (Ky PSC Feb. 17, 2023), Order; Case No. 2023-00147, *Electronic Application of Taylor County Rural Electric Cooperative Corporation for a General Adjustment of Rates* (Ky PSC Oct. 20, 2023), Order at 2-3.

23(d) and 53(k) for the winning bids do not meet the criteria for confidential treatment and should not be exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13.

IT IS THEREFORE ORDERED that:

1. South Kentucky RECC's April 11, 2025 motion for confidential treatment for certain responses to the Attorney General's Second Request is granted, in part, and denied, in part.

2. South Kentucky RECC's April 11, 2025 motion for confidential treatment for South Kentucky RECC's response to the Attorney General's Second Request, Items 6, 7, and the non-winning bids for Items 23(d) and 53(k) is granted.

3. South Kentucky RECC's April 11, 2025 motion for confidential treatment for South Kentucky RECC's response to the Attorney General's Second Request, winning bids contained in Items 23(d) and 53(k) 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 an indefinite period 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. If the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment, South Kentucky RECC shall inform the Commission and file with the Commission an unredacted copy of the designated material.

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, South Kentucky 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 South Kentucky 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.

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 South Kentucky RECC 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 South Kentucky RECC 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, South Kentucky RECC 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.

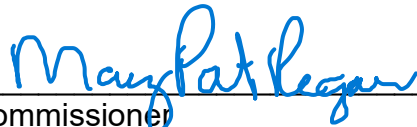
12. The designated material for which South Kentucky RECC's request for confidential treatment has been denied shall neither be placed in the public record nor made available for inspection for 30 days from the date of service of this Order to allow South Kentucky RECC to seek a remedy afforded by law.

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PUBLIC SERVICE COMMISSION


Chairman


Commissioner


Commissioner

ATTEST:


Executive Director



Case No. 2024-00402

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