

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

|                                   |   |            |
|-----------------------------------|---|------------|
| THE ELECTRONIC APPLICATION OF     | ) |            |
| SHELBY ENERGY COOPERATIVE, INC.   | ) | CASE NO.   |
| FOR A GENERAL ADJUSTMENT OF RATES | ) | 2023-00213 |
| PURSUANT TO STREAMLINED PROCEDURE | ) |            |
| PILOT PROGRAM ESTABLISHED         | ) |            |
| IN CASE NO. 2018-00407            | ) |            |

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MOTION FOR CONFIDENTIAL TREATMENT

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Comes now Shelby Energy Cooperative, Inc. (“Shelby 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 Shelby Energy 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, Shelby Energy states as follows:

1. On June 30, 2023, Shelby Energy filed its Notice of Intent to file an adjustment of rates pursuant to the streamlined rate procedures and Shelby Energy filed its Application on August 4, 2023.

2. On August 29, 2023, the AG issued its First Request for Information (“AG’s First Requests”). Shelby Energy is filing responses to the AG’s First Requests contemporaneously with this Motion.

3. Shelby Energy requests the Commission to afford confidential protection to certain information being filed by Shelby Energy in response to the AG’s First Requests Item No. 19 and 24g. 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 Shelby Energy seeks confidential protection is personal salary information of employees and bids received from third-party contracts for right-of-way management. The Confidential Information if disclosed would permit Shelby Energy’s competitors an unfair commercial advantage.

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). Shelby Energy 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 Shelby Energy’s competitors. See KRS 61.878(1)(c).

5. The right-of-way bids should be kept confidential in their entirety. Releasing the Confidential Information to the public would unfairly harm Shelby Energy and its competitive position in the marketplace.

6. The Confidential Information in the excel file for Response 19 contains personal salary information for Shelby Energy employees including salaries and percentage increases which are personal and confidential information. The spreadsheet filed in the public record has been redacted and a separate file has been provided with highlights to indicate the 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.” Shelby Energy’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 Shelby Energy's employees' personal privacy. The public release of this information could also give Shelby Energy's competitors information that could aid them in poaching employees from Shelby Energy which could harm Shelby Energy and its end-use members.

7. The Confidential Information is proprietary information that is retained by Shelby Energy on a "need-to-know" basis and is only distributed by Shelby Energy 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 Shelby Energy's competitive position in the marketplace which would be to the detriment of both Shelby Energy and its end-use members. Additionally, the Confidential Information is publicly unavailable and its confidentiality is critical to Shelby Energy'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. Shelby Energy 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. Shelby Energy is requesting confidential treatment for the entirety of Response 24g being filed under seal pursuant to 807 KAR 5:001, Section 13(2)(a)3.b. For that reason, a redacted version of Response 24g is not being filed in the public record. The Excel spreadsheet provided in the public record for Response 19 has job titles deleted except for executives. A highlighted version of Response 19 is being filed under seal. In accordance with the provisions of 807 KAR 5:001, Section 13(2), Shelby Energy is filing one copy of the Confidential Information separately under seal, without highlights for Response 24g and with highlights for Response 19, since confidential protection for the entire documents is being sought. The filing of the Confidential Information is noted in the public version of Shelby Energy's responses.

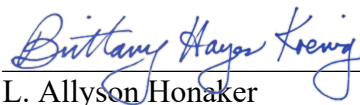
11. In accordance with the provisions of 807 KAR 5:001 Section 13(2), Shelby Energy respectfully requests that the Confidential Information be withheld from public disclosure for a period of ten (10) years. Shelby Energy reserves the right to extend this timeframe if necessary.

12. If, and to the extent, the Confidential Information becomes publicly available or otherwise no longer warrants confidential treatment, Shelby 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, Shelby Energy respectfully requests that the Commission classify and protect as confidential the specific Confidential Information described herein for a period of ten (10) years.

This 12<sup>th</sup> day of September, 2023.

Respectfully submitted,



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