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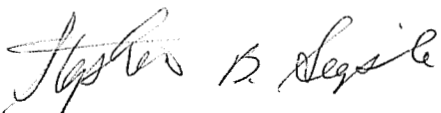
Mr. Jeff Derouen
Executive Director
Public Service Commission
Commonwealth of Kentucky
211 Sower Boulevard
P. O. Box 615
Frankfort, KY 40602

RE: Case No. 2009-00141

Dear Mr. Derouen,

Enclosed for docketing with the Commission is an original and ten copies of Columbia Gas of Kentucky, Inc.'s Petition for Confidential Treatment of Data. Should you have any questions about this filing, please contact me at 614-460-4648. Thank you!

Sincerely,



Stephen B. Seiple
Assistant General Counsel

Enclosures

cc: All Parties of Record
Hon. Richard S. Taylor

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the matter of adjustment of rates of Columbia)
Gas of Kentucky, Inc.) Case No. 2009-00141

PETITION OF COLUMBIA GAS OF KENTUCKY, INC.
FOR CONFIDENTIAL TREATMENT OF DATA

On June 2, 2009, the Attorney General served its first set of data requests upon Columbia Gas of Kentucky, Inc. (“Columbia”). On June 16, 2009, Columbia filed its responses with the Kentucky Public Service Commission (“Commission”) to these data requests. One of Columbia’s responses contains information that is confidential and proprietary to Columbia. Specifically, Data Request No. 66(a) seeks a copy of Amendment 9 to the IBM Agreement¹, which details sensitive pricing information. Columbia filed, and provided to parties, redacted versions of its response to this data request.

Pursuant to 807 KAR 5:001, Section 7, Columbia is requesting confidential treatment for the attachment to this specific data request. The Commission’s regulation requires any request for confidential treatment to set forth specific grounds pursuant to KRS § 61.870, *et seq.*, and file with the Commission an original clean copy of the proposed confidential material with proprietary information highlighted.² Pursuant to 807 KAR 5:001, Section 7, Columbia’s unredacted response is attached to the original copy of this Petition as Attachment A. Because the entire document is confidential, none of the information is highlighted. The Commission’s regulation further requires the requesting party to serve the petition and a redacted copy of the material on

¹ *In the Matter of Application of Columbia Gas of Kentucky, Inc. for an Adjustment of Rates for Gas Service*, PSC Case No. 2009-00141, Attorney General’s initial Requests for Information (June 2, 2009) at 14.

² 807 KAR 5:001 § 7(2)(a).

all parties of record.³ All other copies of this Petition include, as Attachment A, only the cover page of the attachment because all of the remaining pages are confidential. Columbia is also willing to enter into protective agreements with parties to this case under which agreement Columbia will provide the parties with the confidential information.

In view of the foregoing considerations, and as required by 807 KAR 5:001, Section 7, the data should be classified as confidential, pursuant to KRS §§ 61.870 *et seq.*, on the following specific grounds:

- (1) Pricing information which “would permit an unfair commercial advantage to competitors” of Columbia and IBM if disclosed is generally recognized as confidential or proprietary under KRS § 61.878(1)(c)(1).
- (2) Pricing information also constitutes a trade secret, as defined by KRS § 365.880 and protected by KRS § 365.888, and is shielded from disclosure in Commission proceedings under KRS § 61.878(1)(l).

Amendment 9 to the IBM Agreement provides a schedule of pricing methodology and information between IBM and NiSource Corporate Services Company, a Columbia affiliate. This information constitutes a trade secret, as defined by Kentucky’s Uniform Trade Secret Act, KRS § 365.880, *et seq.* Under the act, a trade secret is defined as:

Information, including a formula, pattern, compilation, program, data, device, method, technique, or process, that:

- (a) 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
- (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.⁴

³ 807 KAR 5:001 § 7(2)(c).

⁴ KRS § 365.880(4).

