

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF NAVITAS KY	)	
NG, JOHNSON COUNTY GAS COMPANY, AND	)	
B & H GAS COMPANY FOR APPROVAL OF	)	CASE NO.
ACQUISITION, TRANSFER OF OWNERSHIP,	)	2020-00396
AND CONTROL OF NATURAL GAS UTILITY	)	
SYSTEMS	)	

ORDER

On May 28, 2021, Navitas KY NG, LLC (Navitas KY) filed a petition, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for an indefinite period for redactions from Journal Entries provided as required by Commission Order.<sup>1</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>2</sup> In support of its petition, Navitas KY argued for the application of KRS 61.878(1)(c)(1), which exempts from disclosure “[r]ecords 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.” Exceptions to the free and open examination of public records contained in

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<sup>1</sup> Order at 22, (Ky. PSC Apr. 27, 2021).

<sup>2</sup> KRS 61.872(1).

KRS 61.878 should be strictly construed.<sup>3</sup> The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.<sup>4</sup>

The redacted information consists of pipeline acquisition costs. Navitas KY argued that the redacted information is private work product regarding the acquisition of the systems and if openly disclosed would present an unfair commercial advantage to its competitors.

Having considered the petition and the material at issue, the Commission finds that Navitas KY's petition is granted. Competitors could use this information to unfairly compete with Navitas KY for future acquisition of additional pipeline systems. The Commission granted indefinite confidential treatment in the present case for acquisition strategies and analysis, which similarly would have benefitted competitors if disclosed.<sup>5</sup> The Commission finds that the designated material consists of records that meet the criteria for confidential treatment and are exempted from public disclosure for an indefinite period pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13.

IT IS THEREFORE ORDERED that:

1. Navitas KY's petition 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 an indefinite period or until further Order of this Commission.

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<sup>3</sup> See KRS 61.871.

<sup>4</sup> 807 KAR 5:001, Section 13(2)(c).

<sup>5</sup> Order at 3, (Ky. PSC Apr. 28, 2021) (Jan. 29, 2021 Motion).

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



Chairman

Vice Chairman



Commissioner



ATTEST:



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