

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

In the Matter of:

**ELECTRONIC APPLICATION OF KENERGY CORP.)
FOR AN ADJUSTMENT OF RATES) CASE NO. 2023-00276**

**PETITION FOR ORDER ISSUING
KENERGY CORP. CONFIDENTIAL PROTECTION AS TO CERTAIN RESPONSES
TO THE ATTORNEY GENERAL'S DATA REQUESTS**

1. **KENERGY CORP.** (Kenergy") hereby petitions 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 certain information Kenergy is filing with its responses to the Attorney General's ("AG") Initial Data Requests for Information. The information for which Kenergy seeks confidential treatment is hereinafter referred to as the "Confidential Information."

2. The Confidential Information includes responses to Item 25(i), (k), (l), (n) & (o) of the AG's Initial Requests for Information. Vendors customarily expect that bids and proposals are confidential. The pricing by vendors is proprietary to those vendors and Kenergy's ability to solicit bids in the future would be compromised if Kenergy were unable to keep confidential the proprietary information provided. Allowing this information to be public and available to competing vendors, "would give them

substantially more than a trivial unfair advantage.” *Southeastern United Medigroup v. Hughes*, 952 S.W.2d 195 (Ky. 1997).

Kenergy proposes to keep confidential the entire vendor contracts and bid proposals as the pricing information in the contract is the only relevant information responsive to the request, and filing the unredacted irrelevant portions of the contracts and bid documents serves no purpose.

Kenergy also proposes to keep confidential the Response to Item 59 regarding Kenergy employees’ salaries, raises and bonuses. The Commission granted Kenergy’s Petition for Confidentiality on salary matters in its Order of October 31, 2023, and Kenergy submits that the same reasoning applies to the Responses to Item 59.

Finally, Kenergy also seeks confidential protection for Item 24, a request for information about regional bidding and steps to limit vegetation management contract costs. Filed with this Petition is a study by Big Rivers Electric Corporation (“Big Rivers”) to explore the concept of shared costs by Big Rivers of a conceptual vegetation management program for the member owners of Big Rivers. For the same reasons as stated above about proprietary information among outside vegetation management contractors, a cost analysis of a conceptual shared cost vegetation management program would provide Kenergy’s proprietary information to the public. This could be used by future vegetation management contractors to Kenergy’s detriment.

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 submitted to the Executive Director with this petition by email.

4. A copy of this petition without the Confidential Information 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 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.

6. 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 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 KSR 61.878(1)(c)(1). 807 KAR 5:001 Section 13(2)(a)(1).

I. Information Protected by KRS 61.878(1)(c)(I)

A. Kenergy’s Vendors Face 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. Kenergy’s vendors compete in the vegetation management market. The information sought to be protected is proprietary and if disclosed would subject the vendor to unfair competition and would hamper Kenergy’s ability to obtain competitive bids.

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

II. Time Period

11. Kenergy requests that the Confidential Information 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 that time or to competitively disadvantage to Kenergy’s vendors.

III. Conclusion

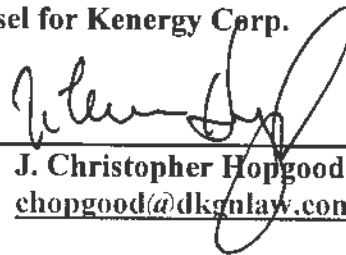
12. Based on the foregoing, the Confidential Information is entitled to confidential protection. If the Commission disagrees that Kenergy is entitled to confidential protection, due process requires the Commission to hold an evidentiary

hearing. *Utility Regulatory Com'n v. Kentucky Water Service Co., Inc.*, 642 S.W.2d 591 (Ky. App. 1982).

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

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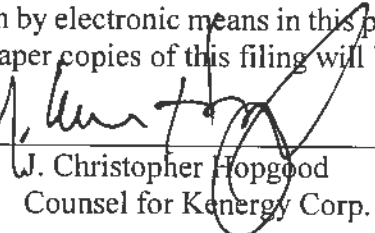
By



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CERTIFICATE OF SERVICE

I hereby certify that the foregoing electronic filing was transmitted to the Kentucky Public Service Commission for filing on November 14, 2023; that same was electronically sent to Michael West, MICHAEL.WEST@KY.GOV; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding by virtue of the Commission's Order of 2020-00085, no paper copies of this filing will be made.



J. Christopher Hopgood
Counsel for Kenergy Corp.