

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 April 5, 2022, Citipower, LLC (Citipower) filed a motion, pursuant to KRS 278.400, for rehearing of its motion for confidential treatment filed on October 28, 2020. The Commission granted this motion in part and denied it in part by Order issued March 16, 2022. The Order denied confidential treatment for redacted pay rates for Citipower’s managing member and controller from a document filed with Citipower’s application entitled “Citienergy Cost Estimates for Tasks Performed for Citipower.” The Commission denied confidential protection to this information on the basis that the public has a significant interest in disclosure of executive compensation included for recovery base rates, and therefore any invasion of privacy was warranted.<sup>1</sup> In Citipower’s rehearing motion, it argued that this basis is inapplicable because the Commission denied recovery of executive pay in base rates.

KRS 278.400 limits rehearing to new evidence not readily discoverable at the time of the original hearing, to correct any material errors or omissions, or to correct findings

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<sup>1</sup> KRS 61.878(1)(a) exempts from public disclosure “[P]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.”

that are unreasonable or unlawful.<sup>2</sup> A Commission Order is deemed unreasonable only when “the evidence presented leaves no room for difference of opinion among reasonable minds.”<sup>3</sup> An Order can only be unlawful if it violates a state or federal statute or constitutional provision.<sup>4</sup> By limiting rehearing to correct material errors or omissions, and findings that are unreasonable or unlawful, or to weigh new evidence not readily discoverable at the time of the original hearings, KRS 278.400 is intended to provide closure to Commission proceedings. Rehearing does not present parties with the opportunity to relitigate a matter fully addressed in the original Order.

Having considered the motion and the material at issue, the Commission finds that Citipower’s motion for rehearing is granted. This is because the basis for denying confidentiality to executive compensation is that ratepayers should know the information that the Commission relied upon in reaching its decision regarding rates. Because Citipower will not recover executive compensation in rates, the Commission concurs that denying the request for confidential treatment for executive compensation was an error and not supported by the evidence of record. For this reason, the Commission finds that the redacted pay rates for Citipower’s managing member and controller from a document entitled “Citienergy Cost Estimates for Tasks Performed for Citipower” are granted confidential treatment pursuant to KRS 61.878(1)(a).

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<sup>2</sup> KRS 278.400; KRS 278.430.

<sup>3</sup> *Energy Regulatory Comm’n v. Kentucky Power Co.*, 605 S.W.2d 46 (Ky. App. 1980).

<sup>4</sup> *Public Service Comm’n v. Conway*, 324 S.W.3d 373, 377 (Ky. 2010); *Public Service Comm’n v. Jackson County Rural Elec. Coop. Corp.*, 50 S.W.3d 764, 766 (Ky. App. 2000); *National Southwire Aluminum Co. v. Big Rivers Elec. Corp.*, 785 S.W.2d 503, 509 (Ky. App. 1990).

IT IS THEREFORE ORDERED that:

1. Citipower's motion for rehearing is granted.
2. The designated material pertaining to executive compensation is granted confidential treatment.
3. The designated material granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for ten years or until further Order of this Commission.
4. 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).
5. Citipower shall inform the Commission if the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment.
6. 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.
7. The Commission shall not make the requested material 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.

PUBLIC SERVICE COMMISSION



Chairman

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Vice Chairman

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Commissioner



ATTEST:

  
Executive Director

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

\*Adam Forsberg  
Controller  
Citipower L.L.C.  
2122 Enterprise Road  
Greensboro, NORTH CAROLINA 27408

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