

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF KENERGY	)	CASE NO.
CORP. FOR A GENERAL ADJUSTMENT OF	)	2023-00276
RATES	)	

ORDER

On December 13, 2023, Kenergy Corp. (Kenergy) filed an amended petition,<sup>1</sup> pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential protection for five years for certain responses to the Attorney General's First Request for Information.

LEGAL STANDARD

The Commission is a public agency subject to Kentucky's Open Records Act, which requires that all public records "be open for inspection by any person, except as otherwise provided by KRS 61.870 to 61.884."<sup>2</sup> Exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.<sup>3</sup> The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.<sup>4</sup> KRS 61.878(1)(a) provides an exception that

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<sup>1</sup> On November 13, 2023, Kenergy originally filed a petition seeking confidential treatment for certain response to the Office of Rate Intervention's (Attorney General) First Request for Information (Attorney General's First Request). By Order dated December 4, 2023, the Commission ordered Kenergy to refile its responses to provide clarity in the labeling and argument of each item.

<sup>2</sup>KRS 61.872(1).

<sup>3</sup> See KRS 61.871.

<sup>4</sup> 807 KAR 5:001, Section 13(2)(c).

“[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.” KRS 61.878(1)(c)(1) provides an exception to the requirement for public disclosure of records that are “generally recognized as confidential and proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.

### DISCUSSION AND FINDINGS

In support of its petition, Kenergy argued that its responses to the Attorney General’s First Request, Items 24, 25(i), 25(o) and 59 (a)-(j) should be afforded confidential treatment under KRS 61.878(1)(c)(1). Kenergy’s response to the Attorney General’s First Request, Item 24 contained a vegetation management analysis. Kenergy argued that the analysis contained proprietary and internal information that could be used to put Kenergy at a competitive disadvantage in bid formulation with vegetation management contractors.<sup>5</sup>

Kenergy’s response to the Attorney General’s First Request, Item 25(i) contained bid pricing for all circuit miles trimmed in 2022 and 2023 and included documents from unsuccessful bidders.<sup>6</sup> Kenergy stated that it desired to keep confidential the entire bid package received from each unsuccessful bidder.<sup>7</sup> Kenergy argued that, if this

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<sup>5</sup> Kenergy’s Amended Petition for Order Issuing Kenergy Corp. Confidential Protection as to Certain Responses to the Attorney General’s Data Requests (Kenergy’s Amended Petition) (filed Dec. 13, 2023) at 1.

<sup>6</sup> Kenergy’s Amended Petition at 2.

<sup>7</sup> Kenergy’s Amended Petition at 2.

information were disclosed, Kenergy would be a disadvantage in obtaining competitive bids.<sup>8</sup>

Kenergy's response to the Attorney General's First Request, Item 25(o) contained bid comparisons. Kenergy stated that these were documents prepared to compare right of way (ROW) bidders and recommend a winning bid, and these documents disclosed unsuccessful bids.<sup>9</sup> Kenergy argued that allowing all the bids to be public would put Kenergy at a disadvantage in future bids.<sup>10</sup>

Kenergy's response to Attorney General's First Request, Item 59 contained the following items: (1) Item 59(a)- Kenergy's employees' salaries, raises, and bonuses from 2013-2023; (2) Item 59(b)- percentage increase of average raise for salaried employees received and whether it is connected to performance review; (3) Item 59(c)- average bonus that each salaried employee received; (4) Item 59(d)- all awards carrying monetary value given to salaried employees; (5) Item 59(e)- vehicle allowance for salaried employees; (6) Item 59(f)- non-employee specific incentive compensation; (7) 59(g)- average raise to be given to salaried employees that have not been determined yet; (8) Item 59(h)- detailed explanation of insurance benefits, including premiums paid; (9) , Item 59(i)- explanation of retirement benefits with no employee-specific information; (10) Item 59(j)-statement on salaried employees and unions. Kenergy argued that the Commission granted Kenergy's petition for confidentiality on salary matters in its Order of October 31,

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<sup>8</sup> Kenergy's Amended Petition at 2.

