

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC INVESTIGATION OF	)	
JURISDICTIONAL STATUS OF EAST	)	CASE NO.
KENTUCKY MIDSTREAM, LLC, AND OF ITS	)	2022-00238
COMPLIANCE WITH KRS CHAPTER 278, 807	)	
KAR CHAPTER 005, AND 49 CFR PARTS 191	)	
AND 192	)	

ORDER

This matter arises on two motions for confidential treatment: one filed by East Kentucky Midstream, LLC (East Kentucky Midstream) on November 16, 2022, and the second filed by Kentucky Frontier Gas, LLC (Kentucky Frontier) on November 16, 2022. East Kentucky Midstream filed its motion pursuant to 807 KAR 5:001, Section 13, and 807 KAR 5:001, Section 4(10)(a). Kentucky Frontier filed its motion pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(m)(1).

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>1</sup> Exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.<sup>2</sup> The

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

<sup>2</sup> See KRS 61.871.

party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.<sup>3</sup>

Commission regulation 807 KAR 5:001, Section 4(10)(a)(7), requires that any party filing a paper with the Commission redact the names, phone numbers, addresses, and e-mail addresses of any individuals that are not parties nor have requested to be parties.

KRS 61.878(1)(m)(1) exempts from disclosure any records “which would have a reasonable likelihood of threatening the public safety by exposing a vulnerability in preventing, protecting against, mitigating, or responding to a terrorist act.”

#### EAST KENTUCKY MIDSTREAM’S NOVEMBER 16, 2022 MOTION

On November 16, 2022, East Kentucky Midstream filed a motion for confidential treatment, requesting that the Commission grant confidential treatment for information contained in East Kentucky Midstream’s responses to Staff’s Post Formal Conference Request for Information, Items 1, 3, 5, 7, and 9. Additionally, East Kentucky Midstream requested that the Commission grant confidential treatment to information redacted from attachments 014–023 included with East Kentucky Midstream’s response to Staff’s Post Formal Conference Request for Information. East Kentucky Midstream requested that the redacted material receive confidential treatment for an indefinite period.

In support of its motion, East Kentucky Midstream argued that 807 KAR 5:001, Section 4(10)(a)(7) requires any party filing a paper with the Commission redact any personal identifying information of a non-party, including first and last names, addresses, phone numbers, and e-mail addresses. Other than the Attorney General, Office of Rate Intervention, there have been no requests for intervention in this case.

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<sup>3</sup> 807 KAR 5:001, Section 13(2)(c).

Having considered the motion and the material at issue, the Commission finds that East Kentucky Midstream's motion should be granted. The designated material contains personal identifying information about non-parties; it therefore meets the criteria for confidential treatment and is exempted from public disclosure pursuant to 807 KAR 5:001, Section 4(10)(a)(7).

KENTUCKY FRONTIER'S NOVEMBER 16, 2022 MOTION

On November 16, 2022, Kentucky Frontier filed a motion for confidential treatment, requesting that the Commission grant confidential treatment for information contained in Kentucky Frontier's response to Staff's Post Formal Conference Request for Information, Item 1. Kentucky Frontier requested confidential treatment of the designated material for an indefinite period.

In support of its motion, Kentucky Frontier argued that its response to Staff's Post Formal Conference Request for Information, Item 1 contained GIS coordinates for its customer base, which, if released, would expose Kentucky Frontier's critical energy infrastructure for transporting natural gas in the region.

Having considered the motion and the material at issue, the Commission finds that Kentucky Frontier's motion should be granted. The designated material contains records specifically exempted by KRS 61.878(1)(m)(1)(f). The disclosure of said material could expose critical infrastructure systems to the threat of a terrorist act. The designated material therefore meets the criteria for confidential treatment and is exempted from public disclosure pursuant to KRS 61.878(1)(m)(1)(f).

IT IS THEREFORE ORDERED that:

1. East Kentucky Midstream's motion for confidential treatment is granted.

2. Kentucky Frontier's motion for confidential treatment is granted.
3. The designated material granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for an indefinite period or until further Order of this Commission.
4. 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).
5. East Kentucky Midstream shall inform the Commission if the designated material granted confidential treatment by paragraph 1 of this Order becomes publicly available or no longer qualifies for confidential treatment.
6. Kentucky Frontier shall inform the Commission if the designated material granted confidential treatment by paragraph 2 of this Order 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 paragraph 1 of this Order and the period during which the material has been granted confidential treatment has not expired, East Kentucky Midstream 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 East Kentucky Midstream 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. If a nonparty to this proceeding requests to inspect the material granted confidential treatment by paragraph 2 of this Order and the period during which the material has been granted confidential treatment has not expired, Kentucky Frontier 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 Kentucky Frontier is unable to make such demonstration, the requested material shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection

9. 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 the applicable utility to seek a remedy afforded by law.

PUBLIC SERVICE COMMISSION

  
Chairman

Vice Chairman

  
Commissioner



ATTEST:

  
Executive Director

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