

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF INTER-COUNTY ENERGY	)	CASE NO.
COOPERATIVE CORPORATION FOR A	)	2018-00129
GENERAL ADJUSTMENT OF EXISTING RATES	)	

ORDER

This matter arises on three motions filed by Inter-County Energy Cooperative Corporation (Inter-County Energy). On June 19, 2018, Inter-County Energy 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 information provided in response to Commission Staff's First Request for Information (Staff's First Request), Items 55 and 59.

On July 17, 2018, Inter-County Energy 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 information provided in response to Commission Staff's Second Request for Information (Staff's Second Request), Item 3.

On October 22, 2018, Inter-County Energy 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 information provided in response to Commission Staff's Fourth Request for Information (Staff's Fourth Request), Item 3.

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> Inter-County Energy sought application of two statutory exceptions to public disclosure. KRS 61.878(1)(a) exempts “[p]ublic 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.<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>

#### JUNE 19, 2018 MOTION

Inter-County Energy’s response to Staff’s First Request, Item 55, included compensation information for its employees, identified by employee number and job title. Inter-County Energy argued that this information should be granted confidential treatment because compensation data, combined with job titles, are of a personal nature and would constitute a clearly unwarranted invasion of personal privacy as contemplated by KRS 61.878(1)(a). Inter-County Energy also argued that it competes with numerous other employers for employees and its competitors would be unfairly advantaged under

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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 13(2)(c).

KRS 61.878(1)(c)(1) if those competitors had access to compensation information for job titles. Inter-County Energy stated it has recently lost three employees who have taken positions with other utilities.

Having considered the motion and the material at issue, the Commission finds that this motion shall be granted. Compensation data is of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy under KRS 61.878(1)(a). The Commission has previously exempted this information from disclosure even when employee names are not included but job titles could allow identification of individual employees.<sup>4</sup> The Commission also held that compensation data, other than information regarding executive compensation, is protected from public disclosure by KRS 61.878(1)(c)(1) because competitors could use this information to compete for employees.<sup>5</sup> The information provided in response to Staff's First Request, Items 55 and 59, for which confidential treatment is sought, therefore meets the criteria for confidential treatment and is exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(a) and (1)(c)(1).

#### JULY 17, 2018 MOTION

Inter-County Energy's response to Staff's Second Request, Item 3 consisted of information pertaining to employee exit interviews and reasons for leaving employment, paired with employee names. Inter-County Energy asserted that this information was exempt from disclosure by KRS 61.878(1)(a) as constituting a clearly unwarranted

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<sup>4</sup> 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 unnumbered 5-6.

<sup>5</sup> Case No. 2021-00407, Mar. 28, 2022 Order at unnumbered 3.

invasion of personal privacy if disclosed. Inter-County Energy also argued application of KRS 61.878 (1)(c)(1) because disclosure would hinder Inter-County Energy's ability to get honest, complete responses in exit interviews and this information could also be used by competitors in competition for employees.

Having considered the motion and the material at issue, the Commission finds that this motion shall be granted. Reasons for employment termination and employee responses to exit interview questions are sensitive and personal to the employee and would constitute a clearly unwarranted invasion of personal privacy under KRS 61.878(1)(a) if disclosed. This information is also exempt from disclosure under KRS 61.878(1)(c)(1) because competitors could use this information to compete for employees. The information provided in response to Staff's Second Request, Item 3, for which confidential treatment is sought, therefore meets the criteria for confidential treatment and is exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(a) and (1)(c)(1).

#### OCTOBER 22, 2018 MOTION

Inter-County Energy's response to Staff's Fourth Request, Item 3 consisted of a wage and salary study paid for by Inter-County Energy. Inter-County Energy argued that public disclosure of this information would unfairly advantage its competitors, who compete with Inter-County Energy for labor, and this information should be granted confidential treatment under KRS 61.878(1)(c)(1).

Having considered the motion and the material at issue, the Commission finds that this motion shall be granted. Wage and salary studies are exempt from disclosure under KRS 61.878(1)(c)(1) because competitors could use this information to compete for

employees. The Commission has previously granted confidential treatment to wage and salary studies.<sup>6</sup> The information provided in response to Staff's Fourth Request, Item 3, for which confidential treatment is sought, therefore meets the criteria for confidential treatment and is exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

IT IS THEREFORE ORDERED that:

1. Inter-County Energy's motions for confidential treatment are granted.
2. Inter-County Energy's redactions from its responses to Staff's First Request, Items 55 and 59; Staff's Second Request, Item 3; and Staff's Fourth Request, Item 3, shall not be placed in the public record or made available for public inspection for ten years or until further Order of this Commission.
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. Inter-County Energy 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, Inter-County Energy 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 Inter-County

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<sup>6</sup> Case No. 2021-00066, *Electronic Application of Kenergy Corp. for a General Adjustment of Rates Pursuant to Streamlined Procedure Pilot Program Established in Case No. 2018-00407* (Ky. PSC June 10, 2022), Order at 2.

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.

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 Inter-County Energy to seek a remedy afforded by law.

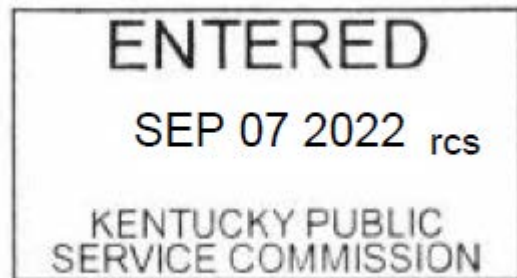
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