<sup>9</sup> Kenergy's Amended Petition at 2

<sup>10</sup> Kenergy's Amended Petition at 2.

2023, and Kenergy submitted that the same reasoning applies to its response to Item 59.<sup>11</sup>

Having considered the petition and the material at issue, the Commission finds that Kenergy's petition should be granted, in part, and denied, in part. The Commission finds that the designated material contained in Kenergy's responses to the Attorney General's First Request, Item 24 and Item 25(i) are records that meet the criteria for confidential treatment and should be exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13.

The Commission further finds that Kenergy's response to the Attorney General's First Request, Item 25(o), Item 59(a), and Item 59(c) should be granted, in part, and denied, in part. The Commission finds that the non-winning bids contained in Item 25(o) are records that meet the criteria for confidential treatment and should be exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13. However, the Commission finds that the winning bids contained in Item 25(o) should be denied. The Commission has previously held that bids that were not selected should be granted confidential treatment, but that winning bids should be denied based on the principles of transparency.<sup>12</sup> Therefore, Kenergy's response to the Attorney General's First Request, Item 25(o) for the winning bids do not meet the criteria for confidential treatment and should not be exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13.

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<sup>11</sup> Kenergy's Amended Petition at 2.

<sup>12</sup> See Case No. 2022- 00341, *Electronic Application of Delta Natural Gas Co., Inc. for Its Pipe Replacement Filing*, (Ky PSC Feb. 17, 2023) ,Order; Case No. 2023-00147, *Electronic Application of Taylor County Rural Electric Cooperative Corporation for a General Adjustment of Rates* (Ky PSC October 20, 2023), Order at 2-3.

The Commission finds that Kenergy's response to the Attorney General's First Request, Items 59(a) and 59(c) for all non-executive compensation information should be exempted from public disclosure pursuant to KRS 61.878(1)(a) and 807 KAR 5:001, Section 13. However, the Commission finds that all compensation information related to executive employees, including bonuses to executive officers, should be denied. The Commission has previously found that compensation information for executive employees should not be afforded confidential treatment.<sup>13</sup> While Kenergy cites to the October 31, 2023 Order, that Order is differentiated from Kenergy's request because it was a wage and salary study which would generally be given confidential treatment as a

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<sup>13</sup> The Commission has a long precedent of not granting confidential treatment for executive compensation. See Case No. 2012-00221, *Application of Kentucky Utilities Company for an Adjustment of its Electric Rates* (Ky. PSC Sept. 11, 2013); Case No. 2014-00371, *Application of Kentucky Utilities Company for an Adjustment of its Electric Rates* (Ky PSC Jan 20, 2016); Case No. 2015-00418, *Application of Kentucky-American Water Company for an Adjustment of Rates* (Ky PSC Aug. 31, 2016); Case No. 2017-00321, *Electronic Application of Duke Energy Kentucky, Inc. For: 1) An Adjustment of the Electric Rates; 2) Approval of an Environment Compliance Plan and Surcharge Mechanism; 3) Approval of New Tariffs; 4) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; and 5) All other Required Approvals and Relief* (Ky. PSC June 12, 2018); Case No. 2018-00294, *Electronic Application of Kentucky Utilities Company for an Adjustment of its Electric Rates* (Ky. PSC Oct. 8, 2019); Case No. 2018-00295, *Electronic Application of Louisville Gas and Electric Company for an Adjustment of its Electric and Gas Rates* (Ky. PSC Oct. 8, 2019); Case No. 2019-00268, *Application of Knott County Water and Sewer District for an Alternative Rate Adjustment* (Ky. PSC Dec. 3, 2019); Case No. 2019-00271, *Electronic Application of Duke Energy Kentucky, Inc. for 1) An Adjustment of the Electric Rates; 2) Approval of New Tariffs; 3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; and 4) All other Required Approvals and Relief* (Ky. PSC May 4, 2020); Case No. 2020-00290, *Electronic Application of Bluegrass Water Utility Operating Company, LLC for an Adjustment of Rates and Approval of Construction* (Ky. PSC Dec. 27, 2021); Case No. 2020-00349, *Electronic Application of Kentucky Utilities Company for an Adjustment of Electric Rates, a Certificate of Public Convenience and Necessity to Deploy Advanced Metering Infrastructure, Approval of Certain Regulatory and Accounting Treatments, and Establishment of a One-Year Subcredit* (Ky. PSC Dec. 7, 2021); Case No. 2020-00350, *Electronic Application of Louisville Gas and Electric Company for an Adjustment of its Electric and Gas Rates, a Certificate of Public Convenience and Necessity to Deploy Advanced Metering Infrastructure, Approval of Certain Regulatory and Accounting Treatments, and Establishment of One-Year Surcredit* (Ky. PSC Dec. 7, 2021); Case No. 2021-00183, *Electronic Application of Columbia Gas of Kentucky, Inc. for an Adjustment of Rates; Approval of Depreciation Study; Approval of Tariff Revision; Issuance of a Certificate of Public Convenience and Necessity; and Other Relief* (Ky. PSC Oct. 5, 2021); Case No. 2021-00185, *Electric Application of Delta Natural Gas Company, Inc. for an Adjustment of its Rates and a Certificate of Public Convenience and Necessity* (Ky. PSC Dec. 8, 2021).

