

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

In the Matter of:

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

MOTION FOR CONFIDENTIAL TREATMENT

Navitas KY NG, LLC (“Navitas” or the “Company”), by counsel and pursuant to 807 KAR 5:001 Section 13 and KRS 61.878, respectfully submits this motion for confidential treatment (“Motion”) with respect to certain information provided in Attachments to its Application for an Alternative Rate Filing Adjustment pursuant to 807 KAR 5:076 (“Application”). The information for which Navitas seeks confidential treatment is hereinafter referred to as the “Confidential Information.” In support of its Motion, Navitas states as follows:

1. Contemporaneously with the filing of this motion, Navitas has filed its Application and supporting Attachments in the above-referenced matter.

2. Within those Attachments, Navitas has provided certain Confidential Information, which is found in the following items:

- a. Attachment 7(a) to the Application – Loan and Security Agreement dated October 17, 2013, as amended (“Loan Agreement”);
- b. Attachment 7(b) to the Application – First Amended and Restated Term Loan D Promissory Note (Note D) dated November 14, 2017, as amended (“Note D”);
- c. Attachment 7(c) to the Application – Promissory Note (Note G) dated July 31, 2014, as amended (“Note G”);

- d. Attachment 7(d) to the Application – Amended and Restated Revolving Line of Credit Loan L Promissory Note (Note L) dated September 13, 2021, as amended (“Note L”);
- e. Attachment 7(e) to the Application – Promissory Note (Note N) dated April 30, 2021, as amended (“Note N”); and
- f. Attachment 8 to the Application – Navitas’s federal and state tax returns (“Tax Returns”).

3. The information Navitas seeks to protect as Confidential Information includes (i) private financial information of Navitas and other related companies who share the same parent company, Navitas Assets, LLC, but are unaffected and unaffiliated with this Application, (ii) private information including that of a personal nature, and (iii) sensitive utility infrastructure information.

I. ATTACHMENT 7(a) - THE LOAN AGREEMENT.

4. The Confidential Information Navitas seeks to protect in the Loan Agreement does not include general terms or general, non-confidential language.

5. The Confidential Information included in the Loan Agreement includes the following (with references to the page numbers for the Attachment’s complete PDF file):

- Certain financial information on page 1, paragraphs (a)-(h), second column under the header “Amount”;
- Certain private information of guarantors on page 3, section 1.11, paragraphs (a)-(b);
- Certain financial information on pages 5-6, section 2.1, paragraphs (a)-(h), second column under the header “Amount”;
- Certain financial information on page 6, section 2.4, line 2;

- Certain financial information on page 6, section 2.6, lines 4, 5, and 11;
- Certain financial information on page 19, section 7.5.2, line 2, and section 7.5.5, line 1;
- Certain financial information on page 23, section 9.4, line 7;
- Certain financial information on page 24, section 10.1, line 15;
- Certain real property and property information on page 33, section a.viii., lines 2-6; section b., lines 1-3; and section c.i., lines 1 and 2;
- Certain real property and property information on page 34, section c.ii., lines 1 and 2; section c.iii., lines 1 and 2; section d.i., line 1; section d.ii., line 1; section d.iii., lines 2-9; and d.vi., lines 2-5;
- Certain real property information on page 35, section d.vi., lines 6-9; section d.vii., the second paragraph; section d.viii., the second paragraph; and section d.ix., the second paragraph, lines 2-4;
- Certain real property and property information on pages 37-38, section g.i.(a)-(b); section g.ii., line 1; and section g.iii.(a)-(e);
- Certain real property and property information on page 38, section h.i., lines 1-2;
- Certain real property and property information on page 39, the first full paragraph, lines 3-7; the second paragraph, line 1; and section k.ii., the first full paragraph, lines 5-6 and the second paragraph, 5-10;
- Certain real property and property information on page 40, the first paragraph, lines 4-6; the third paragraph; the fourth paragraph; and the sixth paragraph;
- Certain real property and property information on page 41, section iv., lines 6-9, 11-15, 17-19, and 21-28;
- Certain real property and property information on page 42, lines 1-10 and 13-15;

