

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

|                                      |   |            |
|--------------------------------------|---|------------|
| ELECTRONIC PURCHASED GAS ADJUSTMENT  | ) | CASE NO.   |
| FILING OF DELTA NATURAL GAS COMPANY, | ) | 2019-00216 |
| INC.                                 | ) |            |

ORDER

On June 24, 2019, Delta Natural Gas Company, Inc. (Delta), filed a petition, pursuant to 807 KAR 5:001, Section 13, and all other applicable law, requesting that the Commission grant confidential protection for an indefinite period to the identity of the gas suppliers listed in its Quarterly Gas Cost Recovery filing.

Delta states that the designated material contains sensitive commercial information that if disclosed, would injure Delta's ability to negotiate future gas supply contracts at advantageous prices, which would thereby force Delta's customers to pay a higher price for natural gas. Delta further asserts that disclosure of the information would permit an unfair advantage to its competitors for both gas supplies and retail gas load.

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."<sup>1</sup> The exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.<sup>2</sup> The party requesting that materials be treated confidentially has the burden of establishing

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<sup>1</sup> KRS 61.872(1).

<sup>2</sup> See KRS § 61.871.

that one of the exceptions is applicable.<sup>3</sup> In determining whether materials should be exempt from disclosure, the Commission must balance the potential harm from disclosure with “the effect of protecting a given document from scrutiny by the public and potential intervenors.”<sup>4</sup>

Having considered the petition and the material at issue, the Commission finds that the identity of the gas suppliers located in Delta’s Quarterly Gas Cost Recovery filing is generally recognized as confidential or proprietary; it, therefore, meets the criteria for confidential treatment and is exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c).

IT IS THEREFORE ORDERED that:

1. Delta’s petition for confidential protection for the identity of the gas suppliers located in the Quarterly Gas Cost Recovery filing is granted.
2. The identity of the gas suppliers located in the Quarterly Gas Cost Recovery filing shall not be placed in the public record or made available for public inspection until further Order of this Commission.
3. The use of the material in question in any Commission proceeding shall be in compliance with 807 KAR 5:001, Section 13(9).
4. Delta shall inform the Commission if the material in question becomes publicly available or no longer qualifies for confidential treatment.

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<sup>3</sup> 807 KAR 5:001, Section 13 (2)(c).

<sup>4</sup> *Southeastern United Medigroup, Inc. v. Hughes*, 952 S.W.2d 195, 199 (Ky. 1997), *abrogated on other grounds by Hoskins v. Maricle*, 150 S.W.3d 1 (Ky. 2004).

5. If a non-party 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, Delta 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 71.878. If Delta 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 following an Order finding that the material no longer qualifies for confidential treatment in order to allow Delta to seek a remedy afforded by law.

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By the Commission

ENTERED  
OCT 03 2019  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
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