

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 October 5, 2021, Atmos Energy Corporation (Atmos) filed a petition for rehearing on the Commission’s October 1, 2021 Order, pursuant to KRS 278.400. Atmos requested the Commission modify its October 1, 2021 Order on the issue of confidentiality for the names of executive employees and retirees and their compensation on FR 16(8)(g) Schedule G-3 included in the response to Commission Staff’s First Request for Information, Item 55, the submitted document was entitled “Staff\_1-55 KY Co 50 G.3 - Exec Comp Apr20-Mar21 - mailout 052521 (CONFIDENTIAL).xlsx” (Attachment to Staff’s First Request Item 55).<sup>1</sup> The Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention (Attorney General), did not file a response to Atmos’s petition.

On August 3, 2021, Atmos requested confidential treatment for all workpapers, calculations, and assumptions used to develop its forecasted test year period that were provided in response to Commission Staff’s First Request Item 55, which fall under

---

<sup>1</sup> Atmos’s original motion for confidential treatment did not identify this Excel spreadsheet as the document for which it was seeking conditional treatment. It was only clear that this was the document for which confidential treatment was sought because Atmos filed it confidentially with its original motion for confidential treatment.

previous requests for confidentiality. Atmos submitted the Attachment to Staff's First Request Item 55, which did not specify the material to which the request applied. Going forward, Atmos should specify the material it requests receive confidential treatment. The Commission's October 1, 2021 Order stated:

To the extent that the subject material contains executive compensation information, the Commission finds that compensation for executive employees is included in base rate calculations and public information required to be disclosed in regulatory filings, and therefore, does not meet the standard confidentiality. Staff has reviewed the materials submitted and the executive compensation information is not entitled to confidential treatment and should not be exempted from public disclosure pursuant to KRS 61.878(1)(c) and 807 KAR 5:001, Section 13.

In its petition for rehearing, Atmos specifies that it is requesting confidential treatment for the names of executive employees and retirees and their salary benefits not otherwise publicly disclosed. In support of its motion, Atmos attached a revised document in response to Commission Staff's First Request, Item 55 (Redacted Attachment to Staff's First Request Item 55), that removed, among other things, the names and compensation information of retired employees<sup>2</sup> and argues that Atmos is only requesting confidential protection for the named executive salary benefits not otherwise publicly disclosed. Atmos claims confidential treatment for the named executive salary benefits not otherwise

---

<sup>2</sup> Atmos's Petition for Rehearing, filed Oct. 5, 2021, "Staff\_1-55\_KY\_Co\_50\_G.3\_-\_Exec\_Comp\_Apr20-Mar21\_(REDACTED)." Atmos filed a redacted Excel spreadsheet as an attachment to the Petition for Rehearing and a redacted PDF attached to the Petition for Rehearing. Comparing the redacted PDF attachment and the original spreadsheet exhibit, the only differences are on the SERP Tab of the spreadsheet in the original filing that coincide with page 5 of the PDF. The information in column L through AY in the SERP Tab of the Excel spreadsheet is the only information that is different between the original spreadsheet, the redacted PDF attachment, and the corresponding tab of the spreadsheet in the redacted spreadsheet. In the PDF attachment, Atmos removed the entire section containing the names of the retirees, executives, and the amount of compensation. In the redacted spreadsheet, the retiree's names and some executive's names have been removed and the amount of compensation remains.

publicly disclosed is in accord with KRS 61.878(1)(a) and cites the Commission's August 23, 2017 Order in Case No. 2017-00179<sup>3</sup> as support.

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."<sup>4</sup> The exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.<sup>5</sup> The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.<sup>6</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>7</sup>

The facts of Case No. 2017-00179 differ from those presented here because the information at issue was executive officer compensation that the utility requested remain confidential until it would be filed publicly in a Securities Exchange Commission (SEC) filing.<sup>8</sup> The Commission finds that that is not the case presented by Atmos. SEC filings

---

<sup>3</sup> Case No. 2017-00179, *Electronic Application of Kentucky Power Company for (1) A General Adjustment of Its Rates for Electric Service; (2) an Order Approving Its 2017 Environmental Compliance Plan; (3) an Order Approving Its Tariffs and Riders; (4) an Order Approving Accounting Practices to Establish Regulatory Assets and Liabilities; and (5) an Order Granting All Other Required Approvals and Relief* (Ky. PSC Aug. 23, 2018).

<sup>4</sup> KRS 61.872(1).

<sup>5</sup> See KRS 61.871.

<sup>6</sup> 807 KAR 5:001, Section 13(2)(c).

<sup>7</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).

