

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF JACKSON)	
PURCHASE ENERGY CORPORATION FOR A)	
CERTIFICATE OF PUBLIC CONVENIENCE AND)	CASE NO.
NECESSITY AUTHORIZING THE INSTALLATION)	2024-00013
OF A NEW ADVANCED METERING)	
INTRASTRUCTURE (AMI) SYSTEM)	

ORDER

This matter arises upon two motions for confidential treatment filed by Jackson Purchase Energy Corporation (Jackson Purchase Energy). Each motion is individually addressed below.

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.”¹ In support of its motions, Jackson Purchase Energy argued for the application of three open records exemptions set forth in KRS 61.878. 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.” KRS 61.878(1)(a) prevents disclosure of “[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.” Lastly,

¹ KRS 61.872(1).

KRS 61.878(1)(i) protects “correspondence with private individuals, other than correspondence which is intended to give notice of final action of a public agency.”

Exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.² The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.³

JANUARY 26, 2024 MOTION

On January 26, 2024, Jackson Purchase Energy filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1), requesting that the Commission grant confidential protection for an indefinite period for Exhibits 1, 2, 3, 4 and 5 to the application containing information about bids for the installation of a new advanced metering infrastructure (AMI) system.

Exhibit 1 to the application includes redacted cost comparisons of bids received and presented to Jackson Purchase Energy’s Board of Directors. Jackson Purchase Energy argued that this information is generally recognized as confidential and proprietary and public disclosure would permit an unfair commercial advantage to Jackson Purchase Energy’s competitors,⁴ and might cause competitive harm under KRS 61.878(1)(c)(1).

Exhibits 2 through 4 to the application include bid proposals from suppliers Aclara, Quality Resources, and Luthan, which Jackson Purchase Energy argued are commercially sensitive information, meriting protection under KRS 61.878(1)(c)(1).

² See KRS 61.871.

³ 807 KAR 5:001, Section 13(2)(c).

⁴ Motion for Confidential Treatment (filed Jan. 26, 2024) (January 26, 2024 Motion) at 2.

Exhibit 5 to the application contains 15-year cost comparisons for the bids as well as installed costs from all bids received, which Jackson Purchase Energy argued is confidential and proprietary.⁵ Costs include meter replacement, maintenance and support from all bids received from the Request for Proposal (RFP).

Regarding the redacted portions of Exhibit 1 to the application, the Commission generally treats bids as confidential for a limited time to prevent future bidders from using the information, except for the total amount of the winning bid. The Commission generally treats itemized bids as confidential under KRS 61.878(1)(c)(1) for a limited time to prevent future bidders from using the information to manipulate bidding in future contracts.⁶ However, the winning bid amount is included in revenue requirement calculations and has been found to be subject to public disclosure.⁷

Having considered the motion and the material at issue, the Commission finds that Jackson Purchase Energy's January 26, 2024 motion should be granted, in part, and denied, in part. The Commission generally treats bids as confidential for a limited time to prevent future bidders from using the information to disadvantage a utility with its competitors, with the exception of the total amount of the winning bid.⁸ Therefore, the

⁵ January 26, 2024 Motion at 2.

⁶ 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.

⁷ Case No. 2022-00402, *Electronic Joint Application of Kentucky Utilities Company and Louisville Gas and Electric Company for Certificates of Public Convenience and Necessity and Site Compatibility Certificates and Approval of a Demand Side Management Plan and Approval of Fossil Fuel-Fired Generating Unit Retirements* (Ky. PSC Nov. 20, 2023), Order at 3.

⁸ See Case No. 2019-00399, *Application of Salt River Electric Cooperative Corporation for an Order Issuing a Certificate of Public Convenience and Necessity Constrict and Advanced Metering Infrastructure (AMI) System Pursuant to KRS 807, KAR 5:001 and KRS 278.020* (Ky. PSC Feb. 20, 2020), Order at 2.

