

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF SHELBY)	CASE NO.
ENERGY COOPERATIVE, INC. FOR A GENERAL)	2024-00351
ADJUSTMENT OF RATES)	

ORDER

On January 30, 2025, Shelby Energy Cooperative, Inc. (Shelby Energy) filed a motion,¹ pursuant to 807 KAR 5:001, Section 13, KRS 61.878(1)(a) and KRS 61.878(1)(c)(1), requesting that the Commission grant confidential protection for an indefinite period specific information and documents provided in response to the Attorney General's First Request for Information (Attorney General's First Request), Item 4, Item 5, Item 6, and Item 19(c).²

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."³ Exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.⁴ The party requesting that materials be treated confidentially has the burden of establishing

¹ Shelby Energy's Motion for Confidential Treatment (filed Jan. 30, 2025).

² Shelby Energy's Motion for Confidential Treatment at 2.

³ KRS 61.872(1).

⁴ See KRS 61.871.

that one of the exceptions is applicable.⁵ KRS 61.878(1)(a) provides an exception that “[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.”⁶ 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.”⁷

DISCUSSION AND FINDINGS

In response to the Attorney General’s First Request, Item 4, Item 5, and Item 6, Shelby Energy provided Excel format attachments containing detailed compensation information for several years. In response to Item 19(c), Shelby Energy provided an attachment containing the names of all employees as well as their corresponding labor and payroll information. However, Shelby Energy highlighted the names in the response to Item 19(c) and stated in its motion that it requested the names receive confidential treatment.⁸

Shelby Energy argued that the disclosure of employee titles and corresponding compensation would be an invasion of its employees’ privacy, as disclosure would allow the public to determine the salaries of specific employees, and Shelby Energy argued the information is commercially valuable and proprietary.⁹

⁵ 807 KAR 5:001, Section 13(2)(c).

⁶ KRS 61.878(1)(a).

⁷ KRS 61.878(1)(c)(1).

⁸ Shelby Energy’s Motion for Confidential Treatment at 1–2.

⁹ Shelby Energy’s Motion for Confidential Treatment at 3.

Having considered the motion and the material at issue, the Commission finds that Shelby Energy's motion is granted, in part, and denied, in part. Shelby Energy's responses to Attorney General's First Request, Item 4, Item 5, and Item 6, are granted confidential treatment for documents related to non-executive employees pursuant to KRS 61.878(1)(a) and KRS 61.878(1)(c)(1). The identity of Shelby Energy's employees and compensation could be ascertained from the job titles, and non-executive employees have a privacy interest in their compensation data under KRS 61.878(1)(a).¹⁰ As to the response to Item 19(c), the Commission finds that the names provided excepting the chief executive officer, as highlighted in the PDF, should be confidential under KRS 61.878(1)(a). Although it is not completely clear, as to the specific request, the motion stated, "confidential treatment for the names."¹¹

Additionally, the Commission has previously found that employee salaries with job titles for non-executive positions should be afforded confidential treatment for an indefinite period.¹² The Commission further finds that the request for confidential treatment for Shelby Energy's responses to Attorney General's First Request for the attachments to Item 4, Item 5, Item 6, and Item 19(c), should be denied for information and documents related to executive employees as it does not meet the criteria for confidential treatment and should not be exempted from public disclosure pursuant to KRS 61.878(1)(a) and

¹⁰ Case No. 2021-00407, *Electronic Application of South Kentucky Rural Electric Cooperative Corporation for a General Adjustment of Rates, Approval of Depreciation Study, and Other General Relief* (Ky. PSC Mar. 28, 2022), Order at 6.

¹¹ Shelby Energy's Motion for Confidential Treatment at 2.

¹² Case No. 2021-00185, *Electronic Application of Delta Natural Gas Company, Inc. for an Adjustment of Its Rates & A Certificate of Public Convenience & Necessity* (Ky. PSC Jan. 21, 2022), Order.

807 KAR 5:001, Section 1. The Commission has previously found that the compensation of executive employees is not entitled to confidential protection.¹³

IT IS THEREFORE ORDERED that:

1. Shelby Energy's January 30, 2025 motion for confidential treatment is granted in part and denied in part.

2. Shelby Energy's motion for confidential treatment for compensation information and documents provided in response to the Attorney General's First Request, Items 4, 5, and 6 for non-executive employees is granted.

3. Shelby Energy's motion for confidential treatment for the highlighted names, excluding the executive officer, contained the PDF response to the Attorney General's First Request, Item 19(c), is granted.

4. Shelby Energy's motion for confidential treatment for information and documents provided in response to the Attorney General's First Request, Items 4, 5, 6, and 19(c), containing the compensation information for executive employees, is denied.

5. The designated material granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for an indefinite period or until further order of this Commission.

6. 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).

7. If the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment, Shelby

¹³ Case No. 2021-00185, *Electronic Application of Delta Natural Gas Company, Inc. for an Adjustment of Its Rates & A Certificate of Public Convenience & Necessity*, (Ky PSC Jan. 21, 2022), Order.

Energy shall inform the Commission and file with the Commission an unredacted copy of the designated material.

8. 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 Shelby Energy 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.

9. 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 Shelby Energy to seek a remedy afforded by law.

10. 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.

11. If Shelby 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.

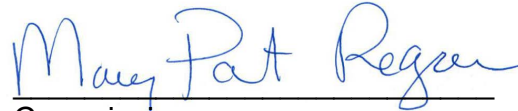
12. Within 30 days of the date of service of this Order, Shelby Energy shall file a revised version of the designated material for which confidential treatment was denied, reflecting as unredacted the information that has been denied confidential treatment.

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PUBLIC SERVICE COMMISSION


Chairman


Commissioner


Commissioner

ATTEST:


Executive Director



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