

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC REQUEST OF ATMOS ENERGY	)	
CORPORATION FOR MODIFICATION AND	)	CASE NO.
EXTENSION OF ITS GAS COST ADJUSTMENT	)	2020-00289
PERFORMANCE BASED RATEMAKING	)	
MECHANISM	)	

ORDER

This matter arises on two petitions filed by Atmos Energy Corporation (Atmos). On February 16, 2022, Atmos filed a petition, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for an indefinite period for documentation filed in response to Commission Staff's Post-Hearing Request for Information (Post-Hearing Request), Item 7. On August 9, 2022, Atmos filed a petition, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for an indefinite period for redactions from its Annual Report filed on the same date. Both petitions are before the Commission for a decision.

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."<sup>1</sup> KRS 61.878(1)(c)(1) exempts from disclosure "[r]ecords confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly

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

disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.” KRS 61.878(1)(k) exempts “information the disclosure of which is prohibited by federal law or regulation or state law.” 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 that one of the exceptions is applicable.<sup>3</sup>

### FEBRUARY 16, 2022 PETITION

In response to Post-Hearing Request, Item 7, Atmos filed Inside FERC and NYMEX prices that Atmos obtained using its S&P Global Platt’s subscription. S&P Global compiles and publishes the prices at issue and sells them via a subscription service. Atmos asserts that the publication is proprietary and subject to copyright laws and to the best of its knowledge is not available publically. Atmos argued that similarly information has previously been granted confidential treatment by the Commission.

Having considered the petition and the material at issue, the Commission finds that Atmos’s petition should be granted. The publication contains proprietary information intended for confidential use. Public disclosure could jeopardize Atmos’s ability to obtain this type of information in the future and might represent a copyright law violation. This type of information is generally recognized as confidential and proprietary and would permit an unfair commercial advantage to Atmos’s competitors if disclosed.<sup>4</sup> The

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<sup>2</sup> See KRS 61.871.

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

<sup>4</sup> Case No. 2021-00214, *Electronic Application of Atmos Energy Corporation for an Adjustment of Rates* (Ky. PSC Feb. 25, 2022), Order at 4; see also Case No. 2021-00183, *Electronic Application of Columbia Kentucky, Inc. for an Adjustment of Rates* (Ky. PSC Oct. 4, 2021), Order (indicating that copyrighted material is subject to confidential treatment pursuant to KRS 61.878(1)(k)).

Commission finds that the designated material contained in these documents are records that meet the criteria for confidential treatment and are exempted from public disclosure indefinitely pursuant to KRS 61.878(1) and 807 KAR 5:001, Section 13.

AUGUST 9, 2022 PETITION

On August 9, 2022, Atmos filed an Annual Report that included redacted gas contract discounts. Atmos argued that disclosure of these discounts would give an unfair advantage to its competitors and similar information was already granted confidential treatment in this case.

Having considered the petition and the material at issue, the Commission finds that Atmos's petition should be granted in part. Competitors or suppliers could use this information unfairly to their benefit and Atmos's detriment. However, the information will not be useful indefinitely. In fact, similar information was previously granted confidential treatment in this case but only for ten years.<sup>5</sup> Thus, the Commission finds that the designated material contained in the Annual Report meets the criteria for confidential treatment and is exempted from public disclosure for ten years, as opposed to the indefinite period requested, pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13.

IT IS THEREFORE ORDERED that:

1. Atmos's petitions for confidential treatment are granted in part.
2. The documents provided in response to Post-Hearing Request, Item 7 and granted confidential treatment by this Order shall not be placed in the public record or

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<sup>5</sup> Order (Ky. PSC Feb. 7, 2022) at 3-4.

made available for public inspection for an indefinite period or until further Order of this Commission.

3. The material redacted from Atmos's August 9, 2022 Annual Report and granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for ten years, as opposed to the indefinite period requested, or until further Order of this Commission.

4. 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).

5. 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.

6. 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.

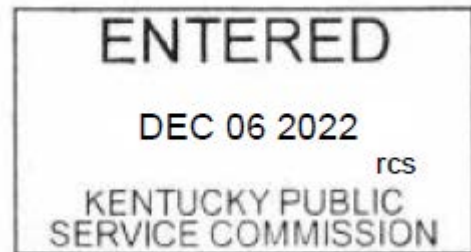
7. The Commission shall not make the requested material available for inspection for 30 days from the date of service of an Order finding that the material no longer qualifies for confidential treatment in order to allow Atmos to seek a remedy afforded by law.

PUBLIC SERVICE COMMISSION

  
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Chairman

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Vice Chairman

  
\_\_\_\_\_  
Commissioner



ATTEST:

  
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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

\*Eric Wilen  
Atmos Energy Corporation  
810 Crescent Centre Drive, Suite 600  
Franklin, TN 37067

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

\*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

\*Michael West  
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