Commission finds that Jackson Purchase Energy's Exhibits 1 through 5 to the application are recognized as confidential or proprietary, that if disclosed would permit an unfair commercial advantage to competitors of the disclosing party, and meets the criteria for confidential treatment and should be exempted from public disclosure for a period of five years⁹ pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1). However, confidential treatment is denied for the total Aclara bid amount in Exhibits 1, 2, and 5. Jackson Purchase Energy should file a public version of these documents with everything redacted except the Aclara name and the total Aclara bid amount.

MARCH 25, 2024 MOTION

On March 25, 2024, Jackson Purchase Energy filed a motion, pursuant to 807 KAR 5:001, Section 13; KRS 61.878(1)(a); KRS 61.878(1)(c)(1); and KRS 61.878(1)(i), requesting that the Commission grant confidential treatment for information provided in Jackson Purchase Energy's response to Commission Staff's First Request for Information (Response to Staff's First Request), Items 1, 3(a), and 5.

Exhibit A to the Response to Staff's First Request, Item 1, contains a PowerPoint presentation for Jackson Purchase Energy's Board. In support of its motion, Jackson Purchase Energy argued that the information in Exhibit A to the Response to Staff's First Request, Item 1, should be confidentially held indefinitely because it is generally recognized as confidential and proprietary and public disclosure would permit an unfair commercial advantage if disclosed. Jackson Purchase Energy sought indefinite

⁹ Case No. 2023-00210, *Electronic Application of Duke Energy Kentucky, Inc. for a Certificate of Public Convenience and Necessity Authorizing the Phase Two Replacement of the AM07 Pipeline* (Ky. PSC Oct. 10, 2023), Order at 3, reducing the confidentiality period to five years from the requested ten years for construction bids. The Commission finds that five years is sufficient time for bid information to become obsolete.

protection and argued that disclosure of the selection process would give competitors an unfair commercial advantage in negotiations for products in the future and would allow access to business strategies and decision-making processes.¹⁰

Exhibit B to the Response to Staff's First Request, Item 3(a), contains all of the RFP responses from vendors, including the chosen vendor Aclara. Jackson Purchase Energy argued that if the portion of Exhibit B that deals with Aclara were disclosed prior to execution of the contract, Jackson Purchase Energy could face commercial harm as contemplated in KRS 61.878(1)(c)(1). If the contract between Jackson Purchase Energy and Aclara were ultimately not executed, Jackson Purchase Energy argued that subsequent vendors would know how much Jackson Purchase Energy was prepared to pay for the meter system.¹¹ Jackson Purchase Energy only sought confidential treatment until the contract execution.

Jackson Purchase Energy claimed that Exhibit D to the Response to Staff's First Request, Item 5, contained names and addresses of Jackson Purchase Energy's member communications with the current meter manufacturer. Jackson Purchase Energy sought indefinite protection and argued that pursuant to KRS 61.878(1)(a) and KRS 61.878(1)(i), Exhibit D constituted correspondence with a private company related to meter issues.¹² Jackson Purchase Energy also argued that Exhibit D contains personal information of private individuals discussing proprietary information that is retained by Jackson Purchase Energy on a "need-to-know" basis that is not publicly available, and distributed

¹⁰ Motion for Confidential Treatment (filed Mar. 25, 2024) (March 25, 2024 Motion) at 2.

¹¹ March 25, 2024 Motion at 3.

¹² March 25, 2024 Motion at 3.

only to those employees who must have access for business reasons and is generally recognized as confidential and proprietary in the energy industry.¹³

Having considered the motion and the material at issue, the Commission finds that Jackson Purchase Energy's March 25, 2024 motion should be granted, in part, and denied, in part. Exhibit A to Response to Staff's First Request, Item 1, which contains a presentation to Jackson Purchase Energy's Board of Directors providing bid information, disclosing the manner in which the RFP's were evaluated and ultimately selected, and including financial and strategic company information. Exhibit B contains all bid information from the various bidders.

The Commission generally treats bids and bid information as confidential for a limited time to prevent future bidders from using the information, with the exception of the total amount of the winning bid,¹⁴ which is included in revenue requirement calculations and has been found to be subject to public disclosure.¹⁵ Therefore, the Commission finds that the request for confidential treatment for Exhibits A and B should be granted for the Response to Staff's First Request, Item 3(a), pursuant to 807 KAR 5:001, Section 13 and KRS 61.878(1)(c)(1). However, confidential treatment is denied for the total Aclara bid amount in Exhibits A and B. Jackson Purchase Energy should file a public version of these documents with everything redacted except the Aclara name and the total Aclara

¹³ March 25, 2024 Motion at 3.

