

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF NAVITAS KY)	CASE NO.
NG, LLC FOR AN ALTERNATIVE RATE FILING)	2024-00252
PURSUANT TO 807 KAR 5:076)	

ORDER

This matter arises upon three motions for confidential treatment filed by Navitas NG KY, LLC (Navitas KY) in this matter.

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.”¹ 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 support of its motions, Navitas KY argued for the application of KRS 61.878(1)(c)(1), which provides an exception to the requirement for public disclosure for records that are “generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that

¹ KRS 61.872(1).

² See KRS 61.871.

³ 807 KAR 5:001, Section 13(2)(c).

disclosed the records,” KRS 61.878(1)(a), which exempts “[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy,” and KRS 61.878(1)(m), which exempts “[p]ublic records the disclosure of which would have a reasonable likelihood of threatening the public safety by exposing a vulnerability in preventing, protecting against, mitigating, or responding to a terrorist act . . .”⁴ The exemption is limited to certain types of records, including:

Infrastructure records that expose a vulnerability referred to in this subparagraph through the disclosure of the location, configuration, or security of critical systems, including public utility critical systems. These critical systems shall include but not be limited to information technology, communication, electrical, fire suppression, ventilation, water, wastewater, sewage, and gas systems.⁵

A terrorist act is defined as including a criminal act intended to “[d]isrupt a system” identified in the above.⁶

AUGUST 2, 2024 MOTION

Attachments 7(a-e) to Navitas KY’s application included redactions to a Loan and Security Agreement and several promissory notes. These redactions included amounts borrowed, the amount of fees and interest rates, descriptions of collateral, the identities of guarantors, identities of easement grantors, easement property descriptions, and transmission line locations and specifications. Navitas KY argued that amounts borrowed, the amount of fees, and interest rates should be granted confidential treatment

⁴ KRS 61.878(1)(m)(1).

⁵ KRS 61.878(1)(m)(1)(f).

⁶ KRS 61.878(1)(m)(2)(b).

for five years pursuant to KRS 61.878(1)(c)(1) because this information is sensitive and proprietary and would provide an unfair advantage to competitors.⁷ Navitas KY argued that descriptions of collateral, identities of guarantors, identities of easement grantors, easement property descriptions should remain confidential for five years pursuant to KRS 61.878(1)(a) as causing a clearly unwarranted invasion of personal privacy.⁸ Navitas KY argued that the locations and specifications of transmission infrastructure could expose vulnerabilities for potential system disruption and should be exempted from disclosure indefinitely under KRS 61.878(1)(m).⁹ Navitas KY also sought indefinite protection for its tax returns,¹⁰ provided as Exhibit 8 to its application.¹¹

Having considered the motion and the material at issue, the Commission finds that Navitas KY's August 2, 2024 motion for confidential treatment should be granted, in part, and denied, in part. Confidential treatment should be granted for guarantor identities redacted from the response to Item 7(a) because an individual's personal debt obligation information is of a personal nature and public disclosure would constitute a clearly unwarranted invasion of personal privacy under KRS 61.878(1)(a). Navitas KY's tax returns (Exhibit 8 to application) should remain confidential indefinitely because KRS 61.878(1)(k) requires protection of information mandated to be confidential by law, including tax returns under 26 U.S.C. § 6103(a) and KRS 131.190(1).

⁷ Navitas KY's Motion for Confidential Treatment (filed Aug. 2, 204) (August 2, 2024 Motion) at 11-12, 14.

⁸ August 2, 2024 Motion at 2, 4-8, 11-12.

⁹ August 2, 2024 Motion at 13.

¹⁰ August 2, 2024 Motion at 13.

The remaining information redacted from the response to Item 7(a-e) for which confidential treatment was requested in this motion should be denied. The Commission previously found that once a loan closes, rates and fees actually paid should be made public because they impact revenue requirement and resulting rates, the calculation of which should be transparent.¹² The same logic applies to amounts borrowed, which are part of revenue requirement calculations and which are also subject to disclosure because utilities are required to obtain approval for all debt assumption under KRS 278.300. Navitas KY provided no specific reason for keeping descriptions of collateral in loan documents confidential. With no clear reason why this information would be harmful to Navitas KY if disclosed, Navitas has not met its burden. As noted in the loan documents, the referenced easements are “of record” meaning the grantors and property descriptions have already been publicly disclosed by filing in the applicable county clerk’s office(s). Therefore, this information, has already been publicly disclosed.¹³ Navitas KY also redacted the size of pipes in the easement locations but disclosing the size of pipes does not expose any vulnerability.

