

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF CITIPOWER,	)	
LLC FOR (1) AN ADJUSTMENT OF RATES	)	
PURSUANT TO 807 KAR 5:076; (2) APPROVAL	)	
FOR A CERTIFICATE OF PUBLIC	)	CASE NO.
CONVENIENCE AND NECESSITY TO	)	2019-00109
PURCHASE PIPELINE AND OTHER RELATED	)	
ASSETS; AND (3) APPROVAL OF FINANCING	)	

ORDER

On March 29, 2019, Citipower, LLC (Citipower), tendered an application requesting to adjust its rates pursuant to the procedures set forth in 807 KAR 5:076, for a Certificate of Public Convenience and Necessity (CPCN) to acquire an existing pipeline, and for authority to obtain financing to acquire the existing pipeline. Citipower simultaneously filed a motion in which it requested that the information regarding the operation and maintenance expenses of the pipeline and the Letter of Interest with financing terms be exempt from disclosure for ten years pursuant to KRS 61.878(1)(c)(1) and that maps depicting the pipeline be exempt from public disclosure indefinitely pursuant to KRS 61.878(1)(m). Having reviewed the motion and being otherwise sufficiently advised, the Commission grants Citipower's motion for confidential protection in part and denies it in part.

The Commission is a public agency subject to Kentucky's Open Records Act, which requires that all public records "be open for inspection by any person, except as

otherwise provided by KRS 61.870 to 61.884.”<sup>1</sup> Exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.<sup>2</sup> The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.<sup>3</sup>

Here, Citipower first requests confidential treatment for information regarding the operations and maintenance expenses of the current owner of the pipeline, Champ Oil Co., Inc. (Champ Oil), that were provided to Citipower by Champ Oil pursuant to a confidentiality agreement. “[C]apital costs and O&M costs are not generally recognized as confidential or proprietary when submitted in support of a request for a CPCN.”<sup>4</sup> However, the operating maintenance expenses for which confidential treatment has been previously denied were the projected operating and maintenance expenses of the utility requesting the CPCN as distinguished from the operating and maintenance expenses of

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<sup>1</sup> KRS 61.872(1); *see also* KRS 278.020(1) (indicating that the Commission may, in its discretion, conduct a public hearing on any request for a certificate of need and convenience); KRS 278.020(9) (indicating that a public hearing is required in certain situations involving the construction of transmission lines); KRS 278.260(1) (“No order affecting the rates or service complained of shall be entered by the commission without a formal public hearing.”).

<sup>2</sup> *See* KRS § 61.871.

<sup>3</sup> 807 KAR 5:001, Section 13 (2)(c); *see also* *Southern United Medigroup, Inc. v. Hughes*, 952 S.W.2d 195, 199 (Ky. 1997), *abrogated on other grounds by Hoskins v. Maricle*, 150 S.W.3d 1 (Ky. 2004) (indicating that quasi-judicial agencies should engage in this balancing when determining whether documents should be exempt from disclosure pursuant to the Open Records Act).

<sup>4</sup> Case No. 2014-00166, *2014 Integrated Resource Plan of Big Rivers Electric Corporation*, Order (Ky. PSC Aug. 26, 2014); *see also* Case No. 2014-00292, *Application of East Kentucky Power Cooperative, Inc. for an Order Declaring the Glasgow Landfill Gas to Energy Project to be an Ordinary Extension of Existing Systems in the Usual Course of Business and a Joint Application of Farmers Rural Electric Cooperative Corporation and East Kentucky Power Cooperative, Inc. for Approval to Enter into a Ten Year Purchased Power Agreement and Approval of a Special Contract*, Order at 2 (Ky. PSC Mar. 30, 2015).

the current operator of the facilities.<sup>5</sup> When, as here, the operating and maintenance expenses of the current owner are not otherwise public, disclosure of that information could assist a competitor in attempting to purchase the assets at issue at the expense of the utility requesting a CPCN. Thus, the Commission finds that the operation and maintenance expense information of the current owner of the pipeline for which confidential treatment has been requested (as distinguished from any operating and maintenance expenses projected by Citipower) should be exempt from disclosure pursuant to KRS 61.878(1)(c)(1) for ten years, unless Citipower completes its purchase of the pipeline at which point the information may be publically disclosed.<sup>6</sup>

