

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

MOTION FOR CONFIDENTIAL TREATMENT

Navitas KY NG, LLC (“Navitas”), by counsel and pursuant to KRS 61.878 and 807 KAR 5:001 Section 13, hereby moves the Kentucky Public Service Commission (the “Commission”) to grant confidential protection to certain documents and information provided in connection with its Response to the Commission Staff’s First Request for Information in the above-styled matter (the “RFI”). 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 Response to the RFI and supporting exhibits in the above-referenced matter.
2. As discussed below, the Confidential Information is entitled to confidential treatment based upon KRS 61.878(1)(c)(1) and KRS § 61.878(1)(m)(1).¹
3. As part of its Response, Navitas has provided certain Confidential Information, which is found in the following items:
 - I. Response to Request No. 1-7;
 - II. Exhibit PSC 1-9(a);

¹ See 807 KAR 5:001, Section 13(2)(a)(1).

- III. Exhibit PSC 1-9(b);
- IV. Exhibit PSC 1-10;
- V. Exhibit PSC 1-12;
- VI. Exhibit PSC 1-13;
- VII. Exhibit PSC 1-14;
- VIII. Exhibit PSC 1-17;
- IX. Exhibit PSC 1-18;
- X. Exhibit PSC 1-19;
- XI. Exhibit PSC 1-30.

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.” KRS § 61.878(1)(m)(1) protects certain “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....”

A. Customer Information

5. A portion of Navitas’s Response to Request No. 1-7 contains information related to individual customers, including individual customer usage data. Disclosing these details would allow Navitas’s competitors, as well as the competitors of Navitas customers, information that could be used to negotiate more favorable terms and to develop marketing strategies. Additionally,

providing individual customer usage data would invade the privacy rights of the Navitas customer identified in the Response to Request No. 1-7.

6. Navitas previously sought confidential treatment for customer-specific information similar to that contained in the Response to Request No. 1-7; this motion was granted by the Commission in an Order entered February 3, 2021 in which the Commission held that this information was “generally recognized as confidential or proprietary” and therefore met the criteria for confidential treatment.² The Commission has previously granted confidential treatment of such information pursuant to KRS 61.878 for an indefinite period of time.³

B. Protected Commercial Information

7. Exhibit PSC 1-9(a) (the General Ledger), Exhibit PSC 1-9(b) (the Trial Balance), Exhibit PSC 1-17 (Board Minutes), and Exhibit PSC 1-18 (Audited Financial Statements) contain Confidential Information which is not publicly disseminated and public disclosure of this information would harm Navitas. If potential competitors or other suppliers enjoyed ongoing, unrestricted access to this Confidential Information, Navitas’s ability to fairly negotiate terms with counterparties in the marketplace would be negatively impacted. Indeed, the public disclosure of this Confidential Information will inevitably inure to the benefit of Navitas’s potential

² *In the Matter of: 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*, Case No. 2020-00396, Feb. 3, 2021 Order.

³ *See In the Matter of: Application of Atmos Energy Corporation for an Adjustment of Rates and Tariff Modifications*, Case No. 2013-00148, Dec. 3, 2013 Order; *In the Matter of: Filing of Agreement for the Purchase and Sale of Firm Capacity and Energy Between Big Rivers Electric Corporation and the Kentucky Municipal Energy Agency*, Order, P.S.C. Case No. 2016-00306 (Jan. 2, 2019); *In the Matter of: Application of Kentucky Utilities Company for an Adjustment of its Electric Rates*, Order, P.S.C. Case No. 2012-00221 (July 25, 2013) (holding customer names, account numbers, and usage information exempt from disclosure under KRS 61.878(1)(a)).

