

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF INTER-	)	
COUNTY ENERGY COOPERATIVE	)	
CORPORATION FOR A CERTIFICATE OF	)	
PUBLIC CONVENIENCE AND NECESSITY	)	CASE NO.
AUTHORIZING THE INSTALLATION OF A NEW	)	2022-00350
ADVANCED METERING INFRASTRUCTURE	)	
(AMI) SYSTEM	)	

ORDER

On October 24, 2022, Inter-County Energy Cooperative Corporation (Inter-County Energy) filed a motion, pursuant to 807 KAR 5:001E, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for ten years for Exhibits 1 through 4 to its application.

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 KRS 61.878(1)(c)(1), which 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

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

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>

Exhibits 1 through 4 to Inter-County Energy's application included redacted cost figures from the seven advanced metering infrastructure (AMI) vendors who submitted bids in response to Inter-County Energy's requests for proposals. Inter-County Energy argued that the redacted material should be granted confidential treatment because disclosing bids would negatively affect its ability to negotiate with vendors and would reduce the number of bids in receives in the future because vendors would not want their bids disclosed. Inter-County Energy also sought protection of winning bid cost information in the event the contract is not executed to prevent other bidders from manipulating potential replacement bids.

Having considered the motion and the material at issue, the Commission finds that Inter-County Energy's motion should be granted in part and denied in part. The Commission finds the redactions of information from Exhibits 2 through 4 relating to non-selected bids are confidential to prevent vendors from using these bids to manipulate any future bidding.<sup>4</sup> Therefore, this information meets the criteria for confidential treatment and is exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001E, Section 13.

The Commission further finds that the request for confidential treatment is denied for redactions from Exhibit 1 through 4 pertaining to Landis+Gyr's winning bid. The

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

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

<sup>4</sup> See Case No. 2021-00358, *Electronic Application of Jackson Purchase Energy Corporation for a General Adjustment of Rates and Other General Relief* (Ky. PSC Feb. 28, 2022), Order at 2–3.

Commission has previously held that winning bids are not granted confidential treatment because this amount is included in base rate calculations and shall be subject to public disclosure.<sup>5</sup> Granting the request based upon Inter-County Energy's argument that the contract amount from the winning bid should stay confidential would prevent the public from being able to evaluate the costs and benefits of the proposed project, and might encourage utilities to not execute contracts prior to Commission approval in order to keep information from being publicly disclose. Redactions for Exhibits 1 through 4 pertaining to Lands+Gyr's bid do not meet the criteria for confidential treatment and are not exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001E, Section 13.

IT IS THEREFORE ORDERED that:

1. Inter-County Energy's motion for confidential treatment for Exhibits 1 through 4 to its application is granted in part and denied in part.
2. Inter-County Energy's motion for confidential treatment for redactions from Exhibits 2 through 4 to its application pertaining to non-selected bids is granted.
3. Inter-County Energy's motion for confidential treatment for redactions from Exhibits 1 through 4 pertaining to Landis+Gyr bids 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 5:001E, Section 13(9).

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<sup>5</sup> See Case No. 2021-00358, (Ky. PSC Feb. 28, 2022), Order at 2–3.

6. Inter-County Energy 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, 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 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.

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 Inter-County Energy 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 Inter-County 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.

11. Within 30 days of the date of service of this Order, Inter-County 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.

12. The designated material for which Inter-County Energy'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 Inter-County Energy to seek a remedy afforded by law.

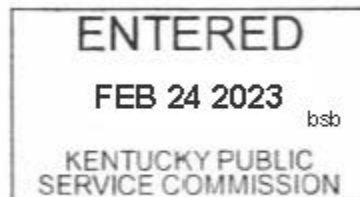
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PUBLIC SERVICE COMMISSION

  
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Chairman

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Vice Chairman

  
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Commissioner



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