Citipower next requests confidential treatment for a non-binding “Letter of Interest” provided by a financial institution in which the financial institution summarizes potential financing terms that it indicated could serve as a basis for further discussion. While Citipower requests approval based on the terms included in the Letter of Interest, neither Citipower nor the financial institution has committed to the terms, so it may be necessary for Citipower to obtain financing from another institution in order to get the most favorable terms. Disclosure of the terms being discussed in the Letter of Interest would place Citipower at a disadvantage in attempting to obtain financing from other institutions in the event it is not able to reach an agreement with the financial institution that provided the

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<sup>5</sup> See, e.g., Case No. 2014-00292, *Application of East Kentucky Power Cooperative, Inc. for an Order Declaring the Glasgow Landfill Gas to Energy Project to be an Ordinary Extension of Existing Systems in the Usual Course of Business and a Joint Application of Farmers Rural Electric Cooperative Corporation and East Kentucky Power Cooperative, Inc. for Approval to Enter into a Ten Year Purchased Power Agreement and Approval of a Special Contract*, Order (Ky. PSC Mar. 30, 2015).

<sup>6</sup> If Citipower completes the purchase of the pipeline, there would be no basis for keeping the material confidential as it could not be used by a competitor to bid against Citipower for the pipeline.

Letter of Interest.<sup>7</sup> However, the same logic would not apply to financing terms Citipower actually receives, and while the Commission has granted confidential treatment to expected interest rates in the past, it does not grant confidential treatment to actual interest rates, which are necessary to calculate rates. Thus, the Commission finds that the Letter of Interest should be exempt from public disclosure pursuant to KRS 61.878(1)(c)(1) as requested by Citipower, but this finding is limited to the Letter of Interest itself, for which confidential treatment was requested, not actually interest rates or interest rates used to calculate rates.

Citipower lastly requested confidential treatment for maps showing the location of the pipeline at issue along with the locations of compressors and the location of portions of a pipeline owned by Delta Natural Gas, Inc. The Commission finds that the information contained in the maps for which confidential protection provide the location of critical systems used for the delivery of natural gas and, therefore, that the maps should be exempt from public disclosure pursuant to KRS 61.878(1)(m)(1) for an indefinite period as requested by Citipower.

IT IS THEREFORE ORDERED that:

1. Citipower's Motion for Confidential Treatment filed on March 29, 2019, is granted in part and denied in part.

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<sup>7</sup> See, e.g., Case No. 2018-00115, *Application of East Kentucky Power Cooperative, Inc. for Approval of the Authority to issue up to \$300,000,000 of Secured Private Placement Debt and/or Secured Tax Exempt Bonds and for the Use of Interest Rate Management Instruments*, Order (Ky. PSC Dec. 10, 2018) (where the Commission held that disclosure interest rates that the utility expected to receive when obtaining financing through competitive bids would place the utility at a competitive disadvantage); Case No. 2017-00281, *Application of Big Rivers Electric Corporation for Approval to Issue Evidences of Indebtedness*, Order (Ky. PSC Sept. 14, 2017) (in which the Commission granted confidential treatment to "indicative interest rates").

2. The information regarding Champ Oil's operating and maintenance expenses for which confidential treatment was sought meets the criteria for confidential treatment and, therefore, that information shall be exempt from public disclosure for ten years unless Citipower completes its purchase of the pipeline at issue herein in which case the information will be subject to public disclosure at that time.

3. The Letter of Interest for which confidential treatment was sought meets the criteria for confidential treatment and, therefore, the Letter of Interest shall be exempt from public disclosure for ten years.

4. The maps for which confidential treatment was sought meet the criteria for confidential treatment and, therefore, that information shall be exempt from public disclosure for an indefinite period.

5. The use of the information granted confidential treatment herein shall comply with 807 KAR 5:001, Section 13(9).

6. Citipower shall inform the Commission if the information granted confidential treatment herein becomes publicly available or no longer qualifies for confidential treatment.

7. If a non-party to this proceeding requests to inspect materials containing the information granted confidential treatment by this Order and the period during which the information has been granted confidential treatment has not run, Citipower shall have 30 days from receipt of written notice of the request to demonstrate that the information still falls within the exclusions from disclosure requirements established in KRS 61.878. If Citipower is unable to make such demonstration, the requested materials shall be made available for inspection.

8. The Commission shall not make the designated materials available for inspection for 30 days following an Order finding that the materials no longer qualify for confidential treatment in order to allow Citipower to seek a remedy afforded by law.

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By the Commission

ENTERED  
AUG 14 2019  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
Executive Director

Case No. 2019-00109

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