

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF CLARK)	
ENERGY COOPERATIVE, INC. FOR A GENERAL)	CASE NO.
ADJUSTMENT OF RATES PURSUANT TO)	2020-00104
STREAMLINED PROCEDURE PILOT PROGRAM)	
ESTABLISHED IN CASE NO. 2018-00407)	

ORDER

On June 22, 2020, Clark Energy Cooperative, Inc. (Clark Energy) filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for ten years for information filed in response to Commission Staff’s First Request for Information (Staff’s First Request), Items 5 and 12; and Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention’s (Attorney General) First Request for Information (Attorney General’s First Request) Item 30.

In support of its motion, Clark Energy argued that the designated material is exempt from public disclosure under KRS 61.878(1)(c)(1) which exempts “[r]ecords 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” and KRS 61.878(1)(a) which exempts “[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.”

In response to Staff's First Request, Item 5, Clark Energy provided a copy of a Key Ratio Trend Analysis (KRTA) compiled by third party Cooperative Financial Corporation (CFC) comprised of comprehensive details of internal Clark Energy business figures for a five-year period across 145 different factors, including revenue, expenses, growth data, pricing, and other data compared with proprietary national and regional data collected by CFC for use in this type of report. Clark Energy argued that this report should stay confidential in its entirety under copyright law and that CFC specifically included language in the report stating that the information was considered by CFC to be proprietary, confidential, and protected by copyright law. Clark Energy argued that disclosure could result in being accused of violating CFC's copyright and losing access to this information in the future due to the potential chilling effect on CFC's willingness to share such information.

In response to Staff's First Request, Item 12, Clark Energy provided a copy of a wage and salary report prepared by third party Intandem, LLC (Intandem). Clark Energy argued that this report should be exempt from public disclosure in its entirety for similar reasons as the KRTA. Intandem also used regional and national proprietary data collected by Intandem for use in this type of report and might be reluctant to work with Clark Energy in the future if it fails to protect Intandem's work product. The report also contains individual non-executive salary information, including some employee names, as well as information that could be used to identify other individuals' salary information. Clark Energy argued that its non-executive employees have a privacy interest in their compensation information that is protected under KRS 61.878(1)(a).

Clark Energy also sought confidential treatment under KRS 61.878(1)(a) for salary increase percentages redacted from its response to Attorney General's First Request,

Item 30. Clark Energy publicly disclosed the salary percentage increase for its President/CEO but not for these non-executive employees. Clark Energy argued that these employees have a privacy interest in their compensation information.

Having considered the motion and the material at issue, the Commission finds that Clark Energy's motion for confidential treatment is granted. The KRTA and salary report are both proprietary and intended by the preparers to remain confidential. Public disclosure could jeopardize Clark Energy's ability to obtain this type of information in the future and might represent a copyright law violation. Release of the wage and salary report would also be detrimental to Clark Energy's future compensation negotiations with employees. The Commission has previously granted confidential treatment to KRTA's and other reports generated by third parties pursuant to KRS 61.878(1)(c)(1).¹ The non-executive employee compensation information is exempt from public disclosure under KRS 61.878(1)(a) because non-executive employees have an expectation of privacy in this information.² This information therefore meets the criteria for confidential treatment and is exempted from public disclosure for ten years pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(a) and (1)(c)(1).

IT IS THEREFORE ORDERED that:

1. Clark Energy's motion for confidential treatment is granted.

¹ Case No. 2021-00358, *Electronic Application of Jackson Purchase Energy Corporation for a General Adjustment of Rates and Other General Relief* (Ky. PSC 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. PSC Mar. 14, 2019), Order at 2.

² See Case No. 2020-00160, *Electronic Application of Water Service Corporation of Kentucky for a General Adjustment in Existing Rates* (Ky. PSC Dec. 22, 2020), Order at 2, granting confidential treatment to non-executive employee compensation data.

2. The designated material granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for ten years or until further Order of this Commission.

3. Use of the designated material granted confidential treatment by this Order in any Commission proceeding shall comply with 807 KAR 5:001, Section 13(9).

4. Clark Energy shall inform the Commission if the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment.

5. If a nonparty to this proceeding requests to inspect the material granted confidential treatment by this Order and the period during which the material has been granted confidential treatment has not expired, Clark Energy shall have 30 days from receipt of written notice of the request to demonstrate that the material still falls within the exclusions from disclosure requirements established in KRS 61.878. If Clark Energy is unable to make such demonstration, the requested material shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

6. The Commission shall not make the requested material available for inspection for 30 days from the date of service of an Order finding that the material no longer qualifies for confidential treatment in order to allow Clark Energy to seek a remedy afforded by law.

By the Commission

ENTERED
JAN 25 2022 rcs
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

Case No. 2020-00104

*L Allyson Honaker
Goss Samford, PLLC
2365 Harrodsburg Road, Suite B325
Lexington, KENTUCKY 40504

*Chris Brewer
Clark Energy Cooperative, Inc.
2640 Ironworks Road
P. O. Box 748
Winchester, KY 40392-0748

*David S Samford
Goss Samford, PLLC
2365 Harrodsburg Road, Suite B325
Lexington, KENTUCKY 40504

*John Wolfram
Catalyst Consulting
3308 Haddon Rd
Louisville, KENTUCKY 40241

*J. Michael West
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Clark Energy Cooperative, Inc.
2640 Ironworks Road
P. O. Box 748
Winchester, KY 40392-0748