

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)	CASE NO.
FOR A CERTIFICATE OF PUBLIC)	2019-00109
CONVENIENCE AND NECESSITY TO)	
PURCHASE PIPELINE AND OTHER RELATED)	
ASSETS; AND (3) APPROVAL OF FINANCING)	

ORDER

This matter arises on four motions for confidential treatment filed by Citipower, LLC (Citipower). On July 23, 2019, Citipower filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential protection for ten years for information provided in response to Commission Staff's First Request for Information (Staff's First Request), Items 24, 25, 34, 35, 37, and 43.

On August 19, 2019, Citipower filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential protection for ten years for information provided in response to Commission Staff's Second Request for Information (Staff's Second Request), Items 8, 30, and 31; and for an indefinite period for Staff's Second Request, Items 14 and 15.

On March 2, 2020, Citipower filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential protection for ten years for a promissory note and mortgage filed as a supplement to its status report.

On March 10, 2020, Citipower filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential protection for ten years for a purchase and sale agreement, promissory note, and mortgage filed as a supplement to its status report.

LEGAL STANDARD

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."¹ In support of its motions, Citipower argued for the application of three provisions of KRS 61.878. KRS 61.878(1)(c)(1) exempts records that are "[g]enerally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.

In addition, KRS 61.878(1)(a) exempts "[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy."

Lastly, under KRS 61.878(1)(m), the Open Records Act exempts "[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 . . ." ² The exemption is limited to certain types of records, including:

Infrastructure records that expose a vulnerability referred to in this subparagraph through the disclosure of the location, configuration, or security of critical systems, including public utility critical systems. These critical systems shall include but

¹ KRS 61.872(1).

² KRS 61.878(1)(m)(1).

not be limited to information technology, communication, electrical, fire suppression, ventilation, water, wastewater, sewage, and gas systems.³

A terrorist act is defined as including a criminal act intended to “[d]isrupt a system” identified in the above.⁴

Exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.⁵ The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.⁶

JULY 23, 2019 MOTION

Citipower sought confidential treatment for costs and vendor names from invoices provided in response to Staff’s First Request, Items 24 and 25, which asked for joint or shared costs allocated to Citipower or affiliates, including vendor names. Citipower argued that vendors referenced in the invoices are not parties to the proceeding and public disclosure of this information might harm them.

Citipower also asked for confidential treatment for its tax identification number and insurance policy numbers redacted from documents provided in response to Staff’s First Request, Item 34. Citipower argued that this is information of a personal nature and disclosure would constitute a clearly unwarranted invasion of personal privacy under KRS 61.878(1)(a).

³ KRS 61.878(1)(m)(1)(f).

⁴ KRS 61.878(1)(m)(2)(b).

⁵ See KRS 61.871.

⁶ 807 KAR 5:001, Section 13(2)(c).

Citipower also requested confidential treatment for non-executive employee compensation data redacted from timesheets and payroll forms provided in response to Staff's First Request, Items 35 and 37, pursuant to KRS 61.878(1)(a).

Lastly, Citipower sought confidential treatment for its responses to Staff's First Request, Item 43, regarding a letter of intent from a lender. Citipower asserted that this information included anticipated interest rates and proprietary loan terms and conditions, which are an integral part of the requested approval, and that public disclosure could allow prospective lenders an unfair advantage over Citipower in future negotiations. Citipower also pointed out that the Commission previously granted confidential treatment to the letter itself.⁷

Having considered the motion and the material at issue, the Commission finds that Citipower's motion is granted in part and denied in part. The Commission finds that Citipower's tax identification number and insurance policy numbers are required to be redacted by 807 KAR 5:001, Section 4(10)(a)(3). Citipower need not request confidential treatment for this information. The regulation does not state that this restriction is limited to financial institution account numbers, and the Commission has previously found commercial account numbers exempt.⁸ The Commission also finds that individual non-executive employee compensation data is exempt from public disclosure under KRS 61.878(1)(a).⁹ Although the Commission previously granted confidential treatment

⁷ Order (Ky. PSC Aug. 14, 2019) at 3–4.

