

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF FARMERS	)	
RURAL ELECTRIC COOPERATIVE	)	
CORPORATION FOR A GENERAL	)	CASE NO.
ADJUSTMENT OF RATES PURSUANT TO	)	2023-00158
STREAMLINED PROCEDURE PILOT PROGRAM	)	
ESTABLISHED IN CASE NO. 2018-00407	)	

ORDER

On September 7, 2023, Farmers Rural Electric Cooperative Corporation (Farmers RECC) filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential protection for a period of ten years for certain responses to Attorney General’s First Request for Information (Attorney General’s First Request), specifically Item No. 3, 4, 25g, and 35b.

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> KRS 61.878(1)(a) exempts from disclosure”

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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 12(2)(c).

[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.”<sup>4</sup> KRS 61.878(1)(c)(1) provides an exception to the requirement for public disclosure of records that are “generally recognized as confidential and proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.”<sup>5</sup>

## DISCUSSION

### Response to Attorney General's First Request, Item 3

In response to Attorney General’s First Request, Item 3, Farmers RECC provided documents that contain salaried employee information, both non-executive and executive, with detailed information of salaried employee salary and benefits by position. Farmers RECC argued this information should be granted confidential treatment pursuant to KRS 61.878(1)(a). Farmers RECC argued that the information is propriety and disclosure would violate the privacy rights of employees and well as provide insight into Farmers RECC salary practices.

### Response to Attorney General's First Request, Item 4

In response to Attorney General’s First Request, Item 4, Farmers RECC provided documents that contain non-executive, non-salaried employee information, with detailed information of employee compensation and benefits by position. Farmers RECC argued this information should be granted confidential treatment pursuant to KRS 61.878(1)(a). Farmers RECC argued that the information is propriety and disclosure would violate the

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<sup>4</sup> KRS 61.878(1)(a).

<sup>5</sup> KRS 61.878(1)(c)(1).

privacy rights of employees and well as provide insight into Farmers RECC salary practices.

Response to Attorney General's First Request, Item 25g

In response to Attorney General's First Request, Item 25g, Farmers RECC provided documents that contain right-of-way (ROW) clearing proposals for the last five years. Farmers RECC argued that this information should be granted confidential treatment pursuant to KRS 61.878(1)(c)(1) because public disclosure of the bids received from third party contractors for ROW management would permit an unfair commercial advantage to competitors by allowing them access to the utility's competitive bidding process.

Response to Attorney General's First Request, Item 35b

In response to Attorney General's First Request, Item 35b, Farmers RECC provided documents that contain copy of the Cooperative Finance Corporation's (CFC) Key Ratio Trend Analysis (KRTA). Farmers RECC argued that this information should be granted confidential treatment pursuant to KRS 61.878(1)(c)(1). Additionally, Farmers RECC argued that the KRTA data compiled by CFC is subject to copyright law and CFC has the right to rely on its copyright to protect against the public disclosure of the information. Release of this information could put Farmers RECC in a position of violating CFC's copyright.

FINDINGS

Having considered the motion and the material at issue, the Commission finds that Farmers RECC's motion should be granted in part and denied in part. The Commission finds that the designated material contained in Attorney General's First Request, Item 3,

as it relates to non-executive salaried employees, should be granted confidential treatment as public disclosure of this information could result in the unwarranted invasion of personal privacy of employees. The Commission has previously found that such information should be afforded confidential treatment and disclosure would be a violation of employee's expectation of privacy.<sup>6</sup> Therefore, the designated material meets the criteria for confidential treatment and should be exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, KRS 61.878(1)(c)(1) and KRS 61.878(1)(a).

The Commission finds that the designated material contained in Attorney General's First Request, Item 3, as it relates executive salaried employees, should be denied. The Commission has previously found that information relating to executive employee compensation in performance plans should not be afforded confidential treatment.<sup>7</sup>

The Commission finds that the designated material contained in Attorney General's First Request, Item 4, as it relates to non-executive non-salaried employees, should be granted confidential treatment as public disclosure of this information could result in the unwarranted invasion of personal privacy of employees. The Commission has previously found that such information should be afforded confidential treatment and disclosure would be a violation of employee's expectation of privacy.<sup>8</sup> Therefore, the designated material meets the criteria for confidential treatment and should be exempted

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<sup>6</sup> See Case No. 2020-00104, *Electronic Application of Clark Energy Cooperative, Inc. for a General Adjustment of Rates Pursuant to Streamlined Procedure Pilot Program Established in Case No. 2018-00407* (Ky. PSC Jan. 25, 2022), Order at 3.

