

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF SOUTH	)	
KENTUCKY RURAL ELECTRIC COOPERATIVE	)	
CORPORATION FOR A GENERAL	)	CASE NO.
ADJUSTMENT OF RATES, APPROVAL OF	)	2021-00407
DEPRECIATION STUDY, AND OTHER GENERAL	)	
RELIEF	)	

ORDER

On December 23, 2021, South Kentucky Rural Electric Cooperative Corporation (South Kentucky RECC) filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential protection for ten years for information provided in response to Commission Staff's First Request for Information (Staff's First Request), Item 19.

On February 2, 2022, South Kentucky RECC filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential protection for ten years for information provided in response to the 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), Items 15a, 15d, 15g, 15j, 15n, 20, and 24; and Commission Staff's Second Request for Information (Staff's Second Request), Items 3, 15, and 21.

LEGAL STANDARD

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.”<sup>1</sup> Exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.<sup>2</sup> The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.<sup>3</sup>

In support of its motion, South Kentucky RECC argued the application of two provisions of KRS 61.870. 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.” KRS 61.878(1)(c)(1) provides an exception to the requirement for public disclosure for records that are “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.”

#### DECEMBER 23, 2021 MOTION

In response to Staff’s First Request, Item 19, South Kentucky RECC provided a copy of a wage and salary report generated by Intandem, LLC (Intandem). The report contains national and regional data compiled by Intandem for comparison with South Kentucky RECC’s employee compensation. Although the report does not list individual employees or their compensation, individual employee identities and compensation could be determined through job titles and use of wage and salary data.

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<sup>1</sup> KRS 61.872(1).

<sup>2</sup> See KRS 61.871.

<sup>3</sup> 807 KAR 5:001, Section 13(2)(c).

South Kentucky RECC argued that this report should be granted confidential treatment under KRS 61.878(1)(a) as information of a personal nature that would constitute a clearly unwarranted invasion of personal privacy if publicly disclosed. South Kentucky RECC also asserted application of KRS 61.878(1)(c)(1), arguing that because South Kentucky RECC competes with numerous other employers with respect to the acquisition and retention of a skilled workforce, the public disclosure of the delicate and protected employee compensation information would unfairly harm its competitive position in the marketplace for utility management and such skilled workforce.

Having considered the motion and the material at issue, the Commission finds that South Kentucky RECC's motion is granted. Intandem's report contains proprietary industry data, and public disclosure could jeopardize South Kentucky RECC's ability to obtain this type of information from third parties in the future and might represent a copyright law violation.<sup>4</sup> The release of the wage and salary report would also be detrimental to South Kentucky RECC's future compensation negotiations with employees and could be used by competitors to compete for employees. Therefore, the Commission finds that the wage and salary report provided by South Kentucky RECC in response to Staff's First Request, Item 19, is a record that meets the criteria for confidential treatment and is exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13.

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<sup>4</sup> See Case No. 2021-00358, *Electronic Application of Jackson Purchase Energy Corporation for a General Adjustment of Rates and Other General Relief* (Ky. PSC December 9, 2021), Order at 2.

## FEBRUARY 2, 2022 MOTION

In response to Attorney General's First Request, Item 15, South Kentucky RECC provided a series of documents listing employee compensation information by job title, but no individual names. The response to Item 15a was a list of salaried employees and their annual salaries. This list included executive officers (President and VPs). The response to Item 15d was a list of salaried employee monetary awards. The response to Item 15g was a list of non-salaried employees and their annual wages. The response to Item 15j was a list of non-salaried employee monetary awards. In addition, South Kentucky RECC supplied responses to Attorney General's First Request, Items 20 and 24, that listed vacated job positions and corresponding compensation. South Kentucky RECC argued that these documents and responses were entitled to confidential treatment under KRS 61.878(1)(a) as sensitive information, undoubtedly of a personal nature, that would constitute a clearly unwarranted invasion of personal privacy if publicly disclosed.

In response to Attorney General's First Request, Item 15n, South Kentucky RECC provided a series of slides created by Intandem containing substantially the same material as the report referenced in South Kentucky RECC's December 23, 2021, motion for confidential treatment. As in that motion, South Kentucky RECC argued that KRS 61.878(1)(c)(1) protected this information from public disclosure because disclosure would unfairly harm its competitive position in the workforce marketplace.

In response to Staff's Second Request, Item 3, South Kentucky RECC supplied contractor bid packages for right-of-way vegetation management and summaries of those bids, with itemized costs redacted. South Kentucky RECC sought confidential treatment

of the redacted cost figures, arguing that South Kentucky RECC benefits from receiving the lowest and best bids in order to mitigate the large annual expense associated with right-of-way vegetation management. South Kentucky RECC stated that public disclosure would provide future right-of-way bidders an enormous commercial advantage over both South Kentucky RECC and competing bidders.

In response to Staff's Second Request, Item 15, South Kentucky RECC provided a bad debt summary with member names redacted. South Kentucky RECC argued that these names constitute personal information that if disclosed, could result in embarrassment and ridicule for those members identified and should remain confidential pursuant to KRS 61.878(1)(a).

