

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC PURCHASED GAS ADJUSTMENT)	CASE NO.
FILING OF ATMOS ENERGY CORPORATION)	2020-00403

ORDER

On December 18, 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 treatment for an indefinite period for redactions from its Gas Cost Adjustment (GCA) filing submitted on the same date.

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 In support of its petitions, Atmos argued for the application of KRS 61.878(1)(c)(1), which 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 disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.” 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 that one of the exceptions is applicable.³

¹ KRS 61.872(1).

² See KRS 61.871.

³ 807 KAR 5:001, Section 13(2)(c).

On December 18, 2020, Atmos filed a GCA spreadsheet that included redacted data from which gas prices paid to suppliers and projected gas prices to be paid to suppliers could be calculated. Atmos argued that its supplier contracts are negotiated, and disclosure would negatively affect its ability to negotiate advantageous prices in the future, to the benefit of competitors.

Having considered the petition and the material at issue, the Commission finds that Atmos's petition should be granted in part as discussed below. Competitors could use the information regarding gas prices and projected gas prices to compete with Atmos for suppliers' business or suppliers could use the data to unfairly negotiate with Atmos. However, the information will not be useful indefinitely. In fact, gas supplier contract prices have previously been granted confidential treatment for Atmos, but only for ten years.⁴ Thus, the Commission finds that the designated material for which confidential treatment is sought 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 motion for confidential treatment is granted in part.
2. 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, as opposed to the indefinite period requested, or until further Order of this Commission.

⁴ Case 2020-00289, *Electronic Request of Atmos Energy Corporation for Modification and Extension of Its Gas Cost Adjustment Performance Based Ratemaking Mechanism* (Ky. PSC Feb. 7, 2022), Order at 3-4.

3. 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).

4. 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.

5. 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.

6. 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


Chairman

Vice Chairman


Commissioner



ATTEST:


Executive Director

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