

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF JACKSON ENERGY)
COOPERATIVE CORPORATION FOR AN) CASE NO. 2013-00219
ADJUSTMENT OF RATES)
)

**MOTION FOR RECONSIDERATION OF
ORDER DENYING CONFIDENTIAL TREATMENT
FOR CONTRACT WITH WELLHEAD ENERGY SYSTEMS, LLC**

Jackson Energy Cooperative Corporation (“Jackson Energy”), by and through the undersigned counsel, hereby moves the Kentucky Public Service Commission (the “Commission”) for reconsideration of its order denying Jackson Energy’s motion for confidentiality for the rates it has agreed to pay to Wellhead Energy Systems, LLC (“Wellhead”) for electricity as well as the contract between the two parties. As grounds for this motion, Jackson Energy states as follows:

By letter dated June 10, 2013, Jackson Energy gave notice to the Commission of its intent to file an application for an increase in its retail electric rates.

By letter dated June 11, 2013, the Commission acknowledged receipt of the notice of intent and subsequently, the Commission filed several data requests in this case.

Jackson Energy, along with fifteen other distribution cooperatives in the Commonwealth of Kentucky, is an owner of East Kentucky Power Cooperative (“East Kentucky”), and as such, it obtains the vast majority of its power requirements from East Kentucky. However, pursuant to the terms of certain amendments to the wholesale power contract between Jackson Energy and

East Kentucky, Jackson Energy is entitled to purchase power from sources other than East Kentucky, provided that such purchases do not exceed a certain percentage of its total load.

In 2011, Jackson Energy entered into a contract for the purchase of power with Wellhead, which is a privately owned company that sells power to electric utilities that is generated by natural gas from stranded gas wells or gas pipelines. Contemporaneously with entering into that contract, Jackson Energy notified the Commission of its intent to purchase power from Wellhead.

Two of the Commission's data requests in this matter sought disclosure of the contract or certain terms of the contract between Jackson Energy and Wellhead. In response, Jackson Energy filed two motions for confidentiality. The first motion sought confidential treatment for the cost of power purchased from Wellhead in response to the Commission Staff's First Request for Information, Item 19. The second motion sought confidential treatment for the entire contract in response to the Commission's Staff's Fourth Request for Information, Item 12. However, the entirety of the contract between Jackson Energy and Wellhead was filed under seal in response to said Request for Information.

By order dated February 14, 2014, the Commission denied both requests for confidentiality. In its order, the Commission held that Jackson Energy had failed to establish that the information identified in the two motions was entitled to confidential treatment, because Jackson Energy had asserted that disclosure of the information would result in an unfair commercial advantage to competitors of Wellhead, but not necessarily to competitors of Jackson Energy. The Commission further found that since Jackson Energy sought recovery of costs associated with the Wellhead contract in its rate case, that Jackson Energy's ratepayers had a

right to know the actual costs of purchased power. For the reasons expressed below, Jackson Energy respectfully requests that the Commission reconsider its ruling in this matter.

Kentucky law, as codified in KRS 61.872 provides for the disclosure of public records. KRS 61.878 provides a number of exceptions to the so-called open records law. Among those records that are exempted from disclosure to the public are “records confidentially disclosed to an agency or required by an agency to be disclosed to it, 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(c)(1).

When analyzing KRS 61.878, Kentucky Courts generally focus on whether the need for disclosure of the records outweighs the protections instilled by the legislature in the specific exemption into which the records may fall. *See Marina Management Services, Inc. v. Commonwealth*, 906 S.W.2d 318 (Ky. 1995).

Pursuant to 807 KAR 5:001, Section 13, the Commission may deem material submitted to it to be confidential provided that the party seeking confidentiality can establish specific grounds, as stated in KRS 61.878, as to why the material should be deemed confidential.

In the case at bar, as stated on page 12 in section 11.12 of the agreement between Jackson Energy and Wellhead, a copy of which has been filed under seal with the Commission, the parties agreed to not disclose the terms of the agreement to third parties. Furthermore, prior to the execution of that agreement, Jackson Energy and Wellhead entered into a non-disclosure agreement, a copy of which is attached to this motion for review by the Commission. Pursuant to the terms of the non-disclosure agreement, Jackson Energy specifically agreed to treat as confidential pricing and other financial information that would be disclosed between the parties as set forth in paragraph (B) of the Recitals of that agreement. Given that Jackson Energy has

been contractually bound to treat as confidential the prices it pays Wellhead for electricity, Jackson Energy would respectfully submit that it has standing to request that this information be protected from disclosure.

While Jackson Energy's original motions for confidentiality stated that disclosure of the terms of the purchase power agreement would impair Wellhead's ability to negotiate with other utilities and permit an unfair commercial advantage to competitors of Wellhead, it is also true that disclosure of this information will impair Jackson Energy's ability to negotiate future contracts of a similar nature with other suppliers. If other suppliers are aware of the rate that Jackson Energy is paying Wellhead, this amount will, in effect, become a floor for future negotiations and will deprive Jackson Energy of the meaningful ability to negotiate for a rate that would be most advantageous to its members. It is vital that Jackson Energy have the ability to negotiate freely with each possible supplier for the best possible rate.

