

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF	)	
COMMERCIAL PROPANE SERVICE, LLC	)	CASE NO.
D/B/A BRIGHT'S PROPANE SERVICE, INC.	)	2017-00343
FOR AN ALTERNATIVE RATE ADJUSTMENT	)	

ORDER

On December 5, 2017, Commercial Propane Service, LLC d/b/a Bright's Propane Service, Inc. ("Bright's Propane"), filed a petition, pursuant to KRS 61.878(1) and 807 KAR 5:001, Section 13, requesting that the Commission grant confidential protection for an indefinite period to the federal and state income tax returns filed with its application for an alternative rate adjustment.

As a basis for its request, Bright's Propane states that the designated material should be deemed confidential because KRS 61.878(1)(k) prevents the public disclosure of records that federal law or regulation prohibits to be disclosed.<sup>1</sup> Pursuant to 26 U.S.C.A. Section 6103(a), federal income tax returns shall be kept confidential and not publicly disclosed.<sup>2</sup> Therefore, Bright's Propane avers that the federal income tax returns and their contents are exempt from disclosure. Bright's Propane further contends that KRS 131.190(1) requires all income tax information filed with the Kentucky Department

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<sup>1</sup> KRS 61.878(1)(k).

<sup>2</sup> 26 U.S.C.A. Section 6103(a).

of Revenue to be treated in a confidential manner.<sup>3</sup> Consequently, Bright's Propane asserts that the state income tax returns are confidential pursuant to KRS 61.878(1)(l), which does not allow records or information to be disclosed if made confidential by the Kentucky General Assembly.<sup>4</sup>

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>5</sup> The exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.<sup>6</sup> The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.<sup>7</sup> In determining whether materials should be exempt from disclosure, the Commission must balance the potential harm from disclosure with "the effect of protecting a given document from scrutiny by the public and potential intervenors."<sup>8</sup>

Having considered the petition and the material at issue, the Commission finds that state and federal income tax returns are generally recognized as confidential or proprietary; the material therefore meets the criteria for confidential treatment and is

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<sup>3</sup> KRS 131.190(1).

<sup>4</sup> KRS 61.878(1)(l).

<sup>5</sup> KRS 61.872(1).

<sup>6</sup> See KRS § 61.871.

<sup>7</sup> 807 KAR 5:001, Section 13 (2)(c).

<sup>8</sup> *Southeastern United Medigroup, Inc. v. Hughes*, 952 S.W.2d 195, 199 (Ky. 1997), *abrogated on other grounds by Hoskins v. Maricle*, 150 S.W.3d 1 (Ky. 2004).

exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1).

IT IS THEREFORE ORDERED that:

1. Bright's Propane's petition for confidential protection is granted.
2. Bright's Propane's state and federal income tax returns shall not be placed in the public record or made available for public inspection until further Order of this Commission.
3. Use of the material in question in any Commission proceeding shall be in compliance with 807 KAR 5:001, Section 13(9).
4. Bright's Propane shall inform the Commission if the material in question becomes publicly available or no longer qualifies for confidential treatment.
5. If a non-party 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, Bright's Propane shall have 20 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 Bright's Propane is unable to make such demonstration, the requested material shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.
6. The Commission shall not make the requested material available for inspection for 20 days following an Order finding that the material no longer qualifies for confidential treatment in order to allow Bright's Propane to seek a remedy afforded by law.

By the Commission

ENTERED  
JUN 29 2018  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
Executive Director

Case No. 2017-00343

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