

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF FLEMING-)	CASE NO.
MASON ENERGY COOPERATIVE, INC. FOR A)	2023-00223
GENERAL ADJUSTMENT OF RATES)	

ORDER

On August 31, 2023, Fleming-Mason Energy Cooperative, Inc. (Fleming-Mason Energy) 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 its responses to Commission Staff's First Request for Information (Staff's First Request), Items 16, 17, 20, and 29.

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 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 KRS 61.878(1)(a) exempts "[p]ublic records containing information of a personal nature where the public disclosure thereof would

¹ KRS 61.872(1).

² See KRS 61.871.

³ 807 KAR 5:001, Section 13(2)(c).

constitute a clearly unwarranted invasion of personal privacy.”⁴ 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.”⁵

DISCUSSION

Response to Staff’s First Request, Item 16

Fleming-Mason Energy provided its monthly payroll variance analysis containing budgeted and actual wages in response to Staff’s First Request, Item 16. In support of its motion, Fleming-Mason Energy argued that disclosure of information would be an unwarranted invasion of privacy and employees have a reasonable expectation of privacy to their salary and wage information. Fleming-Mason Energy also argued that disclosure of information would also put Fleming-Mason Energy at a commercial disadvantage in the work force market.

Response to Staff’s First Request, Item 17

In support of its motion, Fleming-Mason Energy argued that the wage, salary, and benefit study that had not yet been provided to the Commission should be afforded confidential treatment because information contained in the study is of a sensitive and personal nature and disclosure would be an unwarranted invasion of privacy. Fleming-Mason Energy further argued that disclosure of information would provide a commercial disadvantage Fleming-Mason Energy in the workforce market.

⁴ KRS 61.878(1)(a).

⁵ KRS 61.878(1)(c)(1).

Response to Staff's First Request, Item 20

Fleming-Mason Energy provided executive officer salaries in response to Staff's First Request Item 20. Fleming-Mason Energy argued that disclosure of this information would be an invasion of privacy.

Response to Staff's First Request, Item 29

Fleming-Mason Energy provided test-year compensation and benefits in response to Staff's First Request, Item 29. Fleming-Mason Energy argued that disclosure of information would be an unwarranted invasion of privacy and could disadvantage Fleming-Mason Energy in the workforce.

DISCUSSION

Having considered the motion and the material at issue, the Commission finds that Fleming-Mason Energy's motion should be granted in part and denied in part. The Commission finds that the designated material contained in Fleming-Mason Energy's response to Staff's First Request, Items 16 and 29, that relates to non-executive compensation are records that meet the criteria for confidential treatment and should be exempted from public disclosure pursuant to KRS 61.878 (1)(a) and 807 KAR 5:001, Section 13. 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.⁶

The Commission further finds that the request for confidential treatment should be denied for executive compensation provided in response to Staff's First Request, Items

⁶ See Case No. 2020-00104, *Electronic Application of Clark Energy Coop., Inc. for A General Adjustment of Rates Pursuant to Streamlined Proc. Pilot Program Established in Case No. 2018-00407* (Jan. 25, 2022), Order at 3.

16, 20, and 29. The Commission has found numerous times that executive compensation should not be afforded confidential treatment.⁷ Therefore, the executive compensation information provided in response to Staff's First Request, Items 16, 20, and 29, do not meet the criteria for confidential treatment and should not be exempted from public disclosure pursuant to KRS 61.878 (1)(a) and (1)(c)(1) and 807 KAR 5:001, Section 13.

The Commission finds that the request for confidential treatment should be denied for Fleming-Mason Energy's response to Staff's First Request, Item 17. Fleming-Mason Energy has not yet filed the wage, salary, and benefit study. The Commission directs Fleming-Mason Energy to refile an updated confidentiality motion for the wage, salary, and study once it has been provided.

⁷ 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 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).

IT IS THEREFORE ORDERED that:

1. Fleming-Mason Energy's motion for confidential treatment for its responses to Staff's First Request, Items 16, 17, 20, and 29, is granted in part and denied in part.

2. Fleming-Mason Energy's motion for confidential treatment for the non-executive compensation provided in response to Staff's First Request, Items 16 and 29, is granted.

3. Fleming-Mason Energy's motion for confidential treatment for executive compensation information provided in response to Staff's First Request, Items 16, 20, and 29, and its response to Staff's First Request, Item 17, is denied. The Commission directs Fleming-Mason Energy to refile an updated confidentiality motion for the wage, salary, and study once it has been filed in the record.

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. Fleming-Mason Energy 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 Fleming-Mason 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.

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 Fleming-Mason Energy 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 Fleming-Mason Energy 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.

11. Within 30 days of the date of service of this Order, Fleming-Mason Energy 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 Fleming-Mason Energy'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 Fleming-Mason Energy to seek a remedy afforded by law.

PUBLIC SERVICE COMMISSION

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w/permissions { *Cheryl Hatten*
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ENTERED
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