

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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|---------------------------------------|---|------------|
| 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 March 3, 2022, 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 treatment for ten years for South Kentucky RECC’s responses to the Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention’s (Attorney General) Second Request for Information (Attorney General’s Second Request), Items 10(d) and (e), which request employee job titles and bonus compensation for the years 2012-2022, and Item 21(c), which requests the salary allotment for each of the four currently vacant non-executive positions in South Kentucky RECC’s proposed revenue requirement.

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.”¹ KRS 61.878(1)(a) exempts “[p]ublic

¹ KRS 61.872(1).

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) exempts records that are “[g]enerally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.” 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

DISCUSSION AND FINDINGS

In support of its motion, South Kentucky RECC argued that data related to employee compensation is inherently personal in nature and that the public disclosure of job titles and bonus compensation would constitute a clearly unwarranted invasion of its employees’ personal privacy pursuant to KRS 61.878(1)(a). South Kentucky RECC asserted that the public disclosure of job titles associated with currently vacant positions, and the salaries allotted to filling those vacant positions, would unfairly harm its position in the labor marketplace to compete for new employees giving other utilities an unfair commercial advantage.

Having considered the motion and the material at issue, the Commission finds that South Kentucky RECC’s motion should be granted. The designated material contained in South Kentucky RECC’s response to Attorney General’s Second Request, Items 10(d) and (e) contain compensation information for specific non-executive employee positions.

² See KRS 61.871.

³ 807 KAR 5:001, Section 13(2)(c).

The Commission finds that public disclosure of this designated material would result in an unwarranted invasion of privacy, and therefore is exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(a). The Commission has previously found that job titles, like the ones at issue here, provide data sufficient to link employees to their compensation despite the absence of the employees' names.⁴ Accordingly, the job titles and bonus information should receive confidential treatment.

The Commission further finds that the job titles for currently vacant non-executive employment positions should also receive confidential treatment. The job titles associated with each allotted salary are confidential and proprietary and would unfairly harm South Kentucky RECC's ability to compete in the marketplace in new employee hirings. This is consistent with Commission findings in this case.⁵

Therefore, the designated material meets the criteria for confidential treatment and are exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(a) and (1)(c)(1).

IT IS THEREFORE ORDERED that:

1. South Kentucky RECC's motion for confidential treatment is granted.
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.

⁴ Case No. 2021-00185, *Electronic Application of Delta Natural Gas Company, Inc. for an Adjustment of Its Rates and a Certificate of Public Convenience and Necessity* (Ky. PSC Jan. 21, 2022), Order at 4.

⁵ Order (Ky. PSC Mar. 28, 2022) at 3.

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

PUBLIC SERVICE COMMISSION



Chairman

Vice Chairman



Commissioner



ATTEST:



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