

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ALTERNATIVE RATE FILING OF HILLRIDGE) CASE NO. 2010-00426
FACILITIES, INC.)

ORDER

Hillridge Facilities, Inc. (“Hillridge Facilities”) has petitioned for confidential treatment of its response to Commission Staff’s First Request for Information. The response in question consists of invoices for routine maintenance services that Hillridge Facilities received in 2010. Hillridge Facilities contends that the information in question constitutes a trade secret, the disclosure of which would result in serious competitive harm. Finding that the information in question does not fall within an exception to the Kentucky Open Records Law, we deny the petition.

Hillridge Facilities, a Kentucky corporation organized under KRS Chapter 271B, is a utility subject to Commission jurisdiction. It provides sewer collection and treatment services to 720 customers who reside in the Hillridge, Hillridge East, Kirby Lane, Watterson Trail, and Bristol Oak Subdivisions of Jefferson County, Kentucky. Hillridge Facilities has applied to the Commission for authority to increase its monthly rate and to assess a monthly surcharge. If approved by the Commission, the proposed monthly rate and surcharge would effectively increase customer bills by 81.1 percent.

As part of its review of Hillridge Facilities’ application, Commission Staff requested that Hillridge Facilities “[l]ist and provide invoices for each expense related to

Routine Maintenance Fees for 2010.”¹ Hillridge provided the requested information but sought confidential treatment. It asserted that the invoices contained proprietary information that would aid its competitors. The information, Hillridge Facilities asserted, contained specific amounts relating to its costs and operations and constituted a trade secret because it was not publicly available and would cause substantial competitive harm if released. More specifically, it noted its negotiations with Louisville-Jefferson County Metropolitan Sewer District (“MSD”) for the sale of its facilities and the potential adverse effects on its negotiation position if the material were publicly available.

Contending that the materials in question were not recognized as confidential or proprietary, the Attorney General (“AG”) opposed the motion. He noted that all financial materials that utilities are required to submit in a rate proceeding generally contain specific information about a utility’s costs and operation and that Hillridge Facilities had previously disclosed such information as part of its application. Finally, he noted that MSD and Hillridge Facilities are not competitors. MSD does not compete with Hillridge Facilities, he asserted, but rather “looms as a potential initiator of an eminent domain proceeding.”²

On February 14, 2011, the Commission’s Executive Director³ denied the request for confidential treatment. In his letter denying the request, the Executive Director found that Hillridge Facilities had failed to meet the criteria for confidential treatment. He

¹ Commission Staff’s First Information Request to Hillridge Facilities, Inc., Item 4 (issued Jan. 11, 2011).

² AG’s Response to and Request for Denial of Applicant’s Petition for Confidential Treatment (filed Feb. 8, 2011) at 2.

³ The Executor Director is the official custodian of all records that are filed with the Commission. See KRS 278.100.

found no basis for Hillridge Facilities' contention of competitive harm as "no competition exists" and further found that the materials in question were not trade secrets as they involved only the normal operations of a utility plant.

On March 7, 2011, Hillridge Facilities petitioned the Commission for confidential treatment of the materials in question.⁴ It reiterated its earlier arguments that MSD was a competitor of Hillridge Facilities and was seeking to acquire its facilities. In the alternative to confidential treatment of the information, Hillridge Facilities requested an Order restricting all parties' use of the information in question to preparation for and prosecution of this case.

On March 17, 2011, MSD filed its response with the Commission in opposition to Hillridge Facilities' petition. It denied being a competitor of Hillridge Facilities and any intention of operating or occupying any facility that Hillridge Facilities owned. It further contended that it already possessed the authority to access the records in question based upon its powers under KRS Chapter 76.

The burden of proof in this matter falls upon the party requesting confidential treatment.⁵ It must demonstrate that the material in question falls within an exception to the Kentucky Open Records Law.⁶

Based upon our review of the motion and the responses of MSD and the AG, we find that Hillridge Facilities has failed to demonstrate that the materials in question fall

⁴ Although Hillridge Facilities has styled its pleading as a "Motion for Reconsideration of the Commission's Denial of its Petition for Confidential Treatment," we consider the motion as an initial petition since we have not formally addressed the matter.

⁵ 807 KAR 5:001, Section 7(2)(d).

⁶ *Id.* See also KRS 61.878.


within an exception to the Kentucky Open Records Law. We agree with MSD and the AG that no competitive harm will occur as a result of the documents being available for public inspection. Hillridge Facilities is currently the only provider of sewer service in its service area. MSD is not a competitor. It does not currently provide service to those in Hillridge Facilities' service area. Should MSD move to acquire the facilities of Hillridge Facilities or otherwise direct the wastewater flows that are currently treated by Hillridge Facilities, it will be acting not as a competitor but in accordance with its statutory and regulatory duties as a regional wastewater facility.

Moreover, our review of the materials in question fails to demonstrate that they contain any trade secrets. Hillridge Facilities has already provided copies of similar invoices without seeking confidential treatment. The totals of these individual expenditures are already part of the public record as they are reflected in the utility's annual report which is on file with the Commission and available for public inspection. These invoices represent minor and typical repair work that most sewer utilities will experience.

Having carefully reviewed the materials and considered the motion and responses thereto, the Commission HEREBY ORDERS that:

1. Hillridge Facilities' petition for confidential treatment is denied.
2. The material in question shall not be placed in the public record for twenty days following the date of this Order to permit Hillridge Facilities to seek any remedy afforded by law.

By the Commission

ENTERED 
APR 28 2011
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



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