

**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)
FIBER NETWORK AND FOR APPROVAL OF THE)
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)**

**Case No.
2021-00365**

**FOURTH PETITION FOR ORDER ISSUING
KENERGY CORP. and 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 information in Kenergy and Kenect’s Responses to the Data Requests of the Attorney General. The information for which Kenergy seeks confidential treatment is hereinafter referred to as the “Confidential Information.”

2. The Confidential Information is: a) Financial information provided in Data Request Response 7 that was filed under a previous Petition for Confidentiality; b) the rate of return in response to Data Request 15; and c) Conexon’s Fiber to the Home Request for Proposal document that is proprietary to Conexon. 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 financial information, rate of return and Request for Proposal document contain 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.¹ 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 informatoin.

¹ 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

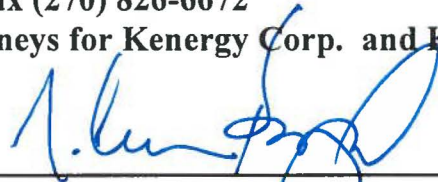
12. Based on the foregoing, the Confidential Information is entitled to confidential protection. If the Commission disagrees that Kenergy and Kenect are entitled to confidential protection, due process requires the Commission to hold an evidentiary

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.

DORSEY, GRAY, NORMENT & HOPGOOD
318 Second Street
Henderson, KY 42420
Telephone (270) 826-3965
Telefax (270) 826-6672
Attorneys for Kenergy Corp. and Kenect, Inc.

By



J. Christopher Hopgood
chopgood@dkgnlaw.com

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 2ND day of December, 2021.



Counsel for Kenergy Corp.