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June 28, 2007

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JUN 28 2007

**PUBLIC SERVICE
COMMISSION**

Hon. Elizabeth O'Donnell
Executive Director
Kentucky Public Service Commission
211 Sower Blvd.
P.O. Box 615
Frankfort, Kentucky 40602-0615

Re: Delta Natural Gas Company, Inc.
Case No. 2007-00089

Dear Ms. O'Donnell:

We deliver herewith for filing an original and ten (10) copies of the Petition of Delta Natural Gas Company, Inc. for Confidential Protection of Information Responsive to Attorney General's First Information Request in the above-captioned case. Best regards.

Sincerely,

Robert M. Watt, III

Rmw
Encl.

Cc: Mr. Glenn R. Jennings (w/ encl.)
Dennis Howard, II, Esq. (w/encl.)

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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JUN 28 2007

PUBLIC SERVICE
COMMISSION

In the Matter of:

APPLICATION OF DELTA NATURAL)
GAS COMPANY, INC. FOR) CASE NO. 2007-00089
AN ADJUSTMENT OF RATES)

* * * * *

**PETITION OF DELTA NATURAL GAS COMPANY, INC.
FOR CONFIDENTIAL PROTECTION OF INFORMATION
RESPONSIVE TO ATTORNEY GENERAL'S FIRST
INFORMATION REQUEST**

Delta Natural Gas Company, Inc. ("Delta") petitions the Kentucky Public Service Commission ("Commission") pursuant to 807 KAR 5:001, Section 7 and KRS 61.878(1)(c)(1), 61.878(1)(k), 61.878(1)(l), 131.190(1) and 26 U.S.C. § 6103(a) to grant confidential protection to certain information responsive to the Attorney General's Initial Request for Information dated June 7, 2007, herein. In support of this Petition, Delta states as follows.

1. Delta's responses to the following data requests contained in the Attorney General's Initial Request for Information contain confidential information that is exempt from disclosure under the Open Records Act, KRS 61.878(1)(c)(1), 61.878(1)(k), 61.878(1)(l):

- Item 28: Delta's fiscal 2008 budget;
- Item 34: Adjusting entry proposed by Delta's auditors for 2006;
- Item 58: Delta's Federal income tax returns for 2004 and 2005;
- Item 61: Delta's Federal and Kentucky income tax returns for 2005 and 2006;

- Item 67: Reconciliation of Delta’s book and tax income and tax liability for 2004-2006;
- Item 74: Delta’s Kentucky income tax return for 2004;
- Item 143: Delta’s construction and capital budgets for 2007-2011;
- Item 197: Delta’s capital budgets for 2005-2007.

2. The information responsive to Items 58, 61, 67 and 74 is either tax returns or information contained in or relating to tax returns. The proposed adjusting entry responsive to Item 34 relates to income tax liability and is sensitive tax planning information.

3. KRS 61.878(1)(k) exempts from public disclosure “all public records or information the disclosure of which is prohibited by federal law or regulation.” Pursuant to 28 U.S.C. § 6103(a), state officials are prohibited from publicly disclosing any federal income tax return or its contents. Therefore, federal income tax returns and their contents fall within the exemption provided by KRS 61.878(1)(k) and are exempt from disclosure. See *In the Matter of: Application for Adjustment of Rates of Kentucky Power Company*, Case No. 91-066, Order of July 23, 1991, at 5-6. KRS 61.878(1)(l) exempts from the Kentucky Open Records Act “public records or information the disclosure of which is prohibited or restricted or otherwise made confidential by enactment of the General Assembly.” KRS 131.190(1) requires that all income tax information filed with the Kentucky Department of Revenue be treated in a confidential manner. Thus, state income tax returns and information are also confidential in nature and protected from disclosure by KRS 61.878(1)(l). See *In the Matter of: Rate Adjustment of Western Kentucky Gas Company*, Case No. 90-013, Order of January 28, 1991, at 2.

4. The information responsive to Items 28, 143 and 197 is budget information. Such information, of course, is forecasted or predicted information. Delta's stock is publicly traded and Delta is regulated by the Securities and Exchange Commission under the Securities Exchange Act of 1934 and the regulations promulgated thereunder. One of those regulations is Regulation FD, which prohibits selective disclosure of information by companies such as Delta. Delta does not report to the general investing public forecasts or predictions about operations, capital spending or the like, but, rather, reports historical information. The filing of budgets in the record in this proceeding will place Delta in jeopardy of having made a selective disclosure of the budgets in violation of Regulation FD.

5. The filing of Delta's budget information will also place in the public record information which is generally recognized as confidential or propriety, which if openly disclosed would permit an unfair commercial advantage to Delta's competitors. The budgets would clearly reveal Delta's business planning and such information would give Delta's competitors an unfair competitive advantage since Delta has no access to such information from those competitors.

6. The budget information for which Delta is seeking confidential treatment is not known outside of Delta and it is not disseminated within Delta except to those employees with a legitimate business need to know and act upon the information.

7. The information provided as set forth in paragraphs 1 through 5 hereof demonstrates on its face that it merits confidential protection. If the Commission disagrees, however, it must hold an evidentiary hearing to protect the due process rights of Delta and supply the Commission with a complete record to enable it to reach a

decision with regard to this matter. Utility Regulatory Commission v. Kentucky Water Service Company, Inc., Ky. App., 642 S.W.2d 591, 592-94 (1982).

8. In accordance with the provisions of 807 KAR 5:001, Section 7, one copy of Delta's response to the foregoing data requests with the confidential information highlighted (in this case, the responses are attached under seal as the entirety of the responses are confidential) and copies of Delta's response without the confidential information are filed with the Commission in Delta's response to the Attorney General's Initial Request for Information.

WHEREFORE, Delta prays that the Commission grant confidential protection to its federal and state income tax returns submitted herewith.

Respectfully submitted,

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and

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By 
Counsel for Applicant

CERTIFICATE OF SERVICE

This is to certify that the foregoing pleading has been served by mailing a copy of same to the following persons on this 28th day of June 2007:

Dennis Howard, II, Esq.
Lawrence W. Cook, Esq.
Assistant Attorneys General
Office of Rate Intervention
1024 Capital Center Drive
Frankfort, KY 40601



Counsel for Applicant