The Kentucky Statutes provide that the trade secrets secrecy should be preserved by reasonable means, which may include granting protective orders.⁵ Under the 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,” are excluded from public disclosure.⁶ The Trade Secrecy Act falls within the last catch-all category of exemptions from public disclosure.⁷

As applied to Amendment 9, the methodology utilized by IBM and NiSource to determine pricing for its service agreement, which also includes the actual pricing of such services, is a protected trade secret. NiSource, Columbia, Columbia’s customers and IBM derive independent economic value from the pricing methodology being held confidential because public disclosure of such information would create an unfair advantage with respect to competitor pricing and predatory practices to retain similar resources. Moreover, Columbia has taken every reasonable effort to ensure the contents of Amendment 9 remain confidential. The IBM Agreement contains a confidentiality clause, to which IBM and Columbia both agreed. The information within Amendment 9 is not disseminated within Columbia, and is known only by those of Columbia’s employees who have a legitimate business need to know and act upon that information. Therefore, the information contained within Amendment 9 is a trade secret and should not be disclosed to the public, as exempted under KRS § 61.878(1)(l).

Disclosure of the information and methodology in Amendment 9 will provide Columbia’s competitors with an unfair commercial advantage. The Open Records Act provides an exception for “records confidentially disclosed to an agency or required by an agency to be disclosed to it, general recognized as confidential or proprietary, which if openly disclosed would

⁵ KRS § 365.888.

⁶ KRS § 61.878(1)(l).

⁷ See 94-ORD-97, 1994 Ky. AG LEXIS 83 (August 5, 1994).

permit an unfair commercial advantage to competitors of the entities that disclosed the records.” The Commission has interpreted this section to require utilities to show that the: (1) commercial documents are generally recognized as confidential or proprietary and that (2) disclosure would permit an unfair commercial advantage to competitors.⁸ The Kentucky Supreme Court held that to trigger the KRS § 61.878(1)(c)(1) exemption, disclosure to competitors should provide substantially more than a trivial unfair advantage.⁹

As applied to Amendment 9, the pricing methodology of Columbia and IBM is confidential information. To disclose this information to Columbia’s competitors would lead to increased competition for utilizing IBM’s services. In addition, were this information to be made public, IBM would be at a serious competitive disadvantage with others who offer similar services, often through a competitive bidding process, and would thus damage IBM’s ability to competitively enter into agreements with other private companies in Kentucky. Therefore, the Commission should protect the pricing information and methodology in Amendment 9 under the Open Records Act exemption KRS § 61.878(1)(c)(1).

By granting this Petition and providing for confidential treatment of Columbia’s response to this data request, the Commission and the parties can fully evaluate Columbia’s proposed application for an adjustment in rates, while maintaining the general confidentiality of such data, thereby balancing the public interest with the personal privacy concerns identified in KRS § 61.878(1)(c)(1), and (l).

⁸ *In the Matter of Joint Petition for Arbitration of NewSouth Communications Corp., Nuvox Communications, Inc., KMC Telecom III LLC, and Xspedius Communications, LLC on behalf of its Operating Subsidiaries*, PSC Case No. 2004-00044, Order (June 2, 2006) at 7 (citing 93-ORD-43, 1993 Ky. AG LEXIS 73 (April 13, 1993)).

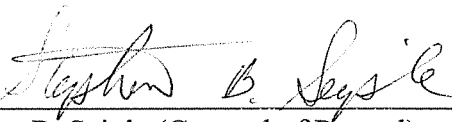
⁹ *Se. United Medigroup, Inc. v. Hon. John J. Hughes*, 952 S.W.2d 195 (Ky. 1997).

WHEREFORE, Columbia respectfully requests that the Commission issue an order authorizing the confidential treatment of Columbia's response to this data request in Attachment A hereto, pursuant to 807 KAR 5:001, Section 7, for the reasons stated herein.

Dated at Columbus, Ohio, this 16th day of June 2009.

Respectfully submitted,

COLUMBIA GAS OF KENTUCKY, INC.

By: 
Stephen B. Seiple (Counsel of Record)

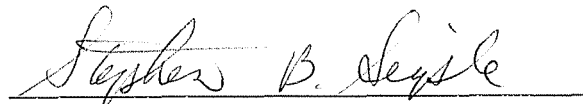
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Attorneys for
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition of Columbia Gas of Kentucky, Inc., for Confidential Treatment of Data was served upon all parties of record by regular U. S. mail this 16th day of June, 2009.



Stephen B. Seiple
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ATTACHMENT A



SERVICE PROVIDER PRICING FORMS

Restated and Amended pursuant to Amendment #9

This document contains confidential and proprietary information of NiSource and its affiliates and may not be duplicated, used or disclosed in whole or in part without the prior written consent of NiSource.

REMAINDER REDACTED