

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 April 26, 2024,¹ 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 portions of the revised Direct Testimony of Timothy Honadle and the related Exhibit.

A hearing in the above-styled matter was held on Wednesday, May 1, 2024. At the hearing, the Commission addressed Kimberly-Clark's April 26, 2024 motion to revise the Direct Testimony and related Exhibit sponsored by Timothy Honadle.² In support of the request, Kimberly-Clark stated that Mr. Honadle, in reviewing his Direct Testimony for the upcoming hearing found a discrepancy in a previous statement regarding unplanned outages from January 1st to December 1st.³ In an effort to provide the most accurate and relevant information, Kimberly-Clark moved to revise the testimony and attached exhibit. There were no objections by any party or by Commission Staff. The Commission, from

¹ Kimberly-Clark Motion for Confidential Treatment (filed Apr. 26, 2024).

² Kimberly-Clark's Motion to Revise Direct Testimony and Associated Exhibit Sponsored by Timothy Honadle (filed Apr. 26, 2024).

³ Hearing Video Transcript (HVT) of the May 1, 2024 Hearing at 09:12–09:13.

the bench, granted Kimberly-Clark's motion to revise the Direct Testimony of Timothy Honadle and related Exhibit.⁴

LEGAL STANDARD

The Public Service Commission is a public agency subject to Kentucky Open Records Act,⁵ which requires that all public records "be open for inspection by any person, except as otherwise provided by KRS 61.870 to KRS 61.884.⁶ The exceptions to the free and open examination of public records should be strictly construed.⁷ The party requesting that the materials be granted confidential protection has the burden of establishing that one of the exemptions is applicable.⁸ 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 stated⁹ that it adopted and incorporated the arguments set forth in the previous December 4, 2023 motion for confidential

⁴ HVT of the May 1, 2024 Hearing at 09:12–9:13.

⁵ KRS 61.870 through 61.884.

⁶ KRS 61.872(1).

⁷ KRS 61.878.

⁸ 807 KAR 5:001, Section 13(2)(c).

⁹ Kimberly-Clark Motion for Confidential Treatment at paragraph 2.

Treatment¹⁰ of the original Direct Testimony of Timothy Honadle and related Exhibit, which was granted confidential treatment by Order dated April 30, 2024.¹¹ Kimberly-Clark stated that the confidential information is a slightly revised version of the Direct Testimony for which Kimberly-Clark sought confidential treatment on December 4, 2023; therefore it requested confidential protection of the same material for the same time period.¹²

Having considered the motion and the revised material at issue, the Commission finds that the information that was previously granted confidential treatment has not substantially changed, therefore, Kimberly-Clark's motion should be granted. The Direct Testimony of Timothy Honadle 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 April 26, 2024 motion for confidential treatment is granted for portions of the revised Direct Testimony of Timothy Honadle and the associated Exhibit.

¹⁰ Motion for Confidential Treatment (filed Dec. 4, 2023).

¹¹ Order (Ky. PSC Apr. 30, 2024).

¹² Kimberly-Clark Motion for Confidential Treatment at paragraph 2.

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.

2. 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.

3. 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).

4. 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.

5. 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.

6. 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



Commissioner



Commissioner

ENTERED
Nov 06 2024 rcs
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



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