

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF ATMOS ENERGY	)	
CORPORATION FOR AN	)	CASE NO. 2013-00148
ADJUSTMENT OF RATES AND	)	
TARIFF MODIFICATIONS	)	

ORDER REGARDING REQUEST FOR CONFIDENTIAL TREATMENT

On March 5, 2014, Atmos Energy Corporation ("Movant") moved, pursuant to KRS 61.878 and 807 KAR 5:001, Section 13, that certain materials filed with the Commission be afforded confidential treatment and not be placed in the public record subject to public inspection. In support of its motion, Movant states that the information it is requesting to be held confidential is found in its responses and periodic updates to the Attorney General's Initial Data Request, Item 1-140, and to Commission Staff's First Request for Information, Item 1-54.

Movant's requests seek confidential treatment for all attorney invoices submitted by Movant's legal counsel to Movant for legal fees associated with the preparation of the above rate case, as well as updated invoices and information on a monthly basis. Movant states that these attorney invoices should be granted confidential protection on two independent bases. First, the invoices fall within a statutory exception to the general requirement of disclosure because the invoices are confidential and proprietary and would provide an unfair commercial advantage to Movant's business competitors. Second, the invoices constitute privileged attorney-client communications between Movant and its attorneys for the purpose of facilitating the rendition of legal services to

Movant. Movant states that it does not object to providing complete and unredacted attorney invoices to the Commission, Staff, or the Attorney General, but seeks to protect these invoices from “public inspection” by all others.

Movant states that it does not make these attorney invoices available to the public and also restricts their circulation internally to management employees of Movant. Movant asserts that public disclosure of these attorney invoices would result in significant and irreparable competitive harm to Movant, as they contain sensitive information related to legal issues, planning strategies, legal research, legal advice and other matters related to Movant’s business. Movant further asserts that these attorney invoices warrant confidential protection from public inspection because they constitute privileged attorney-client communications under Kentucky Rules of Evidence (“KRE”) 503. Specifically, KRE 503(b) provides in relevant part, “A client has a privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication made for the purpose of facilitating the rendition of professional legal services to the client . . . [b]etween the client or a representative of the client and the client’s lawyer or a representative of the lawyer[.]” KRE 503(a)(5) provides in relevant part, “A communication is ‘confidential’ if not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client . . . .”

Movant also cites *St. Luke Hospitals, Inc., v. Hon. Leonard L. Kopowski, Campbell Circuit Court Judge*, 160 S.W.3d 771 (Ky. 2005), in which the Supreme Court of Kentucky stated that “when a communication is protected by the attorney-client privilege it may not be overcome by a showing of need by an opposing party to obtain

the information contained in the privileged communication.” *Id.* at 776-777. The Court further explained, “In short, attorney-client privileged communications do not fall within the ambit of [the work product doctrine], and are not discoverable even when the information is essential to the underlying case and cannot be obtained from another source.” *Id.* at 777.

Having carefully considered the motion and the materials at issue, the Commission finds that:

1. The materials for which Movant seeks confidential treatment meet the criteria for confidential treatment and are exempted from public disclosure pursuant to KRS 61.878 and 807 KAR 5:001, Section 13.

2. The materials for which Movant seeks confidential treatment should not be placed in the public record or made available for an indefinite period.

IT IS THEREFORE ORDERED that:

1. Movant's motion for confidential protection is hereby granted.

2. The materials for which Movant seeks confidential treatment shall neither be placed in the public record nor made available for public inspection for an indefinite period.

3. Use of the materials in question in any Commission proceeding shall comply with 807 KAR 5:001, Section 13(9).

4. Movant shall inform the Commission if the materials in question become publicly available or no longer qualify for confidential treatment.

5. If a non-party to this proceeding requests to inspect materials granted confidential treatment by this Order and the period during which the materials have

been granted confidential treatment has not run, the Movant shall have 20 days from receipt of written notice of the request to demonstrate that the materials still fall within the exclusions from disclosure requirements established in KRS 61.878. If Movant is unable to make such demonstration, the requested materials shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

6. The Commission shall not make the requested materials available for inspection for 20 days following an Order finding that the materials no longer qualify for confidential treatment in order to allow Movant to seek a remedy afforded by law.

By the Commission

ENTERED JUL 16 2014 KENTUCKY PUBLIC SERVICE COMMISSION
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