

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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| ELECTRONIC APPLICATION OF LICKING |) | |
| VALLEY RURAL ELECTRIC COOPERATIVE |) | CASE NO. |
| CORPORATION FOR A GENERAL ADJUSTMENT |) | 2024-00211 |
| OF RATES AND OTHER GENERAL RELIEF |) | |

ORDER

On September 18, 2024,¹ Licking Valley Rural Electric Cooperative Corporation (Licking Valley RECC) filed a motion,² pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for ten years for information included in its responses to Commission Staff's Second Request for Information (Staff's Second Request), Item 19(b),³ and the Attorney General's First Request for Information (Attorney General's First Request), Items 4 and 5.⁴ Licking Valley RECC requested that this information be afforded confidential treatment for a period of ten years.

LEGAL STANDARD

The Public Service Commission (Commission) is a public agency subject to the Kentucky Open Records Act, which requires that all public records be open for inspection

¹ Licking Valley RECC's Motion for Confidential Treatment (Motion) (filed Sep. 18, 2024).

² Licking Valley RECC filed identical motions twice in conjunction with its responses to both Staff's Second Request and the Attorney General's First Request.

³ Licking Valley RECC's Response to Staff's Second Request (filed Sep. 18, 2024).

⁴ Licking Valley RECC's Response to the Attorney General's First Request (Attorney General's First Request) (filed Sep. 18, 2024).

by any person, except as otherwise provided by KRS 61.870⁵ to KRS 61.884.⁶ Exceptions to the free and open examination of public records must be strictly construed, and the party requesting confidential protection has the burden of demonstrating that the material qualifies for one of the statutory exemptions.

KRS 61.878(1)(a)⁷ exempts records from public disclosure that are personal in nature and would constitute an unwarranted invasion of personal privacy. KRS 61.878(1)(c)(1)⁸ exempts “[r]ecords confidentially disclosed to an agency or required by an agency to be disclosed to it, 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.”

DISCUSSION AND FINDINGS

In support of its motion, Licking Valley RECC argued that the requested confidential information includes sensitive and proprietary data related to employee wages and salaries, which are protected under KRS 61.878(1)(a) and KRS 61.878(1)(c)(1).⁹ The confidential material includes a wage and salary study conducted by a third-party consultant in response to Staff’s Second Request, Item 19(b).¹⁰ This study includes detailed employee-specific wage and salary data that Licking Valley

⁵ KRS 61.870.

⁶ KRS 61.884.

⁷ KRS 61.878(1)(a).

⁸ KRS 61.878(1)(c)(1).

⁹ Licking Valley RECC’s Motion, paragraph 2.

¹⁰ Licking Valley RECC’s Motion, paragraph 3.

RECC asserted was commercially valuable and proprietary.¹¹ The cooperative emphasized that this information is shared internally only on a strict "need-to-know" basis among select personnel for legitimate business purposes.¹² Public disclosure, according to Licking Valley RECC, would enable competitors to gain an unfair advantage by understanding its salary decisions and benchmarking processes.¹³

Additionally, the confidential information includes job titles and corresponding salaries of Licking Valley RECC employees, as requested in the Attorney General's First Request, Items 4 and 5.¹⁴ Licking Valley RECC argued that releasing this information would infringe upon employees' privacy and reveal the salaries of all employees in the small cooperative, given its size.¹⁵ Such disclosure could harm employee morale and retention while also giving other entities in the utility industry an unfair competitive advantage.¹⁶

Licking Valley RECC cited relevant provisions of the Kentucky Open Records Act, KRS 61.878, including KRS 61.878(1)(a), which protects records that are personal in nature and would constitute an unwarranted invasion of privacy, and KRS 61.878(1)(c)(1), which exempts records that are confidential or proprietary and could, if disclosed, provide an unfair commercial advantage to competitors.¹⁷ Licking Valley RECC further

¹¹ Licking Valley RECC's Motion, paragraph 3.

¹² Licking Valley RECC's Motion, paragraph 3.

¹³ Licking Valley RECC's Motion, paragraph 6.

¹⁴ Licking Valley RECC's Motion, paragraph 4.

¹⁵ Licking Valley RECC's Motion, paragraph 4.

¹⁶ Licking Valley RECC's Motion, paragraph 4–5.

¹⁷ Licking Valley RECC's Motion, paragraph 5.

referenced prior Commission decisions granting similar confidential treatment, as well as relevant case law, including *Zink v. Department of Workers Claims, Labor Cabinet*¹⁸ and *Hoy v. Kentucky Industrial Revitalization Authority*.¹⁹

Having considered the motion and the material at issue, the Commission finds that the information included in responses to Staff's Second Request, Item 19(b), and the Attorney General's First Request, Items 4 and 5, specifically, the employee-specific wage and salary information and the job titles with corresponding salaries of non-executive staff, are personal in nature and is generally recognized as proprietary. The wage and salary study was created for Licking Valley RECC by a third party and disclosure of this information would infringe on employee privacy and could place Licking Valley RECC at a competitive disadvantage. It, therefore, meets the criteria for confidential treatment and should be exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(a) and KRS 61.878(1)(c)(1).

IT IS THEREFORE ORDERED that:

1. Licking Valley RECC's September 18, 2024 motion for confidential treatment is granted in part and denied in part.
2. Licking Valley RECC's motion for confidential treatment of the wage and salary study provided in response to Staff's Second Request, Item 19(b) is granted pursuant to KRS 61.878(1)(c)(1). The non-executive staff portion of this study may also qualify for confidential treatment pursuant to KRS 61.878(1)(a).

¹⁸ *Zink v. Department of Workers Claims, Labor Cabinet*, 902 S.W.2d 825 (Ky. App. 1994).

¹⁹ *Hoy v. Kentucky Industrial Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995).

3. Licking Valley RECC's motion for confidential treatment of the job titles and corresponding salaries of Licking Valley RECC. employees provided in response to the Attorney General's First Request, Items 4 and 5, is granted for information related to non-executive staff, but denied as to executive staff job titles and salaries. The non-executive staff portions of job titles and corresponding salaries may also qualify for confidential treatment pursuant to KRS 61.878(1)(c)(1).

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).

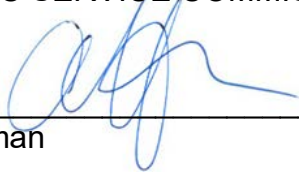
6. If the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment, Licking Valley RECC shall inform the Commission and file with the Commission an unredacted copy of the designated material.


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, Licking Valley 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 Licking Valley 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.


8. 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 Licking Valley RECC to seek a remedy afforded by law.

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PUBLIC SERVICE COMMISSION


Chairman


Commissioner


Commissioner

ATTEST:


Executive Director



Case No. 2024-00211

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