

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

**THIRD PETITION FOR ORDER ISSUING  
KENERGY CORP. & KENECT, INC. CONFIDENTIAL PROTECTION**

1. Petitioners, **KENERGY CORP.** (“Kenergy”) and Kenect, Inc. (“Kenect”) move 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 a feasibility study referenced in the testimony of Jonathan Chambers. The information for which Kenergy seeks confidential treatment is hereinafter referred to as the “Confidential Information.”

2. The Confidential Information is the feasibility study referenced in the testimony of Jonathan Chambers of Conexon which was granted confidentiality in PSC Case: 2020-00215. See Order entered October 22, 2020 and attached hereto. Kenergy and Kenect committed to Conexon that it would maintain confidentiality of Conexon’s

pending and proprietary business matters in its Planned Fiber to Home Business. The feasibility study contains proprietary information to Conexon and Kenect.

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 electronically with the Executive Director with this petition in an e-mail marked "CONFIDENTIAL." A copy of those pages, with the Confidential Information redacted, is being filed with the original. 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. Kenect joins in this Petition as the affiliate of Kenergy involved in providing broad band service through its subcontractor, Conexon. Because Kenect does

not want its confidential and proprietary information disclosed to its 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).

The protection Kenect seeks is for a much longer period due to the proprietary nature of the methodology.

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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).

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

### **A. Kenect 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. Kenect will compete in the business of providing internet services. The information sought to be protected is proprietary and if disclosed would subject Kenect to unfair competition.

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

## **II. Time Period**

11. Kenergy and Kenect request that the Confidential Information contained in the attachments remain confidential for until such time as the information becomes public.

## **III. Conclusion**

12. Based on the foregoing, the Confidential Information is entitled to confidential protection. If the Commission disagrees that Kenergy and Kenect 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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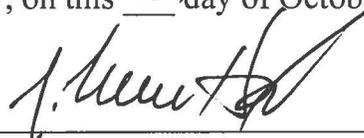
By



\_\_\_\_\_  
J. Christopher Hopgood  
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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, with a courtesy copy to James W. Gardner and M. Todd Osterloh, Sturgill, Turner, Barker & Maloney, PLLC, 333 W. Vine St., Suite 1500, Lexington, KY 40507, on this 23<sup>rd</sup> day of October, 2021.



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Counsel for Kenergy Corp.

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

ORDER

On September 18, 2020, Kenergy Corp. (Kenergy) and Conexon, LLC (Conexon) jointly 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 five years to the testimony of Jonathan Chambers (Mr. Chambers) and documents incorporated therein. The documents incorporated into Mr. Chambers's testimony are designated as "Exhibit A" and "Exhibit B" and were filed with Mr. Chambers's testimony.<sup>1</sup> The Commission notes that although the motion requests confidential treatment for Mr. Chambers's testimony as well as for Exhibits A and B, Mr. Chambers's unredacted testimony was filed into the public record of this proceeding. Therefore, the Commission concludes confidentiality is being sought for Exhibit A and Exhibit B to Jonathan Chambers's testimony. The Commission also notes that Conexon is not a party to this proceeding; therefore, it cannot petition the Commission for confidentiality.

In support of its motion, Kenergy states that the information contained in Exhibits A and B to Mr. Chambers's testimony pertains to Conexon's methodology and is considered proprietary and confidential by Conexon. Kenergy maintains that public disclosure of the

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<sup>1</sup> Testimony of Jonathon Chambers (filed Sept. 18, 2020).

information would permit an unfair advantage to Conexon's competitors. Kenergy argues that consultants, such as Conexon, would not be willing to consult with Kenergy if information they deem to be confidential and proprietary were to be publicly disclosed. In turn, Kenergy's competitors would then receive an unfair commercial advantage because the pool of experts willing to consult with Kenergy would be reduced.

Having considered the motion and the material at issue, the Commission finds that the information contained in Exhibit A and Exhibit B to Jonathan Chambers's testimony is generally recognized as confidential or proprietary; it therefore meets the criteria for confidential treatment and is exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

IT IS THEREFORE ORDERED that:

1. Kenergy's motion for confidential protection for the testimony of Jonathan Chambers and the documents incorporated therein is granted in part and denied in part.
2. Kenergy's request for confidential treatment for Exhibit A and Exhibit B to Jonathan Chambers's testimony is granted.
3. Kenergy's request for confidential treatment for Jonathan Chambers's testimony is denied.
4. The designated information contained in Exhibit A and Exhibit B to Jonathan Chambers's testimony shall not be placed in the public record or made available for public inspection for five years or until further Order of this Commission.
5. Use of the designated material granted confidential treatment by this Order in any Commission proceeding shall be in compliance with 807 KAR 5:001, Section 13(9).

6. Kenergy shall inform the Commission if the material in question 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, 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.

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 Kenergy to seek a remedy afforded by law.

9. If Kenergy objects to the Commission's determination that the requested information 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 should be granted confidential treatment.

By the Commission

ENTERED  
OCT 22 2020  
KCS  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:



Deputy Executive Director

Case No. 2020-00215

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**Case No.  
2021-00365**

**CHAMBERS FEASIBILITY STUDY  
EXHIBITS A & B FILED UNDER CONFIDENTIALITY**