Lastly, in response to Staff's Second Request, Item 21, South Kentucky RECC provided a list of employee and retiree names and the amounts of life insurance premiums paid on their behalf, with the names redacted. South Kentucky RECC argued that this compensation information is protected under KRS 61.878(1)(a) as information of a personal nature that would constitute a clearly unwarranted invasion of personal privacy if publicly disclosed.

Having considered the motion and the material at issue, the Commission finds that South Kentucky RECC's motion is granted in part and denied in part. South Kentucky RECC's responses to Attorney General's First Request, Items 15a, 15d, 15g, 15j, 20, and 24, and Staff's Second Request, Item 21, are granted confidential treatment except for information relating to executive officer compensation in responses to Items 15a and 15d. The identity of South Kentucky RECC employees could be ascertained from job

titles and non-executive employees have a privacy interest in their compensation data under KRS 61.878(1)(a).<sup>5</sup>

Intandem's slideshow, provided in response to Attorney General's First Request, Item 15n, is granted confidential treatment because it contains proprietary industry data, and public disclosure could jeopardize South Kentucky RECC's ability to obtain this type of information from third parties in the future and might represent a copyright law violation.<sup>6</sup> The release of the wage and salary report would also be detrimental to South Kentucky RECC's future compensation negotiations with employees and could be used by competitors to compete for employees.

Itemized costs redacted from right-of-way bid packages and summaries provided in response to Staff's Second Request, Item 3, are granted confidential treatment, except for the total amount of the winning bid. The Commission generally treats itemized bids as confidential under KRS 61.878(1)(c)(1) for a limited time to prevent future bidders from using the information to manipulate bidding in future contracts.<sup>7</sup> However, the winning bid total is included in base rate calculations and is not entitled to confidential treatment.

Finally, redacted names from the bad debt summary provided in response to Staff's Second Request, Item 15, are granted confidential treatment under KRS 61.878(1)(a) for customer information as private in nature.<sup>8</sup>

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<sup>5</sup> See Case No. 2020-00160, *Water Service Corporation of Kentucky* (Ky. PSC Dec. 22, 2020), Order at 2.

<sup>6</sup> See Case No. 2021-00358, *Jackson Purchase Energy* (Ky. PSC December 9, 2021), Order at 2.

<sup>7</sup> See Case No. 2020-00004, *An Electronic Examination of the Application of the Fuel Adjustment Clause of Kentucky Power Company from May 1, 2019, Through October 31, 2019* (Ky. PSC Apr. 9, 2020), Order at 1-2.

<sup>8</sup> See Case No. 2020-00174, *Electronic Application of Kentucky Power Company for (1) A General Adjustment of Its Rates for Electric Service; (2) Approval of Tariffs and Riders; (3) Approval of Accounting*

Therefore, the Commission finds that South Kentucky RECC's redactions from information provided in response to Attorney General's First Request, Items 15a (except executive officer compensation), 15d (except executive officer compensation), 15g, 15j, 15n, 20, and 24; and Staff's Second Request, Items 3 (except winning bid total), 15, and 21 are records that meet the criteria for confidential treatment and are exempted from public disclosure pursuant to KRS 61.878(a)(1) or (1)(c)(1) and 807 KAR 5:001, Section 13.

Confidential treatment is denied for executive officer compensation data supplied in response to Attorney General's First Request, Items 15a and 15d, because any privacy interest executive officers may seek in their compensation data is outweighed by the public's interest in executive compensation that is to be recovered in base rates. The Commission has previously held that executive salaries are not entitled to confidential protection because of the public interest in disclosure.<sup>9</sup> Therefore, this information does

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*Practices to Establish Regulatory Assets and Liabilities; (4) Approval of a Certificate of Public Convenience and Necessity; and (5) All Other Required Approvals and Relief (Ky. PSC Oct. 27, 2020), Order at 3.*