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.⁴

8. Further, these exhibits, including but not limited to Exhibit PSC 1-17 (Board Minutes), contain information regarding the internal ability and workings of Navitas, including specifically the internal processes by which it responds to various issues that arise in similar systems. The Commission has consistently recognized that board minutes, internal strategic planning information, and related materials are entitled to confidential treatment, as these documents typically relate to the company's economic status and business strategies. *See, e.g., In the Matter of: The Joint Petition of Kentucky-American Water Co., Thames Water Aqua Holdings GmbH, RWE Aktiengesellschaft, Thames Water Aqua U.S. Holdings, Inc., and Am. Water Works Co., Inc. for Approval of a Change in Control of Kentucky-American Water Co.*, Case No. 2006-00197 (Aug. 29, 2006) (holding that reports from the joint applicants' financial advisors and all board of director minutes and information is confidential because competitors could use it to gain unfair competitive advantage). Information about a company's detailed inner workings is generally recognized as confidential or proprietary. *See, e.g., 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,*

⁴ *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).

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”).

9. Navitas previously sought confidential treatment for information similar to that contained in Exhibit PSC 1-9(a), Exhibit PSC 1-9(b), and Exhibit PSC 1-18, specifically seeking protection of its detailed ownership information and audited financial statements ; this motion was granted by the Commission in an Order entered February 3, 2021 in which the Commission held that this information was “generally recognized as confidential or proprietary” and therefore met the criteria for confidential treatment.⁵

C. Insurance Policies

10. Exhibit PSC 1-10 and Exhibit PSC 1-12 contain information related to the amounts paid to outside vendors and third-parties related to Navitas’s insurance policies and insurance premiums, or information used to obtain insurance policies or from which insurance premiums may be derived. Disclosure of Navitas’s insurance policies and insurance premiums could adversely affect Navitas’s ability to effectively negotiate for insurance policies in the future.⁶

11. The Commission has previously granted confidential treatment to similar insurance policy information under KRS 61.878(1)(c)(1).⁷

⁵ *In the Matter of: 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*, Case No. 2020-00396, Feb. 3, 2021 Order.

⁶ See KRS 61.878(1)(c)(1).

⁷ See Case No. 2014-00396, Sept. 16, 2015 Order (granting confidential treatment to “insurance coverage and premiums” for a period of five years); Case No. 2018-00281, Feb. 3, 2021 Order (granting confidential treatment to “insurance premium rates”).

D. Employees

12. Exhibit PSC 1-12, Exhibit PSC 1-13, and Exhibit PSC 1-14 contain the names of individual employees of Navitas, most of whom are not identified on the Navitas website (<https://navitasutility.com/management.html>). Navitas respectfully requests that the names of those employees, who are not executives, be kept confidential. Further, Navitas submits that the benefits of its employees contains information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.⁸

E. Benefits

13. Exhibit PSC 1-13, Exhibit PSC 1-14, and Exhibit PSC 1-19 contains employee and director benefit information which is confidential and proprietary information regarding Navitas's business. This information is not publicly disseminated, and public disclosure of this information would harm Navitas. If information regarding Navitas's employee base is made available to the public, competitors could use Navitas's aggregate salary and benefits information to its detriment as they compete for top talent at all levels.⁹ In other words, Navitas's competitors could use this information to recruit Navitas's current employees, including its executives, away from Navitas, to Navitas and its customers' detriment. Competitor use of this data could, therefore, consequently result in additional pressure for Navitas to increase compensation in order to more favorably compete in the attraction and retention of skillful employees and executives. Prospective

⁸ See KRS 61.878(1)(a); e.g. *In the Matter of: (1) An Adjustment of 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*, PSC Case No. 2022-00372, Order (Feb. 10, 2023) (“disclosure would be an unwarranted invasion of personal privacy”)

⁹ See, e.g., *In the Matter of: Electronic Application of Water Service Corporation of Kentucky for a General Adjustment of Existing Rates*, Case No. 2018-00208, Order (Mar. 8, 2019) (granting confidential treatment where “confidential employee compensation information, if disclosed, would enable competitors to attempt to recruit key personnel, and would compromise the Company's position in negotiating employee compensation terms.”).

