

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC PURCHASED GAS ADJUSTMENT) CASE NO.
FILING OF NAVITAS KY NG, LLC) 2023-00428

ORDER

This matter arises on four motions for confidential treatment filed by Navitas KY NG, LLC (Navitas) pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, seeking five years' confidential treatment for the information described herein.

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 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 motions, Navitas 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

¹ KRS 61.872(1).

² See KRS 61.871.

³ 807 KAR 5:001, Section 13(2)(c).

permit an unfair commercial advantage to competitors of the entity that disclosed the records.”

JANUARY 5, 2024 MOTION

Navitas’s January 5, 2024 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 January 5, 2024 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).

MARCH 1, 2024 MOTION

Navitas’s response to Commission Staff’s Second Request for Information (Staff’s Second Request), Item 4(b) included a spreadsheet containing redacted monthly gas prices for different suppliers dating back to 2021. Navitas argued for confidential treatment for the pricing information because potential competitors or suppliers could use this information to Navitas’s disadvantage.

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

Having considered the motion and the material at issue, the Commission finds that Navitas's March 1, 2024 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;⁵ 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).

MARCH 29, 2024 MOTION

Navitas's response to Commission Staff's Third Request for Information (Staff's Third Request), Item 2(a) included redacted supply contract terms, including pricing terms. Navitas's response to Staff's Third Request, Attachment to Item 8, included a spreadsheet containing redacted monthly gas prices for different suppliers dating back to 2019. Navitas argued for confidential treatment for pricing information and supplier contract terms because potential competitors or suppliers could use this information to Navitas's disadvantage.

Having considered the motion and the material at issue, the Commission finds that Navitas's March 29, 2024 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

⁵ See Case No. 2021-00142, Dec. 13, 2022 Order at 2.

confidential or proprietary;⁶ 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).

APRIL 1, 2024 MOTION

On April 1, 2024, Navitas filed an updated response to Staff's Third Request, Attachment to Item 8, which included a spreadsheet containing redacted monthly gas prices for different suppliers dating back to 2019. Navitas argued for confidential treatment for pricing information and supplier contract terms because potential competitors or suppliers could use this information to Navitas's disadvantage.

Having considered the motion and the material at issue, the Commission finds that Navitas's April 1, 2024 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;⁷ 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 January 5, 2024, March 1, 2024, March 29, 2024, and April 1, 2024 motions for confidential treatment are granted.

⁶ See Case No. 2021-00142, Dec. 13, 2022 Order at 2.

⁷ See Case No. 2021-00142, Dec. 13, 2022 Order at 2.

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 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

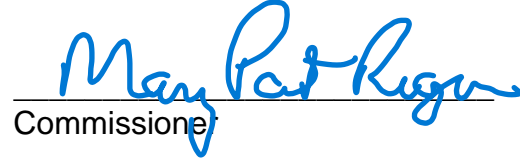
Chairman



Commissioner



Commissioner



ENTERED

OCT 16 2024 AH

KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

Case No. 2023-00428

*M. Evan Buckley
Dinsmore & Shohl, LLP
City Center, 100 W. Main Street
Suite 900
Lexington, KENTUCKY 40507

*Julie Loving
Navitas KY NG, LLC
3186-D Airway Avenue
Costa Mesa, CA 92626

*Thomas Hartline
Navitas KY NG, LLC
3186-D Airway Avenue
Costa Mesa, CA 92626

*Navitas KY NG, LLC
3186-D Airway Avenue
Costa Mesa, CA 92626