

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF ATMOS)	
ENERGY CORPORATION FOR APPROVAL OF)	CASE NO.
SPECIAL CONTRACT PURSUANT TO ITS)	2023-00086
ECONOMIC DEVELOPMENT RIDER)	

ORDER

On March 10, 2023, 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 Exhibits C and D to its special contract application.

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 Atmos sought application of KRS 61.878(1)(c)(1), which exempts records that are “[g]enerally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.” Atmos also sought application of KRS 61.878(1)(m), which exempts “[p]ublic records the disclosure of which would have a reasonable likelihood of threatening the public safety by exposing a vulnerability in preventing, protecting against, mitigating, or responding to a terrorist act . . .” The exemption is limited to certain types of records, including:

¹ KRS 61.872(1).

Infrastructure records that expose a vulnerability referred to in this subparagraph through the disclosure of the location, configuration, or security of critical systems, including public utility critical systems. These critical systems shall include but not be limited to information technology, communication, electrical, fire suppression, ventilation, water, wastewater, sewage, and gas systems.

A terrorist act is defined as including a criminal act intended to “[d]isrupt a system” identified in the above.

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

Exhibit C to Atmos’s application consists of a marginal cost study for the calculation of the margin generated as a result of the economic development rate being charged to the special contract customer. Atmos argued that disclosure would give market participants insight into the prices at which it is willing to buy and sell natural gas and these market participants could use that information to manipulate the bidding process, leading to higher costs or lower revenues. Exhibit D consists of a map showing general locations of its distribution systems and pressure values for different customers indicating available capacity. Atmos asserted that this information should be exempted from disclosure by KRS 61.878(1)(m).

Having considered the petition and the material at issue, the Commission finds that Atmos’s motion for confidential treatment should be granted. Disclosure of special contract terms could affect Atmos’s ability to fairly negotiate with other potential special

² See KRS 61.871.

³ 807 KAR 5:001, Section 13(2)(c).

contract partners in the future, disadvantaging Atmos compared to its competitors. However, in accordance with Commission precedent, confidential treatment for special contract terms and non-member sales should be limited to ten years, at which time this data will be obsolete because demand and pricing will have changed sufficiently.⁴ Therefore, Exhibit C is exempt from disclosure for ten years pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1). Regarding Exhibit D, although the map is not particularly detailed, it could still expose locations of distribution infrastructure as it depicts pipeline location relative to roads and customer locations and should remain confidential indefinitely pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(m).

IT IS THEREFORE ORDERED that:

1. Atmos's March 10, 2023 petition for confidential treatment is granted.
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 for Exhibit C to Atmos's application and for an indefinite period for Exhibit D to Atmos's application, or until further order of this Commission.
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. If the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment, Atmos shall


⁴ See Case No. 2023-00013, *An Electronic Examination of the Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation from November 1, 2020 Through October 31, 2022* (Ky. PSC Jan. 29, 2024), Order at 3-4; Case No. 2016-00117, *Joint Application of Kenergy Corp. and Big Rivers Electric Corporation for Approval of Contracts* (Ky. PSC Dec. 22, 2021), Order at 2; Case No 2023-00013, (Ky. PSC Jan. 29, 2024), Order at 4.

inform the Commission and file with the Commission an unredacted copy of the designated material.


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


Commissioner


Commissioner

ATTEST:


Executive Director



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