Jackson Energy certainly acknowledges the Commission's concern that a Cooperative's members have an interest in knowing the amounts paid for purchased power. However, this interest can certainly be outweighed by other considerations. This is particularly true where, as here, the amount of power being purchased from Wellhead is very small in proportion to Jackson Energy's total load.

Jackson Energy has submitted its entire contract with Wellhead, including pricing information, for review by the Commission. Given the relatively small amount of power that is purchased, Jackson Energy would respectfully submit that its interest in honoring its contract with Wellhead and its interest in being able to freely negotiate such contracts in the future outweigh the need for disclosure of this information.

WHEREFORE, Jackson Energy respectfully moves the Commission to enter an order vacating its order of February 14, 2014 and declaring as confidential the entirety of the contract between Jackson Energy and Wellhead, specifically including the prices Jackson Energy has agreed to pay for such electricity, as filed under seal in response to the Commission Staff's First Request for Information, Item 19 and the Commission Staff's Fourth Request for Information, Item 12.

Respectfully submitted by,



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INFORMATION EXCHANGE AND NON-DISCLOSURE AGREEMENT

THIS INFORMATION EXCHANGE AND NONDISCLOSURE AGREEMENT ("Agreement") is dated and effective as of July 26th, 2010 ("Effective Date"), by Jackson Energy Cooperative ("Jackson Energy Cooperative") and Wellhead Energy Systems, LLC ("Wellhead Energy Systems"), and The terms "Jackson Energy Cooperative" and "WELLHEAD ENERGY SYSTEMS LLC" include authorized consultants, agents, or other representatives, which shall be signatories of Attachment A and subject to the provisions of this Agreement. The terms "Recipient" and "Discloser" refer to Jackson Energy Cooperative or WELLHEAD ENERGY SYSTEMS LLC, as the case may be.

RECITALS

A. Jackson Energy Cooperative and WELLHEAD ENERGY SYSTEMS LLC acknowledge that it may be necessary for each of them, as Discloser, to provide to the other, as Recipient, certain information, including trade secret information and company-sensitive data, considered to be confidential, valuable and proprietary by Discloser, for the sole purpose of evaluating, discussing, and negotiating certain Purchase Power Agreements. Jackson Energy Cooperative and WELLHEAD ENERGY SYSTEMS LLC further acknowledge that no information or data disclosed under this Agreement to any Recipient for purposes of the Project may be used, disclosed, or otherwise relied upon by Recipient for any other purpose and that exchange of such information does not create any obligation by any party other than to protect the information pursuant to the terms set forth in this Agreement.

B. Such information may include, but is not limited to, technical and financial plans and information, strategic information, proposals, requests for proposals, specifications, drawings, prices, costs, customer information, procedures, proposed products, processes, business systems, software programs, techniques, services and like information of, or provided by, Discloser, its Affiliates or any of their third party suppliers, and also includes the fact that such information has been provided by the Discloser (collectively Discloser's "Information"). "Affiliates" means any company or other entity, directly or indirectly, in whole or in part controlled by, controlling or under common control with either party.

IN CONSIDERATION of the mutual promises and obligations contained herein and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Jackson Energy Cooperative and WELLHEAD ENERGY SYSTEMS LLC agree as follows:

1. Recipient will protect Information provided to Recipient by or on behalf of Discloser from any use, distribution or disclosure except as permitted herein. Recipient will use the same standard of care to protect Information as Recipient uses to protect its own similar confidential and proprietary information, but not less than a reasonable standard of care.
2. Recipient agrees to use Information solely in connection with the Project and for no other purpose. Recipient may provide Information only to Recipient's employees, affiliates, consultants, contractors, and agents who: (a) have a substantive need to know such Information in connection with the Project; (b) have been advised of the confidential and proprietary nature of such Information; and (c) have executed Attachment A hereto and personally agreed in writing to protect from unauthorized disclosure all confidential and proprietary information, of whatever source, to which they have access.
3. All Information will be provided to Recipient in written or other tangible or electronic form and must be marked with a confidential and proprietary notice. Information orally or visually provided to Recipient must be designated by Discloser as confidential and proprietary at the time of such disclosure and must be reduced to writing marked with a confidential and proprietary notice and provided to Recipient within thirty (30) calendar days after such disclosure.
4. Discloser's Information does not include:
 - a) any information publicly disclosed by Discloser;
 - b) any information Discloser in writing authorizes Recipient to disclose without restriction;
 - c) any information Recipient already lawfully knows at the time it is disclosed by Discloser, without an obligation to keep it confidential;
 - d) any information Recipient lawfully obtains from any source other than Discloser, provided that such source lawfully disclosed such information; and
 - e) any information Recipient independently develops without use of or reference to Discloser's Information.
5. If Recipient is required to provide Information to any court or government agency pursuant to written court order, subpoena, regulation or process of law, Recipient must first provide Discloser with prompt written notice of such requirement and cooperate with Discloser to appropriately protect against or limit the scope of such disclosure. To the fullest extent permitted by law, Recipient will continue to protect as confidential and proprietary all Information disclosed in response to a written court order, subpoena, regulation or process of law.
6. Recipient may make tangible or electronic copies, notes, summaries or extracts of Information only as necessary for use as authorized herein. All tangible or electronic copies, notes, summaries or extracts must be marked with the same confidential and proprietary notice as appears on the original.
7. Information remains at all times the property of Discloser. Upon Discloser's request, all or any requested portion of the Information (including, but not limited to, tangible and electronic copies, notes, summaries or extracts of any Information) will be promptly returned to Discloser or destroyed, and Recipient will provide Discloser with written certification stating that such Information has been returned or destroyed.

