

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE COMMONWEALTH OF KENTUCKY

In the Matter of:)	
THE ELECTRONIC FILING OF BIG RIVERS)	
ELECTRIC CORPORATION AND)	CASE NO. 2023-00312
KENERGY CORP.TO REVISE THE LARGE)	
INDUSTRIAL CUSTOMER STANDBY)	
SERVICE TARIFF.)	

KIMBERLY-CLARK CORPORATION'S MOTION
FOR CONFIDENTIAL TREATMENT

1. Kimberly-Clark Corporation (“Kimberly-Clark”), by counsel, hereby moves the Kentucky Public Service Commission (“Commission”), pursuant to 807 KAR 5:001 Section 13, KRS 61.878, and other applicable law, to grant confidential treatment to certain documents and information within its Direct Testimony of Steven Cassady and Timothy Honadle and associated exhibits.

2. The information for which Kimberly-Clark seeks confidential treatment is hereinafter referred to as the "Confidential Information." The Confidential Information includes information relating to the operating costs of specific Kimberly-Clark facilities, including the Kimberly-Clark facility located in Owensboro, Kentucky, as well as information relating to Kimberly-Clark contractual commitments subject to non-disclosure.

3. 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 ("Case No. 2020-00085), Kimberly-Clark is submitting with this motion one (1) copy of the documents containing Confidential Information highlighted with transparent ink, printed on yellow paper, or otherwise marked "CONFIDENTIAL," via electronic mail to PSDEC@ky.gov. A copy of

those pages, with the Confidential Information redacted, is being filed into the public docket via the Commission's Electronic Filing System.

4. If and to the extent any of the Confidential Information becomes generally available to the public, whether through filings required by other agencies or otherwise, Kimberly-Clark will notify the Commission in writing. *See* 807 KAR 5:001, Section 13(10)(b).

5. The Confidential Information is entitled to confidential treatment based upon KRS 61.878(1)(c)(1) and KRS 61.878(1)(a). *See* 807 KAR 5:001, Section 13(2)(a)(1), as discussed further below.

I. Certain of the Confidential Information is Entitled to Protection from Public Disclosure by KRS 61.878(1)(a)(1).

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.” Subsection A, below, describes how Kimberly-Clark competes for market share with other corporations, Subsection B describes explains that the Confidential Information is generally recognized as confidential, proprietary or subject to certain contractual non-disclosure commitments, and Subsection C demonstrates that public disclosure of the Confidential Information would permit an unfair commercial advantage to Kimberly-Clark's competitors.

A. Kimberly-Clark Operates in a Competitive Marketplace

7. Kimberly-Clark manufactures paper products, including facial and bath tissue. These goods are placed on store shelves next to competing products from its competitors. The price Kimberly-Clark charges for these goods is directly impacted by its operating costs, including the total price it pays for electricity. This information is not publicly available, and

would be difficult or impossible for a competitor to discover from other sources. Furthermore, this information is not generally disclosed to non-management employees of Kimberly-Clark and is protected internally by Kimberly-Clark as proprietary information. Kimberly-Clark's competitors could put Kimberly-Clark at a competitive disadvantage if they obtained detailed information about Kimberly-Clark's cost structure, which could result in competitors unfairly undercutting product pricing as a result. Moreover, potential partners and customers could use the information to manipulate negotiations with Kimberly-Clark, leading to higher costs to Kimberly-Clark and placing it at an unfair competitive advantage in the marketplace. Thus, disclosure of this proprietary information would mean that Kimberly-Clark's ability to sell its finished goods in competition with its competitors would be adversely affected. Keeping Kimberly-Clark's proprietary information and anticipated competitive position confidential is therefore essential to preventing its competitors from gaining an unfair advantage. No public purpose is served by the disclosure of such information.

B. The Confidential Information is Generally Recognized as Confidential or Proprietary.

8. The Confidential Information for which Kimberly-Clark seeks confidential treatment under KRS 61.878(1)(C)(1) is generally recognized as confidential or proprietary under Kentucky law.

