

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

| | | |
|---------------------------------|---|------------|
| ELECTRONIC APPLICATION OF ATMOS |) | CASE NO. |
| ENERGY CORPORATION FOR AN |) | 2021-00214 |
| ADJUSTMENT OF RATES |) | |

ORDER

On August 3, 2021, Atmos Energy Corporation (Atmos) filed a petition for confidentiality, pursuant to KRS 61.878, and 807 KAR 5:001, Section 13, requesting that the Commission grant confidential protection for an indefinite period for information filed in response to Commission Staff’s First Request for Information (Staff’s First Request), in particular, Atmos seeks confidentiality for information response to Staff’s First Request, Items 12, 14, 15, 16, 47, 48, and 55.

The Commission notes that Atmos did not file and identify its petition for confidentiality separately from its responses to Staff’s First Request. Atmos should file and clearly identify its filings in the “Read1st” documents in accordance with 807 KAR 5:001, Section 8, so that Commission Staff can direct its filings properly. Atmos should take more care in filing to ensure that the Commission is able to review or respond to its filings as required, in a timely and efficient manner.

In support of its motion, Atmos makes the following arguments in favor of indefinite confidential treatment.

Atmos states the information submitted in response to Staff’s First Request, Item 12, includes vendor contracts. Atmos asserts these contracts include the cost of service

and rates charged by third-party vendors and that public disclosure of the materials could provide competitors information that could be used to harm Atmos, and, by extension, its customers. Atmos also notes such information was previously deemed confidential in Atmos's prior rate application, Case No. 2018-00281.¹

Information in response to Staff's First Requests, Items 14, 15, and 16, includes tax returns. In support of its request for confidential treatment for its federal tax returns, Atmos cites the incorporation of federal law in KRS 61.878(1)(k) and 26 U.S.C.A. 6103(a), which require federal tax returns not be publicly disclosed. With regard to Atmos's state tax returns, Atmos cites KRS 131.190(1) which requires state tax returns be kept confidential in order to meet KRS 61.878(1)(l). KRS 61.878(1)(l) grants confidentiality to any information made confidential by the Kentucky General Assembly. Atmos also notes this information was previously deemed confidential in Case No. 2018-00281.²

Atmos states the information provided in response to Staff's First Request, Items 47 and 48, includes an internal analysis of employee benefits and compensation policies. Atmos claims public disclosure of this information would permit an unfair commercial advantage to competitors. Atmos again notes this information was deemed confidential in Case No. 2018-00281.³

Finally, Atmos requests confidential treatment for all workpapers, calculations, and assumptions used to develop its forecasted test year period that were provided in

¹ Case No. 2018-00281, *Electronic Application of Atmos Energy Corporation for an Adjustment of Rates* (Ky. PSC Feb. 3, 2021).

² *Id.*

³ *Id.*

response to Staff's First Request, Item 55, which fall under the previous requests for confidentiality. Atmos did not specify the material to which this request applies.

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 resident of the Commonwealth, except as otherwise provided by KRS 61.870 to 61.884."⁴ The exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.⁵ The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.⁶ 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."⁷

Having considered the petition and material at issue, the Commission finds that Atmos's petition for confidentiality should be granted in part and denied in part. The Commission finds that the designated material contained in Atmos's responses to Staff's First Request, Items 12, 14, 15, 16, 47, and 48 are records that meet the criteria for confidential treatment and are exempted from public disclosure pursuant to KRS 61.878 (1)(c) and 807 KAR 5:001, Section 13.

The Commission further finds that the request for confidential treatment should be denied for information submitted by Atmos in response to Staff's First Request, Item 55.

⁴ KRS 61.872(1).

⁵ See KRS 61.871.

⁶ 807 KAR 5:001, Section 13 (2)(c).

⁷ *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 confidential request is overly broad and does not specify what materials Atmos is claiming meet the criteria for confidential status. To the extent that the subject material contains executive compensation information, the Commission finds that compensation for executive employees is included in base rate calculations and public information required to be disclosed in regulatory filings, and therefore, does not meet the standard confidentiality. Staff has reviewed the materials submitted and the executive compensation information is not entitled to confidential treatment and should not be exempted from public disclosure pursuant to KRS 61.878(1)(c) and 807 KAR 5:001, Section 13.

IT IS THEREFORE ORDERED that:

1. Atmos's petition for confidential treatment for information filed in response to Staff's First Request is granted in part and denied in part.
2. Atmos's petition for confidential treatment for responsive materials to Staff's First Request, Items 12, 14, 15, 16, 47, and 48 is granted.
3. Atmos's petition for confidential treatment for responsive materials to Staff's First Request, Item 55 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 an indefinite period 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, 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'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 Atmos to seek a remedy afforded by law.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

By the Commission

ENTERED
OCT 01 2021 rcs
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

Case No. 2021-00214

*Angela M Goad
Assistant Attorney General
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Randy Hutchinson
Wilson, Hutchinson & Littlepage
611 Frederica Street
Owensboro, KENTUCKY 42301

*Atmos Energy Corporation
3275 Highland Pointe Drive
Owensboro, KY 42303

*Eric Wilen
Project Manager-Rates & Regulatory Affairs
Atmos Energy Corporation
5420 LBJ Freeway, Suite 1629
Dallas, TEXAS 75420

*Brannon Taylor
Atmos Energy Corporation
810 Crescent Centre Drive, Suite 600
Franklin, TN 37067

*Honorable John N Hughes
Attorney at Law
124 West Todd Street
Frankfort, KENTUCKY 40601

*John G Horne, II
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Larry Cook
Assistant Attorney General
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*J. Michael West
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204