PRIVATE/PROPRIETARY/SECURE

No disclosure outside Jackson Energy Cooperative and WELLHEAD ENERGY SYSTEMS LLC except by written agreement of both parties.

8. Recipient will not identify Discloser, its Affiliates or any other owner of Information in any advertising, sales material, press release, public disclosure or publicity without prior written authorization by Discloser. No license under any trademark, patent, copyright, trade secret or other intellectual property right is either granted or implied by disclosure of Information to Recipient.
9. The term of this Agreement and the parties' obligations hereunder commence on the Effective Date and extend with regard to all Information indefinitely.
10. This Agreement is not a commitment by either Jackson Energy Cooperative or WELLHEAD ENERGY SYSTEMS LLC to enter into any transaction or business relationship, nor is it an inducement for either party to spend funds or resources. No such agreement will be binding unless and until stated in a writing signed by Jackson Energy Cooperative and WELLHEAD ENERGY SYSTEMS LLC.
11. Recipient acknowledges and agrees that any breach or threatened breach of this Agreement is likely to cause Discloser and its Affiliates irreparable harm for which money damages may not be an appropriate or sufficient remedy. Recipient, therefore, agrees that Discloser or its Affiliates are entitled to receive injunctive or other equitable relief to remedy or prevent any breach or threatened breach of this Agreement. Such remedy is not the exclusive remedy for any breach or threatened breach of this Agreement, but is in addition to all other rights and remedies available at law or in equity.
12. No forbearance, failure or delay in exercising any right, power or privilege is waiver thereof, nor does any single or partial exercise thereof preclude any other or future exercise thereof, or the exercise of any other right, power or privilege.
13. If and to the extent any provision of this Agreement is held invalid or unenforceable at law, such provision will be deemed stricken from the Agreement, and the remainder of the Agreement will continue in effect and be valid and enforceable to the fullest extent permitted by law.
14. This Agreement is binding upon and inures to the benefit of the parties and their heirs, executors, legal and personal representatives, successors and assigns, as the case may be.
15. This Agreement shall be governed and construed by Kentucky law, without regard to its choice of law provisions. Jurisdiction and venue for any action to enforce this Agreement shall be properly in the applicable federal or state court for Kentucky.
16. This Agreement, including Attachment A, is the entire agreement with respect to exchange of information between Jackson Energy Cooperative and WELLHEAD ENERGY SYSTEMS LLC hereunder and may not be modified or amended except by a written instrument signed by both parties. Each party has read this Agreement, understands it and agrees to be bound by its terms and conditions. There are no understandings or representations with respect to the subject matter hereof, express or implied, that are not stated herein. This Agreement may be executed in counterparts, and signatures exchanged by facsimile or other electronic means are effective for all purposes hereunder to the same extent as original signatures.

IN WITNESS WHEREOF, the parties' authorized representatives have signed this Agreement:

Jackson Energy Cooperative Corporation

Wellhead Energy Systems, LLC

By: Donald R. Schaefer
(Authorized Signature)

By: David Weddle
(Authorized Signature)

Name: Donald R. Schaefer
(Print or Type)

Name: David Weddle
(Print or Type)

Title: President & CEO

Title: CEO

PRIVATE/PROPRIETARY/SECURE

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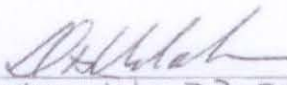
ATTACHMENT A

STATE OF Kentucky)
COUNTY OF Pulaski)

CERTIFICATE OF AUTHORIZED REVIEWING REPRESENTATIVE

BEFORE ME, the undersigned authority, duly Commissioned and qualified in and for the State and County aforesaid, personally came and appeared David Weddle, who, being by me first duly sworn, deposed and said as follows:

I certify my understanding that Confidential Information is being provided to me pursuant to the terms and restrictions of the foregoing Agreement, that I have been given a copy of and have read the Agreement, and that I agree to be bound by it. I understand that the contents of " Confidential Information," and any notes, memoranda, or any other form of information regarding or derived from Confidential Information shall not be disclosed to anyone other than in accordance with the Agreement and shall be used only for the purposes of the Project.

Signature: 

Date of Execution: July 23, 2010
(Type or Print below)

Name: David Weddle
Title: President + CEO
Company: Wellhead Energy Systems
Address: 203 North Main St
Spencer KY 42501

SWORN TO AND SUBSCRIBED BEFORE ME on this 23 day of July, 2010.


(NOTARY PUBLIC)

My Commission expires:

2/17/12

PRIVATE/PROPRIETARY/SECURE

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