

TILFORD DOBBINS ALEXANDER
BUCKAWAY & BLACK PLLC

WILLIAM A. BUCKAWAY, JR.
CHARLES W. DOBBINS, JR.
TERRELL L. BLACK
MARK W. DOBBINS
STUART E. ALEXANDER, III
SANDRA F. KEENE
PATRICK T. SCHMIDT
JOHN A. WILMES
WILLIAM J. WALSH, IV¹
HELEN C. HELTON
J.E. BRIAN BLACK
KATHLEEN M.W. SCHOEN
Of Counsel
CAROLYN K. BALLEISEN²
TERRENCE L. MCCOY
ROBERT A. DONALD, III³

January 15, 2008

HENRY J. TILFORD (1880-1968)
CHARLES W. DOBBINS (1916-1992)
DONALD H. BALLEISEN (1924-1993)
LAWRENCE W. WETHERBY (1908-1994)
RANDOLPH NOE (1939-2003)
STUART E. ALEXANDER, JR. (1920-2006)

¹Also admitted in Indiana
²Also admitted in New York
³Also admitted in Georgia and Illinois

Ms. Elizabeth O'Donnell
Executive Director
Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, Kentucky 40602-0615

RECEIVED

JAN 15 2008

PUBLIC SERVICE
COMMISSION

**RE: IN THE MATTER OF: THE JOINT APPLICATION OF
HERITAGE OPERATING L.P. AND BRIGHT'S PROPANE
SERVICE, INC. FOR APPROVAL OF THE TRANSFER AND
ACQUISITION OF ASSETS AND CERTIFICATES OF PUBLIC
CONVENIENCE**

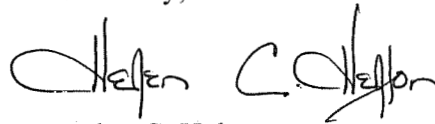
Dear Ms. O'Donnell:

Please find enclosed on behalf of the Joint Applicants a re-filed petition for confidential treatment of certain information contained in the Joint Applicants' responses to information requested by the Public Service Commission and the Office of Attorney General. Pursuant to the initial grounds for denial, the Joint Applicants have more specifically highlighted portions of the responses and exhibits including the sales agreement for which confidentiality is sought. The information for which confidentiality is sought pertains to Joint Applicants' non regulated business information generally considered confidential and proprietary. We are also requesting, with supporting authority, reconsideration for granting confidentiality for the information contained in the response to Attorney General Question 7 because of commercial injury if the information remains public. The accompanying petition for confidentiality fully explains our grounds and the authority we rely upon.

One copy of each response and each exhibit with the highlighted confidential information along with a copy of the petition for confidential treatment is marked confidential and enclosed in a separate envelope. Ten (10) copies of each response and each exhibit with the confidential information redacted are enclosed with the petition for confidential treatment. A copy of the petition and each response and exhibit with the highlighted confidential information marked confidential and a copy of each response

and exhibit with the confidential information redacted have been served on the Office of Attorney General.

Sincerely,

A handwritten signature in black ink that reads "Helen C. Helton". The signature is written in a cursive style with a large initial "H" and a long, sweeping underline.

Helen C. Helton

HCH:mew

Enclosures

F:\OFFICE\HCH\Bright's Propane\Letter to Elizabeth O'Donnell 011508 doc

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

JAN 15 2008

In the Matter of:

PUBLIC SERVICE
COMMISSION

THE JOINT APPLICATION OF HERITAGE OPERATING L.P.)
AND BRIGHT'S PROPANE SERVICE, INC. FOR)
APPROVAL OF TRANSFER AND ACQUISITION OF)
ASSETS AND CERTIFICATES OF PUBLIC CONVENIENCE)

CASE NO.
2007-00494

**JOINT APPLICANTS' PETITION
FOR CONFIDENTIAL TREATMENT OF CERTAIN INFORMATION
DENIED PROTECTION BY LETTER OF THE EXECUTIVE DIRECTOR**

Joint Applicants, Heritage Operating L.P. ("Heritage") and Bright's Propane Service, Inc. ("Bright's") for their Petition for Confidential Treatment of Certain Information Denied Protection by Letter of the Executive Director, pursuant to 807 KAR 5:001, Section 7 and KRS 61.878(1)(c), state as follows:

