

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF KENERGY	)	
CORP. FOR A CERTIFICATE OF PUBLIC	)	
CONVENIENCE AND NECESSITY FOR THE	)	
CONSTRUCTION OF A HIGH-SPEED FIBER	)	
NETWORK AND FOR APPROVAL OF THE	)	CASE NO.
LEASING OF THE NETWORK'S EXCESS	)	2021-00365
CAPACITY TO AN AFFILIATE TO BE ENGAGED	)	
IN THE PROVISION OF BROADBAND SERVICE	)	
TO UNSERVED AND UNDERSERVED	)	
HOUSEHOLDS AND BUSINESSES OF THE	)	
COMMONWEALTH	)	

ORDER

On May 12, 2022, Kentucky Broadband Cable Association (KBCA) filed a petition pursuant to KRS 278.400, for reconsideration of the Commission's April 29, 2022 Order denying confidential protection of Exhibit 2 of KBCA's response to Commission Staff's First Request for Information (Staff's First Request).

DISCUSSION AND FINDINGS

KRS 278.400 limits rehearing to new evidence not readily discoverable at the time of the original hearing, to correct any material errors or omissions, or to correct findings that are unreasonable or unlawful.<sup>1</sup> A Commission order is deemed unreasonable only when, "the evidence presented leaves no room for difference of opinion among reasonable minds."<sup>2</sup> An Order can only be unlawful if it violates state or federal statute

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<sup>1</sup> KRS 278.400 and KRS 278.430.

<sup>2</sup> *Energy Regulatory Comm'n v. Kentucky Power Co.*, 605 S.W.2d 46 (Ky. App. 1980).

or constitutional provisions.<sup>3</sup> By limiting rehearing to correct material errors or omissions, and findings that are unreasonable or unlawful, or to weigh new evidence not readily discoverable at the time of the original hearings, KRS 278.400 is intended to provide closure to Commission proceedings. Rehearing does not present parties with the opportunity to relitigate a matter fully addressed in the original order.

KBCA stated that Exhibit 2 of its response to Staff's First Request included addresses of individuals who are receiving service from one of its members. KBCA requested confidential treatment for an indefinite period for these addresses pursuant to KRS 61.878(1)(a), which exempts disclosure of "information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy."<sup>4</sup> KBCA asserted that the April 29, 2022 Order denied confidential treatment of the addresses because none were visible on the document. KBCA stated that the confidential pages were filed without the required highlighting of the confidential information as required by 807 KAR 5:001, Section 13(2)(a)(3). KBCA stated it would correct the confidential filing and highlight the addresses.

Having considered the motion and the material at issue, the Commission finds that KBCA's motion for reconsideration should be granted. The addresses of private individuals receiving service from KBCA's member is information of a personal nature that would be an unwarranted invasion of personal privacy if disclosed and is granted confidential treatment pursuant to KRS 61.878(1)(a) for an indefinite period. KBCA shall

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<sup>3</sup> *Public Service Comm'n v. Conway*, 324 S.W.3d 373, 377 (Ky. 2010); *Public Service Comm'n v. Jackson County Rural Elec. Coop. Corp.*, 50 S.W.3d 764, 766 (Ky. App. 2000); *National Southwire Aluminum Co. v. Big Rivers Elec. Corp.*, 785 S.W.2d 503, 509 (Ky. App. 1990).

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

refile the confidential documents with the addresses highlighted as required by 807 KAR 5:001, Section 13(2)(a)(3).

IT IS THEREFORE ORDERED that:

1. KBCA's petition for reconsideration is granted.
2. Exhibit 2 provided in response to Staff's First Request is granted confidential treatment.
3. KBCA shall file the appropriately highlighted document within seven days of the entry of this Order.
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 an indefinite period 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. KBCA shall inform the Commission if the designated material granted confidential treatment by this Order 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, KBCA 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 KBCA 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 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 KBCA to seek a remedy afforded by law.

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PUBLIC SERVICE COMMISSION

  
\_\_\_\_\_  
Chairman

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Vice Chairman

\_\_\_\_\_  
Commissioner



ATTEST:

  
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