employees and executives could also use this information in seeking to negotiate higher salaries and benefits, much like a contractor for future work could use prior bids to Navitas’s detriment.¹⁰

14. The Commission has previously recognized that salary information of non-executive employees is entitled to confidential protection.¹¹ In fact, Navitas previously filed a motion with the Commission on December 23, 2020 requesting a grant of confidentiality for employee salary and benefit information; this motion was granted by the Commission in an Order entered February 3, 2021 in which the Commission held that this information was “generally recognized as information of a personal nature” and therefore met the criteria for confidential treatment.¹²

F. Critical Infrastructure

15. Navitas seeks confidential treatment for Exhibit PSC 1-30. That exhibit depicts critical infrastructure, including pump stations, gas lines, etc., and which is readily identifiable as a part of the system.¹³ Further, Exhibit PSC 1-30 identifies, explains, and explores various threats and risks to the system itself. The Commission has previously treated similar critical infrastructure confidentially.¹⁴ Navitas respectfully asks that the Commission treat the entirety of Exhibit PSC 1-30 confidentially in accordance with KRS 61.878(1)(m)(1).

¹⁰ See *In the Matter of: Application of the Union Light, Heat and Power Company for Confidential Treatment*, PSC Case No. 2003-00054, Order (Aug. 4, 2003).

¹¹ *In the Matter of: Electronic Application of Duke Energy Kentucky, Inc. for (1) An Adjustment of 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*, PSC Case No. 2022-00372, Order (Feb. 10, 2023).

¹² *In the Matter of: 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*, Case No. 2020-00396, Feb. 3, 2021 Order.

¹³ See KRS 61.878(1)(m)(1).

¹⁴ See, e.g., *In Re Electronic Application of Kentucky Utilities*, Case No. 2020-00349 (Ky. PSC Dec. 7, 2021) (“public disclosure of the material could result in competitive harm to LG&E/KU; KRS 61.878(1)(m), which prohibits public disclosure of critical infrastructure systems; and 807 KAR 5:001 Section 13.”).

II. Request for Relief.

16. Consistent with the above discussion, Navitas respectfully requests the Commission enter an order granting confidential treatment to the Confidential Information contained in the Response to Request 1-7, Exhibit PSC 1-9(a), Exhibit PSC 1-9(b), Exhibit PSC 1-10, Exhibit PSC 1-12, Exhibit PSC 1-13, Exhibit PSC 1-14, Exhibit PSC 1-17, Exhibit PSC 1-18, Exhibit PSC 1-19 and Exhibit PSC 1-30.

17. 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.

18. Navitas requests that the names and personal identifiers of Navitas employees contained within Exhibit PSC 1-12, Exhibit PSC 1-13, Exhibit PSC 1-14, and Exhibit PSC 1-19, as well as the specific customer usage information contained in the Response to Request No. 1-7, remain confidential for an indefinite period of time to avoid an unwarranted invasion of the personal privacy of the named employees and customers. Likewise, Navitas requests indefinite protection for the critical infrastructure information identified in Exhibit PSC 1-30, for which confidentiality has been sought in accordance with KRS 61.878(1)(m)(1). Ensuring the continued protection of this information promotes system and public security for as long as the information remains relevant/accurate, and thus the information should remain confidential indefinitely.

19. Navitas requests that all other Confidential Information identified herein remain confidential for a period of five (5) years from the date of this Motion, at which time the

Confidential Information should be sufficiently dated such that it could not be used to competitively disadvantage Navitas.¹⁵

20. 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.¹⁶

21. 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.

22. 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, unredacted and with the confidential information highlighted or similarly indicated. 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 (or appropriate placeholders, in the case confidentiality is sought for the entirety of a document) are being publicly filed.

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

¹⁵ 807 KAR 5:001 Section 13(2)(a)(2).

¹⁶ 807 KAR 5:001 Section 13(10)(b).

This 23rd day of October, 2024.

Respectfully submitted,

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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