- Certain private financial and property information on page 46, section 11, lines 3-24;
- Certain private financial and property information on page 47, section 11, lines 1-15;
- Certain private financial and property information on page 49, section a.i.;
- The private information of certain individuals granting rights-of-ways to Navitas on pages 50-51, and section a.iv., lines 1-2 on page 51;
- Certain private financial and property information on pages 51-52 found in section b.i., section b.ii.;
- The private information of certain individuals granting rights-of-ways to Navitas on page 52, section c., lines 5 and 6; page 53, lines 1-7, 9, 12-32; and page 54, lines 1-17;
- Certain equipment and property on pages 55-60 located in the first two columns;
- Certain private information of guarantors on page 68, lines 10-11;
- Certain financial information on page 68, line 20;
- Certain financial information on page 68, section 2(a)(iv), line 2; and section 2(d), line 2;
- Certain private information of guarantors on page 71, section 5, lines 2-3;
- Certain financial information on page 71, section 6, line 3;
- Certain private information on page 72, section 8, line 4; and section 9, line 21;
- Certain financial information on page 73, section 10, line 4;
- Certain private information of guarantors on page 76;
- Certain real property and property information on page 77, paragraphs 1 and 2;
- Certain real property and property information on page 78, paragraphs 1, 2, and 3;
- Certain private information of guarantors on page 79, lines 9-10;
- Certain financial information on page 79, line 14;
- Certain private information of guarantors on page 81;

- Certain private information of guarantors on page 82, lines 11-12;
- Certain financial information on pages 82-83, paragraphs (a)-(l), under the columns titled “Amount” and “Borrower”;
- Certain private information of guarantors on page 84, section 1.12, paragraphs (a)-(d);
- Certain financial information on page 87, section 2.1, paragraphs (a)-(l), under the columns titled “Amount” and titled “Borrower”;
- Certain financial information on page 87, section 2.4, line 2;
- Certain financial information on page 88, section 2.6, lines 2-4;
- Certain financial information on pages 91 and 92, section 3.6, lines 1, 3, and 5;
- Certain financial information on page 93, section 4.13, lines 1-2;
- Certain private information on page 97, section 6.1(h), line 2;
- Certain financial information on page 100, section 6.20, line 2;
- Certain financial information on page 101, section 7.5.2, line 2, and section 7.5.5, line 1;
- Certain financial information on page 105, section 9.4, line 7; and section 10.1, line 15;
- Certain private information of guarantors on page 110;
- Certain real property and property information on page 114, section a.viii., lines 2-6; section b., lines 1-3; and section c.i., lines 1 and 2;
- Certain real property and property information on page 115, section c.ii., lines 1 and 2; section c.iii., lines 1 and 2; section d.i., line 1; section d.ii., line 1; section d.iii., lines 2-9; and d.vi., lines 2-5;
- Certain real property information on page 116, section d.vi., lines 6-9; section d.vii., the second paragraph; section d.viii., the second paragraph; and section d.ix., the second paragraph, lines 2-4;

- Certain real property and property information on pages 118-119, section g.i.(a)-(b); section g.ii., line 1; and section g.iii.(a)-(e);
- Certain real property and property information on page 119, section h.i., lines 1-2;
- Certain real property and property information on page 120, the first full paragraph, lines 3-7; the second paragraph, line 1; and section k.ii., the first full paragraph, lines 5-6 and the second paragraph, 5-10;
- Certain real property and property information on page 121, the first paragraph, lines 4-6; the third paragraph; the fourth paragraph; and the sixth paragraph;
- Certain real property and property information on page 122, section iv., lines 6-9, 11-15, 17-19, and 21-28;
- Certain real property and property information on page 123, lines 1-10 and 13-15;
- Certain private financial and property information on page 128, section 11, lines 3-38;
- Certain private financial and property information on pages 130-131, section 13(a)(i) lines 1-15;
- The private information of certain individuals granting rights-of-ways to Navitas on pages 132-133, and section a.iv., lines 1-2 on page 133;
- Certain private financial and property information on pages 133-134 found in section b.i., section b.ii.;
- The private information of certain individuals granting rights-of-ways to Navitas on page 134, section c., lines 5 and 6; page 135, lines 1-7, 9, 12-32; and page 136, lines 1-17;
- Certain equipment and property on pages 137-142 located in the first two columns;
- Certain private information of guarantors on page 143, lines 11-12;
- Certain financial information on page 143, lines 21-22;

