

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF CUMBERLAND VALLEY ELECTRIC, INC. FOR A GENERAL ADJUSTMENT OF RATES PURSUANT TO STREAMLINED PROCEDURE PILOT PROGRAM ESTABLISHED IN CASE NO. 2018-00407)))))	CASE NO. 2020-00264
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ORDER

On November 9, 2020, and December 7, 2020, Cumberland Valley Electric, Inc. (Cumberland Valley Electric) filed separate motions pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1), requesting that the Commission grant confidential protection for ten years for responses to Commission Staff’s First Request for Information (Staff’s First Request), Items 5, 6, 7, and 8; responses to the Attorney General’s Request for Information (Attorney General’s Request), Items 6 and 14; and responses to Commission Staff’s Second Request for Information (Staff’s Second Request), Item 13, pages 2–9.

In support of its Motions, Cumberland Valley Electric argues that that CFC Key Ratio Trend Analysis provided in response to Item 7 of the Commission Staff’s First Request contains formulas, computations, and information that are highly proprietary and are protected by copyright and other laws. Cumberland Valley Electric asserts that these materials were furnished to Cumberland Valley Electric solely for its own business purposes and if disclosed could provide a commercial advantage to those in competition with Cumberland Valley in its market for skilled employees. Cumberland Valley Electric

also asserts that the Key Ratio Trend Analysis is protected by copyright law and only given to Cumberland Valley for use for Cumberland Valley's business purposes.

Cumberland Valley Electric's response to Staff's First Request Item 5 contains a recent wage and salary study conducted by a third-party consultant containing specific employee identity and cooperative-wide compensation information (job titles, salaries, compensation adjustments and/or similar information). Cumberland Valley Electric argues that as the salary information for related employees for Cumberland Valley is highly sensitive and personal in nature, and if disclosed could provide individuals seeking future employment with Cumberland Valley an unreasonable commercial advantage.

Cumberland Valley Electric's response to Staff's First Request Item 6 and response to Attorney General's Request, Item 14, contain the identical wage and salary plan for Cumberland Valley Electric's employees and the salary increases for certain employees. Cumberland Valley Electric argues that this information is highly sensitive and personal information regarding employees of Cumberland Valley Electric as well as highly sensitive and proprietary information, and that if the plan were released it would reveal the strategy and business decisions of Cumberland Valley Electric to the detriment of Cumberland Valley Electric and its members. Cumberland Valley Electric argues that the salary increase information as well as the salary information for related employees for Cumberland Valley Electric is highly sensitive and personal in nature, and if disclosed could provide individuals seeking future employment with Cumberland Valley Electric an unreasonable commercial advantage. Finally, Cumberland Valley Electric argues that the information is retained by Cumberland Valley Electric on a need-to-know basis and is only distributed within Cumberland Valley Electric to those people holding select positions

who must have access for business purposes, and that it is generally recognized as confidential and proprietary in the utility industry and elsewhere.

Cumberland Valley Electric's response to Attorney General's Request Item 6, contains salary information provided for the identified employees has been redacted as Cumberland Valley Electric asserts that it is information of a personal nature for these employees. The responses identify Cumberland Valley Electric employees that are relatives of Ted Hampton, president and CEO of Cumberland Valley Electric. The employees and their titles are William J. Hampton, superintendent; Karen Hampton, bookkeeper; and Stephen Hampton, assistant superintendent. The response redacted all of the salaries for these three employees.

Cumberland Valley Electric's response to Staff's First Request, Item 8, contains the collective bargaining agreement between Cumberland Valley Electric and its union employees. Cumberland Valley Electric asserts that this information is highly sensitive and contains business decisions and strategy regarding Cumberland Valley's union employees that could be detrimental to both Cumberland Valley Electric and its members if this information became public.

Cumberland Valley Electric's response to Staff's Second Request Item 13, pages 2–9, contains information provided in support of certain nonrecurring charges. Cumberland Valley Electric argues that this information could be used to determine the salary paid to certain employees based on the amount of time spent and the cost allocated to that employee's time. Cumberland Valley Electric asserts that this information is highly sensitive and personal information regarding employees of Cumberland Valley Electric as well as highly sensitive and proprietary information. If the salary information was

released it would reveal the strategy and business decisions of Cumberland Valley Electric to the detriment of Cumberland Valley Electric and its members.

Having considered the motion and the material at issue, the Commission finds that Cumberland Valley Electric's motion should be granted in part and denied in part. The Commission finds that the designated material contained in Cumberland Valley Electric's responses to Staff's First Request Item 5 and Item 8, Cumberland Valley Electric's response to Staff's Second Request Item 13, are records that meet the criteria for confidential treatment and are exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13.