¹² See Case No. 2019-00109, *Electronic Application of Citipower, LLC for (1) An Adjustment of Rates Pursuant to 807 KAR 5:076; (2) Approval for a Certificate of Public Convenience and Necessity to Purchase Pipeline and Other Related Assets; and (3) Approval of Financing* (Ky. PSC Aug. 14, 2019), Order at 4; See also Case No. 2018-00115, *Application of East Kentucky Power Cooperative, Inc. for Approval of the Authority to Issue Up to \$300,000,000 of Secured Private Placement Debt and/or Secured Tax Exempt Bonds and for the Use of Interest Rate Management Instruments* (Ky. PSC Feb. 23, 2023), Order at 2; Case No. 2022-00217, *Electronic Application of Bluegrass Water Utility Operating Company, LLC for Issuance of Evidence of Indebtedness* (Ky. PSC Feb. 10, 2023), Order at 3; Case 2023-0001, *Electronic Application of Atmos Energy Corporation for an Order Authorizing the Implementation of a \$5,000,000,000 Universal Shelf Registration* (Ky. PSC Nov. 12, 2024), Order at 2.

¹³ See Case No. 2020-00387, *Electronic Application of Green River Solar, LLC for a Certificate to Construct an Approximately 200-Megawatt Merchant Solar Electric Generating Facility in Breckinridge County and Meade County, Kentucky Pursuant to KRS 278.700 and 807 KAR 5:110* (Ky. PSC June 20, 2022), Order at 2.

OCTOBER 23, 2024 MOTION

Navitas KY requested confidential treatment for its responses to Commission Staff's First Request for Information (Staff's First Request), Items 7, 9(a-b), 10, 12, 13, 14, 17, 18, 19, and 30. The response to Item 7 included redacted usage data for a special contract customer. Navitas KY sought indefinite confidential treatment for this information under KRS 61.878(1)(c)(1) because disclosure would allow its competitors access to information that could be used to negotiate more favorable terms with special contract customers and to develop competing marketing strategies and should also be granted indefinite protection under KRS 61.878(1)(a) because it also includes customer usage data.¹⁴ The response to Items 9(a), 9(b), 17, and 18 included, respectively, Navitas KY's general ledger, trial balance, board of directors' meeting minutes, and audited financial statements. Navitas KY argued that this information should be granted confidential treatment for five years because this information would benefit competitors, who could unfairly negotiate terms with counterparties in the marketplace. The response to Item 10 includes Navitas KY's liability insurance policy and premium documentation. The response to Item 12 includes employee insurance information, including employee names and premium amounts. Navitas KY argued that both of these types of information should be protected under KRS 61.878(1)(c)(1) because disclosure could adversely affect Navitas KY's ability to effectively negotiate for insurance policies in the future.¹⁵ The responses to Items 13 and 14 include spreadsheets containing employee compensation data by title and employee number, but without employee names. The response to Item

¹⁴ Navitas KY's Motion for Confidential Treatment (filed Oct. 24, 2024) (October 24, 2024 Motion) at 2-3.

¹⁵ October 24, 2024 Motion at 5.

19 includes a spreadsheet with compensation data for two named executive officers. Navitas KY argued that the documents provided in response to Items 12, 13, 14, and 19 should be granted confidential treatment indefinitely under KRS 61.878(1)(a) as information of a personal nature and under KRS 61.878(1)(c)(1) because it could be used by competitors to recruit Navitas KY's current employees.¹⁶ The response to Item 30 included Navitas KY's Distribution Integrity Management Plan (DIMP). Navitas KY argued that this document should remain confidential indefinitely because disclosure could expose vulnerabilities for potential system disruption under KRS 61.878(1)(m).¹⁷

Having considered the motion and the material at issue, the Commission finds that Navitas KY's October 23, 2024 motion for confidential treatment should be granted, in part, and denied, in part. Confidential treatment should be granted for special contract customer usage in the response to Item 7 because disclosure could affect Navitas KY's ability to obtain other potential special contract partners in the future, disadvantaging Navitas KY compared to its competitors.¹⁸ However, the Commission limits the duration of this protection to ten years.¹⁹ Board meeting minutes in the response to Item 17 should be granted confidential treatment for five years pursuant to KRS 61.878(1)(c)(1) because they primarily consist of acquisition plans, which would disadvantage Navitas KY with its

¹⁶ October 24, 2024 Motion at 6-7.

¹⁷ October 24, 2024 Motion at 7.

¹⁸ See Case No. 2024-00141, *An Electronic Examination of the Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation from November 1, 2022 Through April 30, 2023* (Ky. PSC Dec. 4, 2024), Order at 2.

