

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE ELECTRONIC APPLICATION OF)	
THE VANGUARD GROUP, INC. FOR A)	Case No.
DECLARATORY ORDER REGARDING)	2020-00209
INVESTMENT FUND OWNERSHIP)	

MOTION FOR CONFIDENTIAL TREATMENT

1. The Vanguard Group, Inc. (the “Vanguard Group”), by counsel, hereby moves the Kentucky Public Service Commission (the “Commission”), pursuant to KRS 61.878 and 807 KAR 5:001 Section 13, to afford confidential treatment to certain information contained in the Vanguard Group’s Application filed contemporaneously in this matter. The information for which the Vanguard Group seeks confidential protection is hereinafter referred to as the “Confidential Information,” and it is contained in Exhibit 1 to the Application.

INTRODUCTION

2. The Vanguard Group and its related entities (together, “Vanguard”) comprise one of the world’s largest mutual fund complexes, offering a substantial selection of mutual funds, exchange traded funds, advice and related services. This complex includes hundreds of separate funds (“Vanguard Funds”), each an independent entity with its own separate group of shareholders, portfolio of securities and individual investment mandate.

3. As detailed in the Application, the portfolios of numerous Vanguard Funds include voting securities of publicly-traded entities which directly or indirectly own and control Kentucky jurisdictional utilities (or, in the case of Atmos Energy Corporation, is a Kentucky jurisdictional utility). In Exhibit 1 to the Application, the Vanguard Group lists each relevant entity in which any Vanguard Fund maintains an interest and provides specific and aggregated holdings information reflecting fund positions as of June 30, 2020. This holdings information is proprietary information maintained by the Vanguard Group that is not available to the public.

DISCUSSION

4. The Confidential Information is entitled to confidential treatment pursuant to KRS 61.878(1)(c)(1), which 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.” 807 KAR 5:001 Section 13(2)(a)(1).

5. The fund-level and aggregate percentage-interest information reflected in Exhibit 1 is not publicly available, is not disseminated within Vanguard except to those employees and professionals with a legitimate business need to know, and is not disseminated to others without a legitimate need to know. The Confidential Information cannot be reasonably determined or deduced from other publicly-available information, and it is not available for public inspection with the Securities

and Exchange Commission (“SEC”) or other state or federal authority.¹ Moreover, the Confidential Information affords insight into the inner workings of the Vanguard Funds’ portfolios and the approaches maintained by both internally- and externally- advised funds. The public disclosure of this information will inevitably inure to the benefit of the Vanguard Group’s competitors, which would gain valuable, non-public information about the business, its operations and its outlooks. Information such as this is generally recognized as confidential or proprietary, thus warranting confidential protection under KRS 61.878(1)(c)(1) and 807 KAR 5:001 Section 13(2)(a)(1).²

6. Each Vanguard Fund’s ability to successfully compete within the financial markets is dependent upon its ability to ensure its non-public strategic investment information remains confidential. If Vanguard’s competitors or other

¹ The Confidential Information contained within column “D” of Exhibit 1 reflects the percentage of outstanding shares of each relevant entity which are “beneficially owned” by Vanguard, as that term is defined by the SEC under Rule 13d-3 of the Exchange Act. *See* 17 C.F.R. § 240.13d-3 (“a beneficial owner of a security includes any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares: (1) Voting power which includes the power to vote, or to direct the voting of, such security; and/or, (2) Investment power which includes the power to dispose, or to direct the disposition of, such security.”). Under the SEC’s rules, any party who beneficially owns 5% or more of a class of equity securities must file either a Schedule 13G or Schedule 13D, and in that schedule must publicly disclose holdings information like that contained in column “D” of Exhibit 1. In part because Vanguard’s most-recent 13G filings reflect data as of December 31, 2019, the most up-to-date holdings information reflected in column “D” of Exhibit 1 is confidential at this time.

² *See, e.g., Hoy v. Kentucky Indus. Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995) (“It does not take a degree in finance to recognize that such information concerning the inner workings of a corporation is ‘generally recognized as confidential or proprietary’”); *Marina Management Servs. v. Cabinet for Tourism, Dep’t of Parks*, 906 S.W.2d 318, 319 (Ky. 1995) (unfair commercial advantage arises simply from “the ability to ascertain the economic status of the entities without the hurdles systemically associated with the acquisition of such information about privately owned organizations”); Case No. 2019-00115, *In the Matter of: Electronic Application of Grayson County Water District for a Deviation from Meter Testing Requirements of 807 KAR 5:066, Section 16(1)*, Order (Ky. P.S.C. September 19, 2019) (granting confidential protection for proprietary product produced by a third party that was not available to the general public/required membership to obtain and was generally recognized as confidential).

investors are privy to sector-specific holdings information that is otherwise unavailable to the public (and is not available with respect to their own holdings), Vanguard's competitive position is adversely impacted. Further, the information imbalance created by the public disclosure of Vanguard's fund-specific and aggregated positions hinders Vanguard's efforts to maximize the value of its offerings and investor returns, thereby exerting unnecessary and misplaced economic pressure upon Vanguard as a result of its desire to provide the Commission with information that may aid in its evaluation of this matter. Disclosure of the Confidential Information would afford Vanguard' competitors an unfair commercial advantage and result in Vanguard's competitive injury, and therefore confidential treatment is warranted under KRS Chapter 61 and Commission regulation.

7. Pursuant to the Commission's March 24, 2020 Order in *In the Matter of: Electronic Emergency Docket Related to the Novel Coronavirus COVID-19*, Case No. 2020-00085, one (1) copy of Exhibit 1 containing the Confidential Information, with the Confidential Information highlighted and marked "CONFIDENTIAL," is being filed with this motion by email to PSCED@ky.gov with a read receipt. A redacted copy of Exhibit 1 is being filed with the Commission via its Electronic Filing System.

8. If and to the extent the Confidential Information becomes generally available to the public, whether through filings required by other agencies or otherwise, the Vanguard Group will notify the Commission and have its confidential status removed. 807 KAR 5:001 Section 13(10)(b).

9. The Confidential Information provides a snapshot of the positions held by Vanguard Funds in a specific sector, and the public disclosure of this information could be used by Vanguard's competitors or other investors to modify their investment outlook or behaviors going forward. Therefore, the Vanguard Group requests that confidential protection be afforded to the Confidential Information for a period of five (5) years, after which time period the information will be sufficiently dated such that its public disclosure will be unlikely to provide competitors with an advantage in the marketplace. This is true with respect to not only the proprietary fund-level holdings information and externally-advised funds data contained in columns "C" and "E" of Exhibit 1, but also the "beneficial ownership" data provided in column "D" of Exhibit 1; although information similar to that contained in column "D" of Exhibit 1 is disclosed by Vanguard as part of Schedule 13G filings with the SEC, that information is specific to its date of disclosure and thus may be different than positions held at other times (such as the June 30, 2020 date reflected in Exhibit 1). Therefore, keeping private Vanguard's confidential holdings information contained in Exhibit 1 for a period of five (5) years is appropriate.

CONCLUSION

10. Based on the foregoing, the Confidential Information is entitled to confidential protection. If the Commission disagrees, then the Commission should hold an evidentiary hearing to protect the Vanguard Group's due process rights and to supply the Commission with a complete record to enable it to reach a decision with

regard to this matter. *See Utility Regulatory Com'n v. Kentucky Water Service Co., Inc.*, 642 S.W.2d 591 (Ky. App. 1982).

WHEREFORE, Vanguard respectfully requests that the Commission classify and protect as confidential the Confidential Information.

This 6th day of July, 2020.

Respectfully submitted,

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