

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC TARIFF FILING OF COLUMBIA)	
GAS OF KENTUCKY, INC. TO EXTEND ITS)	CASE NO.
SMALL VOLUME GAS TRANSPORTATION)	2021-00386
SERVICE)	

ORDER

On April 18, 2022, XOOM Energy Kentucky, LLC (XOOM); Interstate Gas Supply, Inc. (IGS).; and Constellation New Energy, Gas Division, LLC (CNEG), (collectively, Joint Movants), 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 Joint Movants response to Item 11 of Commission Staff’s First Request for Information (Staff’s First Request) to XOOM, IGS, and CNEG.

In support of their motion, Joint Movants stated that the response includes the total number of customers, total number of customers with fixed rate contracts, and total number of customers with environmental attribute contracts for each of the Joint Movants. The Joint Movants argued that this information is generally recognized as confidential and proprietary and if disclosed would permit an unfair competitive advantage to Joint Movants’ competitors, and is therefore deserving of confidential protection pursuant to KRS 61.878(1)(c)(1).

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 The 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 In determining whether materials should be exempt from disclosure, the Commission must balance the potential harm from disclosure with “the effect of protecting a given document from scrutiny by the public and potential intervenors.”⁴

KRS 61.878(1)(c)(1) exempts from public disclosure information disclosed to an agency if the information is generally recognized as confidential or proprietary and if public disclosure of the information would permit an unfair commercial advantage to the entity that disclosed the information. The Joint Movants did not explain how the information concerning the total number of customers, total number of customers with fixed rate contracts, and total number of customers with environmental attribute contracts could be used by their competitors to gain an unfair competitive advantage. However, the Commission notes that this information, in combination with other publicly available information, could be used to reveal the marketing strategies and pricing trends of the Joint Movants. Marketing strategies and pricing trends of participants in a competitive marketplace are generally considered confidential, and are therefore exempt from public disclosure pursuant to KRS 61.878(1)(c)(1).

¹ KRS 61.872(1).

² KRS 61.871.

³ 807 KAR 5:001, Section 13(2)(c).

⁴ *Southeastern United Medigroup, Inc. v. Hughes*, 952 S.W.2d 195, 199 (Ky. 1997), abrogated on other grounds by *Hoskins v. Maricle*, 150 S.W.3d 1 (Ky. 2004).

Having considered the motion and the material at issue, the Commission finds that Joint Movants' response to Item 11 of Staff's First Request to XOOM, IGS, and CNEG is generally recognized as confidential or proprietary; it therefore meets the criteria for confidential treatment and is exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878 KRS 61.878(1)(c)(1).

IT IS THEREFORE ORDERED that:

1. Joint Movants' 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. Joint Movants 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, Joint Movants 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 Joint Movants are 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 Joint Movants to seek a remedy afforded by law.

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PUBLIC SERVICE COMMISSION



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Vice Chairman

Commissioner



ATTEST:



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