- Certain financial information on pages 143-144, paragraphs (a)-(m), under the columns titled “Amount” and “Borrower”;
- Certain private information of guarantors on page 144, section 1, paragraphs (a)-(d);
- Certain financial information on pages 144-145, section 2.1, paragraphs (a)-(m), under the columns titled “Amount” and titled “Borrower”;
- Certain financial information on page 146, section 7, line 1;
- Certain private information of guarantors on page 150;
- Certain real property and property information on page 152, paragraphs (a)-(i);
- Certain real property and property information on page 153, paragraphs 1-5;
- Certain private information of guarantors on page 156, lines 11-12;
- Certain financial information on page 156, lines 21, 22, and 25;
- Certain financial information on pages 156-157, paragraphs (a)-(n), under the columns titled “Amount” and “Borrower”;
- Certain private information of guarantors on page 157, section 1, paragraphs (a)-(d);
- Certain financial information on pages 157-158, section 2.1, paragraphs (a)-(n), under the columns titled “Amount” and titled “Borrower”;
- Certain financial information on page 159, paragraph (g), line 2;
- Certain financial information on page 160, section 5, line 1;
- Certain private information of guarantors on pages 163-164;
- Certain private information of guarantors on page 167, lines 11-12;
- Certain financial information on page 167, lines 21, 22, 26, 27, and 31;
- Certain financial information on page 168, paragraphs (a)-(o), under the columns titled “Amount” and “Borrower”;

- Certain private information of guarantors on page 168, section 1, paragraphs (a)-(d);
- Certain financial information on page 169, section 2.1, paragraphs (a)-(o), under the columns titled “Amount” and titled “Borrower”;
- Certain financial information on page 169, section 3, line 1; and
- Certain private information of guarantors on pages 173-174.

II. ATTACHMENT 7(b) - NOTE D.

6. The Confidential Information Navitas seeks to protect in Note D does not include general terms or general, non-confidential language.

7. The Confidential Information included in Note D includes the following (with references to the page numbers for the Attachment’s complete PDF file):

- Certain financial information on page 1, heading; lines 4-5; “Interest Rate” section, lines 2-3; “Payment Terms” section, lines 3 and 5; “Late Charge/Default Interest” section, line 2; and “No Novation” section, line 3;
- Certain financial information on page 5, line 7 and “Interest Rate” section, lines 2-7, 9-10, and 12; and
- Certain financial information located throughout pages 7-8.

III. ATTACHMENT 7(c) - NOTE G.

8. The Confidential Information Navitas seeks to protect in Note G does not include general terms or general, non-confidential language.

9. The Confidential Information included in Note G includes the following (with references to the page numbers for the Attachment’s complete PDF file):

- Certain financial information on page 1, heading; lines 4-5; “Interest Rate” section, lines 2 and 10; “Payment Terms” section, line 10; “Late Charges” section, line 1; and “Default rate” section, line 2;
- Certain financial information on page 5, line 7 and “Interest Rate” section, lines 2-3, 5-11, and 12; and
- Certain financial information located throughout pages 7-9.

IV. ATTACHMENT 7(d) - NOTE L.

10. The Confidential Information Navitas seeks to protect in Note L does not include general terms or general, non-confidential language.