9. As described above, the Confidential Information includes detailed, proprietary information pertaining to discrete Kimberly-Clark operations and assets, specifically including the price Kimberly-Clark pays for electricity and electric services at specific facilities throughout the country. This information is critical to the effective execution of Kimberly-Clark's business decisions and strategy and, if disclosed, would allow potential counterparties and competitors to gain an unfair advantage over Kimberly-Clark in the course of ongoing and future negotiations.

Allowed counterparties and competitors access to detailed, internal information related to the operation of its facilities may impact Kimberly-Clark's ability to obtain the best pricing available in connection with future opportunities. In addition, certain of the Confidential Information relates to certain Kimberly-Clark contractual commitments and, as such, is subject to non-disclosure agreements.

10. Information about a company's detailed inner workings is generally recognized as confidential or proprietary. *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”). Moreover, the confidential nature of proprietary pricing and other terms has been affirmed by the Commission on a number of occasions.¹

11. The Confidential Information is not publicly available, is not disseminated within Kimberly-Clark except to those employees and professionals with a legitimate business need to know and act upon the information, and is not disseminated to others without a legitimate need to know and act upon the information. As such, the Confidential Information is both recognized by Kimberly-Clark and generally recognized as confidential and proprietary.

¹ *See, e.g.,* Order, Case No. 2022-00359, *In the Matter Of: Electronic Application of Sentra Corporation for Approval of a Special Contract* (Ky. P.S.C. Filed April 17, 2023) (granting confidentiality for written testimony and application materials that contained “prices and quantities for natural gas that were negotiated by the parties to a special contract”); Order, Case No. 2020-00019, *In the Matter of: Electronic Application of Kentucky Power Company for Approval of a Contract for Electric Services with Air Products and Chemicals, Inc.* (Ky. P.S.C. Filed March 30, 2020) (granting confidential status for documents containing contract rate information).

C. Disclosure of the Confidential Information Would Result in an Unfair Commercial Advantage to Kimberly-Clark's Competitors.

12. Disclosure of the Confidential Information could unreasonably and unnecessarily harm Kimberly-Clark by giving interested third parties an unfair commercial advantage through insight into Kimberly-Clark's business operations and strategies. As discussed above, Kimberly-Clark faces competition in the tissue manufacturing and sales marketplace. Potential partners and customers could use the information to manipulate negotiations with Kimberly-Clark, leading to higher costs to Kimberly-Clark and placing it at an unfair competitive advantage in the marketplace.

13. In addition, if disclosed, certain of the Confidential Information would allow Kimberly-Clark's competitors and potential counterparties to discover and make use of confidential information concerning Kimberly-Clark's assets, cost structures, and business strategies to the unfair competitive disadvantage of Kimberly-Clark.

II. Time Period.

14. Pursuant to 807 KAR 5:001 Section 13(3)(a)(2), Kimberly-Clark requests that the Confidential Information protected by KRS 61.878(1)(c)(1) remain confidential for a period of five (5) years from the date of this motion, which should allow sufficient time for the projected information to become historical and sufficiently outdated that it could not be used to determine similar confidential information at that time or to competitively disadvantage Kimberly-Clark.

III. Conclusion.

15. 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 Kimberly-Clark'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 Util. Reg. Comm'n v. Ky. Water Serv. Co., Inc.*, 642 S.W.2d 591 (Ky. App. 1982).

WHEREFORE, Kimberly-Clark respectfully requests that the Commission classify and protect as confidential the Confidential Information.

Dated December 4, 2023

Respectfully submitted,

Certification

I hereby certify that a copy of this Motion for Confidential Treatment has been served electronically on all parties of record through the use of the Commission's electronic filing system, and there are currently no parties that the Commission has excused from participation by electronic means. Pursuant to the Commission's July 22, 2021 Order in Case No. 2020-00085, a paper copy of this filing has not been transmitted to the Commission.

/s/

Counsel to Kimberly-Clark Corporation