

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF CITIPOWER,)	CASE NO.
LLC FOR A RATE ADJUSTMENT FOR SMALL)	2020-00342
UTILITIES PURSUANT TO 807 KAR 5:076)	

ORDER

On October 28, 2020, Citipower, LLC (Citipower) filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential protection for information redacted from its 807 KAR 5:076 application.

On January 11, 2021, Citipower filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential protection for information redacted from its response to Commission Staff's First Request for Information (Staff's First Request), Items 8, 10, 11, 14, 19, 20, 22, 23, and 24.

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 motion, Citipower argued the application of three provisions of KRS 61.870. 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,

¹ KRS 61.872(1).

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 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

KRS 61.878(1)(a) prevents disclosure of “[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.”

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.”

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

² KRS 61.878(1)(m)(1).

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).

OCTOBER 28, 2020 MOTION

Citipower sought confidential treatment for ten years for information submitted as part of its application, including a payroll expenditure spreadsheet containing non-executive employee salary information and a document entitled “Citienergy Cost Estimates for Tasks Performed for Citipower” with redacted pay rate information for the managing member, controller, and office manager. Citipower argued that employee compensation information is private in nature and should be protected from disclosure under KRS 61.878(1)(a).

Citipower also asked for confidential treatment for an indefinite period for a series of maps indicating locations of pipelines. Citipower stated that if these maps were disclosed, they could be used to disrupt critical public utility systems and systems that rely on gas and intimidate or coerce the civilian population and should therefore be exempted under KRS 61.878(1)(m).

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 the motion is granted for ten years for the payroll spreadsheet and the office manager’s redacted pay rate information because non-executive employees have a privacy interest in their compensation data under KRS 61.878(1)(a).⁷ The Commission finds that the office manager is a non-executive employee based on the clerical nature of this individual’s job tasks.⁸ The Commission finds that the motion is granted for an indefinite

⁷ See 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.

⁸ “Citienergy Cost Estimates for Tasks Performed for Citipower” filed with application includes office manager job duties noted as “mailing and filing.”

period for pipeline maps because the pipeline systems are public utility critical systems and public disclosure of the maps would expose vulnerabilities under KRS 61.878(1)(m). Therefore, these items are records that meet the criteria for confidential treatment and are exempted from public disclosure pursuant to KRS 61.878(1)(a) or (1)(m) and 807 KAR 5:001, Section 13.

The Commission further finds that the request for confidential treatment is denied for pay rate information for the managing member and controller. The managing member of a limited liability company is the chief executive officer of that entity. The Commission also finds that the controller is an executive officer.⁹ Any privacy interest executive officers may seek in their compensation data is outweighed by the public's interest in executive compensation that is to be recovered in base rates. The Commission has previously held that executive salaries are not entitled to confidential protection because of the public interest in disclosure.¹⁰ Therefore, the pay rate information for the managing

⁹ KRS 278.300(2) makes reference to a "comptroller, or other executive officer," suggesting a comptroller is an executive officer for purposes of the Commission. The words comptroller and controller are synonymous, meaning "a public official who audits government accounts and sometimes certifies expenditures." *Merriam-Webster.com Dictionary*, s.v. "comptroller," accessed February 3, 2022, <https://www.merriam-webster.com/dictionary/comptroller>.