¹⁹ See Case No. 2024-00141, Dec. 4, 2024 Order at 3, citing Case No. 2016-00117, *Joint Application of Kenergy Corp. and Big Rivers Electric Corporation for Approval of Contracts* (Ky. PSC Dec. 22, 2021), Order at 2; Case No 2023-00013, *An Electronic Examination of the Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation From November 1, 2020 Through October 31, 2022* (Ky. PSC Jan. 29, 2024), Order at 4.

competitors if disclosed. Insurance policies in the response to Item 10 should remain confidential for five years under KRS 61.878(1)(c)(1) because disclosure could negatively affect Navitas KY's ability to negotiate for insurance policies in the future.²⁰ Non-executive employee insurance, benefits, and compensation data in responses to Items 12, 13, and 14 should remain confidential indefinitely under KRS 61.878(1)(a) because disclosure would constitute a clearly unwarranted invasion of personal privacy. The Commission has previously held that, in the absence of employee names, if the data contains information sufficient to allow identification of individuals, it should remain confidential.²¹ The job titles are sufficient to link compensation to individuals. The DIMP filed in response to Item 30 should remain confidential indefinitely under KRS 61.878(1)(m) because it constitutes a comprehensive risk management strategy, which if disclosed would reveal system vulnerabilities.

Confidential treatment should be denied for Navitas KY's general ledger and trial balance filed in response to Item 9(a-b). None of the entries in these documents appear to be information that would give an unfair advantage to competitors. The information is of the type that would be necessary to determine whether expenditures are appropriate for recovery in a rate case, and disclosure fosters the sort of transparency the Commission generally seeks to provide to customers. Although the Commission has granted confidential treatment to redactions from ledgers before, as indicated by Navitas

²⁰ See Case No. 2018-00281, *Electronic Application of Atmos Energy Corporation for an Adjustment of Rates* (Ky. PSC Feb. 3, 2021), Order.

²¹ See Case No. 2021-0018, *Electronic Application of Columbia Gas of Kentucky, Inc. for an Adjustment of Rates; Approval of Depreciation Study; Approval of Tariff Revisions; Issuance of a Certificate of Public Convenience and Necessity; and Other Relief* (Ky. PSC May 15, 2023), Order at 3.

KY,²² the Commission has declined to give blanket protection to general ledgers, instead focusing on the specific type of information involved.²³ In the present case, Navitas KY has not met its burden for establishing that the entirety of the spreadsheets are entitled to protection, nor is any individual entry clearly entitled to protection. Confidential treatment should also be denied for Navitas KY's audited financial statements provided in response to Item 18. These documents contain substantially the same information required to be filed under 807 KAR 5:006, Section 4, and are publicly filed in Navitas KY's 2022 Annual Report.²⁴ Confidential treatment should be denied for all executive compensation information provided in response to Item 19. The Commission has previously held that executive compensation is not entitled to confidential protection because of the public interest in disclosure.²⁵

²² October 24, 2024 Motion at 5, citing Case No. 2020-00396, *Electronic Application of Navitas KY NG, Johnson County Gas Company, and B & H Gas System for Approval of Acquisition, Transfer of Ownership, and Control of Natural Gas Utility Systems* (Ky. PSC Feb. 3, 2021), Order.

²³ See Case No. 2019-00390, *Electronic Application for Approval of Transfer of a Wastewater Treatment Utility from Pro Man Property Management, LLC to Fox Run Living, LLC; Application for Approval of Transfer from Fox Run Living, LLC to Fox Run Utility, LLC; and Offer to Settle Any Violations* (Ky. PSC June 10, 2022), Order at 1, in which the utility was attempting to transfer assets and if the transfer were to not be consummated, the utility's estimation of the value of assets would be disclosed, disadvantaging it with other potential buyers.

²⁴ See Case No. 2022-00217, *Electronic Application of Bluegrass Water Utility Operating Company, LLC for Issuance of Evidence of Indebtedness* (Ky. PSC Feb. 10, 2023), Order.

²⁵ The Commission has a long precedent of not granting confidential treatment for executive compensation. See Case No. 2012-00221, *Application of Kentucky Utilities Company for an Adjustment of its Electric Rates* (Ky. PSC Sept. 11, 2013); Case No. 2014-00371, *Application of Kentucky Utilities Company for an Adjustment of its Electric Rates* (Ky PSC Jan 20, 2016); Case No. 2015-00418, *Application of Kentucky-American Water Company for an Adjustment of Rates* (Ky PSC Aug. 31, 2016); Case No. 2017-00321, *Electronic Application of Duke Energy Kentucky, Inc. For: 1) An Adjustment of the Electric Rates; 2) Approval of an Environment Compliance Plan and Surcharge Mechanism; 3) Approval of New Tariffs; 4) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; and 5) All other Required Approvals and Relief* (Ky. PSC June 12, 2018); Case No. 2018-00294, *Electronic Application of Kentucky Utilities Company for an Adjustment of its Electric Rates* (Ky. PSC Oct. 8, 2019); Case No. 2018-00295, *Electronic Application of Louisville Gas and Electric Company for an Adjustment of its Electric and Gas Rates* (Ky. PSC Oct. 8, 2019); Case No. 2019-00268, *Application of Knott County Water and Sewer District for an Alternative Rate Adjustment* (Ky. PSC Dec. 3, 2019); Case No. 2019-00271, *Electronic*

