

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION FOR AN	)	
ALTERNATIVE RATE ADJUSTMENT FOR	)	CASE NO.
JACKSON ENERGY COOPERATIVE PURSUANT	)	2024-00324
TO 807 KAR 5:078	)	

ORDER

On January 29, 2025, Jackson Energy Cooperative (Jackson Energy) filed a motion,<sup>1</sup> pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(a) and KRS 61.878(1)(c)(1), requesting that the Commission grant confidential protection for ten years for information provided in response to the Attorney General's First Request for Information Item 5(a), Items 5(d)-(f), Item 6(a), Items 6(d)-(f), Item 7(a), Items 7(d)-(f), and Item 9 under KRS 61.878(1)(a) and KRS 61.878(1)(c)(1).<sup>2</sup>

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>3</sup> Exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.<sup>4</sup> The party requesting that materials be treated confidentially has the burden of establishing

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<sup>1</sup> Jackson Energy's Motion for Confidential Treatment (filed Jan. 29, 2025).

<sup>2</sup> Jackson Energy's Motion for Confidential Treatment.

<sup>3</sup> KRS 61.872(1).

<sup>4</sup> See KRS 61.871.

that one of the exceptions is applicable.<sup>5</sup> KRS 61.878(1)(a) provides an exception that “[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.”<sup>6</sup> 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.”<sup>7</sup>

### DISCUSSION AND FINDINGS

In response to the Attorney General’s First Request, Item 5(a), Items 5(d)-(f); Item 6(a), Items 6(d)-(f); Item 7(a), Items 7(d)-(f), Jackson Energy provided a spreadsheet that contained employee compensation information by job title without individual names for the years 2014-2024. Jackson Energy argued that the requested information and documents sought the disclosure of compensation information for individuals employed by Jackson Energy.<sup>8</sup> Jackson Energy argued that providing titles for these positions, even without providing names, would identify the employees and constitute an unwarranted invasion of privacy.<sup>9</sup> Additionally, Jackson Energy argued that public disclosure of this information would unfairly harm Jackson Energy’s ability to hire and

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

<sup>6</sup> KRS 61.878(1)(a).

<sup>7</sup> KRS 61.878(1)(c)(1).

<sup>8</sup> Jackson Energy’s Motion for Confidential Treatment at 2.

<sup>9</sup> Jackson Energy’s Motion for Confidential Treatment at 2.

retain employees, since it must compete with other employers to hire and retain employees.<sup>10</sup>

In response to the Attorney General's Request Item 9, Jackson Energy provided a wage and salary study compiled by third-party consultants, Performance Pro and Compease.<sup>11</sup> Jackson Energy maintained that the wage and salary studies provided are confidential and proprietary in nature and would likewise result in the disclosure of information that is personal and maintained in confidence by Jackson Energy.<sup>12</sup>

Having considered the motion and the material at issue, the Commission finds that Jackson Energy's motion is granted, in part, and denied, in part. Confidential treatment is denied for information supplied in response to Attorney General's First Request, Item 5(a), Items 5(d)-(f) for information related to executive employee compensation. The Commission has previously found that any privacy interest executive officers may seek in their compensation data is outweighed by the public's interest in executive compensation recovered in base rates.<sup>13</sup> The Commission has previously held that executive salaries are not entitled to confidential protection because of the public interest in disclosure.<sup>14</sup> Therefore, this information does not meet the criteria for confidential

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<sup>10</sup> Jackson Energy's Motion for Confidential Treatment at 2.

<sup>11</sup> Jackson Energy's Response to the Attorney General's First Request for Information, Item 9.

<sup>12</sup> Jackson Energy's Motion for Confidential Treatment at 2.

<sup>13</sup> Case No. 2021-00407 *Electronic Application of South Kentucky Rural Electric Cooperative Corporation for a General Adjustment of Rates, Approval of Depreciation Study, and Other General Relief* (Ky. PSC Mar. 28, 2022), Order at 5.

<sup>14</sup> 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).

treatment and is not exempt from public disclosure pursuant to KRS 61.878(1)(a) and 807 KAR 5:001, Section 13. Additionally, confidential treatment is denied for Items 6(d)-(f) and Items 7(d)-(e) as the documents provided contain employee awards, vehicle allowances, incentive compensation, raises and bonus information; however, they do not contain employee specific information and therefore, not entitled to confidential treatment pursuant to KRS 61.878(1)(a) and 807 KAR 5:001, Section 13.

The Commission finds that Jackson Energy's responses to the Attorney General's First Request Item 6(a) and 7(a) contain the title and position of non-executive salary and non-salary employees and should be granted confidential treatment pursuant to KRS 61.878(1)(a). The Commission has previously granted confidential treatment for entire documents containing non-executive employee salary or wage information.<sup>15</sup> Confidential treatment prevents the possibility that employee identities could be matched to their salaries.

The Commission finds that Jackson Energy's response to the Attorney General's First Request, Item 9, should be granted confidential treatment pursuant to KRS 61.878(1)(c)(1) as the response contains a Compease slideshow, a chart of performance review, job evaluation, and salary ranges created by a third-party consultant. The Commission has previously found that similar wage and salary studies warranted confidential treatment.<sup>16</sup> The Commission finds that the documents provided in response

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<sup>15</sup> Case No. 2020-00160, *Electronic Application of Water Service Corporation of Kentucky for a General Adjustment in Existing Rates* (Ky. PSC Dec. 22, 2020), Order at 2.

<sup>16</sup> Case No. 2023-00147, *Electronic Application of Taylor County Rural Electric Cooperative Corporation for a General Adjustment of Rates* (Ky. PSC Sept. 20, 2023), Order; Case No. 2024-00085, *Electronic Application of Jackson Purchase Energy Corporation for a General Adjustment of Rates and Other General Relief* (Ky. PSC Jun. 21, 2024), Order.

to the Attorney General's First Request, Item 9, are granted confidential treatment because the documents contain proprietary industry data, and public disclosure could jeopardize Jackson Energy's ability to obtain this type of information from third parties in the future and might represent a copyright violation.<sup>17</sup> The release of the wage and salary study would also be detrimental to Jackson Energy's future compensation negotiations with employees and could be used by competitors to compete for employees.

IT IS THEREFORE ORDERED that:

1. Jackson Energy's January 29, 2025 motion for confidential treatment for the designated material is granted, in part, and denied, in part.
2. Jackson Energy's January 29, 2025 motion for confidential treatment for the information provided in response to the Attorney General's First Request, Item 5(a), Items 5(d)-(f), Items 6(d)-(f), Items 7(d)-(e) is denied.
3. Jackson Energy's January 29, 2025 motion for confidential treatment for the information provided in response to the Attorney General's First Request, Item 6(a), Item 7(a), and Item 9 is granted.
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 ten years or until further Order of this Commission.
5. If the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment, Jackson

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<sup>17</sup> See Case No. 2021-00358, *Electronic Application of Jackson Purchase Energy Corporation for a General Adjustment of Rates and Other General Relief* (Ky. PSC Dec. 9, 2021), Order at 2.

Energy shall inform the Commission and file an unredacted copy of the designated material with the Commission.

6. 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, Jackson Energy 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 Jackson Energy is unable to make such demonstration, the requested material shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

7. 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.

8. Within 30 days of the date of service of this Order, Jackson Energy 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.

9. If Jackson Energy 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.

10. 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 Jackson Energy to seek a remedy afforded by law.

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PUBLIC SERVICE COMMISSION

  
Chairman

Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director



Case No. 2024-00324



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