BACKGROUND

By this Petition, Joint Applicants request that the Public Service Commission ("Commission") grant confidential protection to certain information that is confidential and proprietary and that pertains to nonregulated and fully competitive aspects of Joint Applicants' businesses. Specifically, Joint Applicants petition the Commission to grant confidential protection to: (1) confidential and proprietary portions of the Joint Applicants' sale agreement (Exhibit 1 to Joint Applicants' Response to the Commission Staff's Data Request) that govern not only the sale of Bright's Propane Service, Inc., a small jurisdictional utility serving 55 customers, but also the entire business of Bright's Bottle Gas Co., a Kentucky corporation which does not provide utility service, which is not regulated by the Commission, and which operates in a fully competitive market; (2) confidential and proprietary information provided as Exhibit 3

in response to the Commission Staff's Data Request, which includes detailed information regarding the non-regulated business activities of Heritage, as well as a confidential and proprietary list of its customer accounts for OPS services; (3) information provided in response to Data Request 22 of the Attorney General, which includes information regarding the debt structure of the entirety of Heritage's nonregulated operations; and information provided in response to Data Request 7 of the Attorney General, which includes financial information regarding Heritage's revenues.

When the information was initially provided in this case, Joint Applicants filed a Petition for Confidential Treatment requesting protection of this information. On January 4, 2008, the Executive Director issued a letter denying the request, noting that the information produced in response to AG Data Request 7 is in the public record and indicating that additional justification for the request, as well as additional specificity concerning the portions of the information filed for which confidential treatment is sought, are required for approval.

This Petition provides that specificity and justification, as follows:

GROUND FOR PETITION

1. KRS 61.878(1)(c) protects commercial information, generally recognized as confidential or proprietary, if its public disclosure would cause competitive injury to the disclosing entity. Competitive injury occurs when disclosure of the information would give competitors an unfair business advantage. The Commission has taken the position that the statute and the regulation require the party requesting confidentiality to demonstrate actual competition and the likelihood of competitive injury if the information is disclosed. Here, there is actual competition, as the information in question concerns confidential and proprietary information related to the propane business, which is competitive and which is not protected by

the regulatory compact. Heritage is a propane provider operating in a competitive market, and its competitors are not required to disclose the types of information requested by, and filed with, the Commission in this case. The confidential business information disclosed to the Commission in this case is the type of information which would enable Heritage's competitors to discover, and make use of, confidential information concerning Heritage's financial condition and to ascertain the identities of, market to, Heritage's OPS customers, all to the unfair competitive disadvantage of Heritage.

2. The information for which confidential treatment is sought is maintained internally by Joint Applicants. This information is not on file with the FERC, SEC or other public agency, is not available from any commercial or other source outside of Joint Applicants, and is limited in distribution to those employees who have a business reason to have access to such information. Further, the information concerns nonregulated rather than regulated activities. Thus, the public interest to be served by its disclosure is minimal at best. By imposing unfair competitive injury upon Heritage, disclosure in fact harms the public interest.

3. Disclosure of Heritage's OPS customer list and service information contained in Exhibit 3 would make available to Heritage's competitors its OPS customers' identities, enabling those competitors to market directly to Heritage's customers, to Heritage's unfair competitive disadvantage. The Commission has previously withheld such information from disclosure. In *Constellation New-Energy-Gas Division, LLC v. Columbia Gas of Kentucky, Inc.*, PSC Case No. 2005-00184 (Order dated Feb. 9, 2006), at 3, the Commission expressly held that "disclosure of CNEG's customer information could permit an unfair commercial advantage of CNEG's competitors and that the customer information is exempt from disclosure under KRS 61.878(1)(c)."

4. Disclosure of Heritage's proprietary and confidential revenue and debt information provided in response to Attorney General Data Requests 7 and 22 would make available to its competitors information concerning Heritage's financial structure, including debt, revenue, and business information, that such competitors could use to Heritage's competitive disadvantage. Heritage's competitors are not required to file, or to make public, similar financial information. Nor is it relevant that a portion of that information has previously been a part of the public record in this case: in *Constellation New-Energy-Gas Division*, at 3, the Commission granted a utility's request to withdraw confidential information from the existing public record based on its finding that the information was entitled to confidential protection pursuant to KRS 61.878(1)(c). Joint Applicants submit that the law and the public interest are served by an identical holding in this case.

