

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF KENTUCKY)	CASE NO.
UTILITIES COMPANY FOR AN ADJUSTMENT OF)	2018-00294
ITS ELECTRIC RATES)	

ORDER

On September 28, 2018, Kentucky Utilities Company (KU) electronically filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1), requesting that the Commission grant confidential protection to customer-identifying information produced pursuant to 807 KAR 5:001, Section 16(7)(c), and executive compensation information produced pursuant to 807 KAR 5:001, Section 16(8)(g). On October 12, 2018, KU electronically filed a motion similarly requesting confidential treatment for: (1) certain executive compensation information produced in response to Commission Staff's First Request for Information (Staff's First Request), Items 37 and 66; (2) federal and state income tax information produced in response to Staff's First Request, Item 48(a)(9); (3) expected employee merit expense increases for the forecasted test period produced in response to Staff's First Request, Item 36; and (4) certain documents produced in response to Staff's First Request, Item 50, regarding compensation for outside professional services. On October 24, 2018, and November 14, 2018, KU filed supplemental responses to Staff's First Request, Item 48(a), which included additional tax documents for which it requested confidential treatment.

The Commission is a public agency subject to Kentucky's Open Records Act, which requires that all public records “be open for inspection by any person, except as otherwise provided by KRS 61.870 to 61.884.”¹ Exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.² The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.³ The documents for which KU requests confidential treatment are discussed separately below.

1. Customer-identifying information filed with the application: KU provided certain specific information regarding the usage and billing of specific customers to satisfy the requirements of 807 KAR 5:001, Section 16. KU asserted that the information should be exempt from disclosure, pursuant to KRS 61.878(1)(a), because it is of a personal nature, and public disclosure would constitute a clearly unwarranted invasion of personal privacy. Having reviewed the record and being otherwise sufficiently advised, the Commission finds that the customer-identifying information meets the criteria for confidential treatment and is exempted from public disclosure pursuant to KRS 61.878(1) and 807 KAR 5:001, Section 13, indefinitely.

2. Information regarding executive and officer compensation: KU provided executive and officer compensation by title at Tab 60 of its application and in response to Staff's First Request, Item 37, to satisfy the requirements. KU stated that it has not publically disclosed its executive salary information in its FERC Form 1 since 2016, that

¹ KRS 61.872(1).

² See KRS 61.871.

³ 807 KAR 5:001, Section 13(2)(c).

it has not publically disclosed any 2018 compensation information in its filings with the Securities and Exchange Commission (SEC), and that the compensation information for its current officers has never been publically disclosed. KU also noted that portions of executive compensation are not included as an expense for ratemaking purposes and that the public could scrutinize executive compensation by reviewing information regarding average employee compensation included in the public record. Thus, KU asserted that the information should be exempt from disclosure, pursuant to KRS 61.878(1)(a), because disclosing executive compensation information would not serve the purpose of the Opens Records Act to make government and its actions open to public scrutiny and because disclosure would constitute an unwarranted invasion of personal privacy.

However, the information regarding executive and officer compensation for which KU seeks confidential treatment is a matter of public concern, and its disclosure would inform the public as the actions of the Commission. In rate cases filed by large investor-owned utilities, the public generally raises the issue of executive compensation as one of its primary concerns, and commenters have raised that issue in this matter. Moreover, although KU has not publically disclosed the salaries of its executives in a FERC Form 1 since 2016 or with the SEC in 2018, information regarding executive compensation is often readily available, like KU's information filed in its FERC Form 1 prior to 2017 and executive compensation information of publically traded companies that is with the SEC, and public scrutiny of executive compensation has not been viewed as a "clearly unwarranted invasion of personal privacy." Further, because executives and officers generally occupy unique positions, information regarding average or typical employee

compensation would not allow the public to appropriately scrutinize the Commission's treatment of executive compensation for ratemaking purposes. Thus, KU failed to establish that the information regarding executive and officer compensation meets the criteria for confidential treatment pursuant to KRS 61.878(1) and 807 KAR 5:001, Section 13.

KU does try to distinguish between "executive officers" and what it termed as "non-executive" or lower-level officers, and it argues that the Commission has never permitted the disclosure of the compensation of specific "non-executive" employees. However, the documents for which KU seeks confidential treatment only contain information regarding officers of the company—about 19 officers, depending on the year, from the CEO to Vice Presidents of Transmission, Human Resources, etc.—and KU, which has the burden, made no attempt to identify which of those officers were executive officers and which were "non-executive" officers. Further, the Commission observes that in Case No. 2014-00371,⁴ it denied confidential treatment for the executive compensation information, including the information for VP State Regulation and Rates, VP Gas Distribution, VP Electric Distribution, VP Communications, VP External Affairs, and VP Customer Services.⁵ Thus, KU failed to establish that any of the compensation information provided at Tab 60 of the application and in response to Staff's First Request, Items 37 and 66, meets the criteria for confidential treatment pursuant to KRS 61.878(1) and 807 KAR 5:001, Section 13.

⁴ *Application of Kentucky Utilities Company for an Adjustment of Its Electric Rates*, Case No. 2014-00371, Order (Ky. PSC Jan. 19, 2016).

