

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF SOUTH KENTUCKY RURAL)
ELECTRIC COOPERATIVE CORPORATION FOR) Case No. 2018-00050
APPROVAL OF MASTER POWER PURCHASE AND)
SALE AGREEMENT AND TRANSACTIONS THEREUNDER)

FOURTH MOTION FOR CONFIDENTIAL TREATMENT

Comes now South Kentucky Rural Electric Cooperative Corporation (“South Kentucky”), by and through counsel, pursuant to KRS 61.878, 807 KAR 5:001, Section 13 and other applicable law, and for its Motion requesting that the Commission afford confidential treatment to certain information contained in the rebuttal testimony of Dennis Holt and Carter Babbit that South Kentucky is providing contemporaneously herewith, South Kentucky submits as follows:

1. As reflected in South Kentucky’s Application and noted in prior Motions for Confidential Treatment, South Kentucky has requested that the Commission consider and approve, consistent with KRS 278.300, a transaction between South Kentucky and Morgan Stanley Capital Group Inc. (“MSCG”). In accordance with the terms agreed up by the parties, MSCG will supply South Kentucky with 58 megawatts of firm energy for a 20-year period, and provide a capacity hedge for future purchases of capacity made by South Kentucky for an 18-year term. South Kentucky’s proposal to diversify its power supply portfolio and provide its members with added wholesale power cost certainty for a fixed future period is the result of many months of discussions and analysis and is expected to yield significant wholesale power cost savings for the benefit of South Kentucky’s approximately 50,000 members.

2. Contemporaneously with this motion, South Kentucky is filing rebuttal testimony in this proceeding. The rebuttal testimony of Dennis Holt and Carter Babbit includes references to the expected Net Present Value of the MSCG transaction to South Kentucky, considering various factors and with certain sensitivities, as calculated by South Kentucky's supporting consultant in this proceeding EnerVision. Specifically, the confidential information addressed by Mr. Babbit appears on p. 10, line 17; p. 12, line 1; p. 15 lines 13, 16 and page 21, line 13. With respect to Mr. Holt, the confidential information appears on p. 3, line 20; p. 5 line 23; p. 14 lines 21-22 and p. 16 line 3.

3. South Kentucky has previously requested confidential treatment for such sensitive information, as its revelation could harm South Kentucky's position in the market and afford competitors and vendors with a competitive advantage over it, all of which translates into higher costs for South Kentucky and, in turn, its members. In addition, were the Commission's Final Order in this matter to deny the Application, in whole or part, South Kentucky would be faced with the prospect of having to seek an alteration of or amendment to the transaction, or to return to the wholesale power market altogether to secure replacement supply source for its Amendment 3 alternate source designation. In such a circumstance, knowledge by potential counterparties of the anticipated value of the transaction would disadvantage South Kentucky and could lead to harm to its members.

4. The Kentucky Open Records Act and applicable precedent exempts from disclosure information "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."¹ As

¹ See KRS 61.878(1)(c)(1); see also, e.g., Case No. 2016-00269, *In the Matter of: Application of East Kentucky Power Cooperative, Inc. for Issuance of a Certificate of Public Convenience and Necessity, Approval of Certain Assumption of Evidences of Indebtedness and Establishment of a Community Solar Tariff*, Order at pp. 2-3 (Ky. P.S.C. Nov. 30, 2016).

described above, the information for which South Kentucky seek confidential treatment contain information that is, or is based on or acquired from, proprietary information, is not on file with publicly with any public agency, and is not publicly available from any commercial or other source. The aforementioned information is also distributed within South Kentucky only to those employees who must have access for business reasons, and is generally recognized as confidential and proprietary in the energy industry. The public disclosure of this information will create precisely the kind of competitive harm KRS 61.878(1)(c)(1) intends to prevent.

5. KRS 61.878(1)(c)(1) protects “records 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.” The Kentucky Supreme Court has stated, “information concerning the inner workings of a corporation is ‘generally accepted as confidential or proprietary’” *Hoy v. Kentucky Industrial Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995). All of the Confidential Information is critical to South Kentucky’s effective execution of business decisions and strategy. If disclosed, the confidential information would give South Kentucky’s competitors insights into its business operations and strategies that are otherwise publicly unavailable. Accordingly, the confidential information satisfies both the statutory and common law standards for affording confidential treatment.

6. Finally, as noted above and in its original motion, South Kentucky does not necessarily object to limited disclosure of certain of the confidential information described herein (consistent with Commission regulations and its long-standing practice and procedures), pursuant to an acceptable confidentiality and nondisclosure agreement, to intervenors with a legitimate interest in reviewing the same for the sole purpose of participating in this case.

7. In accordance with the provisions of 807 KAR 5:001, Section 13(2), South Kentucky is filing, separately and under seal, one (1) unredacted copy of the rebuttal testimony of Dennis Holt and Carter Babbit with the confidential information highlighted.

8. In accordance with the provisions of 807 KAR 5:001, Section 13(2), South Kentucky respectfully requests that the confidential information be withheld from public disclosure for a period of ten (10) years. The public disclosure of the confidential information prior to the expiration of this time period will result in a competitive disadvantage to South Kentucky and could be detrimental to future negotiations with vendors and competitors.

9. If, and to the extent, the Confidential Information becomes publicly available or otherwise no longer warrants confidential treatment, South Kentucky will notify the Commission and have its confidential status removed, pursuant to 807 KAR 5:001 Section 13(10).

WHEREFORE, on the basis of the foregoing, South Kentucky respectfully requests that the Commission classify and protect as confidential the specific confidential information described herein for a period of ten (10) years.

Dated this 7th day of May, 2018.

Respectfully submitted,

/s/Matt Malone

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CERTIFICATE OF SERVICE

Pursuant to 807 KAR 5:001 Section 6, the undersigned certifies that consistent with 807 KAR 5:001 Section 4(8)(d)(3), a copy of this document has been electronically served upon the following:

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This 7th day of May, 2018.

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