

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF BIG SANDY)	
WATER DISTRICT FOR A CERTIFICATE OF)	
PUBLIC CONVENIENCE AND NECESSITY TO)	
DEPLOY AN ADVANCED METERING)	CASE NO.
INFRASTRUCTURE AND GEOGRAPHIC)	2023-00163
INFORMATION SYSTEM, ISSUANCE OF)	
EVIDENCE OF INDEBTEDNESS, AND REQUEST)	
FOR EXPEDITED RELIEF)	

ORDER

This matter is before the Commission on two motions for confidential treatment filed by Big Sandy Water District (Big Sandy District) on May 24, 2023, and July 11, 2023, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878. In its May 24, 2023 motion, Big Sandy District requested that the Commission grant confidential treatment for an indefinite period to individual customer identifying information and usage data contained in Exhibit 2 to Big Sandy District’s application.¹ In its July 11, 2023 motion Big Sandy District requested a five-year term for itemized pricing information comprising a portion of the total bid price submitted by Integrity Water and Energy² (Integrity) contained in Big Sandy District’s response to Commission Staff’s First Request for Information (Staff’s First Request), Item 9b and Exhibit 19a.

¹ Big Sandy District’s Motion for Confidential Treatment (filed on May 24, 2023).

² Big Sandy District’s Motion for Confidential Treatment (filed on July 11, 2023).

In support of its May 24, 2023 motion, Big Sandy District argued that disclosure of individual customer identifying information and usage data is generally treated as confidential, and that disclosure of this information constitutes an unwarranted invasion of personal privacy.³ Big Sandy District also argued that disclosure of the information would place Big Sandy District at a competitive disadvantage. Big Sandy District further argued that the Commission has granted such material confidential treatment in the past.⁴ Big Sandy District seeks an indefinite term of confidential treatment for this material.

In support of its July 11, 2023 motion, Big Sandy District argued that disclosure of the itemized portion of the total bid price submitted by Integrity, specifically the pricing of the estimated cost of an Advanced Metering Infrastructure (AMI) system and its installation, zone metering, Geographic Information System (GIS) mapping, the estimated cost of a “Non-revenue water” tool, and the cost of leak detection and resolution should be granted confidential treatment for five years. Big Sandy District argued that disclosure of such information would place Big Sandy District at a competitive disadvantage in regard to its competitors. Further Big Sandy District stated that the information for which it is seeking confidential protection was not provided by Integrity in its response to Big Sandy District’s request for proposals (RFP) and was only provided to Big Sandy District in response to Staff’s First Request to assure that the Commission had a thorough record for which to make its decision. Big Sandy District argued that if the information is disclosed it would be detrimental to Big Sandy District being able to receive fair bids in

³ Big Sandy District’s Motion for Confidential Treatment (filed on May 24, 2023).

⁴ Big Sandy District’s Motion for Confidential Treatment (filed on May 24, 2023), see also Case No. 2022-00028, *Electronic Application of Big Rivers Electric Corporation for Annual Review of its MRSM Charge for Calendar Year 2021* (Ky. PSC Apr. 7, 2022), Order.

the future or could possibly discourage contractors from placing bids at all.⁵ Big Sandy District has also limited this request to a five year term.

LEGAL STANDARD

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.”⁶ Exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.⁷

Commission regulation 807 KAR 5:001, Section 13(2) sets forth the procedure for determining whether confidential treatment will be given to material submitted to the Commission during the pendency of a case. The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.⁸

Pursuant to KRS 61.878(1)(a), public records containing information of a personal nature where public disclosure would constitute a clearly unwarranted invasion of personal privacy are excluded from the application of KRS 61.870 to 61.884, and confidential protection is permitted.

KRS 61.878(1)(c)(1) provides an exception to the requirement for public disclosure for records that are “generally recognized as confidential or proprietary, which if openly

⁵ Big Sandy District’s Motion for Confidential Treatment (filed on July 11, 2023).

⁶ KRS 61.872(1).

⁷ See KRS 61.871.

⁸ 807 KAR 5:001, Section 13(2)(c).

disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.”

DISCUSSION AND FINDINGS

Having considered the motions and the material at issue, the Commission finds that information relating to individual customers and containing identifying information should be afforded confidential treatment pursuant to KRS 61.878(1)(a) because the water usage of an individual customer and how that customer’s usage compares to other customers is personal in nature, and public disclosure would result in an unwarranted invasion of personal privacy. Therefore, the Commission finds that Big Sandy District’s May 24, 2023 motion should be granted.

Further the Commission finds that the itemized pricing information comprising a portion of the total bid submitted by Integrity is generally recognized as confidential or proprietary and public disclosure of this information could place Big Sandy District at a competitive disadvantage in the future if it seeks bids on these or similar items. This material therefore meets the criteria for confidential treatment and should be exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13, for a period of five years. Accordingly, the Commission finds that Big Sandy District’s July 11, 2023 motion should be granted.

IT IS THEREFORE ORDERED that:

1. Big Sandy District’s May 24, 2023 and July 11, 2023 motions for confidential treatment are granted.
2. The information relating to identifying specific customers and their usage data is granted confidential treatment by this Order and shall not be placed in the public

record or made available for public inspection for an indefinite term or until further Order of this Commission.

3. The itemized pricing information is granted confidential treatment by this Order and shall not be placed in the public record or made available for public inspection for a term of five years or until further Order of this Commission.

4. 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).

5. Big Sandy District shall inform the Commission if the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment.

6. 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, Big Sandy District 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 Big Sandy is unable to make such demonstration, the requested material shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

7. 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 Big Sandy District to seek a remedy afforded by law.


PUBLIC SERVICE COMMISSION



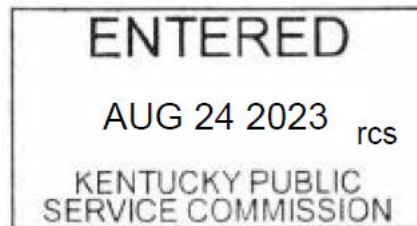
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