

COMMONWEALTH OF KENTUCKY
BEFORE THE KENTUCKY STATE BOARD ON ELECTRIC GENERATION
AND TRANSMISSION SITING

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 January 2, 2024, Kimberly-Clark Corporation (Kimberly-Clark) filed a motion, for confidential treatment pursuant to 807 KAR 5:110, Section 5, and KRS 61.878, requesting the Commission grant confidential treatment for a period of five years for certain documents and information provided in its responses to Big Rivers Electric Corporation (BREC) and Kenergy Corporation’s (Kenergy) First Requests for Information (BREC and Kenergy’s First Request), Item 4, Items 5a., 5b., and Item 8.

LEGAL STANDARD

The Public Service Commission is a public agency subject to Kentucky Open Records Act,¹ 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.”² The exceptions to the free and open examination of public records should be strictly construed.³ The party requesting that the materials be granted confidential protection has the burden of

¹ KRS 61.870 through 61.884.

² KRS 61.872(1).

³ KRS 61.878.

establishing that one of the exemptions is applicable.⁴ 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 that Item 4 provided in response to BREC and Kenergy’s First Request should be afforded confidential treatment under 61.878(1)(c)(1). Kimberly Clark stated that the 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, and disclosure of the information would place Kimberly-Clark at a competitive disadvantage if obtained by competitors.⁵ Further, Kimberly-Clark argued that the information could be used to manipulate negotiations with Kimberly-Clark leading to higher costs.⁶

Kimberly-Clark argued the response to BREC and Kenergy’s First Request, Items 5a. and 5b., email communications between BREC and Kimberly Clark regarding MISO and Kimberly-Clark’s proposed BTM generation, should be entitled to confidential

⁴ 807 KAR 5:001, Section 13(2)(c).

⁵ Motion for Confidential Treatment.

⁶ Motion for Confidential Treatment.

treatment pursuant to KRS 61.878(1)(c)(1), as disclosure of the information could unreasonably and unnecessarily harm Kimberly-Clark by giving interested third parties an unfair commercial advantage through insight into Kimberly-Clark's business operations and strategies.⁷ Further, Kimberly-Clark argued the information in 5a. and 5b. is not disseminated within Kimberly-Clark except to those employees and professionals with a legitimate business need to know and act upon the information, and is not disseminated to others without a legitimate need to know and act upon the information, and the information is generally recognized as confidential and proprietary.⁸

Finally, Kimberly-Clark argued the disclosure of Item 8 provided in response to BREC and Kenergy's First Request, the Excel workbook, which includes detailed, proprietary information pertaining to discrete Kimberly-Clark operations and assets, specifically including the price Kimberly-Clark pays for electricity and electric services at specific facilities throughout the country. If disclosed, Kimberly Clark stated that it would allow potential counterparties and competitors to gain an unfair advantage over Kimberly-Clark in the course of ongoing and future negotiations.⁹ Kimberly-Clark argued that allowing counterparties and competitors access to detailed, internal information related to the operation of its facilities may impact its ability to obtain the best pricing available in connection with future opportunities.¹⁰ In addition, Kimberly-Clark argued the workbook includes information relating to the operating costs of specific Kimberly-Clark facilities,

⁷ Motion for Confidential Treatment.

⁸ Motion for Confidential Treatment.

⁹ Motion for Confidential Treatment.

¹⁰ Motion for Confidential Treatment.

including the Kimberly-Clark facility located in Owensboro, Kentucky, as well as information relating to Kimberly-Clark contractual commitments subject to non-disclosure, and internal business communications and should be given confidential treatment pursuant to should be given confidential treatment pursuant to KRS 61.878(1)(c)(1).¹¹

Having considered the motion and the material at issue, the Commission finds that Kimberly-Clark's response to BREC and Kenergy's First Request, Item 4 should be granted confidential treatment pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13. Although the Commission is not bound to non-disclosure agreements, the Commission finds that disclosure of business operations and strategies would place Kimberly-Clark at a competitive disadvantage, is proprietary, and could be used by competitors leading to higher costs as the information in this response was created for Kimberly Clark specifically for this matter by Larry Blank. Further, the Commission has found that disclosure of "annual operating costs would result in competitive injury."¹²

The Commission finds that documents relied upon by Timothy Hondale in response to BREC and Kenergy's First Request, Items 5a. and 5b. containing email communications between BREC and Kimberly Clark regarding MISO and Kimberly-Clark's proposed BTM generation should be granted confidential treatment pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13. The Commission finds the email communications contain confidential and proprietary information, which if openly

¹¹ Motion for Confidential Treatment.

¹² 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.

disclosed, would permit an unfair commercial advantage to competitors of the entity that disclosed the records.

The Commission finds that Kimberly-Clark's response to BREC and Kenergy's First Request, Item 8, the excel workbook relied upon by Steven Cassidy in his testimony should be granted confidential treatment pursuant to 61.878(1)(a), KRS 61.878(c)(1)(c) and 807 KAR 5:001, Section 13. The disclosure of detailed billing information and internal costs would provide an unfair commercial advantage to competitors of Kimberly-Clark, if disclosed. Further, modeling and the inputs and calculations created by the witness are proprietary. The Commission has previously held that large industrial customers on BREC's system have a right to privacy concerning their power usage and projected needs.¹³ Further the Commission has found that "internal costs and analyses of savings" are granted confidential treatment.¹⁴ Further, the information includes outage and startup information for the Kimberly Clark generator and the Commission has previously granted such information confidential treatment.¹⁵

IT IS THEREFORE ORDERED that:

1. Kimberly-Clark's January 2, 2024 motion for confidential treatment for its response to BREC and Kenergy's First Request, Item 4 is granted confidential treatment.

¹³ Case No. 2021-00289, *Electronic Tariff Filing of Big Rivers Electric Corporation and Kenergy Corporation to Implement a New Standby Service Tariff* (Ky. PSC. March 3, 2022), Order.

¹⁴ Case No. 2013-00148, *In the Matter of: Application of Atmos Energy Corporation for an Adjustment of Rates & Tariff Modifications* (Ky. PSC. Nov. 25, 2013), Order at 2-3.

¹⁵ Case No. 2023-00177, *Electronic Application of East Kentucky Power Cooperative, Inc, for Approval to Amend its Environmental Compliance Plan and Recover Costs Pursuant to its Environmental Surcharge and for Issuance of Certificates of Public Necessity and Other Relief* (Ky. PSC. Nov. 30, 2023), Order at 2.

2. Kimberly-Clark's January 2, 2024 motion for confidential treatment for its response to BREC and Kenergy's First Request, Item 5a. and Item 5b., is granted confidential treatment.

3. Kimberly-Clark's January 2, 2024 motion for confidential treatment for its response to BREC and Kenergy's First Request, Item 8 is granted confidential treatment.

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 five 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. 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.

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, 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.

8. 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.

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