

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

**In the Matter of:**

<b>ELECTRONIC APPLICATION OF</b>	)	
<b>BIG SANDY WATER DISTRICT</b>	)	
<b>FOR A CERTIFICATE OF PUBLIC</b>	)	
<b>CONVENIENCE AND NECESSITY TO</b>	)	
<b>DEPLOY AN ADVANCED METERING</b>	)	<b>Case No. 2023-00163</b>
<b>INFRASTRUCTURE AND</b>	)	
<b>GEOGRAPHIC INFORMATION SYSTEM,</b>	)	
<b>ISSUANCE OF EVIDENCE OF</b>	)	
<b>INDEBTEDNESS, AND REQUEST FOR</b>	)	
<b>EXPEDITED RELIEF</b>	)	

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**MOTION OF BIG SANDY WATER DISTRICT  
FOR CONFIDENTIAL TREATMENT**

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1. Big Sandy Water District (“Big Sandy District”) pursuant to 807 KAR 5:001 Section 13 and KRS 61.878, hereby moves the Kentucky Public Service Commission (the “Commission”) to grant confidential treatment to certain information contained in its Responses to the Commission Staff’s First Requests for Information. In support of this Motion, Big Sandy District states as follows.

2. As discussed below, the Confidential Information is entitled to confidential treatment based upon KRS 61.878(1)(c)(1). *See* 807 KAR 5:001, Section 13(2)(a)(1).

3. Specifically, Big Sandy District seeks to keep confidential itemized pricing information compromising a portion of the total bid price submitted by Integrity Water and Energy (“Integrity”), which is contained within Big Sandy District’s Response to PSC No. 1-9(b) and Exhibit PSC 1-19(a) (“the *Confidential Information*”).

**I. KRS § 61.878 – Confidential or Proprietary Information.**

4. KRS § 61.878(1)(c)(1) 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.”

5. The Confidential Information identified above for which Big Sandy District seeks confidential treatment is not publicly disseminated and public disclosure of this information would harm Big Sandy District and a third-party not a party to this proceeding, Integrity.

6. Big Sandy District’s Response to Commission Staff Request No. 1-9(b) and Exhibit PSC 1-19(a) contains itemized pricing information of Integrity, which was not included within Integrity’s RFP Response. The Confidential Information is comprised of the components making up the total contract price proposed in the RFP response, which is confidential, proprietary information of Integrity and was confidentially provided to Big Sandy District.

7. Specifically, the Confidential Information pertains to Integrity’s estimated costs for each component of the total bid price. Integrity operates in a competitive marketplace and its development of expected expenses when submitting a response to an RFP is based upon confidential, proprietary information of Integrity. Disclosure of how Integrity determines its bid responses could result in an unfair competitive advantage to Integrity’s competitors.

8. The Commission has previously granted confidential treatment to confidential and proprietary documents of third-parties. For example, the Commission has previously protected information proprietary to third-party vendors, reasoning as follows:

The national data should also be held confidential because it is proprietary to the third party. Jackson Purchase’s ability to obtain this type of information in the future is dependent on maintaining confidentiality of such proprietary data. The Commission previously protected a third-party actuarial report, which similarly

included proprietary data gathered for the purpose of generating said report for a utility for compensation. . . .

*In the Matter: Electronic Application of Jackson Purchase Energy Corporation for a General Adjustment of Rates and Other General Relief*, Case No. 2021-00358, Order, (Dec. 9, 2021, 2021 Ky. PUC LEXIS 1255.

9. Likewise, here, a third party contractor provided this information for the purpose of providing a complete response to the Commission Staff's data requests to ensure the Commission had a complete and thorough set of facts upon which it could render a decision. Public disclosure of such information could harm Big Sandy District as other contractors in the future may not be willing to work with Big Sandy District or may not be willing to provide necessary information for fear that proprietary information granting such third party a competitive advantage will be publicly disclosed. *See also In the Matter of: Electronic Application of Ky. Utils. Co. for an Adjustment of its Electric Rates*, Case No. 2016-00370, Order (Dec. 10, 2018), 2018 Ky. PUC LEXIS 1117 (granting confidential treatment to "confidential and proprietary third-party documents").

10. Moreover, the Commission has historically recognized the unfair competitive advantage that can be gained by disclosing specific information related to bid responses. *See In the Matter of: Application of the Union Light, Heat and Power Company for Confidential Treatment*, Order, PSC Case No. 2003-00054 (Aug. 4, 2003). As Big Sandy District continues in its efforts to reduce water loss, public disclosure of the amounts allocated to repairs of the system could work to the detriment of Big Sandy District as future bidders would have information that they could use as a benchmark when seeking to respond to a request for bids issued by Big Sandy District.

## **II. The Confidential Information.**

11. The Confidential Information is not publicly available, is not disseminated within Integrity or Big Sandy District except to those employees and professionals with a legitimate business need to know and act upon the information, and are not disseminated to others without a legitimate need to know and act upon the information.

12. Big Sandy District requests that the Confidential Information be allowed to remain confidential for five years from the date of this Motion, at which point Integrity advises that the Confidential Information should be sufficiently outdated so that it could not be used to competitively disadvantage Integrity.

13. Based on the foregoing, the Confidential Information is entitled to confidential protection. If the Commission disagrees, then the Commission should allow Big Sandy District to request an evidentiary hearing to protect its due process rights and to supply the Commission with a complete record to enable it to reach a decision with regard to this filing. *See Util. Reg. Comm'n v. Ky. Water Serv. Co., Inc.*, 642 S.W.2d 591 (Ky. App. 1982).

14. Pursuant to the Commission's March 24, 2020 Order *In the Matter of: Electronic Emergency Docket Related to the Novel Coronavirus COVID-19*, Case No. 2020-00085 ("Case No. 2020-00085"), one (1) copy of the confidential information highlighted in yellow is being filed with this motion by electronic mail. A copy of those pages, with the Confidential Information redacted, is being electronically filed with the Application for CPCN.

15. A copy of this motion with the Confidential Information redacted has been served on all parties to this proceeding through the use of electronic filing. *See* 807 KAR 5:001, Section

13(b). A copy of the Confidential Information has been served on all parties to this proceeding through electronic mail.

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

WHEREFORE, Big Sandy District respectfully requests that the Commission classify and protect the Confidential Information as confidential for five years from the date of the filing of this Motion

This the 11th day of July, 2023.

Respectfully submitted,

/s/ R. Brooks Herrick  
R. Brooks Herrick  
Easton B. Depp  
DINSMORE & SHOHL LLP  
101 South Fifth Street  
Suite 2500  
Louisville, KY 40202  
502.540.2300  
502.540.2529 (fax)  
[Brooks.herrick@dinsmore.com](mailto:Brooks.herrick@dinsmore.com)  
[Easton.depp@dinsmore.com](mailto:Easton.depp@dinsmore.com)  
*Counsel to Big Sandy Water District*

### **Certification**

I hereby certify that a copy of this Motion 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/ R. Brooks Herrick  
*Counsel to Big Sandy Water District*