<sup>8</sup> Case No. 2017-00179, *Electronic Application of Kentucky Power Company for (1) A General Adjustment of Its Rates for Electric Service; (2) an Order Approving Its 2017 Environmental Compliance Plan; (3) an Order Approving Its Tariffs and Riders; (4) an Order Approving Accounting Practices to*

are specific and only require holding information confidential until a date certain when the information is publicly filed. The Commission rejects Atmos's claim that the reasoning in the Commission's August 23, 2021 Order in Case No. 2017-00179 applies here. The Commission also rejects Atmos's claim that the material identified on rehearing should be given confidential treatment because it is not otherwise publicly disclosed. The amount of compensation involved in the ratemaking process is at issue and meets no other exception to be included in the public record. The Commission finds that the names of retired employees meet the standard of confidentiality set forth in KRS 61.878(1)(a) and should be given confidential treatment. The retired employees no longer represent the utility. The names of the retired employees are information of a personal nature. The amount of compensation to those retirees is part of the expense for ratemaking purposes and should be part of the public record. The amount of compensation to the retirees does not meet the exceptions set forth in KRS 61.878 and should remain part of the public record. To the extent the Attachment to Staff's First Request Item 55 includes any other "named executive salary benefits not otherwise publicly disclosed" that are not retirees, Atmos has not identified that material or supported a claim that it should be given confidential treatment.

Having considered the motion and the material at issue, the Commission finds that Atmos's petition for rehearing should be granted in part and denied in part. The Commission finds that the names of the retirees listed in the Attachment to Staff's First Request Item 55 meet the criteria for confidential treatment and are exempted from public

---

*Establish Regulatory Assets and Liabilities; and (5) an Order Granting All Other Required Approvals and Relief (Ky. PSC Aug. 23, 2018).*

disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878 (1)(a). The salary benefits and compensation, when not identified by names of retired employees, no longer meet the criteria for confidential treatment and because the amount of compensation is included in the ratemaking process, the amount of compensation should be part of the public record.

IT IS THEREFORE ORDERED that:

1. Atmos's motion for confidential treatment is granted in part and denied in part.

2. Atmos's motion for confidential treatment for the names of the retirees included in the Attachment to Staff's First Request Item 55 is granted.

3. Atmos's motion for confidential treatment for all information other than the names of the retirees in the Attachment to Staff's First Request Item 55, including the amount of compensation to retirees, is denied.

4. The designated material granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection until further Order of this Commission.

5. 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).

6. 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.

7. 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.

8. 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.

9. The designated material denied confidential treatment by this Order is not exempt from public disclosure and shall be placed in the public record and made available for public inspection.

10. If Atmos objects to the Commission's determination that the requested material not be granted confidential treatment, it must seek either rehearing pursuant to KRS 278.400 or judicial review of this Order pursuant to KRS 278.410. Failure to exercise either of these statutory rights will be deemed as agreement with the Commission's determination of which materials should be granted confidential treatment.

11. Within 30 days of the date of service of this Order, Atmos shall file a revised version of the designated material for which confidential treatment was denied, reflecting as unredacted the information that has been denied confidential treatment.

By the Commission



ATTEST:

  
Executive Director

\*Angela M Goad  
Assistant Attorney General  
Office of the Attorney General Office of Rate  
700 Capitol Avenue  
Suite 20  
Frankfort, KENTUCKY 40601-8204

\*Randy Hutchinson  
Wilson, Hutchinson & Littlepage  
611 Frederica Street  
Owensboro, KENTUCKY 42301

\*Atmos Energy Corporation  
3275 Highland Pointe Drive  
Owensboro, KY 42303

\*Eric Wilen  
Project Manager-Rates & Regulatory Affairs  
Atmos Energy Corporation  
5420 LBJ Freeway, Suite 1629  
Dallas, TEXAS 75420

\*Brannon Taylor  
Atmos Energy Corporation  
810 Crescent Centre Drive, Suite 600  
Franklin, TN 37067

\*Honorable John N Hughes  
Attorney at Law  
124 West Todd Street  
Frankfort, KENTUCKY 40601

\*John G Horne, II  
Office of the Attorney General Office of Rate  
700 Capitol Avenue  
Suite 20  
Frankfort, KENTUCKY 40601-8204

\*Larry Cook  
Assistant Attorney General  
Office of the Attorney General Office of Rate  
700 Capitol Avenue  
Suite 20  
Frankfort, KENTUCKY 40601-8204

\*J. Michael West  
Office of the Attorney General Office of Rate  
700 Capitol Avenue  
Suite 20  
Frankfort, KENTUCKY 40601-8204