

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.¹ 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

¹ 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



ATTEST:



Deputy Executive Director

Case No. 2020-00215

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