

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF NAVITAS KY)	
NG, JOHNSON COUNTY GAS COMPANY,)	
AND B & H GAS COMPANY FOR APPROVAL)	CASE NO.
OF ACQUISITION, TRANSFER OF)	2020-00396
OWNERSHIP, AND CONTROL OF NATURAL)	
GAS UTILITY SYSTEMS)	

ORDER

On January 29, 2021, Navitas KY NG, LLC (Navitas KY), Johnson County Gas Company (Johnson County), and B & H Gas Company (B & H) (collectively, Applicants) filed a motion pursuant to KRS 61.878 and 807 KAR 5:001, Section 13, requesting that the Commission grant confidential protection of its responses to Commission Staff’s First Request for Information (Staff’s First Request), Items 8(g), 11(a), 24, and 25. Applicants subsequently filed an amended petition on March 11, 2021, requesting confidential treatment for the entire document submitted in response to Item 11(a). Applicants request confidential protection for the designated material for an indefinite period.

In support of its motion, Applicants contend that its response to Item 8(g) should be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1)¹ because it contains financial data regarding gas supply pricing and corporate information regarding

¹ Applicants erroneously requested confidential treatment pursuant to KRS 61.878(1)(a), which exempts from open records laws documents containing personal information that, if publicly disclosed, would constitute an unwarranted invasion of personal privacy. Here, the nature of the designated material and the basis for the request indicate that these are commercial documents that, if publicly disclosed, would result in commercial harm, and thus are the type of information for which public disclosure is prohibited under KRS 61.878(1)(c)(1).

Navitas KY and B & H that, if publicly disclosed, would result in an unfair commercial advantage to competitors.

Applicants further contend that the entire document submitted in response to Item 11(a) should be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1), with the exception of the cover page. Specifically, Navitas KY's response to Item 11(a) consists of a distribution integrity management plan (DIMP), which is required by federal law to address the design and risk management of a gas distribution pipeline. Applicants assert that the designated material discloses the inner workings of Navitas KY and that public disclosure could result in an unfair commercial advantage to Navitas KY's competitors. Applicants further assert that the designated material should remain confidential because the preparer of the designated material provided the document on the condition that it would not enter the public domain.

Applicants contend that its response to Item 24 should also be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1). Specifically, the designated material contains a risk analysis of Johnson County and B & H. The analysis contains information regarding the inner workings of the two gas systems and the potential acquisition of the systems, including planning regarding specific B & H employees. According to Applicants, the information is sensitive, and public disclosure would result in an unfair commercial advantage to Navitas KY's competitors and adversely affect Johnson County and B & H.

Applicants also contend that the information provided in response to Item 25 should be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1). Specifically, the designated material consists of sensitive financial information that is not publicly available, and cannot be discovered from other sources. Applicants contend that public

disclosure of the information would result in significant or irreparable competitive harm to Navitas KY by providing its competitors with a non-reciprocal competitive advantage.

Having considered the motion and the material at issue, the Commission finds that the designated material contained in Applicant's response to Staff's First Request, Items 8(g), 24, and 25 is generally recognized as confidential or proprietary, and therefore meets the criteria for confidential treatment and is exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13. The Commission notes that Applicants improperly requested confidential treatment for the designated material in Applicant's response to Staff's First Request, Item 11(a), based in part upon an agreement with a third party to keep the information private. Applicants are cautioned that an entity cannot circumvent open record laws under contract terms that avoid public disclosure of material that otherwise would be publicly disclosed. However, the DIMP contains information pertaining to critical infrastructure systems. Therefore, the Commission finds that the designated material in Applicant's response to Staff's First Request, Item 11(a), is exempt from public disclosure under KRS 61.878(1)(m), which prohibits disclosure of records that, if publicly disclosed, would have a reasonable likelihood of threatening the public safety by exposing a vulnerability in preventing or protecting against a terrorist act.

IT IS THEREFORE ORDERED that:

1. Applicant's motion for confidential treatment is granted.
2. The designated material granted confidential treatment by this Order 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.

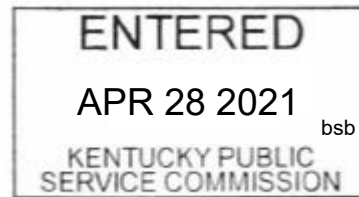
3. Use of the designated material granted confidential treatment by this Order in any Commission proceeding shall comply with 807 KAR 5:001, Section 13(9).

4. Applicants shall inform the Commission if the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment.

5. 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, Applicants 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 Applicants are unable to make such demonstration, the requested material shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

6. 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 Applicants to seek a remedy afforded by law.

By the Commission



ATTEST:

A handwritten signature in blue ink that reads "Linda C. Budwell". The signature is written in a cursive style and is positioned above a horizontal line.

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