5. Disclosure of the confidential terms of the parties' sale agreement would enable competitors to ascertain the amount to be paid for the facilities and assets at issue. It would provide competitors insight into Heritage's strategic business plans and negotiations that competitors can act upon to the unfair competitive disadvantage of Heritage. Heritage's competitors do not have to reveal the terms of their strategic business transactions. Clearly, this harms Heritage in the competitive market in which it operates. The public interest is not served by denying confidentiality of the information requested because the terms of the portion of the transaction that is regulated, the sale of Bright's Propane Service, have been supplied to the Commission and the Attorney General in the Joint Applicants' application. It is the terms of the nonregulated business sale for which the Joint Applicants request confidentiality

6. The confidential and proprietary financial and business information for which confidential protection is sought in this case is precisely the sort of information meant to be

protected by KRS 61.878(1)(c)1. In *Hoy v. Kentucky Industrial Revitalization Authority*, 907 S.W.2d 766 (Ky. 1995), the Kentucky Supreme Court held that financial information submitted by General Electric Company with its application for investment tax credits was not subject to disclosure simply because it had been filed with a state agency. The Court applied the plain meaning rule to the statute, reasoning that “[i]t 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.’” *Id.* at 768. Similarly, the Kentucky Supreme Court applied the KRS 61.878(1)(c)1. “competitive injury” exemption to financial information that was in the possession of Kentucky’s Parks Department in *Marina Management Services, Inc. v. Commonwealth, Cabinet for Tourism*, 906 S.W.2d 318, 319 (Ky. 1995): “These are records of privately owned marina operators, disclosure of which 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 about privately owned organizations.” The same reasoning applies here.

6. The confidential portions of the information provided in response to the requests of Commission Staff and the Attorney General demonstrate on their face that they merit confidential protection pursuant to *Hoy*, *Marina Management*, and KRS 61.878(1)(c)1. If the Commission disagrees, however, it must hold an evidentiary hearing to protect the due process rights of the Joint Applicant and supply the Commission with a complete record to enable it to reach a decision with regard to this matter. *Utility Regulatory Commission v. Kentucky Water Service Company, Inc.*, Ky. App., 642 S.W.2d 591, 592-94 (1982).

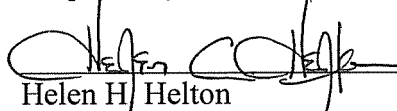
7. Joint Applicants have previously provided the information for which confidential treatment is sought to the Attorney General pursuant to a protective agreement.

8. In accordance with the provisions of 807 KAR 5:001(7), Joint Applicants file herewith (1) set of the confidential information provided in Joint Applicants' response to Data Request Nos. 7 and 22 of the Attorney General's initial Data Request and those confidential portions of Exhibits 1 and 3 provided in response to Commission Staff's Data Request, as well as an original and ten copies of Exhibit 1 and Exhibit 3 and Responses to Attorney General Data Requests Nos. 7 and 22 in redacted form for filing in the public record.

CONCLUSION

For the reasons stated, Joint Applicants respectfully request that the Commission grant confidential protection for the information at issue, or schedule an evidentiary hearing on all factual issues while maintaining the confidentiality of the information pending the outcome of the hearing.

Respectfully submitted,



Helen H. Helton
TILFORD DOBBINS ALEXANDER
BUCKAWAY & BLACK, PLLC
1400 One Riverfront Plaza
401 West Main Street
Louisville, Kentucky 40202
(502) 584-1000
hhelton@tilfordlaw.com

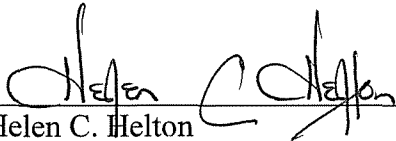
Counsel for Bright's Propane Service, Inc.

Deborah T. Eversole
STOLL KEENON OGDEN, PLLC
2000 PNC Plaza
500 West Jefferson Street
Louisville, Kentucky 40202
(502) 568-5770
Deborah.Eversole@skofirm.com

Counsel for Heritage Operating L.P.

CERTIFICATE OF SERVICE

It is hereby certified that this 15th day of January, 2008, I have served the foregoing by U.S. Mail, postage prepaid, upon Dennis G. Howard II, Lawrence W. Cook, and Paul D. Adams, Assistant Attorneys General, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601-8204.


Helen C. Helton