

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE ELECTRONIC APPLICATION OF)	
CLARK ENERGY COOPERATIVE, INC.)	
FOR A GENERAL ADJUSTMENT OF)	Case No. 2020-00104
RATES PURSUANT TO STREAMLINED)	
PROCEDURE PILOT PROGRAM)	
ESTABLISHED IN CASE NO. 2018-00407)	

MOTION FOR CONFIDENTIAL TREATMENT

Comes now Clark Energy Cooperative, Inc. (“Clark Energy”) by counsel, pursuant to KRS 61.878, 807 KAR 5:001 Section 13 and other applicable law, and respectfully moves the Commission to afford confidential treatment to certain information and documents filed by Clark Energy in response to the requests for information propounded by Commission Staff and the Attorney General, respectively, in the above-styled matter. In support of this request, Clark Energy states as follows:

1. On May 1, 2020, Clark Energy filed its Application in this matter. On June 2, 2020 the Attorney General, by and through his Office of Rate Intervention (“AG”) propounded requests for information upon Clark Energy. On June 11, 2020, Commission Staff propounded requests for information upon Clark Energy. Clark Energy is filing responses to these requests for information contemporaneously herewith.

2. Pursuant to Commission regulation and in accordance with law, Clark Energy requests that the Commission afford confidential treatment to the following proprietary, personal,

confidential, sensitive, and commercially valuable information (collectively, the “Confidential Information”):

a. the 2018 CFC Key Ratio Trend Analysis provided in response to Item 5 of the Commission Staff’s request for information. The formulas, computations and information contained in the materials are protected by copyright and other laws. In CFC's continued effort to provide their members with value-added services, these materials were furnished to Clark Energy solely for its own business purposes. According to the CFC, the CFC Key Ratio Trend Analysis is confidential and proprietary to CFC and should only be shared with the cooperative and its legal and accounting advisers. The Key Ratio Trend Analysis includes this disclaimer:

The formulas, computations and information contained in these materials are protected by copyright and other laws. In CFC's continued effort to provide our members with value-added services, these materials have been furnished to you solely for your system's own business purposes. The CFC Key Ratio Trend Analysis is confidential and proprietary to CFC, and should only be shared with your cooperative and its trusted legal and accounting advisers. Use of these materials should be carefully considered with all other relevant data or information that may be important or specific to your system or cooperative.

b. the recent wage and salary study conducted by a third-party consultant containing specific employee identity and cooperative-wide compensation information (job titles, salaries, compensation adjustments and/or similar information), a copy of which is being filed under seal tendered contemporaneously herewith in response to Item 12 of the Commission Staff’s request for information;

c. the salary increase information for Clark Energy employees other than the President/CEO’s salary increase is being provided in response to Item 30 of the Attorney General’s request for information. This information is highly sensitive and personal information regarding subordinate employees of Clark Energy.

3. Each item for which Clark Energy requests confidential treatment warrants protection from open viewing and distribution. The Key Ratio Trend Analysis is protected by copyright law and only given to Clark Energy for use for Clark Energy's business purposes. In the event that confidentiality is not afforded to the Key Ratio Trend Analysis, Clark Energy could be accused of violating CFC's copyright under federal law and lose access to this publication in the future. Public disclosure of the information being provided under seal herewith would have a chilling effect on CFC's willingness to share such information with cooperatives regulated by the Commission. Similarly, the wage and salary information provided in response to Item 12 of Commission Staff's request for information is clearly private and commercially valuable. The salary increase information for Clark Energy is highly sensitive and personal in nature. All of the Confidential Information is proprietary information that is retained by Clark Energy on a need-to-know basis and is only distributed within Clark Energy to those people holding select positions who must have access for business purposes. The Confidential Information is generally recognized as confidential and proprietary in the utility industry and elsewhere and employees have a reasonable expectation of privacy in their compensation data.¹

3. The Kentucky Open Records Act and applicable precedent exempts the Confidential Information from disclosure. *See* KRS 61.878(1)(a); KRS 61.878(1)(c)(1); *Zink v. Department of Workers Claims, Labor Cabinet*, 902 S.W.2d 825 (Ky.App. 1994); *Hoy v. Kentucky Industrial Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995). The public disclosure of the Confidential Information would potentially harm Clark Energy's competitive position in the marketplace, to the detriment of Clark Energy and its customers. Additionally, the Confidential Information is publicly unavailable and its confidentiality is critical to Clark Energy's effective

¹ Clark Energy is not seeking confidential treatment with regard to the compensation of its President and CEO.

execution of business decisions and strategy. It is well-settled that employees have a reasonable expectation of privacy with regard to financial information. *See Cape Publications, Inc. v. Univ. of Louisville Found., Inc.*, 260 S.W.3d 818, 822 (Ky. 2008). For these reasons, the Confidential Information satisfies both the statutory and common law standards for affording confidential treatment.

4. Clark Energy does not object to limited disclosure of the Confidential Information described herein, 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.

5. Contemporaneously with this motion, Clark Energy is filing an electronic, redacted version of its responses to the relevant requests for information. By subsequent hand-delivery, Clark Energy intends to tender one (1) hardcopy, redacted original of each response and, in a separate sealed envelope marked confidential, one (1) unredacted copy of the Confidential Information.

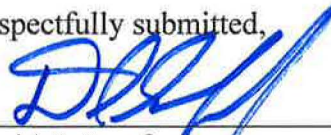
6. In accordance with the provisions of 807 KAR 5:001 Section 13(2), Clark Energy respectfully requests that the Confidential Information be withheld from public disclosure for ten (10) years.

7. If, and to the extent, the Confidential Information becomes publicly available or otherwise no longer warrants confidential treatment, Clark Energy will notify the Commission and seek to have confidential protection removed, pursuant to 807 KAR 5:001 Section 13(10).

WHEREFORE, on the basis of the foregoing, Clark Energy 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 22nd day of June 2020.

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that the foregoing electronic filing is a true and accurate copy of the document being filed in paper medium; that the electronic filing was transmitted to the Commission on June 22, 2020; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that a copy of the filing in paper medium will be filed with the Commission within thirty days of the current state of emergency for COVID-19 being lifted.



Counsel for Clark Energy Cooperative, Inc.