

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

On August 31, 2020, Atmos Energy Corporation (Atmos) filed a petition, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential protection for an indefinite period for its 2020 Annual Report, Four-Year Evaluation, and Exhibit A to the Four-Year Evaluation, all provided pursuant to the Commission's March 31, 2016 Order regarding Atmos' performance-based ratemaking program.¹

On November 13, 2020, Atmos filed a petition, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential protection for an indefinite period for information provided in response to Commission Staff's First Request for Information (Staff's First Request) Items 1 and 9; and Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention's (Attorney General) First Request for Information (Attorney General's First Request) Items 13 and 26.

¹ Case No. 2015-00298, *Modification and Extension of Gas Cost Adjustment PBR Mechanism* (Ky. PSC Mar. 31, 2016), Order at 5.

On December 21, 2020, Atmos filed a petition, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential protection for an indefinite period for information provided in response to Commission Staff's Second Request for Information (Staff's Second Request) Item 1; and Attorney General's Second Request for Information (Attorney General's Second Request) Item 6.

On August 25, 2021, Atmos filed a petition, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential protection for an indefinite period for its 2021 Annual Report as ordered by the Commission.²

LEGAL STANDARD

In support of its petition, Atmos argued that these records should be exempt from public disclosure under KRS 61.878(1)(c)(1) as “[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 disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.”

AUGUST 31, 2020 MOTION

Atmos sought confidential treatment for its 2020 Annual Report and Four-Year Evaluation because these documents constitute a comprehensive and detailed plan for obtaining and structuring gas supply contracts, which include supplier specific information. Atmos also asked for confidential treatment of Exhibit A to the Annual Report, which contains monthly and aggregate purchase volume, discounts, cost, and savings. The document does not include any supplier specific information. However, Atmos argued that discounts should be confidential, as well as the remaining data from

² *Id.*

which discounts could be extrapolated. Atmos cited a prior Commission Order that granted confidential treatment to performance-based ratemaking contract information.³

Having considered the petition and the material at issue, the Commission finds that Atmos's August 31, 2020 petition should be granted. The Annual Report, Four-Year Evaluation, and Exhibit A are exempt from public disclosure because they constitute internal business planning that existing and potential gas suppliers could use this information in future negotiations to the detriment of Atmos and its ratepayers and to the benefit of Atmos' competitors.⁴ The Commission finds that the designated material contained in the 2020 Annual Report, Four-Year Evaluation and Exhibit A are records that meet the criteria for confidential treatment and are exempted from public disclosure for ten years pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13.

NOVEMBER 13, 2020 MOTION

Atmos also petitioned for confidential treatment for a series of documents provided in response to Staff's First Request and Attorney General's First Request pursuant to KRS 61.878(1)(c)(1). In response to Staff's First Request Item 1, Atmos provided gas supplier contracts and internal memos regarding those contracts. In response to Item 9, Atmos provided Requests for Proposals (RFP's) to gas suppliers and the corresponding bid packages. In response to Attorney General's First Request Item 13, Atmos submitted a list of asset managers from 2006 to 2023 with no accompanying contract or payment information. Atmos did not make any argument specific to this document. In response

³ Case No. 2017-00029, *Purchased Gas Adjustment Filing of Atmos Energy Corporation* (Ky. PSC June 30, 2017), Order at 1–2.

⁴ *Id.* See also Case No. 2016-00370, *Electronic Application of Kentucky Utilities Company for an Adjustment of Its Electric Rates and for Certificates of Public Convenience and Necessity* (Ky. PSC Dec. 12, 2018), Order at 3, 5, granting confidential treatment to internal, strategic business plans.

to Item 26, Atmos provided an update to Exhibit A of the Four-Year Evaluation, containing gas purchase cost, discounts, savings, and purchase volume through October 2020.

Having considered the petition and the material at issue, the Commission finds that Atmos' November 13, 2020 petition should be granted in part and denied in part. The documents provided in response to Staff's First Request Items 1 and 9; and Attorney General's First Request Item 26 would be harmful to Atmos' future supplier negotiations if publicly disclosed as discussed above.⁵ The 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 for ten years pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13.

The Commission further finds that the request for confidential treatment should be denied for the document provided in response to Attorney General's First Request Item 13. A list of asset managers with no additional information would not harm Atmos if publicly disclosed. Therefore, this information does not meet the criteria for confidential treatment and is not exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13.

DECEMBER 21, 2020 MOTION

Atmos also petitioned for confidential treatment for documents provided in response to Staff's Second Request and Attorney General's Second Request pursuant to KRS 61.878(1)(c)(1). In response to Staff's Second Request Item 2, Atmos provided a differently detailed version of the data contained in the Exhibit A spreadsheet discussed above. In response to Attorney General's Second Request Item 6, Atmos provided

⁵ See footnote 4.

another update to Exhibit A to the Four-Year Evaluation, containing gas purchase cost, discounts, savings, and purchase volume through May 2021.

Having considered the petition and the material at issue, the Commission finds that Atmos' December 18, 2020 petition should be granted. The documents provided in response to Staff's First Request Item 1 and Attorney General's First Request Item 6 would be harmful to Atmos' future supplier negotiations if publicly disclosed as discussed above.⁶ The 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 pursuant for ten years to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13.

AUGUST 25, 2021 MOTION

Atmos sought confidential treatment pursuant to KRS 61.878(1)(c)(1) for its 2021 Annual report filed as required by the Commission.⁷ This filing was another update to the document supplied as Exhibit A to the 2020 Annual Report discussed above.

Having considered the petition and the material at issue, the Commission finds that Atmos' August 25, 2021 petition should be granted. The document provided as part of the 2021 Annual Report would be harmful to Atmos' future supplier negotiations if publicly disclosed as discussed above.⁸ The Commission finds that the designated material contained in these documents are records that meet the criteria for confidential treatment

⁶ See footnote 4.

⁷ See footnote 1.

⁸ See footnote 4.

and are exempted from public disclosure for ten years pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13.

IT IS THEREFORE ORDERED that:

1. Atmos' petitions for confidential treatment are granted in part and denied in part.

2. Atmos' petitions for confidential treatment for its 2020 Annual Report, Four-Year Evaluation, Exhibit A, 2021 Annual Report, and documents provided in Response to Staff's First Request Items 1 and 9, Attorney General's First Request Item 26, Staff's Second Request Item 1, and Attorney General's Second Request Item 6 are granted.

3. Atmos' petition for confidential treatment for the document provided in response to Attorney General's First Request Item 13 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 ten 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 5:001, Section 13(9).

6. Atmos 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, 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 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 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.

12. The designated material for which Atmos' 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 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. 2020-00289

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