11. The Confidential Information included in Note L includes the following (with references to the page numbers for the Attachment’s complete PDF file):

- Certain financial information on page 1, heading; lines 4-5; “Interest Rate” section, lines 2, 4-9, and 11; “Payment Terms” section, line 9; “Default Interest” section, lines 2 and 4; and “No Novation” section, line 4;
- Certain financial information located in the headings of pages 2-4;
- Certain financial information on page 5, heading; lines 7 and 10; and section 1, line 2;
- Certain financial information located in the heading of page 6;
- Certain financial information on page 7, heading; line 8; section 1, line 2; and section 3, lines 5-11;
- Certain financial information on page 8, heading; line 1; section 4, line 3; and section 5, line 2;
- Certain financial information located in the heading of page 9;

- Certain financial information on page 10, heading; lines 8 and 10; section 1, line 2; section 4, line 3; and section 5, line 3;
- Certain financial information located in the heading of page 11;
- Certain financial information on page 12, heading; lines 8 and 10; section 1, line 2; section 4, line 3; and section 5, line 3;
- Certain financial information located in the heading of page 13;
- Certain financial information on page 14, heading; lines 8 and 10; section 1, line 2; section 4, line 3; and section 5, line 3;
- Certain financial information located in the heading of page 15;
- Certain financial information on page 16, heading; lines 8 and 10; section 1, line 2; section 4, line 3; and section 5, line 3; and
- Certain financial information located in the heading of page 17.

V. Attachment 7(e) - NOTE N.

12. The Confidential Information Navitas seeks to protect in Note N does not include general terms or general, non-confidential language.

13. The Confidential Information included in Note N includes the following (with references to the page numbers for the Attachment's complete PDF file):

- Certain financial information on page 1, heading; line 5; "Interest Rate" section, lines 2, 4-10, and 12; "Payment Terms" section, lines 3-4; "Late Charges" section, line 1; and "Default Rate" section, line 2;
- Certain financial information located in the headings of pages 2-4; and
- Certain financial information located throughout pages 5-8.

VI. CONFIDENTIAL OR PROPRIETARY COMMERCIAL INFORMATION.

14. Pursuant to KRS 61.687(1)(c)(1), commercial information generally recognized as confidential is protected if disclosure would cause competitive injury and permit competitors to obtain an unfair commercial advantage. To qualify for the exemption and maintain the confidentiality of the information, a party must establish that the material is of a kind “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.”¹ The Commission has routinely relied on this section of the Kentucky Open Records Act to grant confidential protection to third-party documents when disclosure would disadvantage a company.²

15. The financial information included within the Confidential Information consists of sensitive financial information, protected work product, and proprietary information regarding the inner workings of Navitas. The private nature of the information, which includes detailed information respecting the Company’s credit and finances, must be maintained to ensure Navitas and its related entities do not experience an imbalance of information with competitors and potential counterparties. This Confidential Information “if openly disclosed would present an unfair commercial advantage to competitors” of Navitas and it therefore qualifies as protectable confidential information pursuant to KRS 61.878(1)(c)(1).

16. The Commission previously recognized the confidential nature of some of the documents that contain the Confidential Information, finding that they met the criteria for confidential treatment and were therefore exempted from public disclosure pursuant to KRS

¹ KRS 61.687(1)(c)(1).

² See, e.g., *In the Matter of Electronic Application of Kentucky Utilities Company for an Order Authorizing the Issuance of Securities and Assumption of Obligations and an Order Amending and Extending Existing Authority with Respect to Revolving Line of Credit*, Case No. 2018-00153, Order (Ky. PSC Aug. 22, 2018).

61.878(1)(c)(1) and 807 KAR 5:0001, Section 13.³ This finding was based upon a redacted version of the Loan and Security Agreement dated October 17, 2013 which is included in Attachment 7(a), a redacted version of the First Amended and Restated Term Loan D Promissory Note effective November 14, 2017 which is included in Attachment 7(b), and a redacted version of the Promissory Note (Note G) effective July 31, 2014 which is included in Attachment 7(c). The Confidential Information contained in Attachments 7(d) and 7(e) is substantially similar in nature to the information previously granted confidential treatment.

17. The financial information included within the Confidential Information is not publicly available. It would be difficult or impossible for someone to discover this information from other sources. The disclosure of this proprietary information would result in significant or irreparable competitive harm to Navitas and other Navitas companies, by providing its competitors with non-reciprocal competitive advantage. No public purpose is served by the disclosure of such Confidential Information.

VII. PRIVATE INFORMATION.

18. The private financial information and certain real property information included within the Confidential Information contains “information of a personal nature” and it therefore qualifies as protectable confidential information pursuant to KRS 61.878(1)(a). This information

19. The private information identified in this Section VII and included within the Confidential Information is protected by the Kentucky Open Records Act. No public purpose is served by the disclosure of such Confidential Information.

