

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

APPLICATION OF NATURAL ENERGY  
UTILITY CORPORATION  
FOR APPROVAL OF CONSTRUCTION OF  
A NATURAL GAS PIPELINE AND  
ISSUANCE OF A CERTIFICATE OF  
CONVENIENCE AND NECESSITY

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) CASE NO.  
) 2017-00049

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PUBLIC SERVICE  
COMMISSION

PETITION FOR CONFIDENTIALITY

Natural Energy Utility Corporation (NEUC) petitions for an order granting confidential protection of responses 4 and 5 of the Commission's Order dated February 3, 2017 pursuant to 807 KAR 5:001, Section 13 and KRS 61.878. The information provided in the response is commercial information that if disclosed could cause substantial competitive harm to NEUC. This information is not publicly available. It would be difficult or impossible for someone to discover this information from other sources. If this information were available to competitors in this form, they could use it to the competitive detriment of NEUC. This information is not generally disclosed to non-management employees of NEUC and is protected internally by the Company as proprietary information. The disclosure of this proprietary information would result in significant or irreparable competitive harm to NEUC by providing its competitors with non-reciprocal competitive advantage. No public purpose is served by the disclosure of such information.

The Kentucky Open Records Act exempts from disclosure certain confidential or proprietary information. KRS 61.878(1)(c). To qualify for this exemption, and, therefore, maintain the confidentiality of the information, a party must establish that disclosure of the information would permit an unfair commercial advantage to competitors of the party

seeking confidentiality.

This petition for confidentiality includes the information requested in questions 4 and 5, which relate to pricing of the gas sold to the customer. Customer's usage, contract rates and related information gives competitors of NEUC as well as competitors of the customer information that could be used to negotiate favorable terms for themselves as well as develop marketing strategies harmful to NEUC or those specific customers. With the identity of the customer and the knowledge of the monetary and service terms, competitors would have information that would enable them to unfairly compete with NEUC.

The requested terms questions 4 and 5 terms all provide detailed proprietary financial information about both NEUC and the customer and the economics of the project. These responses contain highly sensitive information about the NEUC's financial condition, its expectations, business operations and other closely held information. NEUC derives independent economic value from the issuance of contracts and other financing methods with advantageous terms and rates. Its profit, operating expenses and other aspects of its financial condition are contained in the pro forma and income statements. Maintaining the propriety of this information is essential to the financial integrity of its ability to successfully compete for projects, private financing and favorable market terms. This information is highly sensitive and would provide any competitor with information that could not be obtained or derived from any other source.

Any public interest in favor of disclosure of the information is outweighed by the competitive interest in keeping the information confidential thereby enabling NEUC and the customer to successfully compete for business in Kentucky and by the need to protect confidential business plans. Disclosure of the information in question would put both NEUC and the customer at a

competitive disadvantage and potentially harm each buy giving competitors detailed information concerning the planning strategies, costs, marketing incentives and other information that would allow competitors to leverage that information to their advantage.

All this information is protected by the scope of confidentiality. The applicable statutes provide that "records confidentially disclosed to an agency or required by any agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records" shall remain confidential unless otherwise ordered by a court of competent jurisdiction." KRS 81.878(1). The natural gas industry is very competitive. NEUC has active competitors, who could use this information to their advantage and to the direct disadvantage of NEUC. NEUC would be at a competitive threat of loss of business due to the ability of its competitors to leverage the information to their advantage. The public disclosure of the contract terms negotiated with each customer and critical monetary terms would permit an unfair advantage to those competitors. With the identity of the customer and the knowledge of the contract terms, competitors would have inside information to target these customers. For these reasons, the terms in the contracts are exempt from public disclosure pursuant to KRS 61.878(c)(1). The contract terms are also excluded from public disclosure by KRS 278.160(3).

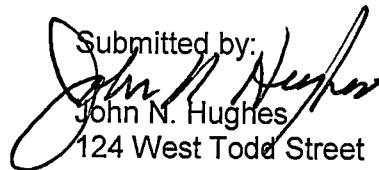
The Supreme Court of Kentucky has held that "disclosure of [this financial information] would unfairly advantage competing operators. The most obvious disadvantage may be the ability to ascertain the economic status of the entities without the hurdles systematically associated with acquisition of such

information. *Marina Management Servs. v. Cabinet for Tourism, Dep't of Parks*, 906 S.W.2d 318, 319 (Ky. 1995); see also *Hoy v. Kentucky Indus. Revitalization Auth.*, 907 S.W.2d 766, 768 (Ky. 1995) ("It does not take a degree in finance to recognize that such information concerning the inner workings of a corporation is generally recognized as confidential or proprietary and falls within the wording of KRS 61.878(1)(c).").

NEUC requests that the information be held confidentially indefinitely. The statutes cited above do not allow for disclosure at any time. Given the competitive nature of the natural gas business and the efforts of non-regulated competitors to encroach upon traditional markets, it is imperative that regulated information remain protected and that the integrity of the information remain secure.

For these reasons, NEUC requests that the items identified in this petition be treated as confidential. Should the Commission determine that some or all the material is not to be given confidential protection, NEUC requests a hearing prior to any public release of the information to preserve its rights to notice of the grounds for the denial and to preserve its right of appeal of the decision.

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