

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)

FIFTH 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 South Kentucky’s response to Commission Staff’s First Posthearing Request for Information, Item 3, provided contemporaneously herewith, South Kentucky submits as follows:

1. South Kentucky’s Application requests that the Commission consider and approve, consistent with KRS 278.300, a long-term power purchase agreement and related energy and capacity transactions entered into on or about December 19, 2017, by and between South Kentucky and Morgan Stanley Capital Group Inc. (“Morgan Stanley Capital Group”). South Kentucky’s proposal to diversify its power supply portfolio 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. On May 21, 2018, Commission Staff submitted its First Posthearing Request for Information.

3. In response to the Commission Staff's First Posthearing Requests for Information, Item 3, South Kentucky is providing certain information for which it requests confidential treatment. Consistent with South Kentucky's request for confidentiality accompanying the Application, its Second Motion for Confidential Treatment, respecting certain responses to initial data requests posed in this proceeding, its Third Motion for Confidential Treatment, respecting certain responses to supplemental data requests posed in this proceeding, and its Fourth Motion for Confidential Treatment, respecting rebuttal testimony filed by South Kentucky in this proceeding, South Kentucky is willing to provide limited disclosure of the information in the following request item to those abiding by the terms and conditions of a non-disclosure agreement.

Refer to the Rebuttal Testimony of Carter Babbit, page 15, lines 12-17. Provide the Net Present Value analysis containing the four changes in assumptions in Excel spreadsheet format with all cells and formulas unprotected and readily accessible.

4. In its response to this request item, South Kentucky is providing the requested analysis performed by EnerVision in Attachment PHPSC-1, which includes proprietary analyses performed by South Kentucky's consultant EnerVision of pricing details relating to both the proposed transaction in question. To this end, some of the information includes internal financial and operational information used by EnerVision, data that if disclosed would give competitors insight into South Kentucky they otherwise are not privy to, as well as information regarding power market conditions that, again, is not available to them publicly and could be to the detriment of South Kentucky were it required to return to the market. Further, this information is similar to the analyses for which South Kentucky requested and was granted confidential treatment in its earlier motions for confidential treatment in this proceeding.¹ For Attachment PHPSC-1, confidential

¹ See Case No. 2018-00050, *In the Matter of Electronic Application of South Kentucky Rural Electric Cooperative Corporation for Approval of Master Power Purchase and Sale Agreement and Transactions Thereunder*, Order (Ky. P.S.C. May 8, 2018).

information pervades much of the information being produced. Accordingly, and pursuant to 807 KAR 5:001, Section 13(2)(a)(3)(b), confidential treatment is being sought for the entirety of confidential materials. Therefore, South Kentucky is filing a CD containing Attachment PHPSC-1, consistent with 807 KAR 5:001 §13(2)(a)(3)(b).

5. 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.”² As described above, the response for which South Kentucky seeks confidential treatment contains information that is, or is based on or acquired from, proprietary information provided by EnerVision, 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.

6. 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.

² 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).

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.

7. As South Kentucky recognized in its initial motion for confidentiality, in the unlikely event the Commission determined to deny in whole or in part the Application, South Kentucky would face the prospect of revising the proposed transaction or returning to the market. If this were to occur and South Kentucky's potential counterparties had access to essential commercial terms such as price, value, and the identities of their competitor-bidders responding to the initial RFP, South Kentucky would be placed at a significant competitive disadvantage ultimately resulting in financial harm to the cooperative and its Owner-Members.

8. 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.

9. 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 data request response addressed herein with the confidential information highlighted. Because confidential information pervades the entirety of the spreadsheet addressed above with written notification given pursuant to 807 KAR 5:001, Section 13(2)(a)(3)(b), a redacted original and one confidential copy have also been tendered to the Commission.

10. 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.

11. 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 29th day of May, 2018.

Respectfully submitted,

/s/Matt Malone

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**SOUTH KENTUCKY RURAL ELECTRIC
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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 29th day of May, 2018.

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