<sup>7</sup> Case No. 2015-00418, *Application of Kentucky-American Water Company for an Adjustment of Rates* (Ky. PSC Apr. 17, 2019), Order at 2.

<sup>8</sup> See Case No. 2020-00104, Jan. 25, 2022 Order at 3.

from public disclosure pursuant to 807 KAR 5:001, Section 13, KRS 61.878(1)(c)(1) and KRS 61.878(1)(a).

The Commission generally treats itemized bids as confidential for a limited time to prevent future bidders from using the information to manipulate bidding in future contracts.<sup>9</sup> Disclosure would also assist Farmers RECC's competitors in competing for obtaining future vegetation management contracts. Therefore, the Commission finds that confidential treatment for the information redacted from Farmers RECC's response to Attorney General's First Request, Item 25g pursuant to KRS 61.878 (1)(c)(1), KRS 61.878(1)(a) and 807 KAR 5:001, Section 13, with the exception of the total winning bid should be granted.

The Commission further finds that the request for confidential treatment for the information redacted from Farmers RECC's response to Attorney General's First Request, Item 25g is denied for the total winning bid amount. This amount is included in base rate calculations and should be subject to public disclosure. This information does 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.<sup>10</sup>

The Commission finds the Key Trend Ratio Analysis document contained in Farmers R.E.C.C.'s response to Attorney General's First Request, Item 35b is generally recognized as confidential or proprietary. Contractors or competitors could use this comprehensive document to their advantage and to Farmers RECC's detriment. The

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<sup>9</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>10</sup> See Case No. 2022-00341, *Electronic Application of Delta Natural Gas Company, Inc. for Its Pipe Replacement Filing* (Ky. PSC Feb. 17, 2023), Order at 1.

national data should also be held confidential because it is proprietary to the third party. Farmers RECC's ability to obtain this type of information in the future is dependent on maintaining confidentiality of such proprietary data. The Commission previously protected a third-party actuarial report,<sup>11</sup> which similarly included proprietary data gathered for the purpose of generating said report for a utility for compensation. The Key Trend Ratio Analysis therefore meets the criteria for confidential treatment and should be exempted from public disclosure pursuant to KRS 61.878 (1)(c)(1), KRS 61.878(1)(a) and 807 KAR 5:001, Section 13.

IT IS THEREFORE ORDERED that:

1. Farmers RECC's motion for confidential treatment is granted in part and denied in part.
2. Farmers RECC's motion for confidential treatment for responses provided to Attorney General's First Request Item 3 containing non-executive salaried employee information is granted.
3. Farmers RECC's motion for confidential treatment for responses provided to Attorney General's First Request Item 3 containing executive salaried employee information is denied.
4. Farmers RECC's motion for confidential treatment for responses provided to Attorney General's First Request Item 4 containing non-executive non-salaried employee information is granted.

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<sup>11</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 Dec. 9, 2021), Order.

5. Farmers RECC's motion for confidential treatment for responses provided to Attorney General's First Request Item 25g containing ROW bids for the last five years that were not selected by the utility is granted.

6. Farmers RECC's motion for confidential treatment for responses provided to Attorney General's First Request Item 25g containing ROW bids for the last five years that were selected by the utility is denied.

7. Farmers RECC's motion for confidential treatment for responses provided to Attorney General's First Request Item 35b containing a copy of the CFC KRTA is granted.

8. 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.

9. 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).

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

11. 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, Farmers 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 Farmers 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.

12. 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 Farmers RECC to seek a remedy afforded by law.

13. 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.

14. If Farmers RECC 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 shall be granted confidential treatment.

15. Within 30 days of the date of service of this Order, Farmers 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.

16. The designated material for which Farmers 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 Farmers RECC to seek a remedy afforded by law.



PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ENTERED  
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KENTUCKY PUBLIC  
SERVICE COMMISSION

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