

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF COLUMBIA	)	
GAS OF KENTUCKY, INC. FOR AN	)	
ADJUSTMENT OF RATES; APPROVAL OF	)	CASE NO.
DEPRECIATION STUDY; APPROVAL OF	)	2021-00183
TARIFF REVISIONS; ISSUANCE OF A	)	
CERTIFICATE OF PUBLIC CONVENIENCE	)	
AND NECESSITY; AND OTHER RELIEF	)	

ORDER

On August 18, 2021, Columbia Gas of Kentucky, Inc. (Columbia Kentucky) filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for one year for Attachment A to Columbia Kentucky's supplemental response to the Attorney General's First Request for Information, Item 197.

In support of its motion, Columbia Kentucky states that the information included in the response is only being provided in unredacted Excel Spreadsheet format, and that the spreadsheet cannot be redacted and keep the formulas intact. Additionally, Columbia Kentucky argues that compensation and benefit information, such as that contained in Attachment A, is personal in nature and if disclosed could violate Columbia Kentucky's employees reasonable expectations of personal privacy. Columbia Kentucky maintains that this information is excluded from the Kentucky Open Records Act<sup>1</sup> by KRS 61.878(1). Further, Columbia Kentucky states that information contained in Attachment A is

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<sup>1</sup> KRS 61.870 through 61.884.

commercially sensitive and proprietary and constitutes a trade secret under KRS 365.880(4).<sup>2</sup>

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>3</sup> The exceptions to the free and open examination of public records contained in KRS 61.878, should be strictly construed.<sup>4</sup> The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.<sup>5</sup> In determining whether materials should be exempt from disclosure, the Commission must balance the potential harm from disclosure with “the effect of protecting a given document from scrutiny by the public and potential intervenors.”<sup>6</sup>

Columbia Kentucky argues that KRS 61.878(1) exempts Attachment A from public disclosure, but does not state with particularity which of the 18 subsections of KRS 61.878(1) applies to the information contained in Attachment A. The Commission reminds Columbia Kentucky and any other utility requesting confidential treatment for material filed with the Commission that the burden of establishing one of the exceptions to public disclosure applies is that of the party making the request. Having considered

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<sup>2</sup> KRS 365.880(4) defines a trade secret as information, including a formula, pattern, compilation, program, data, device, method, technique, or process that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use, and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

<sup>3</sup> KRS 61.872(1).

<sup>4</sup> KRS 61.871.

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

<sup>6</sup> *Southeastern United Medigroup, Inc. v. Hughes*, 952 S.W.2d 195, 199 (Ky. 1997), *abrogated on other grounds by Hoskins v. Maricle*, 150 S.W.3d 1 (Ky. 2004).

the motion and the material at issue, the Commission finds that the formulas contained in Attachment A meet the requirements of a “trade secret” as defined in KRS 365.880(4), and therefore are exempt from public disclosure under KRS 61.878(1)(c)(1).<sup>7</sup>

The Commission has generally held that executive officer salary and compensation does not meet the criteria for confidential treatment because executive compensation is included as an expense in base rate calculations and because certain executive salary information must be disclosed to the public in any case in other regulatory filings.<sup>8</sup> For this reason, the Commission finds the text included on Attachment A is not exempt from public disclosure, and that Columbia Kentucky should file the information with the Commission in a format that permits redaction of the confidential formulas, such as a PDF file.

IT IS THEREFORE ORDERED that:

1. Columbia Kentucky’s motion for confidential treatment for Attachment A to Columbia Kentucky’s supplemental response to the Attorney General’s First Request for Information, Item 197 is granted in part and denied in part.

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<sup>7</sup> KRS 61.878(1)(c)(1) exempts from public disclosure public records 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.

<sup>8</sup> See Case No. 2017-00349, *Electronic Application of Atmos Energy Corporation for an Adjustment of Rates and Tariff Modifications* (Ky. PSC May 17, 2018) at 1–2; See also, Case No. 2012-00221, *Application of Kentucky Utilities Company for an Adjustment of its Electric Rates* (Ky. PSC Sept. 11, 2013) at 1 (denying a request to treat executive salaries and benefits as confidential for those reasons). See also, Case No. 2017-00321, *Electronic Application of Duke Energy Kentucky, Inc. for 1) An Adjustment of the Electric Rates; 2) Approval of an Environmental Surcharge Mechanism; 3) Approval of New Tariffs; 4) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities and 5) all Other Requires Approvals and Relief* (Ky. PSC May 3, 2018) (Ky. PSC May 4, 2018) denying confidential treatment to executive compensation, and (Ky. PSC June 12, 2018) denying rehearing of the issue.

2. Columbia Kentucky's motion for confidential treatment for the formulas contained in Attachment A to Columbia Kentucky's supplemental response to the Attorney General's First Request for Information, Item 197 is granted.

3. Columbia Kentucky's motion for confidential treatment for the included on Attachment A to Columbia Kentucky's supplemental response to the Attorney General's First Request for Information, Item 197 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 one year 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. Columbia Kentucky 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, 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 Columbia Kentucky 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 Columbia Kentucky 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 Columbia Kentucky 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, Columbia Kentucky 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 Columbia Kentucky'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 Columbia Kentucky to seek a remedy afforded by law.

By the Commission

ENTERED  
OCT 05 2021 rcs  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:



Executive Director

Case No. 2021-00183

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