¹⁴ Case No. 2020-00004, (Ky. PSC Apr. 9, 2020), Order at 1-2.

¹⁵ Case No. 2022-00402, (Ky PSC Nov. 20, 2023), Order at 3.

bid amount. The Commission finds that Exhibits A and B should be granted five years' confidential treatment.¹⁶

The Commission finds that confidential treatment should be denied for Exhibit D to Response to Staff's First Request, Item 5. Correspondence with agents of contractors under a public contract on issues relating to the administration of that contract cannot be characterized as correspondence with private individuals.¹⁷ Nor does KRS 61.878(1)(a) apply because no customer names are referenced as indicated in Jackson Purchase Energy's motion. However, mailing addresses, email addresses, and phone numbers, when used in conjunction with the name of a person or business, are required to be redacted by 807 KAR 5:001, Section 4(10)(a).

IT IS THEREFORE ORDERED that:

1. Jackson Purchase Energy's motions for confidential treatment are granted in part and denied in part.

2. Jackson Purchase Energy's January 26, 2024 motion for confidential treatment for Exhibits 1 through 5 to the application is granted for a period of five years, except for the total Aclara bid amount found in Exhibits 1, 2, and 5, which is denied confidential treatment. Jackson Purchase Energy shall file a public version of these documents with everything redacted except the Aclara name and the total Aclara bid amount.

¹⁶ Case No. 2023-00210, (Ky. PSC Oct. 10, 2023), Order at 3, reducing the confidentiality period to five years from the requested ten years for construction bids. The Commission finds that five years is sufficient time for bid information to become obsolete.

¹⁷ Kentucky Attorney General Opinion, 00-ORD-98 (Apr. 13, 2000).

3. Jackson Purchase Energy's March 25, 2024 motion for confidential treatment for Exhibits A and B to Jackson Purchase Energy's Response to Staff's First Request, Item 1, is granted for a period of five years, except for the total Aclara bid amount found in Exhibits A and B, which is denied confidential treatment. Jackson Purchase Energy shall file a public version of these documents with everything redacted except the Aclara name and the total Aclara bid amount.

4. Jackson Purchase Energy's March 25, 2024 motion for confidential treatment for Exhibit D to Jackson Purchase Energy's Response to Staff's First Request, Item 5 is denied. However, Jackson Purchase Energy shall redact all addresses, email addresses, and phone numbers from the document.

5. The designated material granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for five years or until further order of this Commission.

6. 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).

7. If the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment, Jackson Purchase Energy shall inform the Commission and file with the Commission an unredacted copy of the designated material.

8. 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 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 Jackson Purchase 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.

9. 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 Energy to seek a remedy afforded by law.

10. 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.

11. If Jackson Purchase 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.


12. Within 30 days of the date of service of this Order, Jackson Purchase 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.


13. The designated material for which Jackson Purchase 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 Jackson Purchase Energy to seek a remedy afforded by law.

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PUBLIC SERVICE COMMISSION


Chairman


Commissioner


Commissioner

ATTEST:


Executive Director



Case No. 2024-00013

*L. Allyson Honaker
Honaker Law Office, PLLC
1795 Alysheba Way
Suite 1203
Lexington, KY 40509

*Brittany H. Koenig
Honaker Law Office, PLLC
1795 Alysheba Way
Suite 1203
Lexington, KY 40509

*Greg Grissom
Jackson Purchase Energy Corporation
6525 US Highway 60 W
Paducah, KY 42001

*Heather Temple
Honaker Law Office, PLLC
1795 Alysheba Way
Suite 1203
Lexington, KY 40509

*Jackson Purchase Energy Corporation
6525 US Highway 60 W
Paducah, KY 42001

*Travis Spiceland
Jackson Purchase Energy Corporation
6525 US Highway 60 W
Paducah, KY 42001