

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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COMMISSION

CMN-RUS, Inc.

Complainant

v.

No. 2018-00157

Windstream Kentucky East, LLC

Respondent

**CMN Response to Windstream Petition for
Confidential Treatment of Additional Confidential Contracts**

Complainant CMN-RUS, Inc. (“CMN”) hereby responds to the Petition for Confidential Treatment of Additional Contracts (“Additional Petition”), filed and served by Respondent Windstream Kentucky East, Inc. (“Windstream”) on October 1, 2018. As established in CMN’s earlier responses in opposition to Windstream’s initial Motion and Supplemental Petition, Windstream has not made a case for confidential treatment of any of the contracts which it has redacted. The same conclusion applies to the Additional Petition’s request for confidential treatment of the agreements that Windstream produced — with all but the title and brief preamble redacted — as a supplement to its response to 1 PSC 8 (WIN 7835-56) and as part of the response to 2 CMN 19 (WIN 7857-71).

1. In a single paragraph, Windstream cites KRS 61.878(1)(c) and then conclusorily asserts that the subject contracts are “entered into ... in a competitive field,” it gave the other parties “the expectation that their terms would remain confidential,” “disclosure would constitute a breach,” and “possible loss of business with these companies....” Additional Petition p.2. No supporting information is given.

2. The two subject Agreements are with electric distribution co-ops and are about 20 years old:

- Joint Use Pole Agreement between Blue Grass Energy Cooperative Corporation and GTE South Incorporated, dated January 1, 1997 (WIN 7835-56);
- Agreement between Shelby Energy Cooperative, Inc., and Kentucky Data Link, Inc., dated February 1999 (WIN 7857-71).

All the parties to the Agreements were at that time Commission-regulated utilities, with tariffs and other special contracts on file with the Commission; GTE South was an ILEC and Windstream (successor to GTE South and Kentucky Data on the Agreements) remains an ILEC. Pole-attachments services and joint use of poles is not evidently “a competitive field,” nor does Windstream even suggest how it could lose the co-ops’ “business” of attaching to its poles.

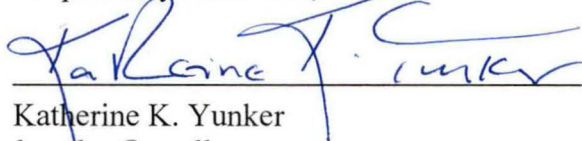
3. Windstream does not explain how disclosure in this Commission proceeding could constitute a breach. There is nothing on the face of the Agreements to suggest that they are (or are kept) confidential, and Windstream neither cites to nor quotes from any confidentiality provision in the Agreement. *Pro forma* assertions that a document is confidential or meets the requirements of KRS 61.878(1)(c) are not enough.

4. Despite the point being noted in CMN’s Responses to the initial Motion (p.2 ¶2) and the Supplemental Petition (p.4 ¶6), Windstream still has not offered to provide CMN with any of the redacted information subject to a confidentiality agreement or order from the Commission. It has been difficult to respond to the Windstream requests for confidential treatment when CMN has been kept in the dark about the significance of the redacted material and even the claimed confidentiality clauses. In its responses to CMN’s second set of requests, Windstream has added an absurdist touch to this situation, by simply refusing to provide redacted contract

information to CMN (*see, e.g.*, responses to 2 CMN 22, 23) but also responding to requests for data about its pole-attachment contracts as follows: “As the agreements between Windstream and all other attachers have already been provided in this litigation, it is not Windstream’s obligation to sort through these agreements for CMN.” *See* Windstream response to 2 CMN 35b, 36b, 37b. Windstream does not acknowledge that CMN cannot “sort through these agreements” to determine the rights or limits they provide for an attacher when Windstream has redacted all the provisions.

WHEREFORE, for the reasons stated, CMN requests that the Commission deny Windstream’s Additional Petition. If the Commission grants all or part of Windstream’s requests for confidential treatment, CMN requests that the same order make provision for its access to the material excluded from public disclosure so that it can use the material as relevant.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on October 6, 2018, pursuant to the Commission’s 8/7/18 Order ¶2, a conformed copy of the foregoing has been served on the attorneys for Respondent by electronic mail or by hand-delivery to: Casey C. Stansbury <cstansbury@mrrlaw.com>, Tia J. Combs <tcombs@mrrlaw.com>; MAZANEC, RASKIN & RYDER CO.; 230 Lexington Green Circle, Suite

605; Lexington, KY 40503. I will also provide PSC Staff Counsel Benjamin Bellamy with a courtesy copy of this Response in the form served on the attorneys for Respondent.


Attorney for Complainant