⁸ Case No. 2011-00419, *Proposed Revision of Rules Regarding the Provision of Wholesale Water Service by the City of Versailles to Northeast Woodford Water District* (Ky. PSC Mar. 14, 2012), Order at 1.

⁹ Case No. 2020-00160, *Electronic Application of Water Service Corporation of Kentucky for a General Adjustment in Existing Rates* (Ky. PSC Dec. 22, 2020), Order at 2.

to the letter of intent, it mandated that the interest rates be disclosed, and qualified granting confidential treatment, stating “[d]isclosure 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 Letter.” This reason for keeping the letter of interest confidential is moot because the financing agreement closed. However, the redacted information contains additional information that consists of internal business strategies regarding financing negotiations and should remain confidential to prevent unfair competition.¹⁰ Therefore, redactions from responses to Staff’s First Request, Items 34, 35, 37, and 43 are records that meet the criteria for confidential treatment and are exempted from public disclosure pursuant to KRS 61.878(1)(a) and (1)(c)(1), and 807 KAR 5:001, Sections 4 and 13.

The Commission further finds that the request for confidential treatment is denied for redactions to responses to Staff’s First Request, Items 24 and 25. Citipower has not provided enough detail to establish what this information represents or why it requires protection. Citipower has not met the burden to establish that this information should remain confidential.¹¹ Therefore, this material does not meet the criteria for confidential treatment and is not exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13.

¹⁰ See Case No. 2016-00370, *Electronic Application of Kentucky Utilities Company for an Adjustment of Its Electric Rates and for Certificates of Public Convenience and Necessity* (Ky. PSC Dec. 12, 2018), Order at 3, 5.

¹¹ See Case No. 2020-00342, *Electronic Application of Citipower, LLC for a Rate Adjustment for Small Utilities Pursuant to 807 KAR 5:076* (Ky. PSC Mar. 16, 2022), Order at 8.

AUGUST 19, 2019 MOTION

Citipower sought confidential treatment for a map of existing pipeline to be acquired in response to Staff's Second Request. Citipower argued that disclosure of the map would have a reasonable likelihood of threatening public safety by exposing a vulnerability in preventing, protecting against, mitigating, or responding to a terrorist act against a public utility critical system under KRS 61.878(1)(m).

Citipower also asked for confidential treatment for its tax identification number and checking account number redacted from responses to Staff's Second Request, Items 14 and 15, as sensitive confidential information.

Lastly, Citipower requested confidential treatment for its responses to Staff's Second Request, Items 30 and 31, which pertained to the lender's letter of intent, for the same reasons as stated in its July 23, 2019 motion.

Having considered the motion and the material at issue, the Commission finds that Citipower's motion is granted. The Commission agrees that pipelines are public utility critical systems subject to protection from disclosure under KRS 61.878(1)(m). The Commission also finds that Citipower's tax identification number and checking account numbers are required to be redacted by 807 KAR 5:001, Section 4(10)(a)(3). The Commission finds that the information redacted from responses to Staff's Second Request, Items 30 and 31, contains additional information that consists of internal business strategies regarding financing negotiations and should remain confidential to prevent unfair competition. Therefore, redactions from responses to Staff's Second Request, Items 8, 14, 15, 30, and 31 are records that meet the criteria for confidential

treatment and are exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Sections 4 and 13.

MARCH 2, 2020 AND MARCH 10, 2020 MOTIONS

Citipower asked for confidential treatment for a purchase and sale agreement, promissory note, and mortgage filed as a supplement to its status report. Citipower argued that these documents include executed financial documents, which contain anticipated interest rates and proprietary loan terms and conditions that are an integral part of the requested approval and for which a loan closing has not occurred. Citipower also stated that disclosure could arm prospective lenders, with whom Citipower may need to negotiate with in the future, with information to allow such lenders and unfair commercial advantage over Citipower.