³ *In the Matter of Electronic Application of Navitas KY NG, Johnson County Gas Company, And B & H Gas Company for Approval of Acquisition, Transfer of Ownership, and Control of natural Gas Utility Systems*, Case No. 2020-00396, Order (Ky. PSC Apr. 28, 2021).

VIII. INFORMATION EXEMPTED BY KRS 61.878(1)(m).

20. KRS 61.878(1)(m)(1) protects “[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. . . .”

21. Attachment 7(a) (the Loan Agreement) contains information specifically identifying the location of its gas transmission system. As disclosure of this information would provide the public with a tool to analyze, discover, or create vulnerabilities in Navitas’s transmission system, thereby threatening public safety, this information should be granted confidential treatment.

IX. ATTACHMENT 8 - FEDERAL AND STATE TAX RETURNS.

22. The Confidential Information in Attachment 8 is Navitas’s federal and state income tax returns. The Commission considers tax returns confidential and exempt from public disclosure for an indefinite period of time.⁴

X. TIME PERIOD.

23. 807 KAR 5:001 Section 13(2)(a)(2) provides that a motion for confidential treatment shall state the time period for which the material should be treated as confidential and the reasons for this time period.

- a. Navitas respectfully submits that the tax returns should be accorded confidential treatment for an “indefinite” period of time, consistent with the Commission’s Order in Case No. 2018-00041 (“The material set forth in the attachments to Columbia’s Response to Staff’s Third Request, Item 1, Attachment B shall not be

⁴ *In the Matter of: Electronic Investigation of the Impact of the Tax Cuts and Job Act on the Rates of Columbia Gas of Kentucky, Inc.*, Case No. 2018-00041, Order at 2 (Jun. 6, 2018); Case No. 2020-00290.

placed in the public record or made available for public inspection for an indefinite period, or until further Orders of this Commission.”).

- b. Navitas requests that the Confidential Information protected by KRS 61.878(1)(m) remain confidential indefinitely; as long as the transmission system remains in place, the information should be confidential for the reasons stated above.
- c. The remaining attachments for which confidential treatment is sought may remain confidential for five (5) years from the date of the filing of this Motion, which Navitas submits is a reasonable period of time for confidentiality in light of competitive conditions in the utility and financial marketplaces.

XI. REQUEST FOR RELIEF.

24. Because this Confidential Information is subject to a pending motion for confidential treatment, the Confidential Information remains confidential until the Commission acts on that motion.⁵

25. This 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.

26. If disclosed, some of the Confidential Information would allow Navitas’s competitors to discover, and use, the Confidential Information concerning Navitas’s financial condition and business strategies, to the unfair competitive advantage of Navitas.

⁵ See 807 KAR 5:001 Section 13(4) (“Pending action by the commission on a motion for confidential treatment or by its executive director on a request for confidential treatment, the material specifically identified shall be accorded confidential treatment.”).

27. If and to the extent the Confidential Information becomes generally available to the public, whether through filings required by other agencies or otherwise, Navitas will notify the Commission in writing.⁶

28. If the Commission disagrees with Navitas that the material for which this Motion seeks confidential treatment is exempt from disclosure, it must hold an evidentiary hearing to protect the due process rights of Navitas and permit the opportunity to supply the Commission with a complete record to enable it to reach a decision with regard to this confidentiality request.

29. In compliance with 807 KAR Section 8(3) and Section 13(2)(e), Navitas is filing with the Commission a copy of the Confidential Information, entirely unredacted and with highlighting of the material for which confidential treatment is sought. The unredacted copies are filed under seal pursuant to the instructions regarding confidential filings in the March 24, 2020 Order issued in Case No. 2020-00085; redacted pages of the subject documents are being publicly filed.

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

Submitted this the 2nd day of August, 2024.

Respectfully submitted,

/s/ M. Evan Buckley

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⁶ 807 KAR 5:001 Section 13(10)(b).

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Certification

I hereby certify that a copy of this filing 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