third party proprietary document pursuant to KRS 61.878(1)(c)(1). Also of note, is that Kenergy did not ask for confidential treatment under KRS 61.878(1)(a).

The Commission further finds that the request for confidential treatment should be denied for Kenergy's response to the Attorney General's First Request, Items 59(b) and 59(d)-(j). Kenergy filed these items publicly into the record in response to the Attorney General's First Request, Item 59. Furthermore, while Kenergy makes general arguments for why Kenergy's response to the Attorney General's First Request, Item 59 should be granted confidential treatment, Kenergy did not make any specific arguments as to why such items should be confidential. Therefore, these items do not meet the criteria for confidential treatment and should not be exempted from public disclosure pursuant to KRS 61.878 (1)(c)(1) and (1)(a) and 807 KAR 5:001, Section 13.

IT IS THEREFORE ORDERED that:

1. Kenergy's December 13, 2023 petition for confidential treatment for certain responses to the Attorney General's First Request is granted, in part, and denied, in part.
2. Kenergy's December 13, 2023 petition for confidential treatment for Kenergy's response to the Attorney General's First Request, Item 24, Item 25(i), and non-executive compensation information in Item 59(a) and (c) is granted.
3. Kenergy's December 13, 2023 petition for confidential treatment for Kenergy's response to the Attorney General's First Request, winning bids contained in Item 25(o); executive compensation information in Items 59(a) and (c); and Items 59(b) and 59(d)-(j) is denied.

4. The designated material granted confidential treatment by this Order 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 comply with 807 KAR 5:001, Section 13(9).

6. If the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment, Kenergy shall inform the Commission and file with the Commission an unredacted copy of the designated material.

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 for which confidential treatment was granted 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. The designated material denied confidential treatment by this Order is not exempt from public disclosure and shall be placed in the public record and made available for public inspection.

10. If Kenergy objects to the Commission's determination that the requested material 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 shall be granted confidential treatment.

11. Within 30 days of the date of service of this Order, Kenergy shall file a revised version of the designated material for which confidential treatment was denied, reflecting as unredacted the information that has been denied confidential treatment.

12. The designated material for which Kenergy's request for confidential treatment has been denied shall neither be placed in the public record nor made available for inspection for 30 days from the date of service of this Order to allow Kenergy to seek a remedy afforded by law.

PUBLIC SERVICE COMMISSION

  
\_\_\_\_\_  
Chairman

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Vice Chairman

  
\_\_\_\_\_  
Commissioner

ATTEST:

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\_\_\_\_\_  
Executive Director



Case No. 2023-00276

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