¹⁰ The Commission has a long precedent of not granting confidential treatment for executive compensation. See Case No. 2012-00221, *Application of Kentucky Utilities Company for an Adjustment of its Electric Rates* (Ky. PSC Sept. 11, 2013); Case No. 2014-00371, *Application of Kentucky Utilities Company for an Adjustment of its Electric Rates* (Ky PSC Jan 20, 2016); Case No. 2015-00418, *Application of Kentucky-American Water Company for an Adjustment of Rates* (Ky PSC Aug. 31, 2016); Case No. 2017-00321, *Electronic Application of Duke Energy Kentucky, Inc. for: 1) An Adjustment of the Electric Rates; 2) Approval of an Environment Compliance Plan and Surcharge Mechanism; 3) Approval of New Tariffs; 4) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; and 5) All other Required Approvals and Relief* (Ky. PSC June 12, 2018); Case No. 2018-00294, *Electronic Application of Kentucky Utilities Company for an Adjustment of its Electric Rates* (Ky. PSC Oct. 8, 2019); Case No. 2018-00295, *Electronic Application of Louisville Gas and Electric Company for an Adjustment of its Electric and Gas Rates* (Ky. PSC Oct. 8, 2019); Case No. 2019-00268, *Application of Knott County Water and Sewer District for an Alternative Rate Adjustment* (Ky. PSC Dec. 3, 2019); Case No. 2019-00271, *Electronic Application of Duke Energy Kentucky, Inc. for 1) An Adjustment of the 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* (Ky. PSC May 4, 2020); Case No. 2020-00290, *Electronic Application of Bluegrass Water Utility Operating Company, LLC for an Adjustment of Rates and Approval of Construction* (Ky. PSC Dec. 27, 2021); Case No. 2020-00349, *Electronic Application of Kentucky Utilities Company for*

member and controller in the document entitled “Citienenergy Cost Estimates for Tasks Performed for Citipower” does not meet the criteria for confidential treatment and is not exempted from public disclosure pursuant to KRS 61.878(1)(a) and 807 KAR 5:001, Section 13. The Commission further warns Citipower that, as a result of the long-standing precedent denying confidential treatment to executive compensation, it will not look kindly on subsequent motions for confidential treatment of executive compensation.

JANUARY 11, 2021 MOTION

Citipower sought confidential treatment for ten years for information redacted from its responses to Staff’s First Request. Citipower redacted pay rates of individual non-executive employees from its response to Staff’s First Request, Item 8. In response to Staff’s First Request, Items 20, 22, 23, and 24, Citipower provided documents including redacted employee addresses, social security numbers, pay rates, wages, benefits and Citipower’s tax identification numbers. Citipower argued that this information is private in nature and should be protected from disclosure under KRS 61.878(1)(a).

Citipower also redacted account, insurance policy, and loan numbers from documents supplied in response to Staff’s First Request, Items 11, 14, and 19. It argued

an Adjustment of Electric Rates, a Certificate of Public Convenience and Necessity to Deploy Advanced Metering Infrastructure, Approval of Certain Regulatory and Accounting Treatments, and Establishment of a One-Year Subcredit (Ky. PSC Dec. 7, 2021); Case No. 2020-00350, Electronic Application of Louisville Gas and Electric Company for an Adjustment of its Electric and Gas Rates, a Certificate of Public Convenience and Necessity to Deploy Advanced Metering Infrastructure, Approval of Certain Regulatory and Accounting Treatments, and Establishment of One-Year Surcredit (Ky. PSC Dec. 7, 2021); Case No. 2021-00183, Electronic Application of Columbia Gas of Kentucky, Inc. for an Adjustment of Rates; Approval of Depreciation Study; Approval of Tariff Revision; Issuance of a Certificate of Public Convenience and Necessity; and Other Relief (Ky. PSC Oct. 5, 2021); Case No. 2021-00185, Electric Application of Delta Natural Gas Company, Inc. for an Adjustment of its Rates and a Certificate of Public Convenience and Necessity (Ky. PSC Dec. 8, 2021).

that this information is personal in nature and exempt from public disclosure under KRS 61.878(1)(a).¹¹

Lastly, Citipower redacted information from its responses to Staff's First Request, Items 10 and 11 that it characterized as "[a]mounts allocated to entities other than Citipower."¹² The documents provided in response to Item 10 are a series of professional services invoices with the vendor names and payment amounts redacted. The documents provided in Item 11 are customer invoices with redacted handwritten calculations. Citipower argued that this information includes costs that were allocated to entities other than Citipower, which are not parties to this proceeding and that public dissemination of this information could cause competitive harm to those entities in the marketplace.

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 the motion is granted for ten years for employee compensation information redacted from responses to Staff's First Request Items 8, 20, 22, 23, and 24 because non-executive employees have a privacy interest in their compensation data under KRS 61.878(1)(a).¹³ Indefinite confidential treatment is granted for social security numbers and tax identification numbers, which in combination with personal or business names, are required to be redacted by 807 KAR 5:001, Section 4(10)(a)(3). Indefinite

¹¹ Citipower's motion states (p.2) that the memo column of the check register spreadsheet supplied in response to Staff's First Request, Item 14, could not be redacted to remove the policy and account numbers so the column was deleted in total.