<sup>9</sup> The Commission has a long precedent of not granting confidential treatment for executive compensation. See Case No. 2012-00221, *Application of Kentucky Utilities Company for an Adjustment of its Electric Rates* (Ky. PSC Sept. 11, 2013); Case No. 2014-00371, *Application of Kentucky Utilities Company for an Adjustment of its Electric Rates* (Ky PSC Jan 20, 2016); Case No. 2015-00418, *Application of Kentucky-American Water Company for an Adjustment of Rates* (Ky PSC Aug. 31, 2016); Case No. 2017-00321, *Electronic Application of Duke Energy Kentucky, Inc. for: 1) an Adjustment of the Electric Rates; 2) Approval of an Environment Compliance Plan and Surcharge Mechanism; 3) Approval of New Tariffs; 4) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; and 5) All other Required Approvals and Relief* (Ky. PSC June 12, 2018); Case No. 2018-00294, *Electronic Application of Kentucky Utilities Company for an Adjustment of its Electric Rates* (Ky. PSC Oct. 8, 2019); Case No. 2018-00295, *Electronic Application of Louisville Gas and Electric Company for an Adjustment of its Electric and Gas Rates* (Ky. PSC Oct. 8, 2019); Case No. 2019-00268, *Application of Knott County Water and Sewer District for an Alternative Rate Adjustment* (Ky. PSC Dec. 3, 2019); Case No. 2019-00271, *Electronic Application of Duke Energy Kentucky, Inc. for 1) An Adjustment of the Electric Rates; 2) Approval of New Tariffs; 3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; and 4) All other Required Approvals and Relief* (Ky. PSC May 4, 2020); Case No. 2020-00290, *Electronic Application of Bluegrass Water Utility Operating Company, LLC for an Adjustment of Rates and Approval of Construction* (Ky. PSC Dec. 27, 2021); Case No. 2020-00349, *Electronic Application of Kentucky Utilities Company for an Adjustment of Electric Rates, a Certificate of Public Convenience and Necessity to Deploy Advanced Metering Infrastructure, Approval of Certain Regulatory and Accounting Treatments, and Establishment of a One-Year Subcredit* (Ky. PSC Dec. 7, 2021); Case No. 2020-00350, *Electronic Application of Louisville*

not meet the criteria for confidential treatment and is not exempted from public disclosure pursuant to KRS 61.878(1)(a) and 807 KAR 5:001, Section 13. The Commission further warns South Kentucky RECC that, as a result of the long-standing precedent denying confidential treatment to executive compensation, it will not look kindly on subsequent motions for confidential treatment of executive compensation.

Confidential treatment is also denied for the right-of-way vegetation management winning bid total supplied in response to Staff's Second Request, Item 3, because this total is included in base rate calculations and therefore shall be publicly disclosed.

IT IS THEREFORE ORDERED that:

1. South Kentucky RECC's motion for confidential treatment for the designated material is granted in part and denied in part.

2. South Kentucky RECC's motion for confidential treatment for redactions from information provided in response to Staff's First Request, Item 19; Attorney General's First Request, Items 15a (except executive officer compensation), 15d (except executive officer compensation), 15g, 15j, 15n, 20, and 24; and Staff's Second Request, Items 3 (except winning bid total), 15, and 21 are granted.

3. South Kentucky RECC's motion for confidential treatment for executive officer compensation data regarding the President and VP supplied in response to Attorney General's First Request, Items 15a and 15d, and right-of-way vegetation

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*Gas and Electric Company for an Adjustment of its Electric and Gas Rates, a Certificate of Public Convenience and Necessity to Deploy Advanced Metering Infrastructure, Approval of Certain Regulatory and Accounting Treatments, and Establishment of One-Year Surcredit* (Ky. PSC Dec. 7, 2021); Case No. 2021-00183, *Electronic Application of Columbia Gas of Kentucky, Inc. for an Adjustment of Rates; Approval of Depreciation Study; Approval of Tariff Revision; Issuance of a Certificate of Public Convenience and Necessity; and Other Relief* (Ky. PSC Oct. 5, 2021); Case No. 2021-00185, *Electric Application of Delta Natural Gas Company, Inc. for an Adjustment of its Rates and a Certificate of Public Convenience and Necessity* (Ky. PSC Dec. 8, 2021).

management winning bid total supplied in response to Staff's Second Request, Item 3, is denied.

4. 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.

5. 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).

6. South Kentucky RECC shall inform the Commission if the designated material granted confidential treatment becomes publicly available or no longer qualifies for confidential treatment.

7. 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 South Kentucky RECC is unable to make such a demonstration, the requested material shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

8. 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 South Kentucky RECC to seek a remedy afforded by law.

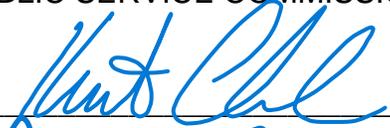
9. The designated material denied confidential treatment by this Order is not exempt from public disclosure and shall be placed in the public record and made available for public inspection.

10. If South Kentucky RECC objects to the Commission's determination that the requested material is not to 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 shall be granted confidential treatment.

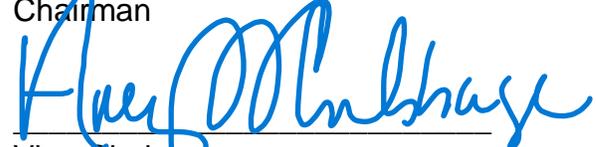
11. Within 30 days of the date of service of this Order, South Kentucky RECC shall file a revised version of the designated material for which confidential treatment was denied, reflecting as unredacted the information that has been denied confidential treatment.

12. The designated material for which South Kentucky RECC'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 South Kentucky RECC to seek a remedy afforded by law.

PUBLIC SERVICE COMMISSION

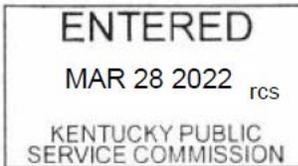
  
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Chairman

  
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Vice-Chairman

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