

**COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION**

**IN THE MATTER OF:**

**APPLICATION OF KENERGY CORP. FOR A )  
WAIVER PURSUANT TO KRS 278.2219 ) CASE NO. 2020-00215**

**PETITION FOR ORDER ISSUING  
KENERGY CORP. & CONEXON, LLC CONFIDENTIAL PROTECTION**

1. Petitioners, **KENERGY CORP.** (“Kenergy”) and Conexon, LLC (“Conexon”) jointly petition the Kentucky Public Service Commission (“Commission”), pursuant to 807 KAR 5:001 Section 13, and KRS 61.878(1)(c), to grant confidential protection to the testimony and documents incorporated therein of Jonathan Chambers of Conexon, LLC.. The information for which Kenergy seeks confidential treatment is hereinafter referred to as the “Confidential Information.”

2. The Confidential Information is the testimony of Jonathan Chambers and the documents incorporated by reference in his testimony. Kenergy committed to Conexon that it would maintain confidentiality of Conexon’s methodology in its Fiber to Home Business plan that are stamped as “proprietary” and “confidential”.

3. One (1) copy of the paper attachments with the confidential information underscored, highlighted with transparent ink, printed on yellow paper, or otherwise marked “CONFIDENTIAL,” is being filed with this petition in a separate sealed envelope marked “CONFIDENTIAL.” A copy of those pages, with the Confidential Information

redacted, is being filed with the original and each of the 10 copies of the responses to the information requests filed with this petition. See 807 KAR 5:001 Sections 13(2)(a)(3), 13(2)(b).

4. A copy of this petition with the Confidential Information redacted has been served on all parties to this proceeding. See 807 KAR 5:001 Section 13(2)(c).

5. The Confidential Information is not publicly available, is not disseminated within Petitioners except to those employees and professionals with a legitimate business need to know and act upon the information, and is not disseminated to others without a legitimate need to know and act upon the information.

6. If and to the extent the Confidential Information becomes generally available to the public, whether through filings required by other agencies or otherwise, Petitioners will notify the Commission in writing. See 807 KAR 5:001 Section 13(10)(b).

7. As discussed below, the Confidential Information is being submitted confidentially pursuant to 807 KAR 5:001 Section 13(9)(a) and/or is entitled to confidential protection based upon KRS 61.878(1)(c)(1). 807 KAR 5:001 Section 13(2)(a)(1).

8. Conexon joins in this Petition because in 2015-00353, Kenergy's Petition for Confidentiality of a vendor's pricing was denied because that statute only protects "the entity that disclosed the records". Because companies would not want their confidential and proprietary information disclosed to their competitors, public disclosure of the Confidential Information in this case would likely reduce the pool of companies willing to consult with Kenergy, reducing Kenergy's and

other utilities' ability to secure needed consultation from experts in a particular field.

The Commission has also recognized this real danger to utilities in Kentucky. In P.S.C. Case No. 2003-00054, the Commission granted confidential protection for bids submitted to Union Light Heat & Power ("ULH&P"). ULH&P argued, and the Commission implicitly accepted, that the bidding contractors would not want their bid information publicly disclosed, and that disclosure would reduce the contractor pool available to ULH&P, which would drive up ULH&P's costs, hurting its ability to compete with other gas suppliers.<sup>1</sup> Similarly, in *Hoy v. Kentucky Indus. Revitalization Authority*, the Kentucky Supreme Court found that without protection for confidential information provided to a public agency, "companies would be reluctant to apply for investment tax credits for fear the confidentiality of financial information would be compromised." *Hoy v. Kentucky Indus. Revitalization Authority*, 907 S.W.2d 766, 769 (Ky. 1995).

Finally, it is important to note that more than one commenter to these proceedings is a competing bidder in the upcoming FCC Rural Digital Opportunity Fund auction. FCC rules restrict public disclosure of bidding plans, or information that could be used to infer the bidding plans of an RDOF

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<sup>1</sup> See *In the Matter of: Application of the Union Light, Heat and Power Company for Confidential Treatment*, P.S.C. Case No. 2003-00054, Order (August 4, 2003).

participant. As noted in prior filings, for Kenergy's protection, no information from the feasibility study should be made public until after the FCC's RDOF auction quiet period has concluded. The protection Conexon seeks is for a much longer period due to the proprietary nature of the methodology.

## **I. Information Protected by KRS 61.878(1)©(1)**

### **A. Conexon Faces Actual Competition**

8. KRS 61.878(1)(c)(1) protects "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."

9. Conexon competes in the business of consulting with entities venturing into the fiber to home market with an emphasis on rural electric cooperatives. The information sought to be protected is proprietary and if disclosed would subject Conexon to unfair competition.

10. As such, the Confidential Information is generally recognized as confidential and proprietary.

## **II. Time Period**

11. Kenergy and Conexon request that the Confidential Information contained in the attachments remain confidential for a period of five (5) years from the date of this petition, which should allow sufficient time for the projected data to become

historical and sufficiently outdated that it could not be used to determine similar confidential information at that time or to competitively disadvantage to Conexon.

**III. Conclusion**

12. Based on the foregoing, the Confidential Information is entitled to confidential protection. If the Commission disagrees that Kenergy and Conexon are entitled to confidential protection, due process requires the Commission to hold an evidentiary hearing. *Utility Regulatory Com'n v. Kentucky Water Service Co., Inc.*, 642 S.W2d 591 (Ky. App. 1982).

WHEREFORE, Kenergy respectfully requests that the Commission classify and protect as confidential the Confidential Information.

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing was served by electronic filing to the Kentucky Public Service Commission, 211 Sower Blvd., Frankfort, KY 40602 with a copy served electronically to the Kentucky Attorney General, Office of Rate Intervention, 700 Capital Avenue, Suite 20, Frankfort, KY 40601-8204, on this 18<sup>th</sup> day of September, 2020.

  
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Counsel for Kenergy Corp.