NOVEMBER 22, 2024 MOTION

Navitas KY sought confidential treatment for its response to Commission Staff's Second Request for Information (Staff's Second Request), Item 10, consisting of information technology vendor software information and invoices. Navitas KY argued that this information should be protected indefinitely because disclosure could expose vulnerabilities for potential system disruption under KRS 61.878(1)(m).²⁶

Having considered the motion and the material at issue, the Commission finds that Navitas KY's November 22, 2024 motion for confidential treatment should be granted indefinitely pursuant to KRS 61.878(1)(m). Identification of the software and the services provided by the information technology contractor could reduce the security of Navitas KY's system and expose system vulnerabilities.

IT IS THEREFORE ORDERED that:

1. Navitas KY's August 2, 2024 motion for confidential treatment is granted, in part, and denied, in part.

Application of Duke Energy Kentucky, Inc. for 1) An Adjustment of the Electric Rates; 2) Approval of New Tariffs; 3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; and 4) All other Required Approvals and Relief (Ky. PSC May 4, 2020); Case No. 2020-00290, Electronic Application of Bluegrass Water Utility Operating Company, LLC for an Adjustment of Rates and Approval of Construction (Ky. PSC Dec. 27, 2021); Case No. 2020-00349, Electronic Application of Kentucky Utilities Company for an Adjustment of Electric Rates, a Certificate of Public Convenience and Necessity to Deploy Advanced Metering Infrastructure, Approval of Certain Regulatory and Accounting Treatments, and Establishment of a One-Year Subcredit (Ky. PSC Dec. 7, 2021); Case No. 2020-00350, Electronic Application of Louisville Gas and Electric Company for an Adjustment of its Electric and Gas Rates, a Certificate of Public Convenience and Necessity to Deploy Advanced Metering Infrastructure, Approval of Certain Regulatory and Accounting Treatments, and Establishment of One-Year Surcredit (Ky. PSC Dec. 7, 2021); Case No. 2021-00183, Electronic Application of Columbia Gas of Kentucky, Inc. for an Adjustment of Rates; Approval of Depreciation Study; Approval of Tariff Revision; Issuance of a Certificate of Public Convenience and Necessity; and Other Relief (Ky. PSC Oct. 5, 2021); Case No. 2021-00185, Electric Application of Delta Natural Gas Company, Inc. for an Adjustment of its Rates and a Certificate of Public Convenience and Necessity (Ky. PSC Dec. 8, 2021).

²⁶ Navitas KY's Motion for Confidential (filed Nov. 22, 2024) at 5-6.

2. Navitas KY's October 23, 2024 motion for confidential treatment is granted, in part, and denied, in part.

3. Navitas KY's November 22, 2024 motion for confidential treatment is granted.

4. The following 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:

a. Redacted guarantor identities contained in Application, Attachment 7(a);

b. Application, Attachment 8;

c. Navitas KY's responses to Staff's First Request, Items 12, 13, 14, and 30; and

d. Navitas KY's response to Staff's Second Request, Item 10.

5. Navitas KY's redactions from its response to Staff's First Request, Item 7, shall not be placed in the public record or made available for public inspection for ten years or until further order of this Commission.

6. Navitas KY's response to Staff's First Request, Items 10 and 17, shall not be placed in the public record or made available for public inspection for five years or until further order of this Commission.

7. Confidential treatment is denied for:

a. Redactions from Application, Attachments 7(a-e) except as indicated in paragraph 4 above; and

b. Navitas KY's response to Staff's First Request, Items 9(a-b), 18, 19.

8. 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).

9. If the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment, Navitas KY shall inform the Commission and file with the Commission an unredacted copy of the designated material.

10. 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.

11. The Commission shall not make the requested material for which confidential treatment was granted 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.

12. The designated material denied confidential treatment by this Order is not exempt from public disclosure and shall be placed in the public record and made available for public inspection.

13. If Navitas KY objects to the Commission's determination that the requested material not be granted confidential treatment, it must seek either rehearing pursuant to KRS 278.400 or judicial review of this Order pursuant to KRS 278.410. Failure to exercise

either of these statutory rights will be deemed as agreement with the Commission's determination of which materials shall be granted confidential treatment.

14. Within 30 days of the date of service of this Order, Navitas KY shall file a revised version of the designated material for which confidential treatment was denied, reflecting as unredacted the information that has been denied confidential treatment.

15. The designated material for which Navitas KY's request for confidential treatment has been denied shall neither be placed in the public record nor made available for inspection for 30 days from the date of service of this Order to allow Navitas KY to seek a remedy afforded by law.

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