¹² Motion at 2.

¹³ Case No. 2020-00160, *Water Service Corporation of Kentucky* (Ky. PSC Dec. 22, 2020), Order at 2.

confidential treatment is also granted for addresses of non-parties, which must be redacted under Section 4(10)(a)(7). The Commission also grants indefinite confidential treatment for redacted account, insurance policy, and loan numbers from documents supplied in response to Staff's First Request, Items 11, 14, and 19. In combination with a personal or business name, information must be redacted under 807 KAR 5:001, Section 4(10)(a)(3), if it constitutes "[t]he digits of an account number, credit card number, or debit card number that, in combination with any required security code, access code, or password, would permit access to an account" This regulation does not specify only financial account numbers should be redacted, and the Commission has previously granted confidential treatment to non-financial commercial account numbers.¹⁴ These items are records that meet the criteria for confidential treatment and are exempted from public disclosure pursuant to KRS 61.878(1)(a), 807 KAR 5:001, Section 4(10)(a), and 807 KAR 5:001, Section 13.

The Commission further finds that the request for confidential treatment is denied for the memo column of the spreadsheet provided in response to Staff's First Request, Item 14 (excluding account numbers) and information redacted from responses to Staff's First Request, Items 10 and 11 (excluding account numbers). Citipower's offered reason for redacting the entire memo column of the check register spreadsheet was that it could not redact the account numbers alone. However, the information in this column is not entitled to confidential treatment and may be redacted by replacing account numbers with X's or other signifiers.

¹⁴ 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.

Regarding information redacted from responses to Staff's First Request, Items 10 and 11 (other than account numbers), 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 is generally recognized as confidential or proprietary, or that disclosure would permit an unfair commercial advantage to its competitors. Citipower did not seek confidential treatment for payments to companies logged in its check register and has not established that these payments are distinguishable.

Therefore, this information does not meet the criteria for confidential treatment and is not exempted from public disclosure pursuant to KRS 61.878 and 807 KAR 5:001, Section 13.

IT IS THEREFORE ORDERED that:

1. Citipower's motion for confidential treatment for the designated material is granted in part and denied in part.
2. Citipower's motion for confidential treatment is granted for an indefinite period for pipeline maps redacted from Citipower's application.
3. Citipower's motion for confidential treatment is granted for ten years for the payroll spreadsheet filed with Citipower's application and the office manager's redacted pay rate information from the document entitled "Citienegy Cost Estimates for Tasks Performed for Citipower" filed with Citipower's application.
4. Citipower's motion for confidential treatment is granted for an indefinite period for account, policy, and loan numbers, social security numbers, tax identification

numbers, and employee addresses redacted from responses to Staff's First Request, Items 11, 14, 19, 20, 22, 23, and 24.

5. Citipower's motion for confidential treatment for is granted for ten years for employee compensation information redacted from responses to Staff's First Request, Items 8, 20, 22, 23, and 24.

6. Citipower's motion for confidential treatment is denied for managing member and controller pay information redacted from the document entitled "Citienergy Cost Estimates for Tasks Performed for Citipower" filed with Citipower's application.

7. Citipower's motion for confidential treatment is denied for information redacted from responses to Staff's First Request, Items 10, 11 (except account numbers), and 14 (except account numbers).

8. The designated material granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for the stated period or until further order of this Commission.

9. 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).

10. Citipower shall inform the Commission if the designated material granted confidential treatment becomes publicly available or no longer qualifies for confidential treatment.

11. 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, 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.

12. 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.

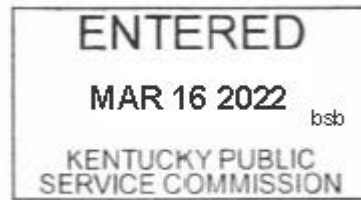
13. The designated material denied confidential treatment by this Order is not exempt from public disclosure and shall be placed in the public record and made available for public inspection.

14. 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 should be granted confidential treatment.

15. 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.

16. 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.

By the Commission



ATTEST:


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