

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF JACKSON	)	
PURCHASE ENERGY CORPORATION FOR A	)	CASE NO.
GENERAL ADJUSTMENT OF RATES AND	)	2021-00358
OTHER GENERAL RELIEF	)	

ORDER

On January 3, 2022, Jackson Purchase Energy Corporation (Jackson Purchase) 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 information redacted from its response to the Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention’s (Attorney General) Second Request for Information (Attorney General’s Second Request), Item 22.

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> KRS 61.878(1)(c)(1) provides an exception to the requirement for public disclosure for records that are “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.” Exceptions to the free and open examination of public records contained in KRS 61.878 should be

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<sup>1</sup> KRS 61.872(1).

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>

### ARGUMENT

The information Jackson Purchase sought confidential treatment for consists of a summary of itemized right-of-way vegetation management bid amounts for several contractors. In support of its motion, Jackson Purchase argued that public disclosure of this information would give potential contractors and competitors a competitive advantage in the course of ongoing and future negotiations for vegetation management contracts. Jackson Purchase stated that these market advantages would translate into higher costs for Jackson Purchase and, by extension, detrimentally higher rates for Jackson Purchase's customers.

### FINDINGS

Having considered the motion and the material at issue, the Commission finds that Jackson Purchase's motion is granted in part and denied in part. 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>4</sup> Disclosure would also assist Jackson Purchase's competitors in competing for obtaining future vegetation management contracts. Therefore, the Commission grants confidential treatment for the information redacted from Jackson Purchase's response to Attorney General's Second

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<sup>2</sup> See KRS 61.871.

<sup>3</sup> 807 KAR 5:001, Section 13(2)(c).

<sup>4</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.

Request, Item 22, pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13, with the exception of the total winning bid amount submitted by Townsend Tree Service.

The Commission further finds that the request for confidential treatment is denied for the total winning bid amount submitted by Townsend Tree Service. This amount is included in base rate calculations and shall 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.

IT IS THEREFORE ORDERED that:

1. Jackson Purchase's motion for confidential treatment for its response to Attorney General's Second Request, Item 22, is granted in part and denied in part.

2. Jackson Purchase's motion for confidential treatment for response to Attorney General's Second Request, Item 22, pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13, with the exception of the total winning bid amount submitted by Townsend Tree Service, is granted.

3. Jackson Purchase's motion for confidential treatment for the total winning bid amount submitted by Townsend Tree Service is denied.

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. Jackson Purchase 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, Jackson Purchase 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 Jackson Purchase 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 Jackson Purchase 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 Jackson Purchase 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, Jackson Purchase 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 Jackson Purchase'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 Jackson Purchase to seek a remedy afforded by law.

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By the Commission

ENTERED  
FEB 28 2022 <sup>rCS</sup>  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:



Executive Director

Case No. 2021-00358

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