

_ COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE ELECTRONIC APPLICATION OF)	
FARMERS RURAL ELECTRIC)	CASE NO.
COOPERATIVE CORPORATION FOR A)	2023-00158
GENERAL ADJUSTMENT OF RATES)	
PURSUANT TO STREAMLINED PROCEDURE)	
PILOT PROGRAM ESTABLISHED)	
IN CASE NO. 2018-00407)	

MOTION FOR CONFIDENTIAL TREATMENT

Comes now Farmers Rural Electric Cooperative Corporation (“Farmers RECC”), 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 Farmers RECC in response to the requests for information propounded by the Attorney General’s Office (“AG”) in the above-styled matter. In support of this request, Farmers RECC states as follows:

1. On May 15, 2023, Farmers RECC filed its Notice of Intent to file an adjustment of rates pursuant to the streamlined rate procedures and Farmers RECC filed its Application on June 16, 2023.
2. On August 24, 2023, the AG issued its First Request for Information (“AG’s First Requests”). Farmers RECC is filing responses to the AG’s First Requests contemporaneously with this Motion.
3. Farmers RECC requests the Commission to afford confidential protection to certain information being filed by Farmers RECC in response to the AG’s Frist Requests Item No. 3, 4,

25g and 35b. The information provided is proprietary, personal, confidential, sensitive, and commercially valuable information. This information is collectively referred to as the “Confidential Information”. The Confidential Information for which Farmers RECC seeks confidential protection is bids received from third-party contracts for right-of-way management, personal salary information of employees and Key Ratio Trend Analysis (“KRTA”) compiled by Cooperative Financial Corporation (“CFC”). The Confidential Information if disclosed would permit Farmers RECC’s competitors an unfair commercial advantage. The Confidential Information also contains information pertaining to information subject to copyright laws, which the Commission has granted confidential treatment to in prior Commission proceedings.¹

4. KRS 61.878(1)(c) 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." KRS 61.878(1)(c)(1); 807 KAR 5:001 8 Section 13(2)(a)(1). Farmers RECC operates in a competitive environment especially with regards to obtaining contractors to perform right-of-way management. The Confidential Information is generally recognized as confidential or proprietary and public disclosure of the Confidential Information would permit an unfair commercial advantage to Farmers RECC’s competitors. See KRS 61.878(1)(c).

5. In addition to the bid information, Farmers RECC is providing KRTA data compiled by CFC which is subject to copyright law. CFC has the right to rely on its copyright to protect against the public disclosure of the information. Release of the KRTA could put Farmers

¹ See, Case No. 2021-00358, *Electronic Application of Jackson Purchase Corporation for a General Adjustment of Rates and Other General Relief* (Ky. P.S.C. Dec. 9, 2021, Order at 2, granting confidential treatment to a KRTA and citing Case No. 2018-00358, *Electronic Application of Kentucky American Water Company for an Adjustment of Rates* (Ky. P.S.C. Mar. 14, 2019), Order at 2.

RECC in the position to be accused of violating CFC's copyright. This could also hinder Farmers RECC in being granted access to the information in the future. Both the right-of-way bids and the KRTA should be kept confidential in their entirety. Releasing the Confidential Information to the public would unfairly harm Farmers RECC and its competitive position in the marketplace, not to mention the violation of copyright law.

6. The additional Confidential Information contains personal salary information for Farmers RECC employees including salaries and percentage increases which are personal and confidential information. KRS 61.878(1)(a) exempts from public disclosure “[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.” Farmers RECC’s employees have an expectation of privacy for their personal and confidential salary information. This information is personal in nature and if disclosed could violate Farmers RECC’s employees’ personal privacy. The public release of this information could also give Farmers RECC’s competitors information that could aid them in poaching employees from Farmers RECC which could harm Farmers RECC and its end-use members.

7. The Confidential Information is proprietary information that is retained by Farmers RECC on a “need-to-know” basis and is only distributed by Farmers RECC only to those holding select positions who must have access for business reasons, and it is generally recognized as confidential and proprietary in the utility industry and elsewhere.

8. The Kentucky Open Records Act and applicable precedent exempts the Confidential Information from disclosure, including 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). As stated above,

the public disclosure of the Confidential Information would potentially harm Farmers RECC's competitive position in the marketplace which would be to the detriment of both Farmers RECC and its end-use members. Additionally, the Confidential Information is publicly unavailable and its confidentiality is critical to Farmers RECC's effective execution of business decisions and strategy. For these reasons, the Confidential Information satisfies both the statutory and common law standards for affording confidential treatment.

9. Farmers RECC does not object to limited disclosure of the Confidential Information described herein, pursuant to a confidentiality agreement, to intervenors with a legitimate interest in reviewing the same for the sole purpose of participating in this case.

10. Farmers RECC is requesting confidential treatment for the entirety of all documents being filed under seal pursuant to 807 KAR 5:001, Section 13(2)(a)3.b. For that reason, a redacted version of the Confidential Information is not being filed. In accordance with the provisions of 807 KAR 5:001, Section 13(2), Farmers RECC is filing one copy of the Confidential Information separately under seal, without highlights since confidential protection for the entire documents is being sought. The filing of the Confidential Information is noted in the public version of Farmers RECC's responses.

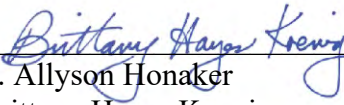
11. Also, in accordance with the provisions of 807 KAR 5:001 Section 13(2), Farmers RECC respectfully requests that the Confidential Information be withheld from public disclosure for a period of ten (10) years. However, Farmers RECC reserves the right to extend this timeframe if necessary.

12. If, and to the extent, the Confidential Information becomes publicly available or otherwise no longer warrants confidential treatment, Farmers RECC 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, Farmers RECC 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 of September, 2023.

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that the electronic filing was transmitted to the Commission on September 7, 2023 and that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding. Pursuant to the Commission's July 22, 2021 Order in Case No. 2020-00085 no paper copies of this filing will be made.



Counsel for Farmers RECC