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March 27, 2008

## VIA FEDERAL EXPRESS

STEPHANIE STUMBO  
EXECUTIVE DIRECTOR  
KENTUCKY PUBLIC SERVICE COMMISSION  
211 SOWER BLVD.  
FRANKFORT KY 40602

**Re: Jackson Purchase Energy Corporation  
Case No. 2007-00116**

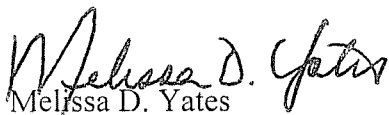
Dear Ms. Stumbo:

Please find enclosed an original and ten (10) copies of Jackson Purchase Energy Corporation's Motion for Confidentiality as relates to the Commission's request for a copy of the "Compensate Plan" in its Third Data Request. V

I have also enclosed an additional copy for file-stamping, which I would ask that you return to me in the enclosed self-addressed, stamped envelope.

Should you need any further information from me regarding this filing, please do not hesitate to contact me.

Sincerely,



Melissa D. Yates

Attorney for Jackson Purchase Energy Corporation

cc: Dennis Howard, Attorney General

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RECEIVED

MAR 28 2008

PUBLIC SERVICE  
COMMISSION

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

MAR 28 2008

PUBLIC SERVICE  
COMMISSION

IN THE MATTER OF:

JACKSON PURCHASE ENERGY  
CORPORATION,

)  
)  
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)

CASE NO. 2007-00116

**MOTION FOR CONFIDENTIALITY**

Comes Jackson Purchase Energy Corporation, by and through its counsel, and for its Motion for Confidential Treatment, states as follows:

1. The Commission staff has requested that Jackson Purchase Energy Corporation provide it with a copy of the "Compensate Plan." The Commission staff has cited to 807 KAR 5:001, Section 7, for the proposition that confidentiality of documents is not sufficient for failure to respond to a discovery request.

2. JPEC purchased the 2008 National Compensation Survey, a salary survey for rural electric cooperatives from across the country, from the National Rural Electric Cooperatives Association ("NRECA") (hereinafter the "salary survey"). The salary survey is copyrighted and its unauthorized distribution is strictly prohibited by NRECA. This is evidenced by the letter which accompanied the plan. A copy of said letter is attached hereto as Exhibit "A."

3. JPEC has requested permission from NRECA to disclose said plan to the Commission. However, NRECA has verbally refused to allow such use. In order to assist JPEC, NRECA legal staff has indicated its willingness to assist with responding to specific questions.

4. JPEC is concerned that disclosure of the salary survey will violate the copyright held by NRECA and it might also violate the agreement under which JPEC uses the information.

5. KRS 61.878 (1)(c)(1) protects from disclosure commercial information, generally recognized as confidential or proprietary, if its public disclosure would cause competitive injury to the disclosing entity. The Commission has previously taken the position that this requires the party to demonstrate actual competition and the likelihood of competitive injury if the information is disclosed. *In the Matter of: BellSouth Telecommunications, Inc.'s Notice of Intent to Disconnect Express Telephone for Non-Payment*, Case No. 2005-00469.

6. JPEC is being asked to deliver the salary survey which was disclosed to JPEC only upon payment of a fee and on the condition that the information be kept confidential. JPEC could certainly be injured by disclosing the salary survey in the event NRECA chooses to bring legal against JPEC for the disclosure and/or reproduction of the copyrighted information.

7. NRECA would certainly suffer actual competitive injury if the information is made public because the salary survey consists of NRECA's confidential and proprietary compilation of salaries from across the nation. The salary survey is likely also a trade secret under the definition of KRS. Essentially, if the information contained in the salary survey is made public, it would be the equivalent of giving away a product which NRECA presumably spent thousands of dollars to create. Such a result would be especially egregious since NRECA is not a party to this action, is not regulated by the KPSC, and only disclosed the information to JPEC with the understanding that it would not be reproduced or republished to the public. In effect, this would be no different than an individual using the open records act to obtain a copy of proprietary computer software purchased for use by state government.

8. To the knowledge of JPEC, the information contained in the salary survey is available only through NRECA upon the payment of a fee for obtaining the information and is not available through any other means. Therefore, the public interest to be served by disclosure is minimal. Put simply, disclosure of the information to the public would constitute the injury to NRECA.