⁵ *See Application of Kentucky Utilities Company for an Adjustment of Its Electric Rates*, Case No. 2014-00371, KU Redacted Workpapers – Wathen Rebuttal Testimony (filed Feb. 9, 2016) (showing the unredacted compensation information for those positions filed in post case filings pursuant to Commission order denying confidential treatment).

3. Federal and state income tax information: KU provided tax returns and associated schedules in response to Staff's First Request, Item 48(a)(9). KU notes that KRS 61.878(1)(k) exempts from disclosure "[a]ll public records or information the disclosure of which is prohibited by federal law or regulation" and that 26 U.S.C. § 6103(a) prohibits the public disclosure of any federal income tax return or its contents. Having reviewed the record and being otherwise sufficiently advised, the Commission finds that the federal and state tax information meets the criteria for confidential treatment and is exempted from public disclosure pursuant to KRS 61.878(1) and 807 KAR 5:001, Section 13, for an indefinite period.

4. Employee Merit Expense Increases: KU indicated that it provided its expected employee merit expense increase in response to Staff's First Request, Item 36. The response included the expected percentage increase and the total increase in wages for employees by class in 2016, 2017, the base period, and the forecasted test period. KU argues that its expected percentage increase for the classes of employees in the forecasted test period should be exempt from disclosure, so it is not placed at a competitive disadvantage in negotiating compensation during the forecasted test year. Having reviewed the record and being otherwise sufficiently advised, the Commission finds that forecasted percentage increases for the test year meet the criteria for confidential treatment and are exempted from public disclosure pursuant to KRS 61.878(1) and 807 KAR 5:001, Section 13, until April 30, 2020, at which point the forecasted test year and the reason for maintaining confidentiality will have ended.

5. Policies, Schedules, Agreements, and Additional Information Pertaining to Compensation for Professional Services: In response to Staff's First Request, Item 50,

KU provided contracts and other documents containing the fee arrangements and hourly rates for professional services outside of this case. KU only seeks to keep those terms regarding the rates paid to the professionals confidential. KU argues that the information is exempt from disclosure, pursuant to KRS 61.878(1)(c)(1), because it is generally recognized as confidential or proprietary, and its disclosure would permit an unfair commercial advantage to a competitor. Having reviewed the record and being otherwise sufficiently advised, the Commission finds that the information for which confidential treatment is sought meets the criteria for confidential treatment and is exempted from public disclosure pursuant to KRS 61.878(1) and 807 KAR 5:001, Section 13, for five years.

IT IS THEREFORE ORDERED that:

1. KU's motion for confidential treatment made on September 28, 2018, is hereby denied in part and granted in part.
2. KU failed to establish that the information produced as part of Tab 60 for which confidential treatment was sought meets the criteria for confidential treatment, and therefore that information shall be made available to the public.
3. The customer-identifying information produced, pursuant to 807 KAR 5:001, Section 16(7)(c), as part of the application for which confidential treatment was sought, meets the criteria for confidential treatment, and therefore that information shall be exempt from public disclosure indefinitely.
4. KU's motion for confidential treatment made on October 12, 2018, is hereby denied in part and granted in part.

5. KU failed to establish that the information produced in response to Staff's First Request, Items 37 and 66, for which confidential treatment was sought meets the criteria for confidential treatment, and therefore that information shall be made available to the public.

6. The tax information produced in response to Staff's First Request, Item 48(a)(9), for which confidential treatment was sought meets the criteria for confidential treatment, and therefore that information shall be exempt from public disclosure indefinitely.

7. The information regarding merit expense increases produced in response to Staff's First Request, Item 36, for which confidential treatment was sought meets the criteria for confidential treatment, and therefore that information shall be exempt from public disclosure until April 30, 2020.

8. The information regarding rates paid for outside professional services produced in response to Staff's First Request, Item 50, for which confidential treatment was sought meets the criteria for confidential treatment, and therefore that information shall be exempt from public disclosure for five years.

9. KU's motions for confidential treatment made on October 24, 2018, and November 14, 2018, are hereby granted.

10. The supplemental tax information produced in response to Staff's First Request, Item 48(a)(9), for which confidential treatment was sought meets the criteria for confidential treatment, and therefore that information shall be exempt from public disclosure indefinitely.

11. KU shall inform the Commission if the materials granted confidential protection become publicly available or no longer qualify for confidential treatment.

12. If a non-party to this proceeding requests to inspect materials granted confidential treatment by this order, KU shall have 30 days from receipt of written notice of the request to demonstrate that the materials are exempt from disclosure, pursuant to KRS 61.878. If KU is unable to make such demonstration or the non-party establishes that an exemption does not apply, the requested materials shall be made available for inspection.


13. The Commission shall not place the documents and materials for which confidential treatment was denied into the public record for 30 days pursuant to 807 KAR 5:001, Section 13(5).

14. Nothing in this Order shall be construed as preventing the Commission from revisiting the confidential treatment of documents and materials.

By the Commission

ENTERED
OCT 08 2019
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


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