The Commission further finds that the request for confidential treatment should be denied for portions of Cumberland Valley Electric's responses to Staff's First Request Item 6 and Attorney General Request Item 14, and Cumberland Valley Electric's response to Attorney General Request Item 6. The Commission has previously held that information pertaining to executive officer compensation is not entitled to confidential protection because the Commission has historically denied confidential treatment for information pertaining to executive officer compensation.¹ Cumberland Valley Electric's responses to Staff's First Request Item 6 and Attorney General Request Item 14, pages 24–29, contain information relating to executive officer compensation and should have been filed publically with the Commission. Cumberland Valley Electric should have, for these pages, redacted the compensation information for only nonexecutive employees

¹ The Commission has generally held that executive officer salary and compensation does not meet the criteria for confidential treatment because salaries are included as an expense in base rate calculations and because certain executive salary information must be disclosed to the public in any case in other regulatory filings. See, e.g., Case No. 2017-00349, *Electronic Application of Atmos Energy Corporation for an Adjustment of Rates and Tariff Modifications* (Ky. PSC May 17, 2018) at 1–2; See also, Case No. 2012-00221, *Application of Kentucky Utilities Company for an Adjustment of its Electric Rates* (Ky. PSC Sept. 11, 2013) at 1 (denying a request to treat executive salary and benefits as confidential for those reasons).

and filed the response with the Commission in that manner. The Commission notes that Cumberland Valley Electric lists its office manager, construction superintendent, and president and CEO as officers in Cumberland Valley Electric's U.S. Internal Revenue Service 990 form, as well as lists those officers' salaries. Therefore, the information pertaining to these three positions should be publically available and not redacted in the response to Attorney General Request Item 14.² Additionally, Cumberland Valley Electric's response to Attorney General Request Item 6 redacts the salaries of William J. Hampton, superintendent; Karen Hampton, bookkeeper; and Stephen Hampton, assistant superintendent. It appears to the Commission that William J. Hampton, and according to Cumberland Valley Electric's publically filed U.S. Internal Revenue Service Form 990 which lists Mr. Hampton's as an office and includes his salary, is considered an executive officer of Cumberland Valley Electric and his salary should not have been redacted.³ Therefore, the executive compensation information contained in Cumberland Valley Electric's responses to Staff's First Request Item 6 and Attorney General Request Item 14, pages 24–29, and the salary of William J. Hampton contained in Cumberland Valley Electric's response to Attorney General Request Item 6 do not meet the criteria for confidential treatment and is not exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13.

² Cumberland Valley Electric's IRS Form 990 for the fiscal year ending 2019 may be viewed here: <https://projects.propublica.org/nonprofits/organizations/610169533/202041749349300804/IRS990> (Last accessed Feb.16, 2021).

³ *Id.*

IT IS THEREFORE ORDERED that:

1. Cumberland Valley Electric's motion for confidential treatment filed on December 7, 2020, is granted.

2. Cumberland Valley Electric's motion for confidential treatment filed on November 9, 2020, is granted in part and denied in part.

3. Cumberland Valley Electric's motion for confidential treatment for the responses to Staff's First Request Item 5 and Item 8, and Cumberland Valley Electric's response to Staff's Second Request Item 13 is granted.

4. Cumberland Valley Electric's motion for confidential treatment for Cumberland Valley Electric's responses to Staff's First Request Item 6 and Attorney General Request Item 14, pages 24–29, and the salary of William J. Hampton contained in Cumberland Valley Electric's response to Attorney General Request Item 6, is denied.

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

6. 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).

7. Cumberland Valley Electric shall inform the Commission if the designated material granted confidential treatment becomes publicly available or no longer qualifies for confidential treatment.

8. 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, 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 Cumberland Valley Electric is unable to make such demonstration, the requested material shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

9. The Commission shall not make the requested material for which confidential treatment was granted 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 Cumberland Valley Electric to seek a remedy afforded by law.

10. The designated material denied confidential treatment by this Order is not exempt from public disclosure and shall be placed in the public record and made available for public inspection.

11. If Cumberland Valley Electric objects to the Commission's determination that the requested material not be granted confidential treatment, it must seek either rehearing pursuant to KRS 278.400 or judicial review of this Order pursuant to KRS 278.410. Failure to exercise either of these statutory rights will be deemed as agreement with the Commission's determination of which materials should be granted confidential treatment.

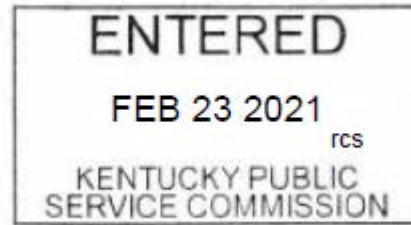
12. Within 30 days of the date of service of this Order, Cumberland Valley Electric shall file a revised version of the designated material for which confidential treatment was denied, reflecting as unredacted the information that has been denied confidential treatment.

13. The designated material for which Cumberland Valley Electric's request for confidential treatment has been denied shall neither be placed in the public record nor

made available for inspection for 30 days from the date of service of this Order to allow Cumberland Valley Electric to seek a remedy afforded by law.

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By the Commission



ATTEST:

A handwritten signature in blue ink, appearing to read "Linda C. Bidwell". The signature is written in a cursive style and is positioned above a horizontal line.

Executive Director

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