

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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| ELECTRONIC APPLICATION OF DELTA |) | CASE NO. |
| NATURAL GAS COMPANY, INC. FOR ITS PIPE |) | 2022-00341 |
| REPLACEMENT FILING |) | |

ORDER

On January 19, 2023, Delta Natural Gas Company, Inc. (Delta) filed a petition, pursuant to 807 KAR 5:001E, Section 13, and KRS 61.878(1)(c)(1), requesting that the Commission grant confidential protection for five years for portions of Delta's responses to Commission Staff's First Request for Information (Staff's First Request), Items 7 and 8. Delta sought confidential treatment for portions of its sponsored narrative responses to Staff's First Request, Items 7 and 8, as well as all of the documents that it provided in response to Staff's First Request, Items 7 and 8.

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

¹ KRS 61.872(1).

² See KRS 61.871.

that one of the exceptions is applicable.³ KRS 61.878(1)(c)(1) exempts records that are “[g]enerally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.”

DISCUSSION AND FINDINGS

In support of its petition, Delta argued that its responses to Staff’s First Request, Items 7 and 8 contain detailed bid and contract information, including the bid information sent to and received from potential contractors. Delta argued that the public disclosure of these bids would disrupt the competitive bid process between Delta and its contractors. Further, Delta argued that the release of the information contained in its responses would reveal insight into Delta’s analysis of the bids it received.

Having considered the petition and the designated material at issue, the Commission finds that Delta’s petition should be granted in part and denied in part. In Case No. 2019-00399, the Commission granted confidential treatment to bids that were not selected by the utility but denied confidential treatment for the bids that were selected by the utility.⁴ On rehearing in that same case, the Commission reasoned, “Salt River’s position is counter to Commission precedent in which information contained in the winning

³ 807 KAR 5:001E, Section 13(2)(c).

⁴ Case No. 2019-00399, *Application of Salt River Electric Cooperative Corporation for an Order Issuing a Certificate of Public Convenience and Necessity Construct an Advanced Metering Infrastructure (AMI) System Pursuant to KRS 807, KAR 5:001 And KRS 278.020* (Ky. PSC Jan. 6, 2020).

bid is typically denied confidential treatment based upon principles of transparency regarding the evidence that the Commission relies upon in rendering its determinations.”⁵

Regarding the narrative portions of Delta’s responses to Staff’s First Request, Items 7 and 8, Delta only provided information about the bids Delta chose to accept. Accordingly, the Commission finds that Delta’s petition for confidential treatment of those redacted portions of Delta’s responses to Staff’s First Request, Items 7 and 8 should be denied based on the principles of transparency that the Commission has relied upon in prior cases.

The documents that Delta included in its response to Staff’s First Request, Item 7 include the form invitation to bid letters sent to multiple contractors, as well as correspondence reflecting Delta’s agreement to continue to extend a contract with winning bidder. The invitation to bid letters do not contain any material that would inherently be recognized as confidential or proprietary, and, as stated above, the Commission has previously denied confidential treatment for information related to winning bids based on principles of transparency. Therefore, the Commission finds that Delta’s petition to treat the documents provided in response to Staff’s First Request, Item 7, should be denied.

The documents that Delta provided in response to Staff’s First Request, Item 8 include the bids themselves that Delta received from several contractors. For the reasons set forth above, the Commission finds that confidential treatment should be denied for the documents that contain information about the winning bids or any contract renewals that

⁵ Case No. 2019-00399, *Application of Salt River Electric Cooperative Corporation for an Order Issuing a Certificate of Public Convenience and Necessity Construct an Advanced Metering Infrastructure (AMI) System Pursuant to KRS 807, KAR 5:001 And KRS 278.020* (Ky. PSC Feb. 20, 2020) at 2.

Delta selected. However, the bids and responses to invitations to bid that Delta received from the contractors that Delta chose not to select do meet the criteria for confidential treatment pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001E, Section 13 and should be exempted from public disclosure. Therefore, Delta's petition for confidential treatment for five years for any bids received that Delta chose not to accept should be granted.

IT IS THEREFORE ORDERED that:

1. Delta's petition for confidential treatment for portions of its responses to Staff's First Request, Items 7 and 8 is granted in part and denied in part.

2. Delta's petition for confidential treatment for five years for the documents containing the bids received from contractors not selected by Delta and included in its response to Staff's First Request, Item 8 is granted.

3. Delta's petition for confidential treatment for all other material not covered by ordering paragraph 2 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 for five years or 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 5:001E, Section 13(9).

6. Delta shall inform the Commission if the designated material granted confidential treatment 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, 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 61.878. 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.

8. The Commission shall not make the requested material for which confidential treatment was granted 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 Delta 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 Delta 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 shall be granted confidential treatment.

11. Within 30 days of the date of service of this Order, Delta 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.

12. The designated material for which Delta's request for confidential treatment has been denied shall neither be placed in the public record nor made available for

inspection for 30 days from the date of service of this Order to allow Delta to seek a remedy afforded by law.

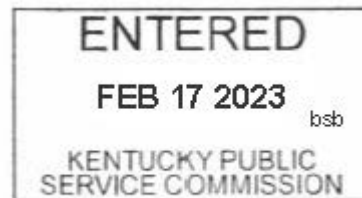
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