

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF ATMOS)	CASE NO.
ENERGY CORPORATION FOR AN)	2021-00214
ADJUSTMENT OF RATES)	

ORDER

On August 23, 2021, Atmos Energy Corporation (Atmos) filed a motion, pursuant to KRS 61.878, and 807 KAR 5:001, Section 13, requesting that the Commission grant confidential treatment for an indefinite period of time for information submitted in response to the Attorney General of the Commonwealth of Kentucky's First Request for Information (Attorney General's First Request), Items 14 and 15.

In support of its motion, Atmos makes the following arguments in favor of indefinite confidential treatment.

Atmos states the responsive information submitted in response to the Attorney General's First Request, Items 14 and 15, include sensitive tax information and tax returns. In support of its request for confidential treatment for its federal tax returns, Atmos cites the incorporation of federal law in KRS 61.878(1)(k) and 26 U.S.C.A. 6103(a), which precludes the public disclosure of federal tax returns. Regarding Atmos's state tax returns, Atmos cites KRS 131.190(1) which requires state tax returns be kept confidential in order to meet KRS 61.878(1)(l). KRS 61.878(1)(l) grants confidentiality to any

information made confidential by the Kentucky General Assembly. Atmos also notes this information was previously deemed confidential in Commission Case No. 2018-00281.¹

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 resident of the Commonwealth, except as otherwise provided by KRS 61.870 to 61.884."² The exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.³ The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.⁴ 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."⁵

Having considered the motion and the material at issue, the Commission finds that the tax information and material requested 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) and (1)(k).

IT IS THEREFORE ORDERED that:

1. Atmos's motion for confidential treatment is granted.

¹ Case No. 2018-00281, *Electronic Application of Atmos Energy Corporation for an Adjustment of Rates* (Ky. PSC Feb. 3, 2021).

² KRS 61.872(1).

³ See KRS 61.871.

⁴ 807 KAR 5:001, Section 13 (2)(c).

⁵ *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).

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. Atmos 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, Atmos 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 Atmos 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 Atmos to seek a remedy afforded by law.

By the Commission

ENTERED
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KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

Case No. 2021-00214

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