

**COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION**

**In the Matter of:**

<b>ELECTRONIC PURCHASED</b>	)	
<b>GAS ADJUSTMENT FILING</b>	)	<b>CASE NO. 2022-00331</b>
<b>OF NAVITAS KY NG, LLC</b>	)	

**MOTION FOR CONFIDENTIAL TREATMENT**

1. Navitas KY NG, LLC (“Navitas”), by counsel, hereby moves the Kentucky Public Service Commission (the “Commission”), pursuant to KRS 61.878 and 807 KAR 5:001 Section 13, to grant confidential protection to certain documents provided in connection with its application in the above-styled matter. The documents for which Navitas seeks confidential protection consist of invoices received from third-party suppliers which contain proprietary commercial information (collectively, the “Confidential Information”). The filing of this Confidential Information is required by the Commission.<sup>1</sup>

2. Navitas seeks confidential protection for the entirety of the subject invoices, primarily in light of the pervasive nature of the proprietary and confidential information contained in each document. The Confidential Information is replete with pricing and volume information involving business transactions of private parties in a competitive marketplace. In light of these facts, Navitas requests that each invoice remain unavailable to the general public, as contemplated by 807 KAR 5:001 Section 13(2)(a)(3)b.

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<sup>1</sup> See, e.g., Case No. 2022-00189, *Electronic Purchased Gas Adjustment Filing of Navitas KY NG, LLC*, Order at 2 (Ky. P.S.C. Aug. 4, 2022) (“For the purpose of transparency and to maintain a record of information for future use, the Commission finds that Navitas KY shall submit all invoices it receives, along with its monthly usage reports when it files its future GCR rate reports.”).

3. Copies of the Confidential Information, marked “CONFIDENTIAL” throughout, are submitted concurrently with this motion by email to PSCED@ky.gov with a read receipt. Because confidential treatment is sought for the entirety of these documents, a redacted copy of each has not been filed or uploaded to the public docket. To the extent required, Navitas requests permission to deviate as described from the filing requirements of 807 KAR 5:001 Section 13, pursuant to 807 KAR 5:001 Section 22.

4. If and to the extent a Confidential Information becomes publicly available because it is no longer competitively sensitive, Navitas will inform the Commission in writing and have its confidential status removed. 807 KAR 5:001 Section 13(10)(b).

#### **I. Discussion**

5. The Confidential Information is entitled to confidential treatment pursuant to KRS 61.878(1)(c)(1), which protects “records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.” 807 KAR 5:001 Section 13(2)(a)(1).

6. As noted above, the Confidential Information includes sensitive pricing and volume information shared between private parties, and it is retained by Navitas as confidential business information. If potential competitors or other suppliers enjoyed ongoing, unrestricted access to the Confidential Information, Navitas’s ability to fairly negotiate terms with counterparties in the marketplace would be negatively impacted. Indeed, the public disclosure of the Confidential Information will inevitably inure to the benefit of Navitas’s potential counterparties and

competitors, which would gain valuable, non-public information about Navitas’s business. Information such as this is generally recognized as confidential or proprietary.<sup>2</sup>

7. The Confidential Information is not publicly available, is not disseminated within Navitas except to those employees and professionals with a legitimate business need to know and act upon the information, and is not disseminated to others without a legitimate need to know and act upon the information.

## **II. Time Period**

8. Navitas requests that the Confidential Information remain confidential for a period of five (5) years, as the public disclosure of the proprietary and confidential information contained in the Confidential Information could be used to the Navitas’ competitive disadvantage through that time. After the expiration of this period, it appears likely the information in the pertinent Confidential Information will be sufficiently dated as to no longer present risk to Navitas.

## **III. Conclusion**

9. Based on the foregoing, the Confidential Information is entitled to confidential protection. If the Commission disagrees, then the Commission should hold an evidentiary hearing to protect Navitas’s due process rights and to supply the Commission with a complete record to

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<sup>2</sup> See, e.g., Case No. 2021-00278, *Electronic Purchased Gas Adjustment Filing of Navitas KY NG, LLC*, Order (Ky. PSC Aug. 16, 2022); *Hoy v. Kentucky Indus. Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995) (“It 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’”); *Marina Management Servs. v. Cabinet for Tourism, Dep’t of Parks*, 906 S.W.2d 318, 319 (Ky. 1995) (unfair commercial advantage arises simply from “the ability to ascertain the economic status of the entities without the hurdles systemically associated with the acquisition of such information about privately owned organizations”); Case No. 2019-00115, *In the Matter of: Electronic Application of Grayson County Water District for a Deviation from Meter Testing Requirements of 807 KAR 5:066, Section 16(1)*, Order (Ky. P.S.C. September 19, 2019) (granting confidential protection for proprietary product produced by a third party that was not available to the general public/required membership to obtain and was generally recognized as confidential).

enable it to reach a decision with regard to this matter. *See Utility Regulatory Com'n v. Kentucky Water Service Co., Inc.*, 642 S.W.2d 591 (Ky. App. 1982).

WHEREFORE, Navitas respectfully requests that the Commission classify and protect as confidential the Confidential Information.

This 5<sup>th</sup> day of October, 2022.

Respectfully submitted,

**DINSMORE & SHOHL LLP**

/s/ M. Evan Buckley

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**Certification**

I hereby certify that a copy of the foregoing has been served electronically on all parties of record through the use of the Commission's electronic filing system, and there are currently no parties that the Commission has excused from participation by electronic means. Pursuant to the Commission's July 22, 2021 Order in Case No. 2020-00085, a paper copy of this filing has not been transmitted to the Commission.

/s/ M. Evan Buckley

*Counsel to Navitas KY NG, LLC*