Having considered the motions and the material at issue, the Commission finds that Citipower's motions are denied. The Commission previously held that interest rates be publicly disclosed in this case,¹² stating that interest rates should be public because they are used in determining rate base. Since the financing agreement has closed, the pendency of the transaction is no longer a barrier to disclosure of the terms. In addition, the mortgage is public record and includes relevant terms of the agreement and note. Therefore, this material does not meet the criteria for confidential treatment and is not exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13.

¹² Order (Ky. PSC Aug. 14, 2019) at 4.

IT IS THEREFORE ORDERED that:

1. Citipower's July 23, 2019, August 19, 2019, March 2, 2020, and March 10, 2020 motions for confidential treatment are granted in part and denied in part.
2. Citipower's motions for confidential treatment for redacted information provided in response to Staff's First Request, Items 34, 35, 37, and 43; Staff's Second Request, Items 8, 14, 15, 30, and 31 is granted.
3. Citipower's motions for confidential treatment for redacted information provided in response to Staff's First Request, Items 24, 25, and the purchase and sale agreement, promissory note, and mortgage filed as a supplement to its status report is denied.
4. Redacted information provided in response to Staff's First Request, Items 35, 37, and 43; and Staff's Second Request, Items 30, and 31 shall not be placed in the public record or made available for public inspection for ten years or until further Order of this Commission.
5. Redacted information provided in response to Staff's First Request, Item 34; and Staff's Second Request, Items 8, 14, 15 shall not be placed in the public record or made available for public inspection for an indefinite period or until further Order of this Commission.
6. Use of the designated material granted confidential treatment by this Order in any Commission proceeding shall comply with 807 KAR 5:001, Section 13(9).
7. Citipower shall inform the Commission if the designated material granted confidential treatment becomes publicly available or no longer qualifies for confidential treatment.

8. If a nonparty to this proceeding requests to inspect the material granted confidential treatment by this Order and the period during which the material has been granted confidential treatment has not expired, Citipower shall have 30 days from receipt of written notice of the request to demonstrate that the material still falls within the exclusions from disclosure requirements established in KRS 61.878. If Citipower is unable to make such demonstration, the requested material shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

9. The Commission shall not make the requested material for which confidential treatment was granted available for inspection for 30 days from the date of service of an Order finding that the material no longer qualifies for confidential treatment in order to allow Citipower to seek a remedy afforded by law.

10. The designated material denied confidential treatment by this Order is not exempt from public disclosure and shall be placed in the public record and made available for public inspection.

11. If Citipower objects to the Commission's determination that the requested material not be granted confidential treatment, it must seek either rehearing pursuant to KRS 278.400 or judicial review of this Order pursuant to KRS 278.410. Failure to exercise either of these statutory rights will be deemed as agreement with the Commission's determination of which materials shall be granted confidential treatment.

12. Within 30 days of the date of service of this Order, Citipower shall file a revised version of the designated material for which confidential treatment was denied, reflecting as unredacted the information that has been denied confidential treatment.

13. The designated material for which Citipower's request for confidential treatment has been denied shall neither be placed in the public record nor made available for inspection for 30 days from the date of service of this Order to allow Citipower to seek a remedy afforded by law.

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PUBLIC SERVICE COMMISSION

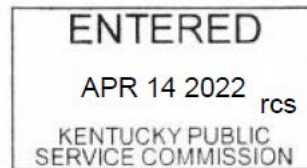


Chairman



Vice Chairman

Commissioner



ATTEST:



Executive Director

*CitiPower, L.L.C.
37 Court Street
P. O. Box 1309
Whitley City, KY 42653

*L Allyson Honaker
Goss Samford, PLLC
2365 Harrodsburg Road, Suite B325
Lexington, KENTUCKY 40504

*David S Samford
Goss Samford, PLLC
2365 Harrodsburg Road, Suite B325
Lexington, KENTUCKY 40504