9. The injury to NRECA and perhaps, by extension, JPEC, could be enormous given that disclosure of the information at issue could damage NRECA not only within the Commonwealth of Kentucky, but could have nationwide implications as well.

10. This type of information is exactly what is supposed to be protected by KRS 61.878(1)(c)(1). The simple fact that the salary survey is now on file with the Commission does not mean that it is subject to disclosure. The information contained in the salary survey is of the type that should be recognized as confidential or proprietary because its disclosure would unfairly advantage any entities which would use NRECA's information for free. If the Commission disagrees, however, JPEC hereby requests an evidentiary hearing to protect the due process rights of both JPEC and NRECA and supply the commission with a complete record to enable it to reach a decision with regard to this matter.

11. Additionally, the salary survey meets the definition of a trade secret pursuant to KRS 355.880. KRS 355.880 (4) defines the term "trade secret" as follows:

**"Trade secret"** means information, including a formula, pattern, compilation, program, data, device, method, technique, or process, that:

(a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and

(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy."

Involuntary disclosure of **trade secrets** usually amounts to irreparable harm. *Grange Mut. Ins. Co. v. Trude*, 151 S.W.3d 803 (Ky. 2004) Accordingly, the salary survey should be given confidential treatment as disclosure of NRECA's trade secret could, in and of itself, result in irreparable harm to NRECA.

12. In accordance with the provisions of 807 KAR 1:005, Section (7) and with discussions held with staff and the Attorney General's office, JPEC files herewith, under seal, one (1) set of the confidential salary survey.

For the reasons stated herein, JPEC respectfully requests that the Commission grant confidential protection for the salary survey at issue, or schedule an evidentiary hearing on all factual issues while maintaining the confidentiality of the information pending the outcome of the hearing.

Respectfully submitted,

DENTON & KEULER  
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By: 

W/ David Denton  
Melissa D. Yates

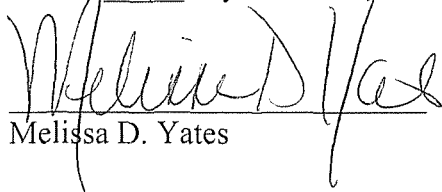
ATTORNEYS FOR JPEC

I hereby certify that the foregoing has been served by mailing a true and correct copy to:

STEPHANIE STUMBO  
EXECUTIVE DIRECTOR  
PUBLIC SERVICE COMMISSION  
211 SOWER BLVD.  
FRANKFORT KY 40602

DENNIS G HOWARD  
OFFICE OF THE ATTORNEY GENERAL  
1024 CAPITAL CENTER DRIVE  
SUITE 200  
FRANKFORT KY 40601-8204


on this 27<sup>th</sup> day of March, 2008.

  
Melissa D. Yates

100048



# National Rural Electric Cooperative Association

A Touchstone Energy® Cooperative 

4301 Wilson Boulevard  
Arlington, VA 22203  
Telephone (703) 907-5500  
[www.nreca.coop](http://www.nreca.coop)

March, 2008

Dear National Compensation Survey Subscriber:

Each year the NRECA National Consulting Group produces a comprehensive salary survey of distribution systems known as the National Compensation Survey or NCS. Subscribers to this survey have found it to be a valuable tool in establishing and maintaining their wage and salary systems.

In response to the membership, we have kept the changes that were added last year. As in 2007 (compared to prior years) there are now additional ranges have been added to the system characteristics of total utility plant, operating revenue, and number of consumers served, so that you can more accurately benchmark your compensation strategy. We are constantly striving to find ways to improve our service to the membership and invite your comments and suggestions on how we can continue to improve this product.

The NRECA National Consulting Group also provides management consulting services in the areas of Compensation, Benefits, Incentive Plans, Organizational Development, and Organizational Effectiveness. For more information regarding surveys or consulting services, please do not hesitate to contact myself or Nancy Montague at 703-907-5650 or by email at [Nancy.montague@nreca.coop](mailto:Nancy.montague@nreca.coop).

Cordially,

*Monica Schmidt*

Monica Schmidt  
National Consulting Group – NRECA  
Office (703) 907-6070

*Warning: copyright law and international treaties protect the National Compensation Survey data. The National Compensation Survey data is proprietary and confidential and may only be used by the purchasing rural electric system. Unauthorized use, reproduction or distribution of this data, or any part of it, may result in civil liability and/or criminal penalties.*