

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC PURCHASED GAS ADJUSTMENT	)	CASE NO.
FILING OF NAVITAS KY NG, LLC	)	2023-00215

ORDER

On July 5, 2023, Navitas KY NG, LLC (Navitas KY) filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, seeking five years' confidential treatment for the information described herein.

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 Exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.² The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.³

In support of its motion, Navitas KY argued for the application of KRS 61.878(1)(c)(1), which provides an exception to the requirement for public disclosure for records that are "generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records."

¹ KRS 61.872(1).

² See KRS 61.871.

³ 807 KAR 5:001, Section 13(2)(c).

Navitas KY's July 5, 2023 Gas Cost Adjustment (GCA) filing included gas supplier invoices. Navitas argued for confidential treatment of these invoices because public disclosure of pricing and volume terms would disadvantage Navitas in a competitive marketplace.

Having considered the motion and the material at issue, the Commission finds that Navitas's July 5, 2023 motion for confidential treatment should be granted. Competitors could use supplier pricing information to compete with Navitas for these suppliers' business or suppliers could use the data to unfairly negotiate with Navitas, disadvantaging Navitas with competitors. This information is generally recognized as confidential or proprietary;⁴ it therefore meets the criteria for confidential treatment and should be exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

IT IS THEREFORE ORDERED that:

1. Navitas's July 5, 2023 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 five years 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. If the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment, Navitas shall

⁴ See Case No. 2021-00142, *Electronic Purchased Gas Adjustment Filing of Atmos Energy Corporation* (Ky. PSC Dec. 13, 2022), Order at 2.

inform the Commission and file with the Commission an unredacted copy of the designated material.

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, Navitas 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 Navitas is 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 Navitas to seek a remedy afforded by law.

PUBLIC SERVICE COMMISSION


Chairman


Commissioner


Commissioner

ATTEST:

 RP
Executive Director



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