

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

In the Matter of:

APPLICATION OF KENERGY CORP.)	
FOR AN ADJUSTMENT OF RATES)	CASE NO. 2023-00276
AND ALL CORRESPONDING MATERIALS)	

**PETITION OF KENERGY CORP.
FOR CONFIDENTIAL TREATMENT**

Comes now **KENERGY CORP.** (“Kenergy”), by and through its counsel, and, pursuant to 807 KAR 5:001 Section 13 and KRS 61.878, hereby petitions the Public Service Commission for the Commonwealth of Kentucky (“Commission”) for an order granting confidential protection to certain information Kenergy is providing as “Exhibit 11” (Exhibit BJ-2) to the application. The information Kenergy seeks to protect as confidential is hereinafter referred to as the “Confidential Information.” As grounds for its motion, Kenergy states as follows.

The Confidential Information includes portions of the salary survey submitted as part of Blair Johanson’s testimony.

One (1) copy of the hardcopy pages containing Confidential Information, with the Confidential Information highlighted with transparent ink, printed on yellow paper, or otherwise marked “CONFIDENTIAL,” is being filed with this petition. A copy of those pages with the Confidential Information redacted is being filed with the original is being with this petition. 807 KAR 5:001 Section 13(2)(a)(3).

A copy of this petition with the Confidential Information redacted has been served on all parties to this proceeding pursuant to 807 KAR 5:001 Section 13(2)(b). A copy of the Confidential Information has been served on all parties that have signed a confidentiality agreement.

The Confidential Information is not publicly available, is not disseminated within Kenergy 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. KRS 61.878(1) exempts from public disclosure “public records containing information of a personal nature where the public disclosure would constitute a clearly unwarranted invasion of personal privacy.”

If and to the extent the Confidential Information becomes generally available to the public, whether through filings required by other agencies or otherwise, Kenergy will notify the Commission and have the information’s confidential status removed pursuant to 807 KAR 5:001 Section 13(10)(b).

I. The Confidential Information Is Entitled to Confidential Treatment Pursuant to KRS 61.878(1)(a), Protecting Information of a Personal Nature.

KRS 61.878(1)(a) protects “records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.”

The Confidential Information contained in the salary survey identifies approximately 69 specific employee positions at Kenergy in Kentucky. It also provides detailed salary information related to each of those positions.

Information falls under the exemption set forth in KRS 61.878(1)(a) if it is of a “personal nature” and if the privacy interest in that personal information outweighs the public good in making the records publicly available. *See Kentucky Bd. of Examiners of Psychologists v. Courier-Journal*, 826 S.W.2d 324, 327 (Ky. 1992). Here, the information contains extremely sensitive employment details that identify almost all compensation information associated with

numerous specific employee positions. The sensitivity of the Confidential Information is especially high here because of the labor market shortage and the ability of other employers to use this information to recruit Kenergy employees. Even without specific individual names listed, and even with employee positions listed by title instead of name, individuals knowledgeable about the electric industry in that region of Kentucky may find it easy to connect the compensation information to specific and identifiable employees. In short, the only way to adequately protect the privacy of these individuals is to protect the Confidential Information as confidential.

For these reasons, the information is of a highly personal nature, and because the details relate to private, not public, employees of cooperatives who are not the subject of this proceeding, there is little to no public interest in making these details publicly available. For these reasons, the public disclosure of this information would constitute an unwarranted invasion of personal privacy, and the Confidential Information should be afforded confidential treatment pursuant to KRS 61.878(1)(a).

II. The Confidential Information Is Entitled to Confidential Treatment Pursuant to KRS 61.878(1)(c)(1), Protecting Information of a Sensitive Commercial Nature.

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.”

As an electric distribution cooperative, Kenergy competes with other businesses (including other regulated and non-regulated electric cooperatives) for the best employees. Much of Kenergy's workforce consists of talented individuals with a deep knowledge of the

electric distribution industry; consequently, the retention of existing employees and the recruitment of qualified new employees is critically important to Kenergy. Disclosure of the Confidential Information could impede Kenergy's ability to effectively attract and retain talented employees, either by creating false expectations and pricing signals in the marketplace or by revealing potential compensation strategies of Kenergy. In either case, the exposure of this information in the public realm could make it more difficult for Kenergy to attract and retain the best possible employees.

