

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF KENERGY	)	CASE NO.
CORP. FOR A GENERAL ADJUSTMENT OF	)	2023-00276
RATES	)	

ORDER

On October 2, 2023, Kenergy Corp. (Kenergy) filed a petition, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for an indefinite period for Exhibit 11, Attachment BJ-2 provided in Kenergy's 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> 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> KRS 61.878(1)(c)(1) provides an exception to the requirement for public disclosure of records that are "generally recognized as

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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).

confidential and proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.”<sup>4</sup>

In support of its petition, Kenergy asked for confidential treatment for the titles of jobs within the wage and benefits study prepared by the Johanson Group that correspond with non-confidential wage and salary comparisons that could potentially be tied to a specific employee provided in Kenergy’s application, Exhibit 11, Attachment BJ-2. Kenergy argued that confidential treatment should be afforded under KRS 61.878(1)(a) because the information related to 69 specific employee positions with detailed information. Kenergy further argued that it would be an invasion of privacy to disclose the information and competitors can discern information specific to individual employees, which could put Kenergy at a commercial disadvantage. Kenergy also argued confidential treatment should be afforded under KRS 61.878(1)(c)(1) because disclosure of the information would hinder Kenergy’s ability to attract and retain good employees. Lastly, Kenergy argued that the information is proprietary, and disclosure would reveal internal business practices and strategies.

Having considered the petition and the material at issue, the Commission finds that Exhibit 11, Attachment BJ-2 provided in Kenergy’s application is generally recognized as confidential or proprietary; it therefore meets the criteria for confidential treatment and should be exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878 61.878(1)(c)(1). The Commission has previously found that wage and salary

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<sup>4</sup> KRS 61.878(1)(c)(1).

studies conducted by third parties should be granted confidential treatment and disclosure could put competitors at an advantage for hiring and retaining employees.<sup>5</sup>

IT IS THEREFORE ORDERED that:

1. Kenergy's petition for confidential treatment is granted.
2. The designated material granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for indefinite period 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. Kenergy 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, Kenergy 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 Kenergy is unable to make such demonstration, the requested material shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

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<sup>5</sup> See Case No. 2023-00147, *Elec. Application of Taylor County Rural Electric Cooperative Corp. for A General Adjustment of Rates*, (Ky. PSC Sept. 20, 2023), Order; Case. No. 2018-00129, *Application of Inter-County Energy Cooperation for a General Adjustment of Existing Rates* (Ky. PSC Sept. 7, 2022) Order at 4-5.


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 Kenergy 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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OCT 31 2023 bsb  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
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Executive Director

\*Angela M Goad  
Assistant Attorney General  
Office of the Attorney General Office of Rate  
700 Capitol Avenue  
Suite 20  
Frankfort, KENTUCKY 40601-8204

\*Michael West  
Office of the Attorney General Office of Rate  
700 Capitol Avenue  
Suite 20  
Frankfort, KENTUCKY 40601-8204

\*Blair Johanson

\*Steve Thompson  
Kenergy Corp.  
6402 Old Corydon Road  
P. O. Box 18  
Henderson, KY 42419

\*J. Christopher Hopgood  
Dorsey, Gray, Norment & Hopgood  
318 Second Street  
Henderson, KENTUCKY 42420

\*Timothy Lindahl  
Kenergy Corp.  
6402 Old Corydon Road  
P. O. Box 18  
Henderson, KY 42419

\*John Horne  
Office of the Attorney General Office of Rate  
700 Capitol Avenue  
Suite 20  
Frankfort, KENTUCKY 40601-8204

\*John Wolfram  
Catalyst Consulting  
3308 Haddon Rd  
Louisville, KENTUCKY 40241

\*Kenergy Corp.  
6402 Old Corydon Road  
P. O. Box 18  
Henderson, KY 42419

\*Larry Cook  
Assistant Attorney General  
Office of the Attorney General Office of Rate  
700 Capitol Avenue  
Suite 20  
Frankfort, KENTUCKY 40601-8204