

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC PURCHASED GAS ADJUSTMENT)	CASE NO.
FILING OF NAVITAS KY NG, LLC)	2023-00002

ORDER

On January 11, 2023, Navitas KY NG, LLC (Navitas KY) filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for five years for invoices (Invoices), in their entirety, received from third-party natural gas suppliers, which purportedly contain proprietary commercial information.

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.”¹ KRS 61.878(1)(c)(1) exempts records that are “[g]enerally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.” Exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.² The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.³

¹ KRS 61.872(1).

² See KRS 61.871.

³ 807 KAR 5:001, Section 13(2)(c).

Navitas KY argued that the Invoices include sensitive pricing and volume information that, if known by Navitas KY's competitors, would hurt Navitas KY's ability to fairly negotiate terms with counterparties and would benefit its competitors, which would gain valuable non-public information about Navitas KY's business.

Having considered the motion and the material at issue, the Commission finds that Navitas KY's motion should be granted. The Invoices provided by Navitas KY are generally recognized as confidential or proprietary and would provide Navitas KY's competitors with an unfair advantage if disclosed; they therefore meet the criteria for confidential treatment and are exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1). Navitas KY also only requested confidential treatment for five years, which is reasonable, because it acknowledged that the information in the invoices would become stale such that disclosure after five years would not place it at a competitive disadvantage.

IT IS THEREFORE ORDERED that:

1. Navitas KY's motion for confidential treatment is granted.
2. 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.
3. 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).
4. Navitas KY shall inform the Commission if the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment.

5. 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, Navitas KY 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 Navitas KY 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 30 days from the date of service of an Order finding that the material no longer qualifies for confidential treatment in order to allow Navitas KY to seek a remedy afforded by law.

PUBLIC SERVICE COMMISSION

Hub Col
Chairman

*MOR
signing
w/permissions*

Angie Hatten
Vice Chairman

May Pat Keen
Commissioner

ENTERED
AUG 10 2023 rcs
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:

Linda C. Bridwell
Executive Director

*M. Evan Buckley
Dinsmore & Shohl, LLP
City Center, 100 W. Main Street
Suite 900
Lexington, KENTUCKY 40507

*Thomas Hartline
Navitas KY NG, LLC
3186-D Airway Avenue
Costa Mesa, CA 92626

*Navitas KY NG, LLC
3186-D Airway Avenue
Costa Mesa, CA 92626