Accordingly, Kenergy competes in the marketplace of potential employees with other businesses (including electric cooperatives), and the Confidential Information should be protected to prevent unfair competitive advantage.

III. The Confidential Information is Generally Recognized as Confidential or Proprietary.

The Confidential Information for which Kenergy seeks confidential treatment under KRS 61.878(1)(c)(1) is generally recognized as confidential or proprietary under Kentucky law.

The Confidential Information contained in the salary survey includes salary information related to numerous employee positions at multiple electric cooperatives. Kenergy reviews information of this nature in evaluating its compensation structure, including wages, salaries, and potential raises paid to its employees.

Public disclosure of the Confidential Information would reveal details of Kenergy's internal management strategies as it evaluates and plans its employee compensation structure. This type of information bears upon Kenergy's inner workings, and it is generally recognized as confidential or proprietary. *See, e.g., Hoy v. Kentucky Indus. Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995) ("It does not take a degree in finance to recognize

that such information concerning the inner workings of a corporation is ‘generally recognized as confidential or proprietary’”); *Marina Management Servs. v. Cabinet for Tourism, Dep’t of Parks*, 906 S.W.2d 318, 319 (Ky. 1995) (unfair commercial advantage arises simply from “the ability to ascertain the economic status of the entities without the hurdles systemically associated with the acquisition of such information about privately owned organizations”). In addition, the Confidential Information is subject to confidentiality obligation with third parties, a circumstance in which the Commission has repeatedly granted confidential treatment. (See Section I, *supra*.)

Accordingly, the Confidential Information should be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1).

IV. Disclosure of the Confidential Information Would Result in an Unfair Commercial Advantage to Kenergy’s Competitors.

Disclosure of the Confidential Information would grant Kenergy’s competitors in the workforce market an unfair commercial advantage. As discussed above, Kenergy faces actual competition in the market for qualified employees. Kenergy’s ability to compete in this market would be adversely affected if the Confidential Information were publicly disclosed, and Kenergy seeks protection from such competitive injury.

Publication of the Confidential Information regarding employee compensation details used by Kenergy to evaluate and plan its compensation structure could cause serious competitive repercussions, including the potential “poaching” of employees by other businesses (including other electric cooperatives) and Kenergy’s competitors. These repercussions would result in an unfair commercial advantage for Kenergy’s competitors because it would reduce Kenergy’s ability to attract and retain its workforce and properly allocate its staff. Any

departure of employees or suppression of Kenergy's ability to attract and retain new talent could cause significant harm to its operational and administrative efforts.

Accordingly, the public disclosure of the Confidential Information would provide Kenergy's competitors in the workforce marketplace with an unfair commercial advantage, and the Confidential Information should be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1).

V. Time Period

Pursuant to 807 KAR 5:001 Section 13(2)(a)(2), Kenergy requests that the Confidential Information be afforded confidential treatment in perpetuity. The information originated with third parties and reflects sensitive personal information of numerous third party individuals and companies. Unlike competitive concerns, these privacy concerns do not disappear with the passage of time. The personal information can only be adequately protected if the Confidential Information is protected in perpetuity.

VI. Conclusion

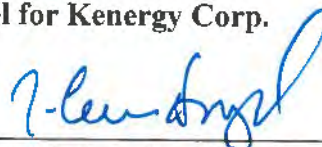
Based on the foregoing, the Confidential Information is entitled to confidential treatment pursuant to 807 KAR 5:001 Section 13 and KRS 61.878. If the Commission disagrees that Kenergy's Confidential Information is entitled to confidential treatment, due process requires the Commission to hold an evidentiary hearing. *Utility Regulatory Comm'n v. Kentucky Water Serv. Co., Inc.*, 642 S.W.2d 591 (Ky. App. 1982).

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

Respectfully submitted.

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CERTIFICATE OF SERVICE

I hereby certify that the electronic version of the foregoing and its attachments, exhibits and testimony is a true and accurate copy of the paper original and that the electronic version has been submitted to the Commission by electronic filing with the paper original retained pursuant to the electronic filing rules and further that the Attorney General of Kentucky, Office of Rate Intervention, 1024 Capital Center Drive, Frankfort, Kentucky 40601, has been notified by electronic mail of the availability of this filing on the Commission's website. on this 24th day of October, 2023.



J. Christopher Hopgood