

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION
Case No. 2018-00157

In the Matter of

CMN-RUS, INC.

v.

WINDSTREAM KENTUCKY EAST, INC.

RECEIVED

AUG 27 2018

Public Service
Commission

COMPLAINANT

DEFENDANT

**WINDSTREAM KENTUCKY EAST, INC.'s MOTION FOR CONFIDENTIAL
TREATMENT OF RATES AND CONFIDENTIAL CONTRACTS**

Comes the Defendant, Windstream Kentucky East, Inc. ("Windstream"), and for its Motion for Confidential Treatment of Rates and Confidential Contracts, hereby states as follows:

Windstream, pursuant to 807 KAR 5:001, Section 13, petitions the Commission to classify and protect as confidential certain information contained in Responses to Requests for Information from the Public Service Commission ("PSC"). Windstream's Responses to the PSC's Requests No. 7 and 8 contain information the disclosure of which would damage Windstream's competitive position and business interests. As required by 807 KAR 5:001, Section 13(2), Windstream is providing one copy of the documents for which it is requesting confidential treatment, under seal, with the material for which confidential treatment is requested highlighted (or in a case where Windstream is seeking confidential treatment of whole documents, the entire, unredacted document is provided) , and six copies of the documents with the confidential material redacted. .

Windstream is seeking confidential treatment for two classes of documents: documents containing pole attachment rates and contracts which contain confidentiality clauses.

- 1) Windstream is entitled to confidential treatment for the documents containing pole attachment rates.**

In its Requests for Information No. 7 and 8, the PSC has requested the following:

7. Provide copies of all current agreements between Windstream East and any pole Attacher regarding the procedure for processing applications for pole attachments and completing related make-ready work.

8. Provide copies of all current agreements between Windstream East and any pole owner or operator regarding the procedure for processing Windstream East's applications for pole attachments or the procedure for completing related make-ready work.

Most of the documents responsive to these requests contain rates at which Windstream allows others to attach to its poles or the rates at which Windstream is allowed to attach to others' poles. Windstream seeks confidential treatment, for an indefinite period, of these rates. As such, Windstream is providing one copy of the documents for which it is requesting confidential treatment, under seal, with the material for which confidential treatment is requested highlighted, and six copies of the documents with the confidential material redacted.

Pursuant to 807 KAR 5:001 Section 13 a party subject to a PSC Request for Information must identify the specific grounds pursuant to KRS 61.878 (the "Open Records Act") to request classification of the material as confidential. KRS 61.878(1)(c) exempts from disclosure "records confidentially disclosed to an agency or required by an 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." Kentucky's appellate courts have repeatedly recognized the confidential nature of business financial information in connection with the Open Records Act and have applied the exemption from disclosure found in KRS 61.878(1)(c) to such information. *Marina Management Servs. v. Cabinet for Tourism, Dept. of Parks*, 906 S.W.2d 318, 319 (Ky. 1995) ("The records submitted to the Parks Department include information on ... rental amounts on houseboats These are records of privately owned marina operators, disclosure of which would unfairly advantage competing operators."); *Hoy v. Kentucky Indus. Revitalization Authority*, 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)(2)". 11. Very recently, the PSC's May 17, 2018 Order entered in *Electronic Application of Atmos Energy Corporation for an Adjustment of Rates and Tariff Modifications*, Case No. 2017-00349 granted confidentiality protection to certain business information in circumstances where applicant argued disclosure would " ... unfairly advantage competing operators ... " as well as an applicant's "competitive position in the marketplace." The rental information responsive in the present case should likewise be afforded confidential treatment.

Moreover, the instant cases does not concern rates paid for attachment to poles at all. The conflict between the parties revolves around the rate at which Windstream should accept and review applications from CMN, not the rates charged. As the rates are only extraneous information coincidentally contained in these contracts, there is no reason not to treat this information as confidential.

2) Windstream is entitled to confidential treatment for contracts which contain confidentiality clauses.

In addition to the contracts produced with redacted rates as noted in Part 1, certain contracts responsive to the same Requests by the PSC (Requests 7 and 8), contain confidentiality clauses requiring the parties to the contracts to keep their terms confidential. These contracts are filed herein under seal and are bates stamped WIN1408-1439, WIN1440-1472, WIN1508-1540, WIN1612-1644, WIN1645-WIN1677, WIN1678-1709, WIN2526-2564, and WIN2875-2910.

Windstream also seeks confidential treatment of these contracts pursuant to KRS 61.878(1)(c), which exempts from disclosure "records confidentially disclosed to an agency or required by an 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." Windstream has entered into these contracts in a competitive field and given the other parties to these contracts the expectation that their terms would remain confidential. Public disclosure of such contracts would constitute a breach, subjecting Windstream to damages and possible loss of business with these companies to whom Windstream promised confidentiality. To protect its business and proprietary interests, Windstream seeks confidential treatment, for an indefinite period, of these contracts. As such, Windstream is providing one copy of the documents for which it is requesting confidential treatment, under seal and six copies of the documents with the confidential material redacted.

WHEREFORE, Windstream requests the PSC to grant its Motion for Confidential treatment of rates and confidential contracts.

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that a true and accurate copy of the foregoing was served on August 8, 2018 upon the following:

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