

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE ELECTRONIC APPLICATION OF)	
JACKSON PURCHASE ENERGY CORPORATION)	CASE NO.
FOR A GENERAL ADJUSTMENT OF RATES)	2024-00085

MOTION FOR CONFIDENTIAL TREATMENT

Comes now Jackson Purchase Energy Corporation (“Jackson Purchase”), by counsel, pursuant to KRS 61.878, 807 KAR 5:001 Section 13, and other applicable law, and respectfully moves the Commission to afford confidential treatment to certain information and documents filed by Jackson Purchase in response to the requests for information propounded by Commission Staff in the above-styled matter. In support of this request, Jackson Purchase states as follows:

1. On April 1, 2024, Jackson Purchase filed its Notice of Intent to file a general adjustment of rates and filed its Application on May 1, 2024. Prior to filing the Application, Commission Staff issued its First Request for Information (“Staff’s First Requests”) to Jackson Purchase on April 12, 2024. Jackson Purchase filed its responses on May 14, 2024.

2. On May 28, 2024, Commission Staff issued its Second Request for Information (“Staff’s Second Requests”) and on May 29, 2024, the Attorney General’s Office issued its First Request for Information (AG’s First Requests”). Jackson Purchase is filing responses to Staff’s Second Requests and the AG’s First Requests contemporaneously with this Motion.

3. Jackson Purchase requests the Commission to afford confidential protection to certain information being filed by Jackson Purchase in response to the Attorney General’s First

Request, Item 26d and Item 28e. The information provided is proprietary, confidential, sensitive, and commercially valuable information. This information is collectively referred to as the “Confidential Information.” The Response to the Attorney General’s First Request, Item 26d requested bids for third-party right-of-way (“ROW) management contract. The response to the Attorney General’s First Request, Item 28e contains the Key Ratio Trend Analysis (“KRTA”) compiled by Cooperative Financial Corporation (“CFC”). The Confidential Information if disclosed would permit Jackson Purchase’s competitors an unfair commercial advantage. The Confidential Information also contains information pertaining to information subject to copyright laws, which the Commission has granted confidential treatment to in prior Commission proceedings.¹

4. KRS 61.878(1)(c)(1) allows conditional protection of records that are generally recognized as confidential or proprietary, and if disclosed would permit an unfair commercial advantage to competitors of the disclosing party.

5. Jackson Purchase operates in a competitive environment especially with regards to obtaining contractors to perform right-of-way management. The Confidential Information is generally recognized as confidential or proprietary and public disclosure of the Confidential Information would permit an unfair commercial advantage to Jackson Purchase’s competitors. See KRS 61.878(1)(c).

6. Jackson Purchase is providing KRTA compiled by CFC which is subject to copyright law. CFC has the right to rely on its copyright to protect against the public disclosure of the information. Release of the KRTA could put Jackson Purchase in the position to be accused

¹ See, Case No. 2021-00358, *Electronic Application of Jackson Purchase Corporation for a General Adjustment of Rates and Other General Relief* (Ky. P.S.C. Dec. 9, 2021, Order at 2, granting confidential treatment to a KRTA and citing Case No. 2018-00358, *Electronic Application of Kentucky American Water Company for an Adjustment of Rates* (Ky. P.S.C. Mar. 14, 2019), Order at 2.

of violating CFC's copyright. This could also hinder Jackson Purchase in being granted access to the information in the future. Both the right-of-way bids and the KRTA should be kept confidential in their entirety. Releasing the Confidential Information to the public would unfairly harm Jackson Purchase and its competitive position in the marketplace, not to mention the violation of copyright law.

7. The information provided in response to Items 26d and 28e of the Attorney General's First Request clearly contain private information and is commercially valuable. The Confidential Information is proprietary information that is retained by Jackson Purchase on a "need-to-know" basis and is only distributed by Jackson Purchase only to those holding select positions who must have access for business reasons, and it is generally recognized as confidential and proprietary in the utility industry and elsewhere.

8. The Kentucky Open Records Act and applicable precedent exempts the Confidential Information from disclosure, including KRS 61.878(1)(a); KRS 61.878(1)(c)(1); *Zink v. Department of Workers Claims, Labor Cabinet*, 902 S.W.2d 825 (Ky. App. 1994); *Hoy v. Kentucky Industrial Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995). As stated above, the public disclosure of the Confidential Information would potentially harm Jackson Purchase's competitive position in the marketplace which would be to the detriment of both Jackson Purchase and its end-use members. Additionally, the Confidential Information is publicly unavailable and its confidentiality is critical to Jackson Purchase's effective execution of business decisions and strategy. For these reasons, the Confidential Information satisfies both the statutory and common law standards for affording confidential treatment.

9. Jackson Purchase does not object to limited disclosure of the Confidential Information described herein, pursuant to a confidentiality agreement, to intervenors with a legitimate interest in reviewing the same for the sole purpose of participating in this case.

10. Because the Confidential Information is so pervasive and it is not practical for Jackson Purchase to redact the response because virtually every portion of the documents contains personal, proprietary, and confidential information. Jackson Purchase is requesting confidential protection for the entirety of the documents pursuant to 807 KAR 5:001, Section 13(2)(a)3.b. For that reason, a redacted version of the Confidential Information is not being filed. In accordance with the provisions of 807 KAR 5:001, Section 13(2), Jackson Purchase is filing one copy of the Confidential Information separately under seal, without highlights since confidential protection for the entire document is being sought. The filing of the Confidential Information is noted in the public version of Jackson Purchase's responses to Item 26d and Item 28e.

11. Also, in accordance with the provisions of 807 KAR 5:001 Section 13(2), Jackson Purchase respectfully requests that the Confidential Information be withheld from public disclosure for a period of ten (10) years. However, Jackson Purchase reserves the right to extend this timeframe if necessary.

12. If, and to the extent, the Confidential Information becomes publicly available or otherwise no longer warrants confidential treatment, Jackson Purchase will notify the Commission and seek to have confidential protection removed, pursuant to 807 KAR 5:001 Section 13(10).

WHEREFORE, on the basis of the foregoing, Jackson Purchase respectfully requests that the Commission classify and protect as confidential the specific Confidential Information described herein for a period of ten (10) years.

Dated this 12^h day of June, 2024.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that the electronic filing was transmitted to the Commission on June 12, 2024, and that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding. Pursuant to the Commission's July 22, 2021 Order in Case No. 2020-00085 no paper copies of this filing will be made.

Heather S. Temple

Counsel for Jackson Purchase