

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

ELECTRONIC APPLICATION OF CITIPOWER,)	CASE NO.
LLC FOR A RATE ADJUSTMENT FOR SMALL)	2020-00342
UTILITIES PURSUANT TO 807 KAR 5:076)	

**CITIPOWER LLC’S MOTION FOR REHEARING
ON DENIAL OF CERTAIN CONFIDENTIALITY ISSUES**

Comes now Citipower, LLC (“Citipower” or “Company”), by counsel, and respectfully petitions the Commission to grant rehearing on certain items contained in an Order entered by the Commission on March 16, 2022 which granted in part and denied in part various motions for confidential treatment filed by the Company (“Confidentiality Order”). As grounds for this motion Citipower respectfully states as follows:

I. Background

The Commission’s Confidentiality Order denied the request for confidentiality for the Company’s information contained in its Application. Specifically, the managing member and controller’s pay rate included in the attachment “Citienergy Cost Estimates for Tasks Performed for Citipower”. The attachment that was provided with the Application was in support of Citipower’s request to include a management fee, for the work performed on Citipower’s behalf by CitiEnergy, in base rates. The Commission’s Final Order in this proceeding denied any recovery of any portion of the management fee requested.

II. Argument

Citipower is aware of the Commission’s longstanding practice of denying confidential treatment to executive compensation. The Commission’s Confidentiality Order in this proceeding

followed the same logic as prior Commission Orders on this issue when it stated “Any privacy interest executive officers may seek in their compensation data is outweighed by the public’s interest in executive compensation that is to be recovered in base rates.”¹ However, Citipower’s issue is different than the other cases that have been decided under this rationale. The information Citipower requested confidential treatment for was pay rates for the managing member and controller of CitiEnergy, the parent company of Citipower. Citipower has requested for many years to be allowed to include CitiEnergy’s management fee through its base rates. The Commission has consistently denied Citipower’s request to recover CitiEnergy’s management fee through base rates. In fact, the Commission does not allow recovery of any portion of CitiEnergy’s management fee through Citipower’s base rates. Since there is no recovery of the management fee in base rates, none of the managing member or the controller’s compensation is recovered through Citipower’s base rates. In fact, none of the work performed by the managing member or the controller is recovered in base rates of Citipower since there are no administrative expenses for these services included.

Citipower respectfully requests the Commission to grant rehearing and afford confidential protection to the compensation information provided in the Application attachment “Citienergy Cost Estimates for Tasks Performed for Citipower”. Since there is no recovery through rates of the compensation of the managing member and the controller, the privacy interest of these two individuals outweighs any public interest of revealing this information. The information tendered to the Commission in its Application, is sensitive compensation information This information is private in nature and should not be publicly available, especially since Citipower does not recover any of this compensation through its base rates. Any public interest in this information is woefully

¹ Confidentiality Order p. 4.

insufficient to warrant the invasion of personal privacy that necessarily results from the public disclosure of employee-specific compensation information.

The Kentucky Court of Appeals has stated, “information such as . . . wage rate . . . [is] generally accepted by society as [a] detail in which an individual has at least some expectation of privacy.”² Additionally, the Kentucky Supreme Court has characterized personal income as being information of a private nature.³ Accordingly, the Commission should grant rehearing and afford the compensation information pertaining to the managing member and controller of CitiEnergy, when their compensation is not included in the base rates of the regulated Kentucky utility, Citipower. The Kentucky Open Records Act prohibits the disclosure of “[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.”⁴

In the case of Citipower’s Application attachment, the palpable damage that will result from the public dissemination of private employee compensation information, which is not recovered in Citipower’s base rates, far outweighs any justification that could be provided in support of disclosure. Based on the foregoing, Citipower respectfully seeks confidential protection for the information submitted in its Application attachment “Citienergy Cost Estimates for Tasks Performed for Citipower”.

WHEREFORE, based on the foregoing, Citipower respectfully moves the Commission to issue an Order granting rehearing and granting confidential treatment to the compensation information described above.

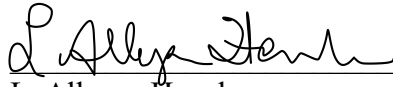
This 5th day of April 2022.

² *Zink v. Department of Workers’ Claims, Labor Cabinet*, 902 S.W.2d 825, 828 (Ky. Ct. App. 1994).

³ *See Cape Pub’ns, Inc. v. Univ. of Louisville Found., Inc.*, 260 S.W.3d 818, 822 (Ky. 2008).

⁴ KRS 61.878(1)(a).

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that the foregoing electronic filing was transmitted to the Commission on April 5, 2022; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and pursuant to the Commission's July 22, 2021 Order in Case No. 2020-00085, no paper copies of this filing will be made.



Counsel for Citipower, LLC.